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**MORE MONEY, MORE PROBLEMS?
A LOOK INTO THE PSYCHOLOGICAL RAMIFICATIONS OF
NAME, IMAGE, AND LIKENESS DEALS IN COLLEGE ATHLETICS**

*Luke Stephenson**

TABLE OF CONTENTS

I. INTRODUCTION.....	274
II. A CHANGE 100 YEARS IN THE MAKING	274
III. ATHLETES HARMED PRIOR TO <i>ALSTON</i>	276
IV. <i>NCAA v. ALSTON</i>	277
V. BUSINESSES AND ATHLETES COLLIDE	278
VI. POSITIVE PSYCHOLOGICAL EFFECTS ON ATHLETES	281
VII. PSYCHOLOGICAL EFFECTS ON CONSUMERS	283
VIII. NIL AND FEMALE ATHLETES	285
IX. NEGATIVE PSYCHOLOGICAL EFFECTS	286
X. WHERE TO GO FROM HERE?.....	289

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I would like to thank my fiancée and family for all of their love and support.

I. INTRODUCTION

The National Collegiate Athletics Association (NCAA) has positioned itself as a champion of elite college athletes. In exchange for student-athletes' athletic abilities, the NCAA and its member schools provide athletes the structure and opportunity to continue to play sports while earning free education from some of the most prestigious universities in the world.¹ For decades, many have believed that this was a fair trade that benefitted both sides.² However, a public outcry began to emerge, which urged the NCAA to allow college athletes to also share in a piece of the pie.³

In 2021, a topic that once was only a debate on ESPN soon became a debate in front of the highest court in the land. In *NCAA v. Alston*, the U.S. Supreme Court ended the debate with a determination that prohibiting college athletes from receiving education-related compensation for their services violated antitrust law.⁴ While many experts predicted the outcome of the decision, no one had the slightest clue how the NCAA, colleges, businesses, and athletes would respond. As time has progressed since the *Alston* case, there has been a flurry of positive and negative changes resulting from the decision. This article will focus on the positive and negative psychological effects that have stemmed from an influx in money to players, as well as an increase in notoriety in the consumer marketplace.

II. A CHANGE 100 YEARS IN THE MAKING

The NCAA was not founded by colleges on their own volition, but rather at the urge of President Theodore Roosevelt to help eliminate massive injury and death numbers for college football.⁵ While this has largely been achieved in the physical sense, the NCAA has done little to protect the financial interests of its student-athletes. Before the NCAA was formed, it was quite common to see athletes on the

1. See Allen R. Sanderson & John J. Siegfried, *The National Collegiate Athletic Association Cartel: Why it Exists, How it Works, and What it Does*, 52 REV. INDUS. ORG. 185, 196 (2018) (noting that "colleges have agreed among themselves through the NCAA simply to limit player compensation to a grant-in-aid: essentially, a tuition scholarship plus room and board.").

2. See Jason Kirk, *The Endless Argument at the Center of College Football*, BANNER SOCIETY (Oct. 4, 2019, 9:31 AM), <https://www.bannersociety.com/2019/10/4/18716003/college-football-amateurism-history>.

3. See Sam Kline, *NCAA Debate: Why We Need to Start Paying College Athletes*, BLEACHER REPORT (Oct. 15, 2010), <https://bleacherreport.com/articles/492382-ncaa-debate-why-we-need-to-start-paying-college-athletes>.

4. See *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141 (2021).

5. See Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9 (2000).

field that were not enrolled in the college.⁶ Athletes included lawyers, blacksmiths, and multiple other professions who doubled as “college” athletes.⁷ The pay could be quite good for college athletes during this time, as one University of Washington football player was said to have taken a pay cut by leaving the University.⁸ This led the NCAA to enact the Sanity Code after World War II, which limited payment to cover just tuition and fees.⁹

Over the next several decades, the NCAA faced legal challenges on various topics such as compensation after a death while playing the sport, broadcasting deals, and limitations placed on “full scholarships.”¹⁰ Each case either was decided in the favor of the NCAA or resulted in the NCAA implementing marginal changes that failed to properly reward athletes.¹¹ For example, in regard to what is defined as a full scholarship, the NCAA allowed schools to pay for tuition, fees, books, and room and board.¹² In 2015, they expanded this to include academic-related supplies, transportation, and other similar items.¹³ The changes appear on the outside to be substantial changes that can help improve the lives of student-athletes. However, when the NCAA makes a total of 1.2 billion dollars in revenue from March Madness alone, it is hard to justify the athletes receiving only “academic-related supplies” as a fair trade off when they are bringing this money in.¹⁴

6. Dennis A. Johnson & John Acquaviva, *Point/Counterpoint: Paying College Athletes*, SPORT J. (June 15, 2012), <https://thesportjournal.org/article/pointcounterpoint-paying-college-athletes/#:~:text=In%20sum%2C%20the%20original%201929%20report%20claimed%20that,representing%20the%20schools%20were%20not%20enrolled%20as%20students>.

7. *Id.*

8. *Hugh McElhenny Denies Charges of Free Ride*, TOLEDO BLADE, Feb. 17, 1956, at 32. Hugh McElhenny denied the story at the time; however, in 2004, he confirmed that he made around 800 dollars—\$8,416.66 in today’s money—for his services illegally in college. Dan Raley, *The Untold Story of Hugh McElhenny, The King of Montlake*, SEATTLE POST-INTELLIGENCER (Sept. 1, 2004), <https://www.seattlepi.com/sports/article/The-untold-story-of-Hugh-McElhenny-the-King-of-1153112.php>.

9. Andy Schwarz, *The NCAA Has Always Paid Players; Now It’s Just Harder To Pretend They Don’t*, DEADSPIN (Aug. 29, 2015, 12:25 PM), <https://deadspin.com/the-ncaa-has-always-paid-players-now-its-just-harder-t-1727419062>.

10. Smith, *supra* note 5.

11. *Id.*

12. Michelle Brutlag Hosick, *Autonomy Schools Adopt Cost of Attendance Scholarships*, NCAA (Jan. 18, 2015, 6:58 AM), <https://www.ncaa.org/about/resources/media-center/autonomy-schools-adopt-cost-attendance-scholarships>.

13. *Id.*

14. Tim Parker, *How Much Does the NCAA Make Off March Madness?*, INVESTOPEDIA (Mar. 16, 2022), <https://www.investopedia.com/articles/investing/031516/how-much-does-ncaa-make-march-madness.asp>.

III. ATHLETES HARMED PRIOR TO *ALSTON*

To understand the gravity of the oppression of the NCAA, it is important to highlight past stories of athletes harmed by the policies of the NCAA and the hope that the new Supreme Court case brings. There are numerous athletes that have been harmed by the rules and regulations the NCAA has set forth over the past years. Some of the harms come in the form of loss of monetary opportunities. For example, while still a high school senior, Missy Franklin was the star of the 2012 Summer Olympics.¹⁵ Winning four golds and one bronze, Missy won the second most medals out of any athlete in the Olympics.¹⁶ In order to maintain her eligibility to swim in college, Missy had to forgo hundreds of thousands of dollars.¹⁷ In the following 2016 Olympics, Missy would only win one medal.¹⁸ At the age of twenty-three, she would retire and never compete in another Olympics.¹⁹

While Missy was fortunate enough to continue her athletic career despite missing out on sponsorship deals, other athletes had to give up their athletic dreams to pursue other avenues. In 2017, Donald De La Haye was a kicker for the University of Central Florida.²⁰ He also happened to have a YouTube channel that highlighted his life as a college athlete.²¹ His channel led to financial success as he monetized his videos and began to make significant earnings.²² Although he garnered thousands of fans, the NCAA was not one of them. The NCAA demanded that Donald either delete his channel or return the money he made.²³ Donald had to choose between a full scholarship and furthering his football career or continuing to make YouTube videos that earned him money.²⁴ Donald shocked the world when

15. John Talty, *Missy Franklin Passing Up Millions in Endorsements to Remain Amateur*, INT'L BUS. TIMES (Aug. 1, 2012, 11:12 AM), <https://www.ibtimes.com/missy-franklin-passing-millions-endorsements-remain-amateur-734697>.

16. *2012 Summer Olympics - Medal Tracker*, ESPN, https://www.espn.com/olympics/summer/2012/medals/_/view/athletes (last visited Feb. 21, 2022).

17. Talty, *supra* note 15.

18. *2016 Summer Olympics - Medal Tracker*, ESPN, https://www.espn.com/olympics/summer/2016/medals/_/view/athletes (last visited Feb. 21, 2022).

19. Wayne Drehs, *Five-time Olympic Gold Medalist Missy Franklin Retires at 23*, ESPN (Dec. 19, 2018), https://www.espn.com/olympics/swimming/story/_/id/25572511/decorated-swimmer-missy-franklin-retires-23. Franklin made the decision to retire after being diagnosed with severe chronic tendinitis of the rotator cuff and biceps that resulted in multiple surgeries and constant pain. *Id.*

20. Jenna Lemoncelli, *Donald De La Haye's 'Crazy' Decision to Quit College Football Turned Him Into a YouTube Millionaire*, N.Y. POST (Sept. 1, 2021, 12:29 PM), <https://nypost.com/2021/09/01/donald-de-la-haye-quit-college-football-now-hes-a-youtube-millionaire/>.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

he chose his YouTube channel over continuing his football and educational career.²⁵ His story highlighted the harshness of NCAA rules, as they made him choose between his two loves. It appears Donald made a wise choice, as his YouTube channel now has over three million subscribers helping him bring in millions of dollars a year.²⁶

Perhaps the saddest story that derived from harsh NCAA rules regarding student-athlete benefits was that of Silas Nacita. In 2015, Silas walked on to the Baylor football team.²⁷ Because he was a walk-on, Silas did not receive financial aid with housing, food, or tuition, all of which are covered by scholarships for most athletes.²⁸ Due to the steep cost of having to foot the bill for all expenses, Silas resorted to sleeping on floors, taking pictures of books in the bookstore for homework, and never knowing where his next meal would come from.²⁹ A close family friend took note of the situation, put him up in an apartment, and helped him pay for some of his living expenses.³⁰ Because Silas took benefits that prevented him from being homeless, the NCAA ruled this was an illegal benefit for Silas, and he was deemed ineligible.³¹ Silas commented on the situation on Twitter, stating, “I’m just a kid who wanted to go to school and play football. Nothing more.”³²

IV. NCAA V. ALSTON

On June 21, 2021, the Supreme Court issued a unanimous decision that struck the NCAA at its core and allowed the opportunity for real change to be made. Both current and former athletes brought suit, alleging that the limits on compensation “violate §1 of the Sherman Act, which prohibits ‘contract[s], combination[s], or

25. *Id.*

26. *Id.*

27. Pete Volk, *Once-homeless Baylor Player Ineligible, Allegedly for Accepting a Place to Live*, SB NATION (Feb. 25, 2015, 11:07 AM), <https://www.sbnation.com/college-football/2015/2/25/8107233/silas-nacita-baylor-football-ncaa-eligibility>.

28. A walk-on in college athletics is a term for a player who tries out for an athletic team without having been recruited or offered a scholarship. *Walk-on*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/walk-on> (last visited Mar. 6, 2022).

29. Volk, *supra* note 27.

30. *Id.*

31. *Id.* The NCAA denied that they ruled Nacita ineligible, and the decision was instead made by Baylor. *Id.* Either way, the NCAA did not intervene and attempt to fix the situation. *Id.*

32. Silas Nacita (@silas_nacita), TWITTER (Feb. 25, 2015, 10:29 AM), https://twitter.com/silas_nacita/status/570621510685036545?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E570621510685036545%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=http%3A%2F%2Fwww.sbnation.com%2Fcollege-football%2F2015%2F2%2F25%2F8107233%2Fsilas-nacita-baylor-football-ncaa-eligibility

conspirac[ies] in restraint of trade or commerce.”³³ In both the district court and the 9th Circuit, the courts found in favor of the NCAA and refused to end the limits the NCAA placed on scholarships.³⁴ However, lower courts did find that certain rules that limited the amount of education-related benefits were illegal and enjoined the NCAA from continuing to use them.³⁵ The 9th Circuit of Appeals, affirming its decision, said the lower court, “struck the right balance in crafting a remedy that both prevents anticompetitive harm to student-athletes while serving the procompetitive purpose of preserving the popularity of college sports.”³⁶

The NCAA appealed to the Supreme Court, arguing there should be no constraints on the limitations they can place on scholarships.³⁷ The Supreme Court affirmed the lower court’s ruling that the limitation on education-related benefits violated antitrust law.³⁸ In making its decision, the Court held that the NCAA did not have to implement the least restrictive rules possible.³⁹ However, the rules in place were more restrictive than they needed to be in order to maintain procompetitive advantages.⁴⁰ The ruling was quite narrow, as the Court only held that the rules involving educational benefits were too restrictive.⁴¹ The Court did not rule on other compensation laws the NCAA had.⁴² However, in a concurrence, Justice Kavanaugh indicated that if the other compensation rules were brought before the Court, they too would be enjoined, as the NCAA would be unlikely to produce a “valid procompetitive justification” for the compensation rules still in place.⁴³

V. BUSINESSES AND ATHLETES COLLIDE

After *Alston*, the NCAA could tell that the writing was on the wall for the elimination of more rules that it held in regards to compensation, and it adopted an

33. Nat’l Collegiate Athletic Ass’n v. Alston, 141 S. Ct. 2141, 2151 (2021) (internal citation omitted).

34. *Id.*

35. *Id.*

36. *Id.* at 2154 (quoting *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1263 (9th Cir. 2020)).

37. *Id.*

38. *Id.* at 2147, 2166.

39. *Id.* at 2161.

40. *Id.* at 2164.

41. *See id.* at 2165–66.

42. *Id.* at 2166 (Kavanaugh, J., concurring).

43. *Id.*

interim Name, Image, and Likeness (NIL) policy.⁴⁴ The policy allows student-athletes to receive compensation based off their notoriety and unique skill sets.⁴⁵ Before this change, athletes could not attach their name to anything for financial benefit.⁴⁶ This was especially unfair to student-athletes, as this limitation did not apply to any other student on campus.⁴⁷ The introduction of the NIL policy essentially allowed athletes to enter endorsement deals with businesses. With student-athletes now freed from the grip of the NCAA, businesses leapt at the opportunity to ink student-athletes with immediate regional appeal and huge national potential.

There have been several different approaches by athletes and business when deciding which deals to pursue and how to present them to the public. Some businesses, like Morgan & Morgan, have focused on the tangible physical abilities of the players.⁴⁸ The personal injury law firm has produced billboards stating “size matters,” featuring a picture of the local college’s largest offensive or defensive linemen.⁴⁹ Some have taken advantage of the unique names in college sports. Kool-Aid signed Alabama defensive back Kool-Aid McKinstry, and Sam’s Club offered ten thousand dollars to ten athletes simply because they were named Sam.⁵⁰ Other companies have focused less on the individual athletes and more on the team itself by offering deals to the whole team. For example, Built Brands, a Utah company, offered a deal to every BYU player and specifically made sure that the athletes not

44. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

45. *Id.*

46. *See id.*

47. For example, a student at the University of Belmont writes a hit country song and becomes an overnight sensation. That student could go out and ink endorsement deals based on their newfound popularity. Another Belmont student, who happens to compete on the golf team, co-wrote the song and also wants to sign an endorsement deal and cash in. They would be unable to make money off their name, as the NCAA would deem them ineligible for their athletic season. *See* N.C.A.A. CONST. art XII, § 5.2.1(a).

48. Claire Simms, *National Championship Could Lead to More NIL Deals for Georgia Players*, FOX 5 ATLANTA (Jan. 7, 2022, 8:48 PM), <https://www.fox5atlanta.com/news/national-championship-could-lead-to-more-nil-deals-for-georgia-players>. One of the athletes used is University of Georgia defensive lineman Jordan Davis, who stands in at 6 foot 6 and 340 pounds. *Id.*

49. *Id.*

50. AJ Spurr, *Alabama CB Ga’Quincy ‘Kool-Aid’ McKinstry Lands NIL Deal With Kool-Aid Brand*, USA TODAY SPORTS (Aug. 18, 2021, 3:49 PM), <https://rolldewire.usatoday.com/2021/08/18/alabama-football-gaquincy-mckinstry-kool-aid-brand-deal-nil/>; Paul Gatling, *Sam’s Club Enters NIL Playing Field, Offers 10 Student-Athletes Named ‘Sam’ \$10,000*, TALK BUS. & POL. (Sept. 15, 2021, 10:34 AM), <https://talkbusiness.net/2021/09/sams-club-enters-nil-playing-field-offers-10-student-athletes-named-sam-10000/>.

on scholarship would have their tuition covered.⁵¹ While many of these companies made splashes with the creativity and the amount of money offered, Barstool Sports went a different route and gave ambassadors clothing.⁵² Athletes simply had to post that they were a Barstool athlete, and they were then rewarded with free gear.⁵³ Lastly, there were several large companies that have used NIL deals to get a jumpstart on signing star athletes. Nike signed Kayvon Thibodeaux, a projected top five NFL draft pick, to a six-figure deal.⁵⁴ Gatorade did the same by inking a deal with Paige Bueckers, a star women's basketball player who has a good chance to be the number one overall pick in the WNBA draft.⁵⁵

On top of the unique deals companies can create, NIL also gives them an easy way to reach a very targeted demographic. Many companies are doing this by nano marketing, a term that describes inking deals with figures who have a social media presence of less than 10,000 people.⁵⁶ Studies have found that although these type of influencers do not have a large audience, the audience they do have finds them more trustworthy, thus creating better engagement and likeliness for the ad to be successful.⁵⁷ An offensive lineman at Washington State is not likely to appeal to a resident in West Virginia. However, for businesses in Pullman, Washington, that offensive lineman can bring instant recognition and notoriety to a business within the community. Car dealerships, local restaurants, and local boutiques have all

51. Jackson Payne, *Built Brands Enters Name, Image and Likeness Partnership With BYU Football to Pay Walk-on Tuition*, UNIVERSE SPORTS (Aug. 12, 2021), <https://universe.byu.edu/2021/08/12/built-brands-enters-nil-partnership-with-byu-football-to-pay-walk-on-tuition/>.

52. Brendan Menapace, *Barstool Sports Has Signed Thousands of College Athletes to NIL Partnerships, But No One (Not Even Barstool) Seems to Know the Plan*, PROMO MKTG. (Aug. 20, 2021), <https://magazine.promomarketing.com/article/barstool-is-trading-branded-merchandise-for-nil-rights-is-it-worth-it-for-athletes/>.

53. *Id.*

54. Zachary Neel, *Report: Kayvon Thibodeaux Inks Six-figure Deal With Nike*, DUCKSWIRE (July 7, 2021, 8:26 AM), <https://duckswire.usatoday.com/2021/07/07/report-kayvon-thibodeaux-inks-six-figure-deal-with-nike-releases-nft-created-by-tinker-hatfield/>. This deal is a particularly interesting one to watch. Large companies are willing to invest millions into the top draft picks each year. The one problem is competing against the other top companies to secure the big names. In the future, large companies could possibly use smaller NIL deals to help build a relationship and gain an advantage in signing the best athletes long term.

55. Ryan Gaydos, *UConn Star Paige Bueckers Inks Gatorade NIL deal*, FOX BUS. (Nov. 29, 2021), <https://www.foxbusiness.com/sports/uconn-paige-bueckers-gatorade>.

56. Dan Cheeseman, *What is Nano Marketing and Why Your Business Should Start Immediately*, MIA TECH. (Oct. 5, 2020), <https://miainfluencer.com/nano-marketing-is-arguably-the-best-form-of-advertising-and-now-any-business-can-do-it/>.

57. See *The State of Influencer Marketing 2019*, HYPEAUDITOR, <https://hypeauditor.com/s/auditor/resources/The-State-of-Influencer-Marketing-2019.pdf> (noting that an influencer with authentic engagement tends to be free of fraud).

taken the opportunity to sign superstars in smaller sports and players that mean the world to the college town they live in.

Up to this point, many have focused strictly on the creativeness of NIL deals or have analyzed the value of NIL from a purely financial perspective. However, a deeper analysis into both positive and negative psychological effects is imperative to make sure NIL deals work for everyone. In analyzing the psychological effects, this article will examine the positives for athletes, the mixture of good and bad for consumers, and the negatives for athletes.

VI. POSITIVE PSYCHOLOGICAL EFFECTS ON ATHLETES

According to Maslow's hierarchy of needs, in order for people to meet their true potential and to be satisfied in life, they must have their basic physiological needs met before anything else.⁵⁸ This includes things like food, water, shelter, etc.⁵⁹ By simply being afforded the opportunity to play on a sports team, some of the higher levels of needs are met for athletes, such as love, belonging, and personal esteem. However, none of these needs matter if the basic needs are not met first. A sense of belonging will do little for a person that is going to bed hungry every night. Before athletes were given the opportunity to make additional money from NIL deals, many athletes had to go without satisfaction of their basic needs.⁶⁰ A 2019 study by the National College Players Association and the Drexel University Sports Management Program found that 86% of off-campus college athletes and 85% of on-campus athletes live below the poverty line.⁶¹ University of Connecticut basketball player Shabazz Napier, who would later play in the NBA, told reporters that there were many nights he would go to bed starving despite the fact he was given a meal plan by the university.⁶² Many people were skeptical of Napier's comments until former Ole Miss quarterback Bo Wallace confirmed the horrifying news, saying, "[a] lot of guys go to bed hungry at night. That's real."⁶³ These quotes

58. *Maslow's Hierarchy of Needs*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/other/maslows-hierarchy-of-needs/> (last visited Mar. 6, 2022). Maslow's Hierarchy of Needs outlines a human's most basic needs, building to those that are more advanced. The five needs identified in the hierarchy, starting with the most basic, are physiological (food, water, etc.), safety (shelter, security, etc.), love and belonging (relationships), esteem (confidence, respect, etc.), and self-actualization (creativity). *Id.*

59. *Id.*

60. Ramogi Huma & Ellen J. Staurowsky, *The Price of Poverty in Big Time College Sport*, NAT'L COLL. PLAYERS ASS'N 3, (2019).

61. *Id.* at 19.

62. Rodger Sherman, *Shabazz Napier: 'There's Hungry Nights Where I'm Not Able to Eat'*, SB NATION (Apr. 7, 2014, 7:23 PM), <https://www.sbnation.com/college-basketball/2014/4/7/5591774/shabazz-napier-uconn-basketball-hungry-nights>.

63. Jeremy Fowler, *Ole Miss' Bo Wallace: Shabazz Napier Was Right, Players Go Hungry at Night*, CBS SPORTS (July 17, 2014, 9:35 AM), <https://www.cbssports.com/college-football/news/ole>

provide some insight into the reality of how athletes live without the flexibility to earn money due to their chaotic school and athletic schedules. It gets even worse considering both of these quotes came from full scholarship athletes at major DI schools known for their athletics.⁶⁴ If these were the conditions endured by athletes reaping the full benefits of NCAA rules, imagine the conditions of those not fortunate enough to receive a full scholarship. The only players guaranteed to receive a full scholarship, if offered one, are DI athletes that play football, men's basketball, women's basketball, women's gymnastics, and women's volleyball.⁶⁵ The rest of the DI sports, and all athletic programs in DII and DIII schools, are considered equivalency sports, meaning that even if these athletes receive a scholarship, there is a strong chance it is not a full scholarship.⁶⁶ These athletes are faced with the burden of paying for school and basic needs on top of studying and participating in athletic schedules.

The steep obstacles a lot of athletes face to even get food to fill their bellies shows the potential NIL deals have to make an impact in a student-athlete's life. Sure, many athletes are not able to make a ton of money, but consider an athlete who can make an extra five hundred dollars a month. What seems like a small payment has the potential to give athletes financial flexibility to buy food, pay rent, or get basic school supplies needed to graduate. If athletes are able to fulfill their basic needs, they can then focus on other areas of their lives to fulfill their higher-level needs. This will make them well-rounded individuals who can use their academic degrees to make an impact in society.

The NIL deals have a chance to go beyond impacting a single student's basic needs. Jose Perez is a college basketball player at Manhattan.⁶⁷ While Perez is living

miss-bo-wallace-shabazz-napier-was-right-players-go-hungry-at-night/#:~:text=HOOVER%2C%20Ala.%20—

%20Former%20UConn%20guard%20Shabazz%20Napier%27s,says%20Napier%27s%20concerns%20are%20real.%20He%27s%20seen%20it.

64. See generally Sherman, *supra* note 62 (noting that Napier had a full ride at University of Connecticut); Fowler, *supra* note 63 (stating that Wallace saw his fellow football players go hungry despite their scholarships).

65. Chelsea Eytel, *How Rare Is a Full-ride Athletic Scholarship?*, NAT'L SCOUTING REP. (Feb. 9, 2020), [https://www.nsr-inc.com/scouting-news/how-rare-is-a-full-ride-athletic-scholarship/#:~:text=Head-](https://www.nsr-inc.com/scouting-news/how-rare-is-a-full-ride-athletic-scholarship/#:~:text=Head-count%20Sports%20There%20are%20six%20Division%20I%20sports,women%E2%80%99s%20olleyball.%20These%20programs%20are%20called%20head-count%20sports.)

count%20Sports%20There%20are%20six%20Division%20I%20sports,women%E2%80%99s%20olleyball.%20These%20programs%20are%20called%20head-count%20sports.

66. *Id.* In these sports, a scholarship likely is a smaller percentage of what tuition costs at the school, thus leaving athletes to pay the rest of their academic expenses out of pocket. See Huma & Staurowsky, *supra* note 60, at 3–4.

67. Zach Braziller, *Jose Perez Thriving at Manhattan, Helping Cancer-Stricken Mom with NIL deal*, N.Y. POST (Dec. 28, 2021, 11:33 PM), <https://nypost.com/2021/12/28/manhattans-jose-perez-capitalizing-on-nil-deal-for-mother/>.

his dream and fighting for the opportunity to make the NBA, his mom is fighting for her life in a battle with cancer.⁶⁸ Prior to NIL, Perez would send any additional money he received to help his mom financially.⁶⁹ Now that NIL has passed, Perez has partnered up with a clothing company, BlueChip, which has allowed him to make money off clothing using his image and likeness.⁷⁰ From this business partnership, Perez has been able to send significantly more money back home to help his mom.⁷¹ The odds of Perez making the NBA are slim, as his statistics did not mirror that of an NBA prospect, but with NIL deals, Perez is able to use his status as a player to help provide for his mom.⁷² The American Psychology Association has reported that a being a caregiver for a sick family member can result in several negative effects on the caregiver in the form of high levels of strain, depression, and even health problems for the caregivers themselves.⁷³ These effects can be worsened when the caregiver does not have enough resources and becomes overwhelmed.⁷⁴ While this may only affect a small amount of student-athletes, the principle can be applied to student-athletes who have family members living in poverty back home that are counting on them making it big in sports. These athletes no longer have to bear the burden of the nearly impossible task of going pro to provide for their families, but rather can provide help before they make the pros or if they never make it at all.⁷⁵

VII. PSYCHOLOGICAL EFFECTS ON CONSUMERS

Marketing departments of corporations are always looking for a way to gain an edge with consumers. Linking popular athletes to their company is a popular marketing tool these departments can use. On the surface, the use of athletes does not always make sense. Is anyone really more inclined to buy Hanes underwear because Michael Jordan appears in commercials, or has anyone actually chosen to order from Papa Johns over Dominos because Shaq is a spokesperson? While seemingly preposterous to think that athletes have this kind of sway in our brains, the reality is that they do.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Mental and Physical Health Effects of Family Caregiving*, AM. PYSCH. ASS'N (2015), <https://www.apa.org/pi/about/publications/caregivers/faq/health-effects>.

74. *Id.*

75. Henry DeWitt, *NCAA Should Pay Its Athletes*, THE BUDGET ONLINE (Oct. 31, 2019), <https://lhsbudget.com/opinion/2019/10/31/ncaa-should-pay-its-athletes/>.

There are several ways the use of athletes in marketing triggers psychological effects that make consumers more apt to buy a product. Two of these ways are particularly applicable to college athletes. The first is the familiarity of a person.⁷⁶ Often called the “mere exposure effect,” simply seeing something that is familiar makes consumers attribute a more positive connotation with what they are seeing.⁷⁷ Thus, thrusting a popular college athlete into an ad can immediately give consumers a positive connotation of the company or product being advertised.⁷⁸ While college athletes may not have the notoriety of professional athletes, think of the influence they can elicit in college towns for small businesses and alumni.⁷⁹ Additionally, exposing the public to these athletes while they are in college will make the athletes even more recognizable and familiar to the general public when they become professional athletes and are given a larger platform to advertise to consumers.

The second way athletes produce a positive psychological response from consumers is the desire to be like famous athletes.⁸⁰ Everyone has a dream of who they wish they were, what they wish they had, and what they wished they looked like. It’s the reason why celebrity endorsement is so successful. Whether it is their occupation, looks, style, wealth, or charm, typically there is something about celebrities that creates a longing to be like them.⁸¹ The same goes for athletes. College athletes are in the top 1% of physical ability. They are fit, popular, and studs at the sport they play. This makes them the perfect person to market to those younger who look up to them, but also to those older who long for what they once had. By seeing an athlete with a product or company, it creates a psychological effect that makes consumers think if they can get that product then a little part of them will be like the athletes they admire.

There is, however, a chance that these deals can create a negative effect on consumers. Many college athletes are appealing to businesses because they can zero in on a specific community. However, with more and more athletes transferring schools, athletes may lose their number one appeal to companies. For example, Milo’s, a restaurant with locations only in Alabama, signed a deal with Auburn

76. *Id.*

77. Kurt Philip, *Get Customers to Buy Using the Familiarity Effect*, CONVERTICA, <https://convertica.org/familiarity-effect/#:~:text=How%20to%20encourage%20customers%20to%20buy%20your%20product,familiar.%20...%207%20Look%20at%20the%20camera.%20> (last visited Feb. 24, 2022).

78. *See id.*

79. *See id.*

80. Ada Okoli, *Impact of Celebrity Endorsement on Consumer Buying Behavior*, ZOOVU (Oct. 4, 2016), <https://zoovu.com/blog/impact-of-celebrity-endorsement-on-consumer-buying-behavior/>.

81. *Id.*

quarterback Bo Nix.⁸² It seemed to be a perfect deal to strictly target an Alabama market. However, at the end of the 2021 season, Nix announced that he was transferring to the University of Oregon.⁸³ Nix is now miles away from the closest Milo's and may even turn off customers who feel scorned towards Nix for leaving.⁸⁴ Moving forward, companies will need to be strategic in picking players who are committed to the university and city they play for or face the risk of a once successful deal turning sideways.

VIII. NIL AND FEMALE ATHLETES

Neil Armstrong, Ferdinand Magellan, and the Wright brothers are all known as great pioneers into industries unknown. Joining the list of these crusaders is Chloe Mitchell. The sophomore volleyball player at Aquinas College, a National Association of Intercollegiate Athletics (NAIA) school, is believed to be the first athlete to receive an NIL deal.⁸⁵ Mitchell was able to make money off her likeness after making DIY TikTok videos.⁸⁶ In her first video that she received money for, she built a mini-golf course in her living room.⁸⁷ However, there is nothing mini about the money she has been able to make. Using money from her videos, she has been able to pay off her student loans, buy a car, buy a laptop, and is now saving to buy a house.⁸⁸ Her unlikely story is part of the larger unexpected narrative of female athletes being one of the biggest beneficiaries of the new NIL rules.

As of November 12, 2021, women's sports made up six of the top eleven sports ranked by total NIL deals.⁸⁹ Women's volleyball takes the top spot for females, and

82. Andrew Joseph, *Auburn Quarterback Bo Nix Immediately Scored an Endorsement Deal After the NIL Rule Change*, USA TODAY SPORTS (July 1, 2021, 12:57 PM), <https://fw.usatoday.com/2021/07/auburn-bo-nix-milos-tea-endorsement-ncaa-nil-rule-change>.

83. Ben Kercheval, *Bo Nix Transfers to Oregon: Three-Year Starter for Auburn to Finish College Career with Ducks*, CBS SPORTS (Dec. 19, 2021, 7:19 PM), <https://www.cbssports.com/college-football/news/bo-nix-transfers-to-oregon-three-year-starter-for-auburn-to-finish-college-career-with-ducks/>.

84. This was not the first issue Milo's had with the Nix deal, as Alabama fans showed disdain for the company signing their rival's best player. James Fletcher, *Alabama Football Fans React to Bo Nix's First NIL Endorsement with Boycotts and More*, TUSCALOOSA NEWS (July 1, 2021, 2:11 PM), <https://www.tuscaloosaneews.com/story/sports/college/football/2021/07/01/alabama-football-fans-react-bo-nix-first-nil-endorsement-milos-sweet-tea/7830134002/>.

85. *The First College Athlete to Profit From NIL*, ADU, <https://www.athleticdirector.uconn.edu/sanil/the-first-college-athlete-to-profit-from-nil/> (last visited Feb. 22, 2022).

86. *Id.*

87. *Id.*

88. *Id.*

89. Torrey Hart, *An Early Look at Which College Athletes Are Getting NIL Deals*, SWIMSWAM (Nov. 12, 2021), <https://swimswam.com/an-early-look-at-which-college-athletes-are-getting-nil-deals/>.

second spot overall when put against men's sports.⁹⁰ While many of these deals are smaller in monetary value, women's sports still have five of the top ten spots when ranked by total compensation, with only football and men's basketball outranking women's volleyball, basketball, and swimming and diving.⁹¹ So how are they doing it? How are female volleyball players receiving more deals than men's basketball players who have nationally televised games and the chance to become huge NBA stars? The answer seems to lie in the social media of female athletes. Let's face it, the odds of turning on ESPN and seeing a highlight of a college volleyball game are slim to none. This lack of coverage limits female athletes' exposure to consumers; however, there are no barriers to someone creating a social media page, thus giving female athletes a way to overcome the exposure barrier.⁹² Little-known female athletes have been able to garner significant followings from TikTok dances and modeling fashion on their Instagram pages. These new followings have spring boarded female athletes from the phone screens of social media users, to the plasma screens of Times Square as the center of national ad campaigns.⁹³ Perhaps this influx of NIL deals will lead to female athletes not just gaining followers on social media but followers of their college sports teams.

IX. NEGATIVE PSYCHOLOGICAL EFFECTS

While the introduction of NIL has largely been deemed a success, it has also brought several concerns. While the introduction of money to the college game opens up doors for college athletes, it also brings a host of pitfalls for both athletes and the universities they represent.

Boos cascaded down onto Spencer Rattler.⁹⁴ The preseason Heisman candidate quarterback led the fourth-ranked Oklahoma Sooners to a 3-0 record to start the season.⁹⁵ Yet Sooner fans did not think this was good enough as they started to chant for the backup, Caleb Williams, to replace Rattler in the second quarter of a game against unranked West Virginia.⁹⁶ Kirk Herbstreit and Matt Barrie, esteemed

90. *Id.*

91. *Id.*

92. Thilo Kunkel et al., *There is No Nil in NIL: Examining the Social Media Value of Student-Athletes' Names, Images, and Likeness*, 5 *SPORT MGMT. REV.* 839 (2021).

93. Candace Buckner, *Brands are Taking Notice of Female College Athletes. Now Let's Move Beyond Their Sex Appeal.*, *WASHINGTON POST* (Aug. 22, 2021, 5:00 AM), <https://www.washingtonpost.com/sports/2021/08/22/nil-deals-female-college-athletes/>.

94. Larry Brown Sports, *Oklahoma Fans Boo, Chant for Spencer Rattler to be Benched*, *MSN SPORTS* (Sept. 25, 2021), <https://www.msn.com/en-us/sports/ncaafb/watch-oklahoma-fans-boo-chant-for-spencer-rattler-to-be-benched/ar-AAOP4f1>.

95. *Id.*

96. *Id.*

college football analysts, attributed this quick revolt of fans to NIL deals.⁹⁷ Barrie argued that college sports teams are corporations now, and these are the consequences of letting people down.⁹⁸ Rattler has inked in several deals, including one with restaurant chain Raising Cane's, received two vehicles valued together at \$113,000, and has the projected ability to earn \$800,000 simply because of the amount of followers he has on social media.⁹⁹ Because of this shift in how college athletes are viewed in the eyes of fans, many are no longer viewed as eighteen-year-old kids fresh out of high school who are undoubtedly due to make mistakes. Instead, they are viewed as professional athletes who are expected to live up to the expectations that come along with receiving compensation for playing.

It is no secret that athletes are under an immense amount of pressure. Just look at Simone Biles. Biles, who is hands-down the best gymnast in the world, shocked everyone when she pulled out of the 2021 Summer Olympics.¹⁰⁰ She cited extreme psychological pressure that harmed her mental well-being and prevented her from competing.¹⁰¹ Even though Biles was competing in a worldwide competition, it can be argued that student-athletes are under comparable pressure. College athletes have to deal with a rigorous class schedule and balance a social life with athletic training. On top of that, college athletes know that their performance determines whether they get to have a chance to live out the dream of playing sports professionally or must resort to a desk job the average joe has. Now throw in the pressure of satisfying endorsement deals and having expectations not only from fans, but also businesses who are expecting a monetary return based on athletic performance. It will be interesting to see if more athletes follow the lead of Simone Biles and withdraw from athletics due to the mass amount of pressure.

The television show *Survivor* may be the greatest example of how money can change a person. Contestants live on a deserted island and compete in challenges to

97. Tim Verghese, *Kirk Herbstreit Reacts to Spencer Rattler Getting Booped by Oklahoma Fans*, ON3, <https://www.on3.com/college/oklahoma-sooners/news/kirk-herbstreit-reacts-to-oklahoma-sooners-quarterback-spencer-rattler-getting-booped-by-oklahoma-fans-call-for-caleb-williams/> (last visited Mar. 22, 2022).

98. Dennis Dodd, *Spencer Rattler Becomes Case Study for NIL Return on Investment with Oklahoma Starting Job in Flux*, CBS SPORTS (Oct. 13, 2021, 3:41 PM), <https://www.cbssports.com/college-football/news/spencer-rattler-becomes-case-study-for-nil-return-on-investment-with-oklahoma-starting-job-in-flux/#:~:text=Rattler%27s%20NIL%20deals%20will%20roll,are%20on%20a%20lease%20deal.>

99. *Id.*

100. See, e.g., Jane Coaston, *Simone Biles is the Greatest Female Gymnast Ever*, VOX (Oct. 13, 2019, 11:56 AM), <https://www.vox.com/culture/2019/10/10/20908435/simone-biles-gymnastics-best-ever>; Sean Ingle, *Simone Biles Pulls Out of Olympics All-around Gymnastics Final to Focus on Mental Health*, GUARDIAN (July 28, 2021), <https://www.theguardian.com/sport/2021/jul/28/simone-biles-withdraws-from-tokyo-olympics-all-around-gymnastics-final>.

101. *Supra* note 100.

win a million dollars.¹⁰² It is interesting to see how the contestants interact when on a team. Despite all having a common goal of reaching the finale, which is much easier to achieve by working with one another, year after year contestants will backstab their teammates to promote their own selfish desires. It begs the question: how does this influx of money affect a player's relationship with their teammates and coaches? In a Yale School of Management study, researchers conducted experiments to determine how money affects a person's self-sufficiency.¹⁰³ The study concluded that when a person was reminded of money, they were less interested in receiving help from others and more interested in achieving their goals on their own.¹⁰⁴ This psychological reaction to money could be catastrophic to both athletic teams and the player. Perhaps this could come in the form of athletes flat out rejecting the instruction of their coaches, or maybe making a bad play in a game because they were focused on their own interest instead of the team. While athletes already had an incentive to make their brand as attractive as possible for scouts at the professional level, this incentive has the potential to be compounded now that money has been thrown into the occasion.

A 2009 report estimated that within two years of retirement, 78% of NFL players were broke, and within five years of retirement, 60% of NBA players were broke.¹⁰⁵ The number is quite shocking. How does a person end up broke despite making millions of dollars each year in salary alone? In a 2014 study, researchers found that individuals who were poor, young, and live around wealthy people tend to fall into the trap of social comparison.¹⁰⁶ People that fall into this category have the urge to spend money they don't have to fit in with those around them.¹⁰⁷ This data indicates a potentially disastrous result. Not all players will receive an equal amount in NIL deals. It's only natural that the star player will attract more deals for more money. This presents the opportunity for players that don't earn as much to live beyond their means, potentially resulting in players who once were getting a jumpstart on life with NIL deals instead starting their adult lives by filing for bankruptcy.

102. *About Survivor*, CBS, <https://www.cbs.com/shows/survivor/about/> (last visited Feb. 21, 2022).

103. Kathleen D. Vohs, *Does Money Change Your Thinking?*, YALE INSIGHTS (Nov. 4, 2009), <https://insights.som.yale.edu/insights/does-money-change-your-thinking>.

104. *Id.*

105. Pablo S. Torre, *How (And Why) Athletes Go Broke*, VAULT (Mar. 23, 2009), <https://vault.si.com/vault/2009/03/23/how-and-why-athletes-go-broke>.

106. Jia Wei Zhang et al., *Living in Wealthy Neighborhoods Increases Material Desires and Maladaptive Consumption*, 16 J. CONSUMER CULTURE 297, 310 (2014).

107. *See id.*

X. WHERE TO GO FROM HERE?

The college athletics community finds itself in a wild west that even the legendary John Wayne would have trouble navigating. The NCAA gave minimum guidance for schools and athletes navigating the NIL world. In its policy, the NCAA essentially only tells athletes to act in compliance with school and state laws and if no state law is present, to make sure it fits the NCAA rules.¹⁰⁸ This sounds great until every school, conference, and state legislature has different rules set in place, resulting in a web of rules that athletes must navigate. The long leash lawmakers have to create rules may lead to a new age space race as football rich schools and states attempt to pass laws that give their favorite teams an advantage over their rivals in recruiting. The discrepancies have been noticed by the players, as athletes from the Atlantic Coastal Conference (ACC) wrote letters to Congress urging them to pass federal regulation to protect players from unfair competition.¹⁰⁹

There is no doubt that NIL is here for good, and for the most part, it has issued positive results. What is important now is to fix some of the issues that have arisen thus far and to continue to proactively monitor the effects as NIL becomes a norm in college athletics. These solutions can be accomplished through federal law, the Supreme Court stepping in, or perhaps the NCAA giving athletes full freedom to contract deals in whatever manner they deem appropriate. No matter which way the NCAA and its member schools decide to go, it is clear that there are significant issues that they should take into account, with many more that are sure to arise as athletes continue to participate in NIL deals.

108. See Hosick, *supra* note 44.

109. See Ross Dellenger, *Group of ACC Athletes Urge Congress to Pass National NIL Law*, SPORTS ILLUSTRATED (Sept. 23, 2021), <https://www.msn.com/en-us/sports/ncaafb/group-of-acc-athletes-urge-congress-to-pass-national-nil-law/ar-AAOKA5Q#:~:text=A%20group%20of%20ACC%20athletes%20has%20sent%20a,them%20to%20create%20and%20pass%20a%20universal%20law>. Luke Phillips, a long-distance runner at Notre Dame, who helped pen the letter said, “We need an equal playing field. We need a federal baseline to go off of. We can’t have some athletes and universities disadvantaged because of the state in which they are located.” *Id.* It is clear from his quote the concern that athletes have with no federal legislation.

