

**NIL:**

***THE WILD, WILD WEST***

**E. MICHAEL BREZINA, III**



# WHAT IS NIL?

NIL = NOTORIETY OR CELEBRITY

A PERSON'S NIL VALUE IS NOT BASED ENTIRELY  
ON ATHLETIC PERFORMANCE.

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WHAT CONSTITUTES AN

“NIL DEAL?”



A dog, possibly a Weimaraner, is shown in profile, looking towards the left. The dog is wearing a white vest with a black and white checkered pattern on the right side. The letters 'LS' are visible on the white part of the vest. The background is a blurred, warm-toned setting, possibly a crowd or a stage.

**THE TWO BIG “NO-NO’S” IN NIL:  
INDUCEMENT & PAY-TO-PLAY**



# WHAT IS INDUCEMENT?

INCENTIVE OFFERED TO SELECT ATHLETES TO SWAY OR INFLUENCE THEIR DECISION TO ENROLL INTO A SPECIFIC UNIVERSITY.

EXAMPLE:

“I WILL PAY YOU \$40,000 IF YOU GO TO UGA”



# **QUICK TEST:**

**THE “SOONER COLLECTIVE” CREATES AN ONGOING FUND FOR OFFENSIVE LINEMAN AT THE UNIVERSITY OF OKLAHOMA.**

**IS THIS AN IMPROPER INDUCEMENT?**



# DEFINING “PAY-TO-PLAY”

COMPENSATION FOR ATHLETIC PARTICIPATION OR ACHIEVEMENT.

STUDENT-ATHLETES MUST BE COMPENSATED ONLY FOR WORK ACTUALLY PERFORMED.

**EXAMPLE:**

AGENT X PAYS STARTING RB \$20,000/MONTH FOR AN “NIL DEAL,” BUT THE PLAYER HAS NO OBLIGATIONS OF PERFORMANCE.



# HOW DID WE GET HERE?

**2009** Ed O'Bannon (UCLA) filed **class action anti-trust lawsuit** against multiple defendants, including NCAA, EA Sports franchise and Collegiate Licensing Company, LLC (Coach Battle).

**AUG. 2014** Judge Claudia Wilken, Judge of the United States District Court for the Northern District of California, **ruled NCAA could not prevent Student Athletes from earning money** on the use of their **names and images**.

**SEP. 2019** California Governor Gavin Newsom signs **"The Fair Pay to Play Act,"** the first law passed allowing Student Athletes to profit off NIL.

**JUNE 21, 2021** The United States Supreme Court decided **NCAA v. Alston**, 141 S. Ct. 2141 (2021).  
"The NCAA couches its argument for not paying student athletes in innocuous labels. But the labels cannot disguise the reality: The NCAA's business model would be flatly illegal in almost any other industry in America." *Id.* at \*2166.  
- Justice Brett Kavanaugh

**JUNE 30, 2021** NCAA passed "INTERIM RULE" – generally permitted NIL for collegiate athletes.


**JULY 1, 2021** Effective date of numerous State NIL statutes

**2021-PRESENT** NCAA failed to successfully lobby Congress to pass new NIL law.



# 4 LEVELS OF LEGAL ANALYSIS

 **NCAA REGULATIONS**

 **FEDERAL LAW**

 **STATE LAW [“PATCHWORK STATE LAWS”]**

## **TCA § 49-7-2802 (2023) - AUTHORIZED NIL IN TENNESSEE**

(A) INTERCOLLEGIATE ATHLETE MAY EARN COMPENSATION FOR THE USE OF THEIR NIL WHICH IS EQUAL TO THE FMV OF THEIR NIL. SUCH COMPENSATION MUST NOT BE PROVIDED IN EXCHANGE FOR ATHLETIC PERFORMANCE OR ATTENDANCE AT AN INSTITUTION.

(B)(1) AN INSTITUTION CANNOT COMPENSATE A CURRENT OR PROSPECTIVE INTERCOLLEGIATE ATHLETE FOR THEIR NIL

(D) ATHLETES ARE REQUIRED TO DISCLOSE ANY AGREEMENTS TO THE UNIVERSITIES

(G) UNIVERSITIES CAN PROHIBIT INVOLVEMENT IN NIL ACTIVITIES THAT CONFLICT WITH THE VALUES OF THE INSTITUTION (DRUGS, ALCOHOL, GAMBLING, ADULT ENTERTAINMENT)

 **UNIVERSITY SPECIFIC RULES AND REGULATIONS**





# WHAT IS A COLLECTIVE?

A POOL OF MONEY RAISED AND USED TO PROVIDE FINANCIAL  
NAME IMAGE AND LIKENESS OPPORTUNITIES TO STUDENT ATHLETES.





**“... [T]HE BASIC PREMISE OF MOST (COLLECTIVES) IS THAT AN ALUM, OR GROUP OF ALUMS, BAND TOGETHER TO FORM A COMPANY WHOSE GOAL IS TO PROVIDE NIL OPPORTUNITIES TO STUDENT ATHLETES OF THAT INSTITUTION. HOW THEY FUND OR PROVIDE THOSE OPPORTUNITIES IS WHERE THE MODELS REALLY DIFFER.”**

**- KRISTI DOSH, FOUNDER OF THE BUSINESS OF COLLEGE SPORTS**





PLAYER  
DEVELOPMENT  
FUND

THE PLAYER DEVELOPMENT FUND IS COMMITTED TO  
**RETAINING** TENNESSEE FOOTBALL PLAYERS AT RISK OF  
ENTERING THE NCAA TRANSFER PORTAL.



# TSSAA AND NIL

ON DECEMBER 8, 2022, THE TSSAA LEGISLATIVE COUNCIL PASSED ARTICLE II, SECTION 18  
THE 12/8/2021 DECISION SPECIFICALLY PROHIBITS:

- PAY-TO-PLAY AND INDUCEMENT;
- NIL DEALS/ENDORSEMENTS FROM SUGGESTING OR REASONABLY SUGGESTING AN ENDORSEMENT OF OR BY A TSSAA SCHOOL; AND
- NIL ADVERTISEMENTS/ENDORSEMENTS FROM (UNDER ANY CIRCUMSTANCES):
  - REFERENCING THE HIGH SCHOOL THE ATHLETE ATTENDS;
  - INCLUDING AN IMAGE OR LIKENESS OF THE ATHLETE IN HIS/HER HIGH SCHOOL UNIFORM, OTHER CLOTHING, OR GEAR DEPICTING THE NAME OR LOGO OF THE ATHLETE'S HIGH SCHOOL;
  - MENTIONING/INCLUDING ANY TSSAA ACCOLADES OR CHAMPIONSHIPS.
- VIOLATING THE TSSAA RULE RENDERS THE ATHLETE INELIGIBLE FOR 12 MONTHS IN THE SPORT IN WHICH THE VIOLATION OCCURRED



# HIGH SCHOOL NIL



**THE VARSITY FUND**





# **COLLECTIVES + CONCERNS**

- PAY-TO-PLAY AND/OR INDUCE/RECRUIT**
- NO SUPERVISION OF NIL COLLECTIVES OR THE PEOPLE WHO RUN THEM.**
- NO RULES, REGULATIONS, OR RESTRICTIONS GOVERNING NIL COLLECTIVES, HOW MUCH THEY MAY EARN, OR THE PEOPLE OWNING/MANAGING THEM.**
- LITTLE-TO-NO RELATIONSHIPS BETWEEN NIL COLLECTIVES AND UNIVERSITIES.**
- MINIMAL REPORTING BY COLLEGIATE STUDENT ATHLETES TO UNIVERSITIES ON NIL DEALS.**
- DISPARITY AMONG STUDENT ATHLETE DEALS AND OPPORTUNITIES**





# CHANGE IS ON THE HORIZON

FURTHER REGULATION OF NIL DEALS/OPPORTUNITIES

REGULATION OF COLLECTIVES

LIMITING SPORTS AGENT COMMISSION %

STRICTER ATHLETE REPORTING REQUIREMENTS TO UNIVERSITIES

INCREASED ACCOUNTABILITY FOR ATHLETES (AND PERHAPS SPORTS AGENTS)

ACCOUNTING REQUIREMENTS FOR COLLECTIVES

CAP ON PLAYER EARNINGS FROM NIL DEALS

**MY HOPE: REGULATION OF NIL AGENTS AND COLLECTIVES IN THE NIL SETTING**



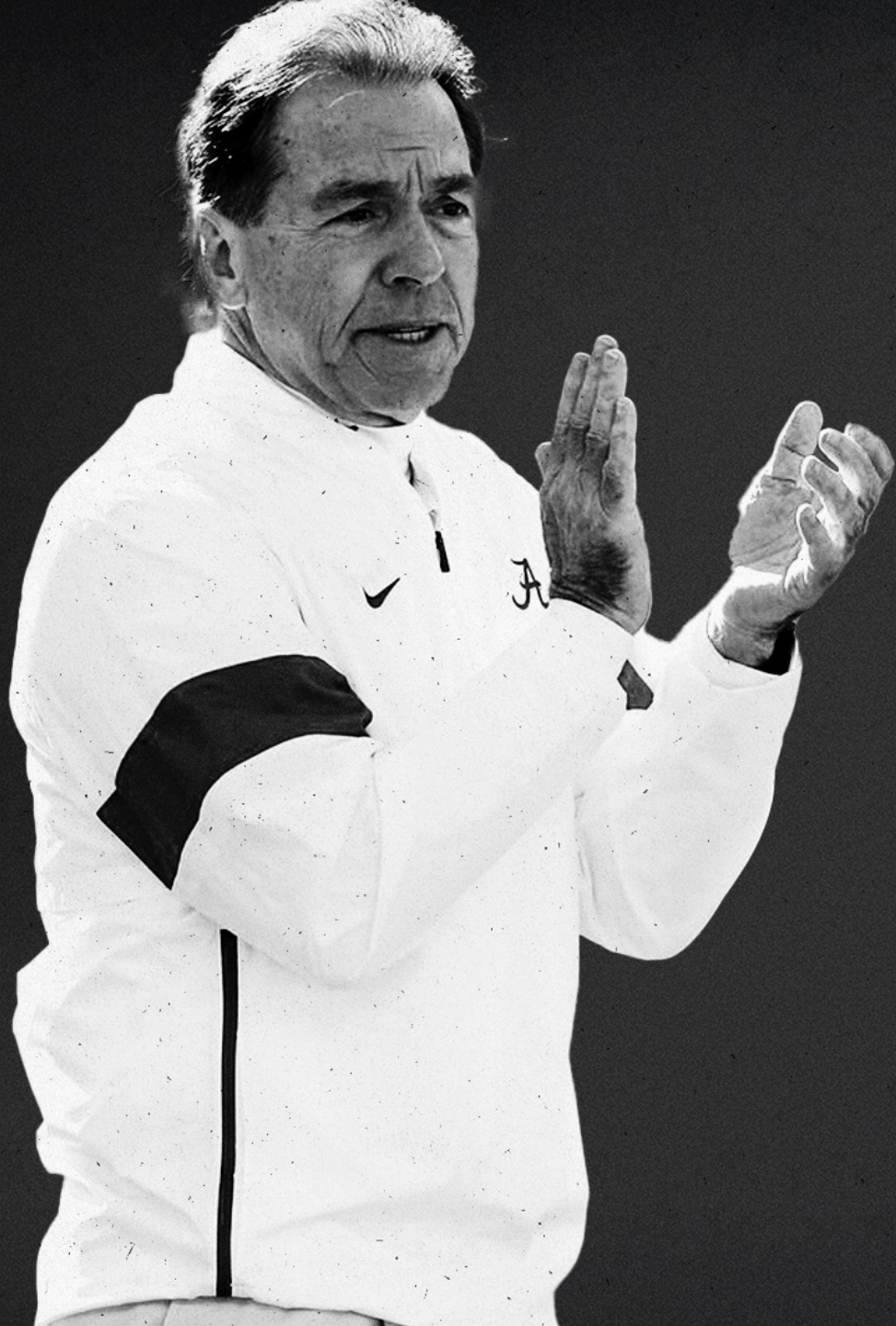
“SEE, WITH THE NIL - WHICH REALLY AIN'T NIL BECAUSE  
IT AIN'T NO NAME, IMAGE, AND LIKENESS - IT'S JUST  
PAY-PER-VIEW RIGHT NOW.

THAT'S WHAT THEY'RE DOING AT THE BIG BOYS; LITTLE  
BOYS, WE CAN'T COMPETE WITH THAT. BUT, ANYWAY,  
YOU'VE GOT A PROBLEM.”

**DEION SANDERS**  
(WHILE COACHING AT JACKSON STATE UNIVERSITY)







“THE CONCEPT OF NAME, IMAGE AND LIKENESS WAS FOR PLAYERS TO BE ABLE TO USE THEIR NAME, IMAGE AND LIKENESS TO CREATE OPPORTUNITIES FOR THEMSELVES. THAT’S WHAT IT WAS, BUT THAT CREATES A SITUATION WHERE YOU CAN BASICALLY BUY PLAYERS. YOU CAN DO IT IN RECRUITING. I MEAN, IF THAT’S WHAT WE WANT COLLEGE FOOTBALL TO BE, I DON’T KNOW. AND YOU CAN ALSO GET PLAYERS TO GET IN THE TRANSFER PORTAL TO SEE IF THEY CAN GET MORE SOMEPLACE ELSE THAN THEY CAN GET AT YOUR PLACE.

**MY CONCERN IS COLLEGE FOOTBALL IN GENERAL. I THINK A LOT OF US ARE CONCERNED ABOUT THAT...PEOPLE WANT TO UNDERSTAND WHY PEOPLE ARE TRANSFERRING SCHOOLS AND GETTING MONEY TO DO IT. THIS IS NOT PROFESSIONAL SPORTS, I MEAN, WE HAVE FREE AGENCY AND NO SALARY CAP. THAT’S BASICALLY WHAT WE HAVE, RIGHT? THERE’S NO PROFESSIONAL LEAGUE THAT HAS THAT CIRCUMSTANCE BECAUSE NONE OF THEM ARE STUPID ENOUGH TO HAVE IT AND THAT’S WHAT WE HAVE.”**

IT’S GOTTEN COMPLETELY OUT OF CONTROL AND NOT A SUSTAINABLE MODEL. IT’S TO THE POINT WHERE YOU’VE GOT THESE ATTORNEYS/AGENTS CALLING COLLECTIVES AND SAYING, ‘PAY MY PLAYER A HUNDRED THOUSAND DOLLARS A YEAR,’ AND THEN THEY WANT THEIR PIECE OF THAT. THEY ALL WANT A CUT.

**NICK SABAN**”



THE SPENCER  
RATTLER  
EFFECT





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