For the (Caleb) Love of the Game, Let States Write Their Own NIL Rules: Why Federal NIL Legislation Would Create Inefficient and Unfair Tax Consequences for Collegiate Student-Athletes

Cecilia Barreca

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FOR THE (CALEB) LOVE OF THE GAME,
LET STATES WRITE THEIR OWN NIL RULES: WHY FEDERAL NIL LEGISLATION WOULD CREATE INEFFICIENT AND UNFAIR TAX CONSEQUENCES FOR COLLEGIATE STUDENT-ATHLETES

CECILIA BARRECA*

INTRODUCTION

After his iconic three-point shot in the Final Four game between UNC and Duke basketball, Caleb Love’s name, image, and likeness (“NIL”) valuation skyrocketed by 77%.

One play. Seventy-seven percent. As of July 1, 2021, student-athletes were permitted by the National Collegiate Athletic Association (“NCAA”) to take advantage of NIL opportunities. Over the past year, student-athletes have generated an estimated $917 million in endorsement payments and are projected to generate over $1 billion by July 2023. While states have each chosen whether to enact NIL laws and to what extent, lobbyists, members of Congress, and academic researchers have called for federal legislation to create a standardized set of NIL rules. These proposed bills aim to create an even

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* Cecilia Barreca is a third-year student at the University of North Carolina School of Law. This article won the 2023 National Sports Law Student Writing Competition sponsored by Marquette University Law School’s Sports Law Program.


playing field for all student-athletes who engage in NIL opportunities by eliminating the “patchwork” of state laws that has led to competition between states. While this is a noble goal, advocates for federal legislation have failed to consider the tax consequences of passing national NIL rules.

If all states must adopt federal NIL rules, student-athletes will have the same NIL rights and protections wherever they choose to play and will face the same federal income tax rules. However, students will begin looking to individual state tax laws to choose a university that can lower their state tax burden. This inefficient decision-making would continue to breed competition between states and universities and shift recruiting aims from the merits of an athletic program to the benefits of a state’s tax laws. Additionally, students who attend the same university and earn the same NIL revenue may still, unfairly, face different tax bills. A student’s ability to pay will depend not only on the university’s state but also on the knowledge and support that the student receives from their family and athletic department. When the socioeconomic background and young age of student-athletes are also factored in, the unfairness of varying tax liability is compounded. Enacting uniform NIL rules will only lead to inefficient decision-making by students and agitate unfair tax outcomes.

In Part I, the basics of NIL will be outlined. Part II of this Article summarizes the history of NIL in the context of student-athletes, including NCAA rules, state laws, and proposed federal legislation. Part III of this Article examines tax considerations for student-athletes receiving NIL compensation. In Part IV, I will evaluate the inefficiencies that underlie the proposed federal legislation and discuss why state-by-state laws, though less easy to administer, will lead to more efficient tax outcomes. Part V will explore how federal legislation will lead to more horizontal and vertical inequity and fail to improve students’ ability to pay. Finally, in Part VI, I will advance a solution to replace the proposed federal legislation.

PART I: WHAT IS NIL AND WHAT IS IT WORTH?

Name, image, and likeness are three components that constitute one’s legal right of publicity. This legal right of publicity, dating back to the late 19th century, is “the right of the individual to control the commercial use of one’s...
identity.” NIL includes all of one’s unique traits – including voices and signatures. Public figures can use NIL to boost their brand, earn money, or promote a cause, but they also have the right to prevent unauthorized use by third parties. For example, after Bette Midler declined to do an advertisement for Ford Motor Company, Ford hired a singer who sounded like Midler. When the commercial ran, many people were fooled into thinking that Midler herself was singing. Midler sued for misappropriation of her right to publicity and won; her voice is part of her NIL which is a component of her right to publicity. There are no federal NIL laws, so state statutes or common law guarantees any legal protection for the right of publicity. The extent of protection of the right of publicity varies by state. Some states offer protection for a person’s likeness after death, and others offer additional NIL protection for specific categories of persons, e.g., celebrities or student-athletes.

A celebrity’s NIL can be valued by using a combination of an income and market approach. The income approach determines the present value of future cash flows attributed to NIL. These future cash flows can include promotions, endorsements, appearances, etc., but calculating the value of these activities is challenging, given how quickly a trend can evaporate or a celebrity’s popularity can dwindle. The market approach helps complement the income approach by looking at past cash flows achieved by other celebrities, events, or similar statuses. The market approach also estimates how long a celebrity can expect to receive cash flows from NIL, even after death. Calculating valuation, while

9 See Name, Image, and Likeness, supra note 6.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.; see infra Part II.
16 See Name, Image, and Likeness, supra note 6.
17 Id.
18 Id.
19 Id.
20 Id.
difficult, can be vital for negotiating NIL deals, paying estate taxes, or assessing damages against someone who violates a celebrity’s right of publicity.\textsuperscript{21}

In the sports sector, NIL is commercialized primarily through merchandising and media.\textsuperscript{22} For professional athletes, examples of NIL include sales of jerseys with an athlete’s name, sales of signed team merchandise, appearances on a television show or advertisement, broadcast or re-broadcast of a game, and computer-generated likeness of an athlete in a video game.\textsuperscript{23} Valuation for athletes, particularly student-athletes, generally reaches the same outcome as the dual income-market approach, but has a slightly different calculation.

ON3 is a data platform that tracks and calculates student-athletes’ NIL valuations by combining roster and brand values.\textsuperscript{24} Roster value calculates the amount the athlete expects to receive from NIL deals from the university’s collective NIL deals, such as whole team appearances or support for local businesses.\textsuperscript{25} Brand value combines three factors: performance, influence, and exposure.\textsuperscript{26} Performance is weighted by athletic performance.\textsuperscript{27} Influence is weighted by social media performance.\textsuperscript{28} Exposure is weighted by which university the athlete attends, what position, and what sport the athlete plays.\textsuperscript{29} Universities, sports, and positions with higher visibility are more likely to have a higher valuation.\textsuperscript{30}

For example, a starting point guard at the University of North Carolina will have a higher exposure rating than a starting center at Temple University.\textsuperscript{31} The total brand value can fluctuate daily due to the sporadic nature of the performance, influence, and exposure factors.\textsuperscript{32} Together, roster value and

\textsuperscript{21} See Name, Image, and Likeness, supra note 6.
\textsuperscript{22} Mantilla, supra note 7.
\textsuperscript{23} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Id.
\textsuperscript{29} Terry, supra note 24.
\textsuperscript{30} Id.
\textsuperscript{31} Id.; There is also significant criticism about this valuation method given the sporadic fluctuation of these factors, “random” approximation of value for certain factors, and a general misunderstanding of how to calculate value as the NIL landscape changes. See Will Miles, How Do You Value Players in the NIL Era?, READ & REACTION (Feb. 19, 2023), https://www.readandreaction.com/2023/02/19/nil-player-value/.
\textsuperscript{32} See Terry, supra note 24.
brand value make up ON3’s NIL valuation.\textsuperscript{33} Because ON3 estimates cash flows and compares athletes to others in local and national markets, the ON3 valuation calculation is similar to the income and market approach.\textsuperscript{34}

Although performing the same or similar functions as professional athletes, college athletes were not earning revenue before the NCAA’s policy change. The NCAA did not allow student-athletes to receive compensation for their name, image, or likeness until 2021,\textsuperscript{35} despite inherent state law protection to the legal right of publicity. In fact, not only were student-athletes missing out on revenue opportunities, \textit{but they were also} having their rights of publicity violated.\textsuperscript{36} The previous NCAA rules allowed universities to fully control a player’s likeness – with or without player permission – and reap all financial benefit without compensating the player.\textsuperscript{37}

The tables have turned in just two years since the NCAA’s interim policy, and the student-athlete NIL market is estimated at around $1 billion.\textsuperscript{38} The market is expected to grow between $3 and $5 billion in the next five years.\textsuperscript{39} Student-athletes are cashing in on NIL opportunities in many of the same ways that professional athletes do, such as selling merchandise and making appearances in advertisements.\textsuperscript{40} Some other common ways that student-athletes make NIL revenue is through: (1) accepting payments for promotional activities; (2) receiving free products or services in exchange for promotion; (3) earning money from social media promotion; or (4) becoming a brand ambassador.\textsuperscript{41}

Moreover, student-athletes have found extraordinarily creative ways to earn NIL income. University of Iowa basketball player Jordan Bohannon made one

\textsuperscript{33} Id.

\textsuperscript{34} Id; see also Name, Image, and Likeness, supra note 6.

\textsuperscript{35} See Interim NIL Policy, supra note 2.


\textsuperscript{37} Id. at 147.

\textsuperscript{38} Terry, supra note 24.

\textsuperscript{39} Id.


of the first-ever NIL deals. He partnered with a local fireworks company; for every fireworks purchase, fans could be entered into a raffle for a signed pair of game-worn Bohannon shoes. Twin basketball players Haley and Hanna Cavinder at the University of Miami have started promoting TurboTax on social media. Their agreement with the company provides the twins with free tax guidance all year!

Gymnast Leah Clapper at the University of Florida used her athletic background to create a gymnastics-based board game. Former meme sensation Dienuerst Collin became a college football player and immediately scored an NIL deal with Popeyes. Reese’s has struck an NIL deal with eight football players, all with the last name Reese – providing them with Reese’s swag and candy.

As a freshman quarterback at the University of Texas, Arch Manning was the highest-valued collegiate student-athlete. His valuation, according to ON3, was $3.7 million. The highest-valued female collegiate student-athlete is Olivia Dunne. She is a gymnast at Louisiana State University and the highest-
valued athlete who is not the relative of a famous professional athlete.\textsuperscript{52} Although these are some of the highest valuations, the average income from NIL deals ranges from $1,000 to $10,000.\textsuperscript{53} Some deals can earn athletes up to $500,000, while others reportedly earn athletes over seven figures.\textsuperscript{54} However, this number can fluctuate greatly depending on the visibility of the sport and the university.\textsuperscript{55} After the NCAA’s interim policy was passed, student-athletes finally received the control and compensation they deserved for their name, image, and likeness.

\textbf{PART II: THE INTERSECTION OF NIL, NCAA, STATES, AND CONGRESS}

The NCAA was founded in 1906 by member universities to standardize the rules of college sports and protect student-athletes from brutal injuries.\textsuperscript{56} Through its century-long history, the NCAA and its member universities have prioritized amateurism in college sports by disqualifying student-athletes who are “paid for play.”\textsuperscript{57} Despite its refusal to pay athletes, the NCAA, including its partner universities, has earned over $18 billion annually since 2019.\textsuperscript{58} Because of this gross disparity between NCAA profits and the lack of student ability to receive payments, the first push for athlete compensation came in the late 2000s.\textsuperscript{59} Twenty former NCAA athletes, headed by UCLA basketball player Ed O’Bannon sued the NCAA for refusing to allow the athletes to earn revenue from their name, image, and likeness used in broadcasts, merchandise, and video games.\textsuperscript{60} In 2014, the Ninth Circuit ruled in favor of the athletes, holding that the NCAA could no longer forbid student-athletes from receiving NIL

\textsuperscript{52} See generally Olivia Dunne, LSU SPORTS, https://lsusports.net/sports/gm/roster/player/olivia-dunne/ (last visited Feb. 22, 2024).
\textsuperscript{53} Rudder, supra note 41.
\textsuperscript{55} There is also criticism that there is a large gender disparity between number of and value of NIL deals. See Jeremiah Poff, NCAA Athlete NIL Deals Unfairly Favor Men, May Violate Title IX, Group Says, WASH. EXAM’R (Jan. 23, 2023, 03:25 PM), https://www.washingtonexaminer.com/restoring-america/fairness-justice/ncaa-athlete-nil-favor-men-violate-title-ix.
\textsuperscript{57} See generally Id.; see also NCAA Bylaw 12.1.2 https://web3.ncaa.org/lsdb/bylaw/?ruleId=7300 (last visited Feb. 22, 2024).
\textsuperscript{58} Felix Richter, U.S. College Sports are a Billion-Dollar Game, STATISTA (July 2, 2021), https://www.statista.com/chart/25236/ncaa-athletic-department-revenue/.
\textsuperscript{60} Id.
compensation; however, the opinion did allow the NCAA to cap NIL compensation at $5,000 per athlete per year. Just five years later, California governor Gavin Newsom, alongside Ed O’Bannon and LeBron James, signed the Fair Pay to Play Act, allowing California college athletes to maintain team eligibility while being compensated for NIL deals. Other states quickly followed suit with their own legislation.

Currently, 43 of 50 states have enacted, amended, proposed, or suspended a law relating to NIL. Each state’s law addresses the topic to different extents. For example, Arizona’s law, enacted by the Arizona legislature, defers to whatever NCAA policy is enacted at the time. Contrarily, the North Carolina law was enacted by executive order and allows for NIL compensation but defers broadly to individual university policies. Pennsylvania’s legislature-enacted law is one of the most efficient rules. The law allows schools the individual discretion whether to allow athletes to use school intellectual property in NIL activities, restricts athletes from arranging deals in “vice” industries like gambling and alcoholic beverages, and allows schools to arrange deals for their athletes. Despite the vast differences between state laws, some common themes underlie most, if not all, of the legislation: (1) schools cannot limit the student’s NIL compensation; (2) students can receive the help of an agent; (3) participating in NIL opportunities cannot affect athletic or scholastic eligibility; (4) schools cannot compensate a student for NIL; (5) states and schools can restrict athletes from contracting with vice industries; and (6) NIL contracts cannot conflict with team or NCAA contracts.


64 Braly Keller, NIL Incoming; Comparing State Laws and Proposed Legislation, OPENDORSE (May 25, 2023), https://biz.opendorse.com/blog/comparing-state-nil-laws-proposed-legislation/; see also Anna G. Williams, In A League of Her Own: Why Female Student-Athletes Are Poised to Win Big in the NIL Era with A Properly Crafted Federal Law, 125 W. Va. L. Rev. 371, 380-81 (2022) (stating that even states without an officially enacted NIL law, such as West Virginia, are still allowing student-athletes to participate and be compensated for NIL deals).

65 Keller, supra note 64.

66 Id.

67 Id.

68 Id.

69 Id.
The former NCAA President, Mark Emmert, stated that the California Act surprised the NCAA.\textsuperscript{70} As more states passed NIL legislation, Emmert and the Board of Directors knew the NCAA had to issue guidance on NIL, even though NCAA committees had not drafted or voted on a comprehensive NIL policy.\textsuperscript{71} COVID-19 further stalled the NCAA legislative process.\textsuperscript{72} Finally, in July 2021, the NCAA Board of Directors passed an interim rule allowing student-athletes to remain eligible for NCAA play while taking advantage of NIL opportunities, consistent with state, local, and university laws.\textsuperscript{73} Because of the vast differences between state rules, the NCAA has clarified certain NIL rules. For example, the NCAA has defined how much role a school can play in acting as an agent for the student-athlete or how the school can discuss NIL as a recruiting incentive.\textsuperscript{74} President Emmert stood firmly against the patchwork of state laws and intended for an in-depth NCAA policy or federal legislation to replace the chaos.\textsuperscript{75} The NCAA believes it is “best positioned” to provide the fairest nationwide approach for NIL.\textsuperscript{76}

Proposed federal legislation related to NIL was first introduced following the California Fair Pay to Play Act.\textsuperscript{77} In the 116th Congress, there were five House and three Senate bill proposals related to NIL.\textsuperscript{78} The underlying theme of these proposals was the conditioning of federal higher education funds on a university’s compliance with new federal laws ensuring that student-athletes were allowed to be compensated for NIL subject to broader “protections” outlined by Congress.\textsuperscript{79} These broader protections ranged from more frequent drug and concussion testing to allowing students to draft collective bargaining agreements.


\textsuperscript{71} Id. at 08:00-08:50.

\textsuperscript{72} See Ross Dellenfer, ‘We’ve Done It to Ourselves’: A Divided NCAA Membership Delays NIL Vote as Pressures Mount, SPORTS ILLUSTRATED (June 21, 2021), https://www.si.com/college/2021/06/22/divided-ncaa-delays-nil-vote-chaos-imminent.

\textsuperscript{73} See Interim NIL Policy, supra note 2.

\textsuperscript{74} See Id.; see also Dosh, supra note 70 at 12:00-12:54; 16:25-17:53.

\textsuperscript{75} Dosh, supra note 70 at 17:55-18:53.


\textsuperscript{77} CONG. RSCH. SERV., R46828, STUDENT ATHLETE NAME, IMAGE, LIKENESS LEGISLATION: CONSIDERATIONS FOR THE 117TH CONGRESS 7-8 (2021).

\textsuperscript{78} Id. at 12-22.

\textsuperscript{79} Id. at 12.
agreements.\textsuperscript{80} One of the most NIL-centric proposals from this Congress was The Student Athlete Level Playing Field Act.\textsuperscript{81} This Act would allow athletes to be compensated without loss of NCAA eligibility or scholarship eligibility.\textsuperscript{82} The Act would also create a Congressional committee for recommending further NIL rules, certifying agents for student-athletes, and resolving disputes between students and universities or the NCAA.\textsuperscript{83} This Act would have preempted any other state legislation.\textsuperscript{84} In the 117\textsuperscript{th} Congress, there was one House and two Senate bill proposals related to NIL, following the same general themes as the previous year’s proposed legislation.\textsuperscript{85} While initial legislative efforts were stalled due to the COVID-19 pandemic and bipartisan failure to agree on the scope of regulation, some proposals have since been reintroduced in 2022 and 2023.\textsuperscript{86}

\textbf{PART III: TAX RAMIFICATIONS FOR STUDENT-ATHLETES WITH NIL COMPENSATION}

There are two broad categories to examine when looking at the practical implications of taxation for student-athletes. First, student-athletes who receive NIL payments are considered self-employed. Second, student-athletes anticipating NIL deals must consider several different state tax laws before choosing a university. Although there are several other tax implications related to NIL income, the treatment of student-athletes as independent contractors firstly sets up students for a significant tax burden that many students without financial knowledge or resources will expect. Secondly, the multi-state tax liability is the focus of my argument against federal legislation in Part IV and Part V of this paper.

\textsuperscript{80} Id. at 12-22.
\textsuperscript{81} Id. at 16-18.
\textsuperscript{82} Id. at 16.
\textsuperscript{83} CONG. RSRV. R46828, STUDENT ATHLETE NAME, IMAGE, LIKENESS LEGISLATION: CONSIDERATIONS FOR THE 117TH CONGRESS 17 (2021).
\textsuperscript{84} Id. at 17-18.
\textsuperscript{85} Id. at 22-25.
\textsuperscript{86} See NIL Legislation Tracker, SAUL EWINING, https://www.saul.com/nil-legislation-tracker ; see also Theresa Loscalzo & Monica Matisa, Update on Key Developments in Name, Image, & Likeness (NIL) Legislative Efforts, JDSUPRA (Oct. 11, 2022), https://www.jdsupra.com/legalnews/update-on-key-developments-in-name-7716671/ ; see also infra, Part IV for a further discussion of the consequences of enacting federal legislation in this area.
A. **Student-athletes are not “employees” of the university, NCAA, or third-party companies they engage with for NIL deals.**

The NCAA policy and state laws have deemed that student-athletes will not be treated as employees of the university or NCAA.\(^87\) This policy allows universities and the NCAA to maintain their not-for-profit status and protect students from having to report school-related benefits like scholarships and uniforms as fully taxable.\(^88\) Even though the university removes itself from involvement with the athlete’s income stream, it can still impose restrictions on NIL deals.\(^89\) However, for tax purposes, student-athletes are considered self-employed, also known as independent contractors.\(^90\)

The most severe tax consequence of self-employment is that no federal or state income, social security, or Medicare taxes are withheld from NIL payments, as payments under NIL contracts are not employee wages.\(^91\) Instead, third parties will send 1099 forms to student-athletes listing the amount of gross income paid to the student-athlete.\(^92\) The student is then liable for paying the self-employment, social security, Medicare, and unemployment taxes for the gross income earned.\(^93\)

Additionally, the student-athlete, likely inexperienced in tax preparation, must prepare a standard Form 1040 and a Schedule C to document self-employment income.\(^94\) The student is also burdened with tracking business expenses incurred in generating NIL income.\(^95\) Some student-athletes might also have to remit estimated quarterly tax payments if their expected liability is significant.\(^96\) If a student-athlete is unaware of these considerations before signing NIL deals, they risk a sizeable year-end tax liability that they are

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\(^{88}\) Id. at 18-19.

\(^{89}\) Id. at 19; Given the extreme level of control that universities maintain over student-athletes, there is an argument to be made that student-athletes must be deemed employees because they would likely satisfy the IRS “right-to-control” test in favor of being employees of a university, rather than independent contractors. See Jean Murray, *How the IRS Determines Independent Contractor Status*, THE BALANCE (Sept. 19, 2022), https://www.thebalancemoney.com/how-the-irs-determines-independent-contractor-status-398618#toc-irs-vs-department-of-labor-classification.


\(^{91}\) Id.

\(^{92}\) Id.

\(^{93}\) Id.

\(^{94}\) Id.

\(^{95}\) Id.

\(^{96}\) Gerhardt, *supra* note 90.
unprepared for or penalties for failing to pay estimated tax.\(^{97}\) When dealing with this type of Schedule C income, an inexperienced student-athlete will most likely need to hire a professional tax preparer to file their tax return. However, finding a preparer requires financial resources to pay preparation fees, community access to professionals, and a certain level of sophistication in knowing how and when to contract an accountant. Student-athletes from high income backgrounds may have an advantage over other players, as they may have advanced knowledge of how to access tax preparation services.

As Part I shows, student-athletes engage in various creative NIL deals with third parties. Each type of compensation poses a different challenge for student-athletes. “Monetary” compensation will be the easiest to track and record as gross income\(^{98}\); however, deals worth less than $600 do not require the third-party to send a 1099, so the student-athlete must report the deal independently.\(^ {99}\) Payments for endorsements, social media posts, and advertisements are examples of “monetary” compensation.\(^ {100}\) These examples can also be classified as compensation “for services.”\(^ {101}\) Income for services will be subject to self-employment payroll taxes.\(^ {102}\)

Royalties, while also “monetary” compensation, are not compensation “for services.”\(^ {103}\) If a student-athlete receives royalties for selling a jersey with their name and number, the royalties are subject to income tax but not additional payroll taxes.\(^ {104}\)

“Non-cash” compensation includes benefits that student-athletes receive for free for their endorsements and sponsorships, such as apparel, equipment, trips, or cars.\(^ {105}\) These benefits are taxable to the student-athlete, and the fair market

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\(^ {97}\) Id.


\(^ {100}\) CBS News, supra note 98.

\(^ {101}\) Whitlock, supra note 87, at 19-21.

\(^ {102}\) Id. at 21.

\(^ {103}\) Id. at 19-21; CBS News, supra note 98.

\(^ {104}\) CBS News, supra note 98.

\(^ {105}\) Id.
value of these benefits must be included in the student-athlete’s gross income.\(^{106}\) Including these benefits in income will significantly increase the student-athlete’s gross income and, therefore, the tax liability for the year.\(^{107}\) The student-athlete will then have to find the cash to pay this tax liability, even though the income was generated from a non-cash asset.\(^{108}\)

Overall, the student-athlete as an “independent contractor” faces complex tax rules that can subject every NIL deal to a different tax calculation. Inexperienced and unprepared student-athletes will find tax compliance as an independent contractor to be costly and nearly impossible to keep up with sans professional help.

**B. Each state has different tax rates and rules.**

States have different tax rates and different tax structures. Seven states: Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, and Wyoming, have no state income tax.\(^{109}\) The top marginal state income tax rates for single filers in 2023 range from 0% (in states that levy no income tax) to 13.30% in California.\(^{110}\) States also have their own deduction and exemption amounts.\(^{111}\)

The first multi-state issue that arises for student-athletes is the state of residency versus the state of school attendance.\(^{112}\) For example, if a student-athlete’s “home” is in North Carolina, but they attend and receive NIL compensation while studying at the University of Texas, does the student have to pay income tax to North Carolina even though Texas levies no state income tax?\(^{113}\) Because each state has different statutory rules about students establishing “residency,” some students may still be considered residents of

\(^{106}\) Id.; Income is defined as “all income from whatever source derived . . . including … fringe benefits and similar items”. 26 U.S.C. § 61(a).

\(^{107}\) Because the student-athlete is not an employee of the third party, these benefits cannot be totally or partially exempt as “fringe benefits” under 26 U.S.C. § 132.


\(^{110}\) Id.

\(^{111}\) Id.; No state has currently provided an exemption to state income tax for NIL income, but it is not out of the realm of possibility for states to do, as long as no preemptive federal legislation is passed. See generally Kekich & Frieser, *supra* note 99.


\(^{113}\) Id.
their “home” state. In contrast, other students may be considered residents of their university’s state. In our above example, North Carolina will likely try to collect tax on the income the student earned from NIL deals, even though the student attends a university in Texas.

The second multi-state issue for student-athletes is the potential for tax liability in multiple states beyond a student’s state of residency and the state of the university. Student-athletes will likely compete in sporting events in multiple states. For example, a University of North Carolina basketball player will compete in ten states during regular season play alone. Then, a student-athlete may travel to additional states to conduct NIL business activities. Each state may claim a portion of the student-athlete’s income from NIL contracts. Some states may seek an allocation of income based on rules that already exist for professional athletic leagues, sometimes referred to as a “jock tax.” For example, Syracuse University, a rival of UNC basketball, may seek 5% of a UNC athlete’s NIL revenue for a national advertisement that runs during the televised basketball program. Liability in multiple states will also depend on the type of income earned by student-athletes. Cash compensation for services is taxed at the place where services are provided. Alternatively, compensation for royalties is taxed in the state of a student-athlete’s residence.

Student-athletes may face tax liability in multiple states whether they live, attend school, or simply compete in the state. Multi-state liability, and lack of uniformity in state tax rates and rules, adds another layer of complexity to the student-athlete’s tax preparation.

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114 Id.
115 Id.
116 See Id.
117 Wittry, supra note 108.
118 Gerhardt, supra note 90.
119 Id.
120 Id.
121 Wittry, supra note 108.
123 Following a simple formula like one explained in the article, the 5% number is derived from the following: There are 20 games in a regular season played in the Atlantic Coastal Conference, and a UNC athlete would play one game in Syracuse, NY each regular season. One game divided by twenty games is 5%. See Wittry, supra note 108.
124 Whitlock, supra note 87, at 20.
125 Id.


PART IV: FEDERAL LEGISLATION FORCES INEFFICIENT DECISION-MAKING

Federal NIL legislation will lead student-athletes to make inefficient\textsuperscript{126} college decisions. Where student-athletes would normally choose a university based on the merits of an athletic program, federal legislation would distort decision-making towards tax advantages. Federal NIL legislation would create a nexus between college athletics and taxes where state legislation never intended for tax to influence the college decision process. The outcome of amateur athletics should not be dictated by underlying tax considerations. Should the best basketball team in the country be South Dakota State University because top players are incentivized to attend for the state’s zero state income tax rate?

A. Criticisms of Federal Legislation

The NCAA believes that the current “patchwork” of state laws makes it too difficult to administer a fair intercollegiate athletic system throughout the country.\textsuperscript{127} Staunch supporters of federal legislation criticize state laws for failing to consider tax consequences, taking different approaches in each state, and potentially upsetting the competitive balance of student-athlete recruiting.\textsuperscript{128} To “solve” these problems, the NCAA, academics, and former athletes have started advocating for federal legislation to create uniform NIL legislation that provides student-athletes the same rights and protections nationwide.\textsuperscript{129} Supporters of federal legislation argue that the legislation would equalize NIL opportunities for all students while ensuring that no states have an

\textsuperscript{126} Inefficiency in a tax context refers to the distortion of behavior in response to tax. An example of an \textit{inefficient tax} comes from late 1600s in England. England decided to initiate a “window tax” under the theory that richer citizens had more windows in their homes and would pay more tax than poorer citizens who had less windows. In response to the window tax, citizens would cover up their windows with bricks during tax season, which reduced their tax liability, then immediately take the bricks back out. Their distorted behavior is an example of inefficiency. \textit{See Wallace E. Oates & Robert M. Schwab, The Window Tax: A Transparent Case of Excess Burden, LINCOLN INST. OF LAND POL.} (Apr. 2014), https://www.lincolinstedu/publications/articles/window-tax; \textit{see generally Alex Raskolnikov, Irredeemably Inefficient Acts: A Threat to Markets, Firms, and the Fisc}, 102 GEO. L.J. 1133 (2014). The goal of any well-drafted tax is to be neutral, meaning people do not change their behavior to reduce their tax liability (unless the tax directs them to do so). A truly neutral tax can only be achieved by taxing every person under a “head tax” system. For example, each person in a country owes $1,000 a year, no matter who you are, what you earn, etc. There is nothing you can do to increase or reduce that tax liability, so the tax is neutral. \textit{John A. Miller, Equal Taxation: A Commentary}, 29 Hofstra L. Rev. 529, 544-45 (2000).

\textsuperscript{127} \textit{See CONG. R&SCH. SERV., supra note 77, at 11; see also Weiss, supra note 122, at 280.}

\textsuperscript{128} \textit{See CONG. R&SCH. SERV., supra note 77, at 11; see also Weiss, supra note 122, at 281.}

\textsuperscript{129} \textit{See CONG. R&SCH. SERV., supra note 77, at 11; see generally Weiss, supra note 122.}
unfair competitive advantage over others.\textsuperscript{130} Other supporters hope that federal legislation will also take power away from the NCAA and ensure that the NCAA cannot create restrictive rules that take away newly granted NIL rights.\textsuperscript{131} Furthermore, some supporters cling to the fact that the bill has bipartisan support\textsuperscript{132} to demonstrate that this topic is important to the current Congress.

The first problem with federal legislation is that, like the state laws its supporters criticize, it, too, fails to mention taxes or consider tax consequences. For example, while academics have suggested federal tax exemptions for NIL income,\textsuperscript{133} no bill in the House or Senate has introduced this or any other federal tax-related concept in an NIL bill. Additionally, while each state may take a different approach to NIL rules, this is how states draft laws in all other areas of law that the federal government does not preempt. It is also worth noting that outside of NIL for student-athletes, states maintain their own rules for other persons like celebrities; there is no federal right of publicity.\textsuperscript{134} Moreover, even if the federal government does pass student-athlete-specific legislation that preempts state rules, states will still be free to add laws that do not conflict with federal law.\textsuperscript{135} Undoubtedly, this will be the case as the federal legislation will likely be too broad to meet the needs of the athletic programs in all fifty states.

Furthermore, the NCAA’s argument that a patchwork of state laws is too difficult to manage does not hold up, given the immense resources of the organization.\textsuperscript{136} Finally, although bills have been proposed by both parties, Democrats and Republicans disagree on how to balance the interests of student-athletes against the interests of the NCAA and how broad the bill’s scope should


\textsuperscript{131} See Williams, supra note 64, at 396.

\textsuperscript{132} See Weiss, supra note 122, at 297.


\textsuperscript{134} See Taylor P. Thompson, Maximizing NIL Rights for College Athletes, 107 Iowa L. Rev. 1347, 1371 (2022).

\textsuperscript{135} See Bunner, supra note 130, at 372.

\textsuperscript{136} See Id., at 355. During the COVID-19 pandemic, the NCAA had no difficulties following a “patchwork” of state vaccine and quarantine rules. The NCAA’s response was to allow universities to begin practices and training in compliance with the university’s jurisdictional laws. The same approach can be taken with NIL, but with the NCAA providing base protections for all students. See Ross Dellenfer, In New COVID-19 Guidance, NCAA Updates Definition of Fully Vaccinated to Include Booster, SPORTS ILLUSTRATED (Jan. 5, 2022), https://www.si.com/college/2022/01/05/ncaa-covid-rules-college-sports-vaccine.
Even with “bipartisan support,” it could be years before Congress will pass a first draft of the legislation. There is also a line of criticism suggesting that the courts and Congress should not be writing the rules for student-athlete NIL compensation, but that the NCAA should manage its own affairs. States, even states without NIL legislation, have been allowing NIL deals and managing problems as they arise, with the guidance of the NCAA as needed. Overall, the proposed federal legislation will not solve the problems it purports to fix.

B. Inefficiencies Created by Federal Legislation

Federal legislation will create even more inefficient decision-making by student-athletes. Imagine that federal legislation is enacted today which provides the same NIL rights and protections for student-athletes nationwide. Player A is a junior in high school who is being recruited at two of the top basketball programs in the country: one in North Carolina and one in Texas. Player A knows he wants to capitalize on his NIL potential in college. For Player A’s decision-making purposes, both basketball programs are equally ranked, and he will have equal NIL rights in either state, thanks to the federal legislation. North Carolina has a flat state income tax rate of 4.75%, while Texas has a zero state income tax rate. If Player A acts as an economically rational actor, he will choose to play basketball in Texas – where he will pay no state income tax on his NIL earnings. Because the schools are equal in all other factors, state income tax rate will become a primary and decisive factor for student-athletes when choosing a college for their athletic career. Rightly so, student-athletes want to make as much money as possible in their short, and maybe only, window of fame. In Player A’s scenario, federal legislation compels the student to select a college based on the state tax rate, a classic example of inefficient decision-making. The student’s behavior is distorted; Player A is not choosing Texas because of its specific NIL protections for Texas athletes or because of the prestige of the Texas basketball team. Instead, Player A is choosing Texas to reduce his year-end tax liability.

139 See Williams, supra note 64, at 377-78, 380-82.
140 See Vermeer, supra note 109. These are the rates for 2023.
141 Bunner, supra note 130, at 365-66.
Now, envision Player A with the same choice of equally ranked basketball programs: North Carolina and Texas, except there is no federal legislation in this scenario. Instead, North Carolina and Texas have individual NIL rules. Texas mandates that students attend a financial literacy workshop before entering any NIL contracts and prohibits students from wearing team logos during non-school-sponsored events. North Carolina instead encourages a university to provide a financial workshop and allows each university to decide whether students can wear team logos outside of school athletic events. Although Texas still has no state income tax, Player A will likely first consider the difference in NIL rules. Player A might think Texas rules are too restrictive on athletes and choose to attend North Carolina, despite the higher tax rate. Alternatively, Player A might find the Texas rules to be amenable and choose to attend Texas, with the lack of state income tax being a bonus for his decision. In this scenario, Player A is making a more efficient decision. NIL rules and other factors are the primary considerations for Player A’s decision, while state income tax is now a tertiary consideration, if even a decisive factor.

C. Additional Unintended Consequences of Federal Legislation

Not only would federal legislation lead to inefficient decision-making by students, but this legislation would further upset the competitive balance between states. Currently, universities compete to recruit students by advertising the merits of their athletic programs. As of July 1, 2021, universities can also recruit students by discussing, in a limited capacity, the opportunity for athletes to earn income by engaging in NIL deals. States may showcase some of the unique features of the state’s NIL laws. However, all NIL rights and protections become the same under federal legislation. Then states with a low or no state income tax rate would dominate the recruiting market by touting the tax benefits of attending a university in that state while striking up NIL deals.

The balance of talent within the NCAA will be shifted to these states as athletes, acting rationally, will choose to commit to a school where they can “pocket” the most money. Student-athletes are also more likely to enter the transfer portal to try to move to a state with lower or no-income tax to increase

145 See Gross, supra note 133, at 281.
146 See Kisska-Schulze & Epstein, supra note 142, at 32, 39, 42. The professional sports leagues already see this type of “team shopping” for tax savings, and professional athletes have little choice in their first professional team, until they are a “free agent.” Student-athletes have more freedom to choose a university, so arguably the “team shopping” effect for tax savings will only be more pronounced. Id. at 38-39.
their overall earnings, giving those states another leg up in recruiting talent to their teams.\textsuperscript{147} The balance of recruiting power shifts between states and student-athletic programs, and redirects the focus from the education and athletic benefits of the university to the profit potential of attending a school in that state; this certainly goes against the fundamental values of the NCAA and would compromise the meaning of “amateur” sports.\textsuperscript{148} When thinking about allocation of income,\textsuperscript{149} the states with low or no state income tax will also become hotbeds for NIL deal activity: filming sites for commercials, sites for high-income producing Bowl games, or places to run summer youth camps.\textsuperscript{150} Student-athletes will rally for these states to host large events and deals to either continue to avoid taxes if they play in a no-income-tax state or to bring home a large portion of earnings without owing any tax to another state. In return, the no-income-tax states get a substantial economic boost by hosting these events and all the tourism and commerce the events attract. Without federal legislation, states can continue recruiting student-athletes as they always have. The balance of talent and economic activity of college athletics will remain the same as always, even if states maintain control over their own NIL rules. Without federal legislation, student-athletes will continue to make efficient college decisions.

\textbf{PART V: FEDERAL LEGISLATION HEIGHTENS UNFAIR TAX OUTCOMES}

Part IV argued that federal NIL legislation would lead to a rise in inefficient decision-making by student-athletes. As a result of this increase in inefficient decision-making, the federal legislation would also agitate unfair\textsuperscript{151} tax consequences that already exist under the “patchwork” state law system. Federal legislation would exacerbate horizontal and vertical equity problems.

Horizontal equity refers to the theory that individuals with the same income should pay the same amount in taxes.\textsuperscript{152} Again, the best way to illustrate the consequences of federal legislation on horizontal equity is to follow Player A’s story: a high school junior choosing between attending a college basketball

\textsuperscript{147} Id. at 40-41.
\textsuperscript{148} See Gross, supra note 133, at 281.
\textsuperscript{149} See supra Part III.
\textsuperscript{151} Unfairness in this context refers to the tax policy concepts of horizontal and vertical equity. See JOEL SLEMROD & JON BAKIJA, TAXING OURSELVES: A CITIZEN’S GUIDE TO THE DEBATE OVER TAXES 88, 134 (The MIT Press, 5th ed. 2017). Fairness here is not to be conflated with the everyday definition of “impartial or just treatment.” However, the concepts of equity may also appeal to our common sense of fairness.
program in Texas and North Carolina. \textsuperscript{153} For this example, Player A will be compared to Player B, another junior in high school who faces the same decision – to play basketball at a university in Texas or North Carolina. Both students are originally from the state of Idaho. Player A is from Eagle, one of the wealthiest cities in Idaho, \textsuperscript{154} while Player B is from Rexburg, one of the poorest cities in Idaho. \textsuperscript{155} As Part IV of this paper demonstrated, federal legislation providing equal NIL rules would lead both players to choose Texas over North Carolina due to Texas’s zero state income tax rate. \textsuperscript{156}

Players A and B played their first year of basketball in Texas in 2023, earning $50,000 of NIL income. Fifty percent of their income was generated from royalties, which are taxed in the state of one’s residence. \textsuperscript{157} Fifty percent was generated from services, which are taxed at the location of services. \textsuperscript{158} Player A’s parents bought a second house, registered a car, and moved their LLC to Texas as soon as A committed to ensure that A was a Texas resident by the end of 2023. \textsuperscript{159} Unfortunately, Player B was still considered a “resident” of Idaho under Texas statutory law at the end of 2023.

The principle of horizontal equity states that because the student-athletes both earned $50,000 in 2023, Player A and Player B should have the same tax liability, both federally and at a state level, since they are from and teammates in the same state. Below is a chart of Player A and B’s hypothetical tax liability for the 2023 year:

\textsuperscript{153} See supra Part IV.
\textsuperscript{156} See supra IV.
\textsuperscript{157} Whitlock, supra note 87, at 20.
\textsuperscript{158} Id.
So why do Players A and B owe different amounts of tax and have different average tax rates? Players A and B decided to attend a university in Texas for the sole purpose of skirting state tax liability. However, only Player A, from a wealthier economic background, had the resources to “tax shop” successfully. As a result, Player A was able to establish residency in Texas and avoid Idaho’s claim to any state income tax on royalty earnings, making all of A’s NIL earnings state-tax free.

Admittedly, Player A will successfully tax shop with or without federal legislation and may always consider state tax liability as a factor when choosing a university. However, federal legislation encourages middle and low-income students like Player B to choose a university based on expected tax savings, rather than non-tax economic reasons. Unfortunately, these students do not have the tax law knowledge or financial resources to access these savings, often leaving them with more liability than their equal-earning counterparts, like Player A.

Furthermore, this lack of knowledge and resources makes students like Player B more vulnerable to additional tax consequences such as tax liability in multiple jurisdictions, penalties for failure to pay, or audits. Proponents of federal legislation argue that these additional consequences could be avoided by

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160 The assumptions made for the calculation of this tax liability are as follows: (1) The federal tax rates and standard deduction rates for 2023 were used. See Alex Durante, 2023 Tax Brackets, TAX FOUND. (Oct. 18, 2022), https://taxfoundation.org/2023-tax-brackets/; (2) An Idaho state income tax rate of 5.8% and standard deduction of $13,850 were used. See Vermeer, supra note 109; (3) Neither player made any estimated tax payments throughout the year because this was their first year of earning NIL/self-employment income. Additionally, the following calculator was used to help estimate the additional tax imposed for self-employment taxes: Income Tax Calculator, CALCULATOR.NET, https://www.calculator.net/tax-calculator.html (last visited, Feb. 25, 2024).

161 Average tax rate is calculated by dividing the total amount of tax owed by the total amount of annual income. Average tax rate differs from marginal tax rate, which is commonly known as a taxpayer’s “bracket” rate. See Marginal Tax Rate, TAX FOUND., https://taxfoundation.org/taxedu/glossary/marginal-tax-rate/#:~:text=The%20marginal%20tax%20rate%20is,divided%20by%20total%20income%20earned (last visited Feb. 25, 2024).

162 See Kisska-Schulze & Epstein, supra note 142, at 37.
an addition to the federal statute that requires universities or states to mandate financial literacy education or resources for student-athletes. Although a worthy statutory addition, universities would likely provide the bare minimum financial education or resources for student-athletes, subjecting low and middle-income students to the same consequences. Unquestionably, horizontal equity will be even more burdensome to achieve if federal legislation is enacted.

Vertical equity, in contrast to horizontal equity, is the theory that as an individual’s income increases, so should the individual’s tax contribution. It is worth reiterating the argument from Part IV again that federal legislation will lead more student-athletes to choose a university based on perceived state income tax savings. Students like Player A in the previous example have access to advanced strategies to avoid state income taxes, no matter where they choose to attend school. Therefore, even as Player A’s income increases, Player A’s tax liability will stay the same or decrease, violating the principle of vertical equity. Following the same facts from the horizontal equity paragraph, Player A and Player B are calculating tax liability for 2023. In this scenario, however, Player A made $60,000, and Player B made $50,000. Additionally, Player A hired an accountant to help him track and deduct his business expenses related to NIL deals. All other facts from the previous example remain the same. Below is a chart of Player A and B’s hypothetical tax liability for 2023:

<table>
<thead>
<tr>
<th></th>
<th>Player A</th>
<th>Player B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal:</td>
<td>$12,658</td>
<td>$10,850</td>
</tr>
<tr>
<td>Idaho:</td>
<td>$0</td>
<td>$647</td>
</tr>
<tr>
<td>Texas:</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total Tax Owed:</strong></td>
<td>$12,658</td>
<td>$11,497</td>
</tr>
<tr>
<td><strong>Average Tax Rate:</strong></td>
<td>21.0%</td>
<td>23%</td>
</tr>
</tbody>
</table>

Player A’s average tax rate from the previous example has decreased. While A is paying more tax in dollars, A is paying a lower average tax rate than Player B, despite higher NIL earnings in 2023. The second column of the table is identical to Table 1 since Player B’s income remained at $50,000.

164 The assumptions for this chart remain the same as supra note 160. Here, however, Player A was able to deduct $20,000 of business expenses.
Alternatively, Table 3 follows the same hypothetical from Table 2 but shows Player B’s tax liability if both players earned $60,000. In line with the principle of vertical equity, Table 3 shows that a $10,000 increase in NIL income from the previous example would raise Player B’s tax liability by almost 1% or $3,000. Contrarily, with Player A’s knowledge just to claim business deductions, a $10,000 increase in NIL income from Table 1 lowered Player A’s average tax rate by almost 1%. As a result, Player B is paying an average tax rate of almost 3% higher than Player A.

Student-athletes from wealthy and well-educated families will always have the resources to widen the vertical equity tax gap. From establishing residency in a new state to setting up an LLC or S-corp, rich student-athletes will always stay rich by paying as little tax as possible. The vertical inequity between the ultra-wealthy and the middle and lower classes will always persist with or without federal legislation. Student-athletes like Arch Manning and Bronny James will always be valued as “high-worth” NIL students because of their professional athlete families. Their family background will allow them to pay minimal tax on NIL earnings, regardless of what university they choose to attend.

But the vertical equity gap between middle-income and low-income student-athletes will grow with federal legislation. Middle-income students will have some resources to tax shop successfully and can take advantage of more

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165 The assumptions for this chart remain the same as supra note 160. Here, however, Player A was able to deduct $20,000 of business expenses.

166 Although 1% can seem insignificant, when we think about top NIL earners who are earning six figures per deal, 1% can become a substantial amount of tax paid or tax avoided. See supra note 160.

167 Wittry, supra note 108.

168 See On3 NIL 100, supra note 49.

169 See generally Thomas Wright, Reformation of the Right of Publicity, 9 BELMONT L. REV. 37 (2021) (arguing that NIL valuation is extremely difficult in the modern world and can lead to exploitation of student-athletes).
accessible solutions like meeting state requirements for residency.\textsuperscript{170} Even establishing residency in a tax-free state alone, without taking business deductions or having any other financial knowledge, can significantly reduce a student’s year-end tax liability. Low-income students will also be persuaded to choose tax-free state universities because of federal legislation. However, these students will be less likely to establish residency, receive tax advice for deductions, or set up an LLC. Low-income students are then severely burdened with tax liability compared to their student-athlete peers from middle- and high-income backgrounds.\textsuperscript{171} As low-income students earn more in NIL compensation, they will continue to owe more taxes, consistent with vertical equity principles. Contrarily, the access to financial planning resources of middle- and high-income student-athletes will allow them to reduce tax liability as NIL compensation skyrockets, in direct opposition to vertical equity.

Closely related to the principle of equity is the “ability to pay.”\textsuperscript{172} When two taxpayers have the same income, economically speaking, the taxpayers have the same \textit{ability} to pay taxes. If one taxpayer has more income than another, the higher-earning taxpayer can pay a larger amount of tax due. In reality, however, taxpayers’ ability to pay depends on how taxpayers are compensated.

As discussed in Part III, student-athletes receive NIL compensation in cash and non-cash deals. Continuing to look at our example, Player A and Player B are basketball players in Texas. They both earned $50,000 in NIL earnings in 2023. Player A received $50,000 cash for his deals. Player B, on the other hand, received a car from a local dealership to drive for the basketball season, free branded merchandise from a large sportswear company after filming a commercial, and a year’s supply worth of energy drinks in exchange for posting TikTok videos of himself enjoying the drink. Players A and B have the same tax liability from Table 1.\textsuperscript{173} While both players have the same ability to pay according to economic theory, Player B likely has no cash available to pay his

\textsuperscript{170} See Wittry, supra note 108 (discussing how many DI athletic universities live only a short commute from a tax-free state). There are also states like North Dakota or Nevada, with minimal requirements to establish residency for in-state tuition purposes. Several states would grant in-state residency to a student-athlete by the second year of enrollment. See In-State Difficulty by State, IN-STATE ANGELS, https://www.instateangels.com/ state-tuition-rules-search (last visited Feb. 25, 2024).

\textsuperscript{171} Studies have shown that the majority of Division I athletes in men’s football and basketball programs come from low socioeconomic backgrounds. Arch Manning is recruited to a DI team with majority low-income players, making the vertical equity tax gap just within one school astonishing. See generally Bryan Kelly, NCAA – An Overview of Socioeconomic Status’s Impact on College Athletes, and the Regulations and Impact That Can Revolutionize the Amateurism World, 6 FACE INTELL. PROP. SPORTS. &. ENT. L.F. 212 (2016).

\textsuperscript{172} See SLEMROD & BAKIA, supra note 151, at 94-95.

\textsuperscript{173} See supra Table 1.
tax bill at the end of the year. Player B may not have even known that he would be taxed on the value of “free” merchandise he received from third parties. Again, Player A’s socioeconomic background provides him an advantage at tax season – Player A knows to save money for year-end tax liability, track deductions, or even avoid structuring deals that pay in non-cash compensation. Supporters of federal legislation would again argue that this problem could be solved by providing financial literacy courses. Nevertheless, offering education does not mean students will understand how to calculate their tax liability in advance, accurately pay estimated tax, or save enough money for the next tax season. Additionally, federal legislation, no matter how “comprehensive,” will never fix the unequal socioeconomic status of players; Player A has sufficient resources to hold more bargaining power in NIL deals and maximize tax savings. Federal legislation can never “give” that to Player B.

PART VI: LET STATES WRITE THEIR OWN RULES

The NCAA has spent the years since California’s Fair Pay to Play Act doing nothing. The NCAA never moved to enjoin states from passing NIL legislation after California’s bill, and it has since lost any possible chance of utilizing this remedy. The NCAA has no choice but to let states maintain their NIL rules unless federal legislation is passed. However, instead of waiting around for Congress to write a bill that should not be passed for the tax consequences demonstrated in this paper, the NCAA should take advantage of its powerful position in intercollegiate athletics to institute programs that will benefit student-athletes.

I propose that the NCAA retain its bare-bones interim policy and allow states to retain their individual NIL rules. However, to address the broader equality concerns that federal legislation hoped to “fix,” the NCAA should establish a financial literacy and education program. Under federal legislation, universities would be mandated to offer this programming, and each university would offer a different set of resources, likely the bare minimum, to satisfy federal requirements. If the NCAA were to offer this programming, the resources offered to student-athletes could be the same nationwide and could be detailed to provide all essential information. Additionally, the NCAA should partner with a nationwide tax preparer like TurboTax to offer free or low-cost

175 Id.
tax preparation and planning for student-athletes.\textsuperscript{176} The NCAA’s enormous profit margin, generated through decades of exploiting student publicity rights, deserves to be re-invested into programs that promote the financial well-being of student-athletes. Establishing these NCAA programs would avoid the inefficient tax consequences of federal legislation and help to mitigate the unfair outcomes resulting from NIL compensation in general, meanwhile allowing states to continue to write their own NIL rules.

CONCLUSION

July 1, 2021, marked an important day for student-athletes and their fight for fair compensation for name, image, and likeness use. While the NCAA has neglected to draft comprehensive rules on the subject, the states have taken to their own legislatures to draft personalized NIL rules tailored to their states and universities. Proposed federal legislation has the backing of the NCAA but fails to consider the inefficient and unfair tax consequences that would result from such rules. So, as the federal government and the NCAA fail to keep their eye on the ball, thank your state for the \textit{slam dunk} legislation and increase to your favorite student-athlete’s taxable income!\textsuperscript{177}

\textsuperscript{176} Not all universities would be able to afford the cost of providing tax preparation or planning services if this was not offered through the NCAA. Additionally, many student-athletes would be ineligible for free tax preparation through services like VITA (Volunteer Income Tax Assistance) if they make more than the income cap or their return is too complicated given the scope of their self-employment income and deductions. See \textit{Free Tax Return Preparation for Qualifying Taxpayers}, \textsc{Internal Rev. Serv.} (18-Jan-2024), https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers#;--text=VITA%20sites%20offer%20free%20tax, Limited%20English%2Dspeaking%20taxpayers.

\textsuperscript{177} This paper is dedicated to former UNC basketball player Caleb Love and the professor who inspired and cultivated my love for tax law, Kathleen Thomas. Go Tar Heels!