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Student Note
Cameron N. Regnery [a1]

CALLING AN AUDIBLE: RECENT DEVELOPMENTS IN NIL LAW AND THE NEED FOR GREATER UNIFORMITY IN THE REGULATION OF ATHLETE REPRESENTATIVES

I. INTRODUCTION

College sports have always been a prominent commercial enterprise in the United States. The first ever intercollegiate sporting event--a boat race between Harvard and Yale--was sponsored by a railroad executive to promote train travel. [1] In 1905, in response to growing concerns over the violent nature of college football, President Theodore Roosevelt convened a meeting of schools that eventually resulted in the creation of what is today the National Collegiate Athletic Association (NCAA). [2] As a bedrock principle, the NCAA established itself as an amateur organization in which student athletes were prohibited from receiving remuneration or financial compensation for their athletic services. [3] That being said, college athletes have received compensation "throughout the history of college athletics," [4] and the NCAA did not effectively punish anybody for violating its amateurism principles until the 1950s. [5] As Justice Neil Gorsuch notes, "[f]rom the start, American colleges and universities have had a complicated relationship with sports and money." [6]

This Note will discuss recent developments in name, image, and likeness (NIL) law and their effect on agents and attorneys who represent student athletes. Part II of this Note provides a brief background on student athlete compensation and discusses the Supreme Court's decision in *NCAA v. Alston* and the corresponding changes it triggered in state law. Part III outlines the ***74** various pieces of legislation that regulate student athletes and their professional representatives. Part IV explains the issues created by inconsistency among state laws regulating athlete representatives and the impact thereof. Part V highlights the need for greater uniformity in the regulation of athlete representatives and discusses how such uniformity can be achieved. Finally, this Note concludes that the recent changes in NIL law necessitate a clearer regulatory framework for attorneys and agents representing student athletes.

II. BACKGROUND AND THE *ALSTON* DECISION

The NCAA is no foreigner to the American legal system, consistently subject to scrutiny which has thereby led to organizational transformation. In the 1950s, in response to the growth of powerful conferences such as the Southeastern Conference (SEC) and the Big Ten Conference (Big-10), as well as increased television viewership, the NCAA underwent significant internal changes. [7] In 1956, for example, the NCAA expanded the scope of allowable payments to student athletes to include room and board, textbooks, and other fees incidental to one's education. [8] As the twentieth century continued, the NCAA gradually increased the ability of educational institutions to compensate athletes by providing expanded aid payments and scholarships. [9] Nevertheless, the NCAA remained firmly committed to its amateurism principles, defending them in numerous lawsuits.

In 1984, the United States Supreme Court appeared to sanctify the NCAA's amateurism tradition. In *NCAA v. Board of Regents of the University of Oklahoma*, the Supreme Court heard an antitrust challenge to the NCAA's plan for televising the football games of certain member institutions. [10] While the Court ruled that the NCAA's action did violate the Sherman Antitrust Act, it

further noted, albeit through dicta, that the NCAA plays a critical role in the maintenance of the "revered tradition of amateurism in college sports." [11] This sentiment was maintained in subsequent high-profile cases. In *McCormack v. NCAA*, the Fifth Circuit Court of Appeals emphasized the dicta from *Board of Regents*--that "[i]n order to preserve the character and quality of the 'product,' athletes must not be paid"--in holding that the NCAA did not violate antitrust laws regarding ***75** its infamous imposition of the "death penalty" on Southern Methodist University. [12]

In the more recent case of *Agnew v. NCAA*, the Seventh Circuit Court of Appeals similarly ruled in favor of the NCAA in the face of an antitrust challenge related to scholarship awards. [13] In a bit of foreshadowing, however, the majority in *Agnew* noted that "[i]t is undeniable that a market of some sort is at play" and that "the transactions ... schools make with premier athletes--full scholarships in exchange for athletic services--are not noncommercial, since schools can make millions of dollars as a result of these transactions." [14] Indeed, just nine years later, the Supreme Court would deliver a major blow to the NCAA's tradition of amateurism, specifically regarding the use of student athletes' name, image, and likeness. [15]

The impetus for changes in American NIL law with respect to intercollegiate student athletes stemmed from a recent decision by the nation's highest court. In *NCAA v. Alston*, the United States Supreme Court heard a class action suit brought by current and former NCAA student athletes challenging the organization's rules limiting the compensation student athletes may receive for their athletic services. [16] The Court upheld a district court order enjoining certain NCAA rules limiting the education-related benefits schools could make available to student athletes. [17] While this ruling may have appeared broad, Justice Kavanaugh noted in his concurrence that "this case involves only a narrow subset of the NCAA's compensation rules--namely, the rules restricting the *education-related* benefits that student athletes may receive." [18] As such, the remainder of the NCAA's compensation rules, including its NIL policies, "[were] not at issue here and therefore remain on the books." [19]

Nevertheless, shortly following the decision in *Alston*, the NCAA adopted a new interim NIL policy. [20] This policy, which became effective July 1, 2021, gives NCAA student athletes the opportunity to benefit financially from their name, image, and likeness. [21] While this change in policy was not necessitated by the decision in *Alston*, the NCAA was likely ***76** attempting to be proactive. Indeed, in his concurrence, Justice Kavanaugh noted that "the NCAA's current compensation regime raises serious questions" and sternly warned that the "NCAA is not above the law." [22] Perhaps reading the writing on the wall, the NCAA took steps to revise its NIL policy, a move mimicked in jurisdictions throughout the United States.

Prior to the decision in *Alston*, a few states had already begun taking legislative steps towards protecting the ability of student athletes to earn compensation for their name, image, and likeness. Most famously, California passed the Fair Pay to Play Act in 2019, [23] which served as a model for future state NIL statutes. [24] This statute, replicated across the country following *Alston*, guaranteed two important protections for student athletes. First, as expected, these statutes protect the ability of student athletes to earn compensation for the use of their name, image, or likeness, without affecting scholarship eligibility. [25] Florida's NIL statute, for example, provides that "[a]n intercollegiate athlete at a postsecondary educational institution may earn compensation for the use of her or his name, image, or likeness." [26] Similar language is used in NIL statutes across the country. [27]

Second, and most important to this discussion, these statutes protect the ability of student athletes to obtain professional representation, through lawyers or athlete agents, in connection to their compensation. [28] These provisions, replicated in substantially similar language across the states, provide that "[a] student athlete may obtain professional representation by an athlete agent or attorney for the purpose of securing compensation for the use of his or her name, image, or likeness." [29] As such, these NIL statutes protect not only the ability of student athletes to seek and obtain professional representation, but also the ability of attorneys to seek out and obtain student athlete clients.

***77 III. PROFESSIONAL REPRESENTATION OF STUDENT ATHLETES**

Prior to the decision in *Alston*, the status quo was quite clear that student athletes could not obtain professional representation with regard to compensation for their athletic services. The NCAA's still active "No-Agent Rule" holds that "[a]n individual shall be ineligible for participation in an intercollegiate sport if the individual ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing athletics ability or reputation in that sport." [30] As many athlete agents are

lawyers, the No-Agent Rule necessarily bars attorneys from representing student athletes with regard to compensation. Case law, while admittedly sparse, further supports this position. In *Banks v. NCAA*, the Seventh Circuit Court of Appeals ruled in favor of the NCAA in its defense of a lawsuit challenging the bylaws that require student athletes to forfeit their scholarships and amateur eligibility if they hire an agent. [31] The court noted that "[e]limination of the no-draft and no-agent rules would fly in the face of the NCAA's amateurism requirements." [32] Nevertheless, with the change in the NCAA's NIL policy and the accompanying NIL statutes protecting student athletes' rights to professional representation, the effect of the NCAA's No-Agent Rule has diminished. [33] For professionals recently empowered to represent student athletes, three major pieces of legislation regulate such representation.

a. Uniform Athlete Agents Act

By the turn of the twenty-first century, over half of the states had crafted laws regulating the professional representation of athletes, most of which imposed registration requirements. [34] These patchwork laws were largely ineffective, however, and as a result, concerns grew over the recruitment of enrolled student athletes and the attendant eligibility problems. [35] In response, the Uniform Law Commission (ULC)--a body responsible for drafting legislation that attempts to bring clarity and stability to critical areas of state law--drafted the Uniform Athlete Agents Act (UAAA) in 2000. [36] One of the ***78** ULC's main purposes in crafting the UAAA was to "deter sports agents from encouraging amateur athletes from turning professional or accepting money in violation of the NCAA's own internal bylaws." [37] Among other things, the UAAA requires agents and attorneys representing student athletes to register with their respective state's secretary of state; moreover, it governs the form and content of agency contracts, the right of student athletes to terminate such contracts, and the course of dealing between student athletes and their representatives. [38] The UAAA also creates a civil remedy that allows NCAA member schools to bring lawsuits against agents and student athletes if the school is harmed by conduct arising from the agent or student athlete's violation of the UAAA. [39]

By 2018, over forty states had adopted a version of the UAAA. [40] The NCAA itself has encouraged states to adopt the UAAA, including a page on its website entitled, *Need for and Benefits of the [UAAA]*. [41] That being said, some have criticized the perceived lack of enforcement, the narrow coverage of the Act, and the lack of a notice requirement to educational institutions before agents or attorneys contact student athletes. [42] Others argue that the UAAA values the interests of NCAA member schools over the interests of their student athletes. [43] With the backdrop of these issues, many states began amending their athlete agent laws, prompting an eventual response from the ULC. [44]

b. Revised Uniform Athlete Agent Act

In 2015, the ULC drafted the Revised Uniform Athlete Agents Act (RUAAA) to address concerns with the UAAA and maintain uniformity in the modern sports context. [45] The RUAAA attempted to greater promote the protection of student athletes by adding several new provisions. [46] Among ***79** these were greater registration and documentation requirements for agents, prohibitions on non-registered agents contacting student athletes, and a broader definition of "athlete agent" to encompass financial and career advisers. [47] The 2015 revision also explicitly prohibited an agent from "furnish[ing] anything of value to the athlete before the athlete enters into [a sports agent] contract." [48] Furthermore, the RUAAA gives student athletes a private right of action against agents who violate the Act and provides criminal penalties for certain forms of agent misconduct. [49]

The RUAAA was met with strong support from the college athletics community. [50] Dozens of college athletic directors and coaches, including prominent figures such as North Carolina basketball coach Roy Williams and Kansas football coach Les Miles, voiced support and urged adoption of the RUAAA in a 2017 memo to officials. [51] Nevertheless, the RUAAA has only been adopted in under twenty states, with notable omissions including athletic powerhouses such as Texas, Florida, and North Carolina. [52] While the states remain fractured between those that have adopted the RUAAA, those that have adopted the UAAA, and those that have adopted neither, federal law does provide some, albeit minimal, uniformity.

c. Sports Agent Responsibility and Trust Act

Following the passage of the UAAA, Congress decided to form its own committee to draft federal sports agent legislation. [53] The result was the passage of the Sports Agent Responsibility and Trust Act (SPARTA) in 2004. [54] Like the RUAAA years later, SPARTA prohibited sports agents from "providing anything of value to a student athlete or anyone associated with the student athlete." [55] SPARTA also granted the Federal Trade Commission (FTC) authority to enforce the Act, and treated violations of the Act as unfair trade practices. [56] Nevertheless, SPARTA only afforded minimal, if any, additional protections for student athletes beyond those found in the ***80** UAAA. [57] In fact, the Act specifically provides that "[i]t is the sense of Congress that [s]tates should enact the [UAAA] ... to protect student athletes and the integrity of amateur sports from unscrupulous sports agents." [58]

In the wake of SPARTA's passage, many observed that the law suffered from many of the same flaws as the UAAA adopted four years earlier. [59] Unlike in later revisions to the UAAA, SPARTA failed to implement a civil cause of action for student athletes harmed by agent misconduct and largely abstained from regulating the relationship between athletes and their representatives. [60] In essence, SPARTA functioned as a minimalist version of the UAAA which, like the UAAA itself, failed to provide an adequate level of uniformity among the states. With the backdrop of these three pieces of legislation--the UAAA, the RUAAA, and SPARTA--in mind, attorneys must navigate a precarious legal landscape in attempting to enter the student athlete NIL arena.

IV. ISSUES FACING ATHLETE REPRESENTATIVES

a. Lack of Uniformity Among States

The lack of uniformity among state laws creates a major issue for lawyers attempting to properly represent student athletes in light of changes to NIL law. The majority of states still operate under the original UAAA or the RUAAA, requiring athlete agents to comply with the state's version of the uniform law, as well as superseding law (*i.e.*, SPARTA). [61] Oklahoma's NIL statute is particularly representative:

> Professional representation provided by athlete agents shall be by persons licensed pursuant to the [RUAAA] or superseding law. An athlete agent representing a student athlete shall comply with the federal [SPARTA]. [62]

That being said, a significant minority of states have adopted neither of the uniform laws. [63] The result is a lack of clarity across the states in what is required of professionals representing student athletes.

***81** A notable example of this issue can be found in New Jersey, a state that adopted an NIL statute prior to the decision in *Alston* and that is in the small minority of states that have not adopted either form of the UAAA. [64] New Jersey's Fair Pay to Play Act requires only that "[l]egal representation obtained by student-athletes shall be from attorneys licensed by the [s]tate" and that "[a]thlete agents ... shall comply with [SPARTA] in their relationship with student-athletes." [65] From that language, two glaring issues emerge.

First, the Act has "no state-mandated license requirement for athlete agents and they need only comply with [SPARTA]." [66] While *attorneys* representing student athletes must be licensed in New Jersey, non-lawyer *agents* representing student athletes need only comply with the loose guidelines of SPARTA. [67] This shortfall presents a counterintuitive position wherein an attorney licensed to practice in New York or Ohio must obtain a New Jersey law license to represent a student athlete at Rutgers, but an inexperienced college student declaring himself an "agent" could represent that same athlete. [68] This seemingly illogical result is a direct consequence of New Jersey's failure to pass some form of the UAAA, which requires sports agents be licensed in their home state, and its sole reliance on SPARTA. [69]

Second, because New Jersey has not adopted either version of the UAAA, it has "no statutory or regulatory framework to regulate athlete agents." [70] This problem is not limited to New Jersey; several other states have recently passed NIL legislation

in the absence of the UAAA or RUAAA. [71] As such, the lack of a uniform standard for athlete representation across the states puts athlete representatives in a precarious position and student athletes at risk from harmful agent misconduct. Professionals seeking to represent student athletes at large Big-10 athletic programs like Illinois, Northwestern, and Rutgers, for example, must navigate a substantially murkier legal landscape than agents seeking to represent student athletes in states that have adopted more uniform athlete agent laws. [72]

82** ***b. Different Penalties for Violations

Even in those states that have adopted a version of the UAAA or the RUAAA, there are discrepancies regarding the regulation of the agent-athlete relationship. One glaring example of such discrepancy is the differences in penalties for agent misconduct across the states. [73] In Nebraska, a state that adopted the UAAA, for example, agents who participate in statutorily-prohibited conduct can be found guilty of a misdemeanor, with civil penalties assessed by the state reaching as high as $25,000. [74] However, in Alabama, a state that adopted the RUAAA, agents who participate in statutorily-prohibited conduct can be found guilty of a felony, with civil penalties assessed by the state reaching as high as $50,000. [75] This variation may lead to foreseeable issues in the relationship between professionals and the student athletes they represent. An attorney representing a football player at the University of Nebraska, for example, may feel more enticed to violate the UAAA with only a misdemeanor and $25,000 penalty at stake, as opposed to an attorney representing a basketball player at the University of Alabama with a felony and a $50,000 penalty at stake. [76]

This issue is only magnified further in those states that have not adopted either version of the UAAA. In New Jersey, for example, student athletes may be left with only common law claims, such as breach of the duties of care and loyalty, against their representatives. [77] Conversely, in Ohio, which has its own non-uniform athlete agent law, agents guilty of misconduct may be subject to a misdemeanor, [78] and both student athletes and higher education institutions have private rights of action against agents. [79] Put plainly, penalties for agent misconduct vary markedly across the states and while those states that have passed versions of the UAAA or RUAAA may have similar provisions, the lack of uniformity is a significant issue for both student athletes and attorneys seeking to represent them.

***83 V. POTENTIAL SOLUTIONS**

a. NCAA Regulation

One potential solution to the current problems facing professionals representing student athletes is to have the NCAA promulgate its own uniform regulations of the relationship between the agent and the student athlete. This is the approach taken by the four major professional sports leagues in the United States--that is, the National Football League (NFL), Major League Baseball (MLB), the National Basketball Association (NBA), and the National Hockey League (NHL). [80] Agents and attorneys are required to be licensed and are subject to uniform requirements and regulations set by the players' unions of each of the four leagues. [81] Furthermore, each league requires "a baseline level of knowledge, education[,] and competency for an athlete agent to represent a player." [82] To summarize, these leagues have a heightened level of compliance required for professionals to represent athletes. [83]

An NCAA policy similar to that of one of the four major professional sports leagues would help bring about the desired uniformity, while circumventing the cumbersome legislative process. These leagues have crafted uniform policies with application requirements, compliance requirements, and enforcement mechanisms to regulate anyone representing an athlete, whether they are attorneys or otherwise. [84] A similar policy in the NCAA would help ensure that these crucial factors are present, despite the pitfalls of state NIL and athlete agent regulation laws. A model adopted after one of the professional leagues could prove the least costly and most effective way to instill uniform regulation of athlete agents.

b. Federal Legislation

Federal legislation is another potential solution to the lack of uniformity in athlete agent regulation. Clearly, SPARTA alone is not adequate in this regard. [85] Over the past few years, lawmakers in both houses of Congress have proposed legislation building on SPARTA. In 2020, for example, Representative Anthony Gonzales (R-OH) introduced a federal NIL statute, the "Student Athlete Level Playing Field Act." [86] The Act would establish the ***84** "Covered Athletic Organization Commission" which would, among other things, "recommend to each covered athletic organization such a process to certify or recognize credentialed athlete agents." [87] Likewise, in 2021 Senator Jerry Moran (R-KS) introduced a federal NIL statute titled the "Amateur Athletes Protection and Compensation Act of 2021." [88] The Act would create the "Amateur Intercollegiate Athletics Corporation," a government corporation which would "establish rules to enforce this Act and impose fines, penalties, and sanctions on amateur athlete representatives." [89] While these proposals may not become law, the idea of a regulatory body that oversees agent regulation has found its way into legislative proposals.

Recently introduced in the House of Representatives was the "Modernizing the Collegiate Student Athlete Experience Act," proposed by Representative Steve Chabot (R-OH). [90] The Act would establish a government corporation to be known as the "National Intercollegiate Compensation Corporation," which would oversee student athlete agents and third-party licensees of student athlete publicity rights. [91] The board of directors of this corporation would "adopt rules that ... provide for how athlete agents and third-party licensees may register with the Corporation" and "govern the conduct of registered athlete agents." [92] Further requirements of athlete agents would include biannual disclosures and compliance tests. [93]

The adoption of new federal law will necessarily provide sought-after uniformity in the legal regulation of the relationship between representative professionals and student athletes. While national lawmakers have been slow in developing laws to regulate the athlete-agent relationship, the recent developments in NIL law may prompt newfound expediency. [94] By now, the weaknesses of SPARTA and accompanying state laws have become apparent, and some argue that current law "serve[s] primarily to indoctrinate the NCAA's internal [p]rinciple of [a]mateurism." [95] Additional federal legislation would both provide much-needed uniformity and protect the fiduciary relationship between athletes and their representatives. [96] Ultimately, a change in federal law would allow professional representatives of student athletes to "fully meet the needs of their clients in the twenty-first century." [97]

***85 VI. CONCLUSION**

In the wake of *Alston*, states have followed the NCAA's lead and passed new NIL statutes protecting the ability of student athletes to earn compensation and to obtain professional representation. [98] These statutes have deferred the regulation of the relationship between student athletes and their representatives to both state athlete agent law (if applicable) and SPARTA. [99] The result has been an inconsistency among the states regarding the regulation of the athlete-agent relationship--an inconsistency that places both student athletes and their representatives at risk. Student athletes in states with minimal athlete agent regulation may find themselves the victims of agent misconduct, with little legal recourse. [100] Similarly, attorneys representing student athletes may experience markedly different penalties for misconduct across the states, perhaps incentivizing poor behavior in more lenient jurisdictions. [101]

Given this lack of uniformity and accompanying variance in legal penalties for misconduct, there is a growing need for changes to athlete agent laws to meet the modern realities of college sports. [102] Perhaps the least cumbersome of these changes would be an internal policy change in the NCAA mandating athlete agent regulations similar to those of the four major professional sports leagues. [103] This approach would not require resorting to the lengthy legislative process and would lead to uniformity across the states, even in those that have not passed NIL statutes. [104] A more cumbersome yet lasting change could also be made at the federal level. Federal NIL legislation that regulates the relationship between student athletes and their representatives would obviously provide legislative uniformity throughout the nation. [105] This legislation would also carry with it greater enforcement mechanisms and would be less subject to change than an internal NCAA policy. Although the correct path to achieving uniformity while protecting athletes and representative professionals is unclear, it is clear that greater regulation is necessary, whether through NCAA internal policy or new federal legislation.

Footnotes

a1 J.D. Candidate (2023), The University of Alabama School of Law.

1 NCAA v. Alston, 141 S. Ct. 2141, 2148 (2021).

2 *Alston*, 141 S. Ct. at 2148; John Niemeyer, *The End of an Era: The Mounting Challenges to the NCAA's Model of Amateurism*, 42 PEPP. L. REV. 883, 886 (2015); Kelly Charles Crabb, *The Amateurism Myth: A Case for a New Tradition*, 28 STAN. L. & POL'Y REV. 181, 189-90 (2017).

3 *Alston*, 141 S. Ct. at 2149; Niemeyer, *supra* note 2, at 887 (noting "[a]mateurism is one of the NCAA's fundamental policies"); Crabb, *supra* note 2, at 190.

4 Crabb, *supra* note 2, at 189 (quoting Reed Karaim, *Paying College Athletes*, 24 CQ Researcher 577 (2014), https://library.cqpress.com/cqresearcher/document.php?id=cqresrre2014071100).

5 *Id*.

6 *Alston*, 141 S. Ct. at 2148.

7 Crabb, *supra* note 2, at 190-92.

8 *Alston*, 141 S. Ct. at 2149.

9 *See generally id*. at 2148-51; Crabb, *supra* note 2, at 188-92.

10 NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85 (1984).

11 Crabb, *supra* note 2, at 194 (citing *Bd. of Regents*, 468 U.S. at 120).

12 McCormack v. NCAA, 845 F.2d 1338, 1344 (5th Cir. 1988) (citing *Bd. of Regents*, 468 U.S. at 102); *see also* Niemeyer, *supra* note 2, at 899-900.

13 Agnew v. NCAA, 683 F.3d 328 (7th Cir. 2012); *see* Niemeyer, *supra* note 2, at 902-03.

14 *Agnew*, 683 F.3d at 338-40; *see* Niemeyer, *supra* note 2, at 903.

15 *See* NCAA v. Alston, 141 S. Ct. 2141 (2021).

16 *Id*. at 2151.

17 *Id*. at 2165-66.

18 *Id*. at 2166 (Kavanaugh, J., concurring) (emphasis in original).

19 *Id*. (Kavanaugh, J., concurring).

20 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.

21 *Id*.

22 *Alston*, 141 S. Ct. at 2168-69 (Kavanaugh, J., concurring).

23 CAL. EDUC. CODE § 67456 (West 2019) (effective Sept. 1, 2021).

24 New Jersey joined California as one of the early states to pass an NIL statute, adopting its own Fair Pay to Play Act in 2020. *See* S. 971, 219th Leg., Reg. Sess. (N.J. 2020) (effective the fifth academic year following the date of enactment, Sept. 14, 2020); for a comprehensive look at each state's NIL statute, see *NIL Legislation Tracker*, SAUL EWING, https://www.saul.com/nil-legislation-tracker (last visited Jan. 20, 2023).

25 William P. Deni, Jr., *New Jersey Fair Play Act Creates an Uneven Playing Field for Lawyers*, 328-FEB N.J. LAW. 40, 40 (2021).

26 FLA. STAT. § 1006.74(2)(a) (2020).

27 Some state statutes employ similar language to Florida and acknowledge the student athlete's ability to be compensated. *See, e.g.*, TENN. CODE ANN. § 49-7-2802 (West 2021). Others also specifically prohibit schools from restricting the student athlete's ability to be compensated. *See, e.g.*, TEX. EDUC. CODE ANN. § 51.9246(c)(1)(A) (West 2021).

28 Deni, *supra* note 25, at 40.

29 OKLA. STAT. tit. 70, § 820.24(A) (2021); *see also* CAL. EDUC. CODE § 67456(c)(1); FLA. STAT. § 1006.74(2)(d); TEX. EDUC. CODE ANN. § 51.9246(c)(1)(B).

30 NCAA, 2022-2023 NCAA DIVISION I MANUAL § 12.3.1 (2022).

31 Banks v. NCAA, 977 F.2d 1081 (7th Cir. 1992).

32 *Id*. at 1091. In part of his dissent, however, Circuit Judge Flaum argued that the NCAA's defense of amateurism "no longer jibes with reality" in the face of "a vast commercial venture that yields substantial profits for colleges." *Id*. at 1099 (Flaum, J., concurring in part, dissenting in part).

33 *See supra* discussion in Part II.

34 John P. Sahl, *The Changing Landscape of Intercollegiate Athletics - The Need to Revisit the NCAA's "No Agent Rule"*, 61 SANTA CLARA L. REV. 1, 25 (2020).

35 Joshua Lens, *Application of the UAAA, RUAAA, and State Athlete-Agent Laws to Corruption in Men's College Basketball and Revisions Necessitated by NCAA Rule Changes*, 30 MARQ. SPORTS L. REV. 47, 64 (2019).

36 Sahl, *supra* note 34, at 25; Lens, *supra* note 35, at 64.

37 Marc Edelman, *Disarming the Trojan Horse of the UAAA and SPARTA: How America Should Reform Its Sport Agent Laws to Conform with True Agency Principles*, 4 HARV. J. SPORTS & ENT. L. 145, 169 (2013).

38 *Id*. at 170-74.

39 *Id*. at 171 (citing UNIF. ATHLETE AGENTS ACT § 16(a) (UNIF. L. COMM'N 2000)).

40 Sahl, *supra* note 34, at 25.

41 *Need For and Benefits of the Uniform Athlete Agents Act (UAAA)*, NCAA, https://www.ncaa.org/enforcement/agents-and-amateurism/need-and-benefits-uniform-athlete-agents-act-uaaa (last visited Sept. 8, 2022).

42 Lens, *supra* note 35, at 65.

43 Edelman, *supra* note 37, at 172 (claiming "[t]he UAAA subordinates the interests of student-athletes to those of NCAA member schools").

44 For a more comprehensive overview of the provisions of the UAAA, see Robert N. Davis, *Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act*, 8 VILL. SPORTS & ENT. L.J. 1 (2001).

45 Lens, *supra* note 35, at 65; Sahl, *supra* note 34, at 26.

46 Sahl, *supra* note 34, at 26-27.

47 *Id*. at 26.

48 *Id*. at 27 (citing REVISED UNIF. ATHLETE AGENTS ACT § 14(2) (UNIF. L. COMM'N 2015)).

49 *Id*.

50 Lens, *supra* note 35, at 65-66.

51 *Id*.

52 For a comprehensive look at each state's adoption of the UAAA and the RUAAA, visit ULC, *Athlete Agents Act*, https://www.uniformlaws.org/committees/community-home?CommunityKey=cef8ae71-2f7b-4404-9af5-309bb70e861e (last visited Sept. 8, 2022).

53 Edelman, *supra* note 37, at 176-77.

54 Sports Agent Responsibility and Trust Act, 15 U.S.C. §§ 7801-7807 (2004).

55 15 U.S.C. § 7802(a)(1)(B).

56 15 U.S.C. § 7803. The Act also allows state attorneys general to enforce its provisions, similar to the UAAA. 15 U.S.C. § 7804(a)(1). *See also* Edelman, *supra* note 37, at 178; Sahl, *supra* note 34, at 25-26.

57 Edelman, *supra* note 37, at 177.

58 15 U.S.C. § 7807.

59 Edelman, *supra* note 37, at 179 (noting that "[SPARTA]'s drafters made many of the same mistakes as the [ULC] just a few years earlier").

60 *Id*.

61 *See generally* Edelman, *supra* note 37, at 169; *see also supra* note 52.

62 OKLA. STAT. tit. 70, § 820.24(B) (2021).

63 *See* Edelman, *supra* note 37, at 169; *see also supra* note 52.

64 Deni, *supra* note 25, at 40-41.

65 S. 971, 219th Leg., Reg. Sess. § 2(a)(3) (N.J. 2020).

66 Deni, *supra* note 25, at 40-41.

67 *Id*. at 41.

68 *Id*. (noting that "[e]ssentially, the Fair Play Act authorizes anyone to call themself a sports agent and represent a student-athlete at a New Jersey institution with little to no regard for education, competence, or ethical standards, and with no oversight or enforcement").

69 *Id*.

70 *Id*.

71 *See, e.g.*, S. 2338, 102d Leg., Gen. Ass. § 20(a) (Ill. 2021) ("An agent, legal representative, or other professional service provider offering services to a student-athlete shall, to the extent required, comply with the federal [SPARTA] and any

other applicable laws, rules, or regulations."). Illinois repealed its version of the UAAA in 2017. *See* S. 1821, 100th Leg., Gen. Ass. § 10 (Ill. 2017).

72 *See*, S. 971, 219th Leg., Reg. Sess. (N.J. 2020); S. 2338, 102d Leg., Gen. Ass. § 20(a) (Ill. 2021).

73 *See* Deni, *supra* note 25, at 41.

74 NEB. REV. STAT. ANN. §§ 48-2615, 48-2617 (West 2009).

75 Deni, *supra* note 25, at 41; ALA. CODE §§ 8-26B-15, 8-26B-17 (1975).

76 Admittedly, most state law penalties more closely resemble Alabama's than Nebraska's, particularly in regard to the criminal penalty (*i.e.*, felony). *See e.g.*, MISS. CODE ANN. §§ 73-42-29, -33 (West 2001) (providing that agents who participate in statutorily prohibited conduct can be found guilty of a felony, with civil penalties assessed by the state reaching as high as $25,000). Mississippi has adopted the UAAA. *Id*. §§ 73-42-1 to -39.

77 Deni, *supra* note 25, at 41 (arguing that this leaves student athletes at risk of unscrupulous agents).

78 OHIO REV. CODE. ANN. § 4771.99 (West 2001).

79 *Id*. §§ 4771.19-99.

80 Deni, *supra* note 25, at 42.

81 *Id*.

82 *Id*. at 43.

83 *Id*.

84 *Id*.

85 *See generally* Deni, *supra* note 25, at 42.

86 Student Athlete Level Playing Field Act, H.R. 8382, 116th Cong. (2020).

87 H.R. 8382, § 3(a)(2).

88 Amateur Athletes Protection and Compensation Act of 2021, S. 414, 117th Cong. (2021).

89 S. 414, § 8(b)(2).

90 Modernizing the Collegiate Student Athlete Experience Act, H.R. 3379, 117th Cong. (2021).

91 *Id*. § 2.

92 *Id*. § 3.

93 *Id*.

94 *See* Edelman, *supra* note 37, at 188-89.

95 *Id*. at 189.

96 *Id*.

97 *Id*.

98 *See, e.g.*, TENN. CODE ANN. § 49-7-2802 (West 2021); TEX. EDUC. CODE ANN. § 51.9246 (West 2021); OKLA. STAT. tit. 70, § 820.21-.26 (2021).

99 *See, e.g.*, OKLA. STAT. tit. 70, § 820.24(B).

100 New Jersey is a representative example. *See* Deni, *supra* note 25, at 40-41.

101 The differences in Nebraska (UAAA jurisdiction) and Alabama's (RUAAA jurisdiction) athlete agent laws provide an instructive example. *See* Deni, *supra* note 25, at 41.

102 *See* Edelman, *supra* note 37, at 189.

103 *See* Deni, *supra* note 25, at 42-43.

104 *Id*.

105 *See* Edelman, *supra* note 37, at 189.

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