

FEATURE

# College Athletes Cash In

*How new branding rights are upending sports on campus*

EVERY YEAR ON MEMORIAL DAY WEEKEND, promising young football players from across the country descend on Santa Monica, California, for a prestigious two-day training camp known as “the QB Retreat.” Quarterbacks from elite college teams like Ohio State, the University of Alabama, Clemson, and the University of Florida are flown in to serve as guest coaches. Organizer Steve Clarkson, a well-respected private coach, tries to create an atmosphere where college players can get away from the public eye, have fun, and talk about the upcoming season.

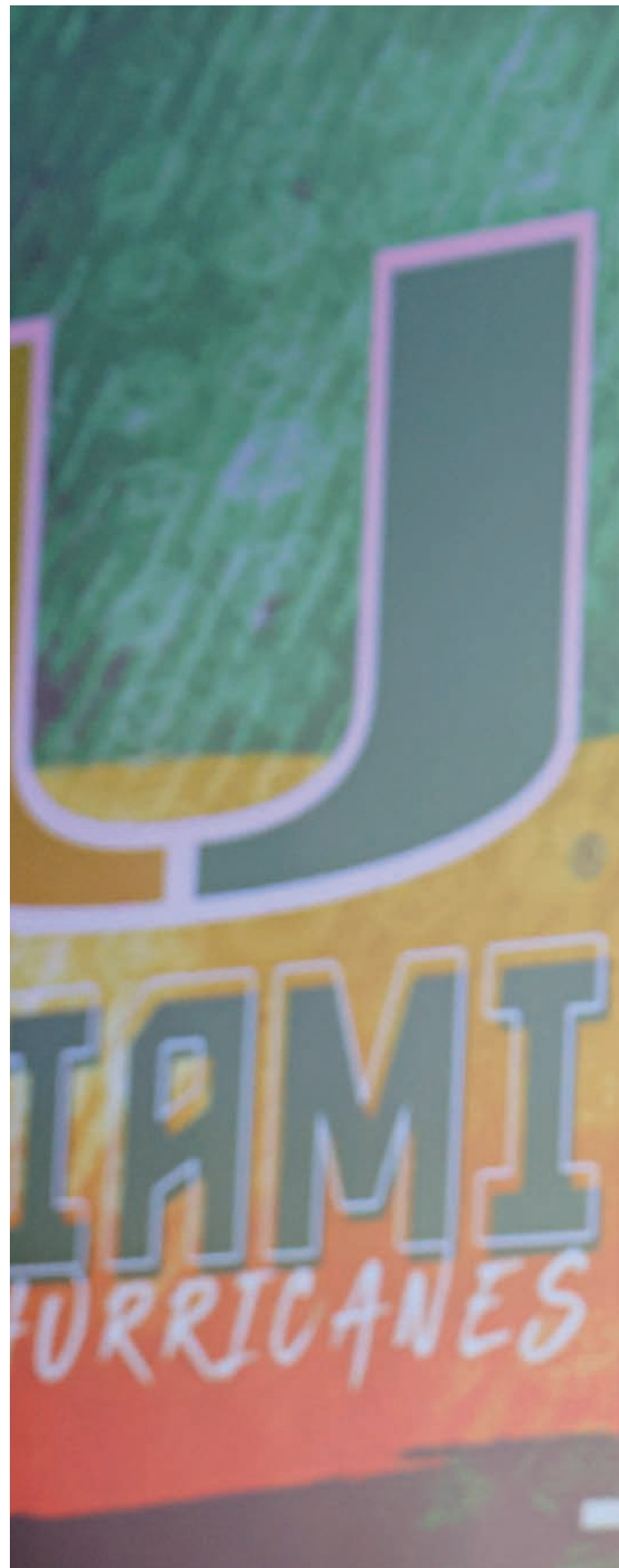
But in 2021, the main topic of conversation wasn’t football. It was business.

“Everybody’s talking about NIL,” said quarterback D’Eriq King of the University of Miami Hurricanes, as he scanned a hotel conference room that, at the moment, was hosting some of the most famous arms in college sports. “Just look around the room... D.J. [Uiagalelei of Clemson University], Bryce Young [from the University of Alabama], Sam Howell [from the University of North Carolina]. These are names every college football fan knows. It’s a whole new ballgame.”

NIL—the three letters transforming college sports—is the acronym for “name, image, and likeness.” For decades, college

BY ANDREW PERLOFF

AP PHOTO / NELL REDMOND



*In the first days and weeks after the NCAA lifted its ban on name, image, and likeness endorsements, University of Miami quarterback D'Eriq King distinguished himself as a leading dealmaker, signing contracts to promote a local chain of car dealerships and Tampa-based College Hunks Hauling Junk & Moving.*





athletes have been barred from earning money through the sort of lucrative endorsement deals that professional athletes commonly sign. That meant no money from appearing on cereal boxes, selling jerseys, or starring in sneaker ads. Theoretically, the ban by the National Collegiate Athletic Association, which sets the rules for college sports, was intended to reflect students' official status as amateurs and keep financial pressure and unfair competition out of intercollegiate play.

But college sports is big business. In 2019, the NCAA reported that revenue from athletics totaled \$18.9 billion. The nation's most elite college athletic programs—65 schools in all—took in \$8.5 billion in revenues in 2016, earned mostly by broadcasting men's basketball and football games. Coach salaries routinely reach into the millions—in Miami, King's coach Manny Diaz earned \$3.1 million in 2020—and paid endorsements and speaking engagements can add several hundred thousand dollars to their annual pay.

Meanwhile, in addition to barring endorsement deals,

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NCAA rules also stipulate that college athletes cannot be paid beyond "the full cost of attendance." As official amateurs, even the most elite players are not allowed to earn anything more than free tuition, room and board, meals, help with transportation costs, and an allowance for school supplies.

Both of those limits have come under considerable pressure in recent years, resulting in two major changes this summer. First, on June 21, the U.S. Supreme Court issued a unanimous ruling that lifted some limits on financial incentives colleges can offer their athletes. In *NCAA v. Alston*, justices ruled that the NCAA can't limit some education-related benefits schools provide, like computers, internships, and graduate-school scholarships. Student-athletes still cannot receive salaries, however. And, the ruling preserved the right of the NCAA to set and enforce the rules for these arrangements.

Then, on July 1, the NCAA temporarily lifted its long-standing ban on NIL endorsement deals. The move was done

under pressure, with new laws in 17 states set to go into effect this year that would prohibit athletes from being punished for monetizing their likeness. Last year, new federal legislation was introduced in both the U.S. House and Senate that would establish a College Athletes Bill of Rights, which includes protections for equitable compensation.

In May at the QB Retreat, the quarterbacks didn't know for sure at the time, but they were about to break through some of the barriers that advocates say have shortchanged student-athletes for years. King would soon execute a series of unprecedented deals that would make him college football's first NIL star.

### Anatomy of a Student-Athlete

The NCAA was formed at the dawn of the 20th century when football was played with a watermelon-sized ball. There was scant protective equipment and a violent set of rules, and 45 people died playing the sport between 1900 and 1905. Football-loving president Theodore Roosevelt organized two White House conferences with the presidents of Harvard, Yale, and Princeton, and a group of 13 colleges soon banded together to adopt new rules and oversight so the sport could continue. That group, the Inter-Collegiate Athletic Association, was soon renamed the National Collegiate Athletic Association. It had relatively limited power until the television era. But once it negotiated a \$1 million-plus package to broadcast college games on NBC in 1952, the NCAA had the money and power to control the college-sports landscape.

Over the years, its influence grew along with television deals, which it alone had the power to negotiate. But even as revenues increased to astronomical figures for the times, such as an estimated \$381 million in 1984, powerful football schools balked at the limits the organization imposed. In the early 1980s, the Universities of Georgia and Oklahoma negotiated their own broadcast deals with NBC, to air more of their games and pay more fees directly to the schools. Then they hit the NCAA with an antitrust suit that eventually reached the U.S. Supreme Court.

In 1984's *NCAA v. Board of Regents of the University of Oklahoma*, justices ruled 7-2 to curtail the organization's ability to control football television contracts. But even though the NCAA lost that specific battle, the language of the ruling actually bolstered its control over student-athletes.

The NCAA "plays a critical role in the maintenance of a revered tradition of amateurism in college sports," Justice John Paul Stevens wrote for the majority. "There can be no question but that it needs ample latitude to play that role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the antitrust laws."

The term "student-athlete" had first been used more

than 30 years earlier in another court case, involving a Fort Lewis A&M college football player who died from injuries he sustained on the field. Ray Dennison's widow filed a claim for death benefits from the workmen's compensation fund in 1955. In a subsequent legal battle, Fort Lewis A&M successfully sued to block the claim, arguing that Dennison was a student-athlete and not an employee because the institution was not in the "football business." The NCAA successfully adapted that verbiage and has used it in various ways to maintain the amateur model over the years.

Today, the long-held moniker is on shaky ground.

"The term student-athlete has been infused with all this romantic meaning," said Amira Rose Davis, a professor of history and African American studies at Penn State University who studies the evolving role of college athletes. "The origins of it are a legal shield from workmen's comp claims. The argument was that they are students first, not athletic workers."

But the reality for many students is that athletic demands outweigh academic pursuits. Between long daily practices, ongoing physical conditioning, and cross-country travel, playing on a team can stand in for a full-time job.

"If you have a student who really needs to learn the playbook," Davis said, "the priority has to be on the playbook, not classwork. They can live with a B-minus, but they can't lose their renewable yearly scholarship."

NCAA lawyers have argued that if players can earn money, they're professionals, not student-athletes. Critics of NIL deals worry that allowing players to monetize their fame will create competing interests within the student body, independent of an institution's bigger educational mission. But according to Davis and many others, many athletes already are pros. For example, in 2020, when most campuses were closed during the Covid-19 pandemic, football players were called back to practice in person. "Based on what?" Davis asked. "There was no academic reason."

The pressures of balancing professional-level demands within college life were evident in the chatter at the QB Retreat. On a bus taking top high-school players and their college coaches to the practice field, young students asked the college players what was different at the next level.

"You have no idea," said Uigalelei, who was ranked the number-one high-school quarterback when he committed to Clemson just two years ago. "You're going to have to work harder than you ever have in your life to balance everything and not fall behind. Film study, working out, going to class, practice, working out some more... time management is everything."

"It's no joke," Ohio State's C.J. Stroud chimed in. "You have to approach this seriously. When I got to Ohio State, I couldn't believe how much there was to do."

If players don't adjust right away, he warned, "you're not going to make it."



Alabama's sophomore quarterback Bryce Young has reportedly signed more than \$800,000 in name, image, and likeness deals—sums that his coach, Nick Saban, has called "ungodly."

Davis said that there's a misperception that these challenges are unique to the major revenue-generating sports. College athletes playing less lucrative and visible sports struggle with the same pressures.

"Football programs get the headlines," Davis said. "At Penn State, there are so many non-revenue programs that are competing at the highest level—volleyball, field hockey, men's and women's soccer, baseball, gymnastics, lacrosse. All of them create a restriction on what athletes are able to achieve as scholars. Their academic schedules have to fit into athletics, not the other way around."

## Let It Rain

For a player like King, the opportunity to generate income as a college athlete is a game-changer. Despite being undersized (his height is listed at 5-foot-8), King has NFL aspirations. But in December 2020, in the second quarter of the Cheez-It Bowl game against Oklahoma State, his football future was put in jeopardy.

"I was running down the sideline," King said, "and a defender was in front of me. I put on a move like I had thousands of times before. Something just felt wrong. It turned out to be my worst nightmare. I tore my ACL... When that happens, you don't know what's next."

King's story isn't unique. College athletes face significant injury risk, which in some cases threatens their scholarships or causes long-term health issues. King put in hours of grueling work every day in Miami to rehab his knee to be on schedule to start in the Hurricanes' 2021 season opener on September 4.

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leading dealmaker. He signed contracts to promote a local chain of car dealerships and Tampa-based College Hunks Hauling Junk & Moving. He also created a personal-apparel company, started a podcast, signed card and memorabilia deals with industry leader Panini America, and launched Dreamfield, a platform where marketers and other brand-builders can hire college athletes to appear at live events like autograph signings and speaking engagements for hourly fees ranging from \$100 to \$2,000—or more.

"I'm excited for this opportunity," King said, "for my family. But also for the next player who comes along."

Major deals have also been negotiated by athletes who are already social-media stars. Take twins Haley and Hanna Cavinder, who are top-scoring basketball players for Fresno State. They also have more than 3 million followers on TikTok, plus another quarter-million followers each on Instagram—an audience size substantial enough to land them a sponsorship with Boost Mobile, among other deals.

On the local level, athletes are promoting everything from fireworks to sweet teas to a shower-door company. Want a personalized video from University of Alabama softball pitching star Montana Fouts? You can get it through the Cameo app for just \$55. An Arkansas, Wright's Barbecue is sponsoring the entire offensive line of the University of Arkansas Razorbacks men's football team. At the University of Oregon, defensive end Kayvon Thibodeaux has partnered with Nike to create a one-of-a-kind digital image of original artwork of himself in a generic football uniform. Even when it comes to non-fungible tokens, or NFTs, school logos are still prohibited when players are selling their image.

And the schools still don't have to compensate their students as employees, even after the recent *NCAA v. Alston* ruling. The court did allow for some education-related perks but officially preserved the NCAA's ability to set rules over whether to pay athletes to play. However, advocates say the relatively narrow ruling set the stage for future challenges to the governing body's authority. Justice Brett Kavanaugh wrote this blistering passage in his concurring opinion:

"The NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars in revenues for colleges every year ... [and] traditions alone cannot justify the NCAA's decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated. This business model would be flatly illegal in almost any other industry in America.... And under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law."

The ruling "gives incentive for attorneys to pursue challenges that would allow for colleges to pay athletes," said University of New Hampshire law professor Michael McCann. "The Supreme Court made it clear that antitrust laws will apply to college sports. The NCAA has to be prepared to face serious legal challenges moving forward."

"It was a major miscalculation by the NCAA to petition the Supreme Court in *Alston*," he said. "Everything that Stevens in 1984 wrote about deference to how NCAA treats student athletes... it's off the board now."

## Unequal Rewards

The demands on the players and the enormous profits have long raised questions of fairness, both from civil-rights and free-market perspectives.

In 2011, historian Taylor Branch wrote a critique of college sports in the *Atlantic* that began a serious discussion of the racial dynamics of the amateur model:

"The NCAA makes money, and enables universities and corporations to make money, from the unpaid labor of



young athletes. Slavery analogies should be used carefully. College athletes are not slaves. Yet to survey the scene—corporations and universities enriching themselves on the backs of uncompensated young men, whose status as ‘student-athletes’ deprives them of the right to due process guaranteed by the Constitution—is to catch an unmistakable whiff of the plantation.”

When California became the first state to pass an NIL bill in 2019, Governor Gavin Newsom, a former college baseball player, appealed to both of these concerns.

“The money is not being equally distributed to the talent,” Newsom told the *New York Times*. “To the people that are performing, putting their minds and, quite literally, their bodies on the line to make millions and millions—hundreds

endorsements will encourage star players to leave and join a rival team out of state.

The NCAA claims that many sports programs operate at a deficit, even revenue-generating ones. That’s partly because of the sizable investments in facilities. Elite programs feel compelled to build the biggest and best locker rooms, weight rooms, and stadiums to attract recruits. Funds also go toward scholarships and to support other sports programs.

That argument has an optics problem, however, thanks to the rising salaries of coaches and administrators. According to an annual report on public compensation published by *USA Today*, football coaches at public colleges and universities were the highest-paid public employees in 40 states in 2020. Sixteen coaches earned more than \$5 million a year.



Twins Hanna (left) and Haley Cavinder, top-scoring basketball players for Fresno State, have more than 3 million followers on TikTok, plus another quarter-million followers each on Instagram—an audience substantial enough to land them a deal with Boost Mobile.

of millions—of dollars for others. I think that’s unjust. And I think it lacks a tenet of capitalism. That, I think, persuaded the Republicans in our California Legislature to come on board.”

His comments set the tone for the kind of bipartisan support that helped push through similar laws in several more states. In Florida, Republican Governor Ron DeSantis gave his state’s new NIL law vocal support, calling it a “matter of fairness.” Lawmakers and governors in more than a dozen states have adopted similar laws, motivated by these same concerns or, more recently, by the worry that failing to establish a student-athlete’s right to sign NIL

And those contracts come with exorbitant “buyout” clauses if colleges opt to fire a coach. Auburn University owed Gus Malzahn \$21.45 million after firing him in December 2020. In January, the University of Texas fired Tom Herman and had to shell out \$15.4 million.

The enormous gap in fortunes between coaches, many of whom are white, and players, many of whom are Black, has animated the discussion of fairness. In March of this year, Senator Chris Murphy, a Democrat from Connecticut, tweeted: “Mostly white coaches make millions and can do unlimited endorsement deals. Mostly black players get

only a scholarship, which they lose if they do a single endorsement deal. There is a civil rights crisis in big time college sports today.”

## The Open Market

In the days leading up to July 1, nearly everyone had the same question: how will all of this work? A enormous new marketplace was about to launch on nearly every campus in America, with little oversight or guidance. How much, exactly, would NIL deals be worth?

Charles Stanfield, a marketing representative who has worked with NFL, NBA, and MLB players for more than 20 years, said he was concerned by the flurry of business immediately after the NIL ban was lifted. “Agents and marketing

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representatives were so desperate to sign players,” he said. “They’re flashing deals in front of people who don’t know their real value.”

There’s also the matter of team “boosters,” the wealthy super-fans who routinely donate millions of dollars to their favorite teams. Some boosters also have funneled gifts to players under the table—anything from cash to lending out flashy cars to rides on the family yacht.

Now boosters can openly hire students for marketing deals.

Florida businessman Dan Lambert has promised all 90 scholarship players at the University of Miami \$500 a month, or \$6,000 a year, to promote his mixed martial arts gym on social media. Several questions arise out of Lambert’s \$540,000 yearly investment. Will boosters at other institutions follow suit and create an arms race? Did Lambert promise too much or too little? Would that money have otherwise been spent directly with the University of Miami? Will athletic departments start competing with individual athletes for marketing dollars?

Stanfield, the athlete representative, has faith that “the

market will straighten things out,” he said. “Now that everything is out in the open, athletes will see what other players are getting paid. In the first few days of NIL, some big-time athletes made deals they’ll regret. But everyone talks. Athletes should be able to tell who really has their best interest at heart.”

Blake Lawrence is one potential source of insight as to what the market will bear. A former starting linebacker at the University of Nebraska, as an underclassman his life revolved around football. His junior year, a series of four concussions changed everything.

“One day I woke up, and I couldn’t remember even my own name,” Lawrence said. “Just like that, my football career was over.”

He found the sudden shift from athlete to non-athlete jarring. After he graduated and earned his MBA, he created Opendorse, a technology and marketing company that connects athletes and marketers through an online platform. Think Zillow, but instead of investigating the market price for a house, you’re trying to find out how much it would cost to have your favorite basketball player endorse a new product or appear at a private party. In the first 10 days of July, the company executed 3,000 unique marketing deals, Lawrence said.

“We have all the data on athletes’ true worth from working with pro athletes,” Lawrence said. “Athletes have completed enough deals on our platform to give us an accurate picture of the marketplace. If a volleyball player with a TikTok following promotes a brand, we know the real value.”

While the company was founded to “ensure athletes aren’t exploited” by being underpaid, its platform and data also have another use: ensuring payments aren’t overly inflated, either. Given the wild history of big-time recruiting, it’s important to determine that payments are actually for the purpose of marketing, not just a direct cash exchange to get a player to choose a certain school.

“If a player receives \$50,000 for a tweet that we know is worth just \$1,000,” Lawrence said, “that’s not only an NCAA violation. It’s fraud and could come with legal consequences.”

Colleges have compliance officers to make sure athletes follow NCAA rules. Even though athletes can now earn money, the school still has to track all financial activity. “The NCAA’s inability to implement a set of guidelines has caused a problem,” he said. “Eighty percent of the schools we talked to thought the NCAA was going to provide a tool to help them keep track of all these deals. It doesn’t exist.”

There are other potential financial complications for students as well. Most haven’t had to file taxes, for example. Some could risk losing their financial aid awards by increasing their annual income.

“Is it wise to make a deal that would endanger a \$12,000 Pell Grant?” Lawrence asked. He also noted that most students



“know very little about intellectual-property law and what logos they are able to use. Very few people realized international athletes wouldn’t be able to participate because of federal immigration law and their student visa requirements.”

## Hazards Ahead

The NCAA has proven to be resilient in defending its amateur model in the past and could avoid paying players

the court of public opinion. In March 2021, Seton Hall University released its annual Sports Poll and reported that only 30 percent of respondents were against athletes in revenue-generating college sports being paid, compared to 60 percent in 2017 and 71 percent in 2013.

In an interview with reporters in July, NCAA president Mark Emmert suggested it was time to rethink the organization’s role. “When you have an environment like that, it just



COURTESY JORDAN WRIGHT

*Jordan Wright, front bottom left, owner of Wright’s Barbecue, is sponsoring the offensive line of the University of Arkansas Razorbacks.*

for years. But it will face challenges from multiple directions. Lawmakers who argued for NIL could push even further, demanding more direct compensation to players. An athlete could sue the NCAA or a conference and force the courts once again to expand player benefits. Or a group of players could lead the push.

Already, the organization seems on the losing end in

forces us to think more about what constraints should be put in place ever on college athletes,” he said. “And it should be the bare minimum.”

This is a drastic change of direction for an organization that listed its legal fees at \$68 million for the fiscal year 2019–20 to fight for its “core values.” But admitting partial defeat may well be the organization’s best hope for



survival. By having a lighter touch, the NCAA can improve its chances of avoiding further antitrust litigation.

The new NIL rule has already provided opportunities for athletes to group together to gain leverage. It stands to reason that players organizing to establish wages might not be far off. In 2014, football players at Northwestern University attempted to form a union with the blessing of

as popular as the NFL. But what's good for athletes in revenue-generating sports like football and men's basketball might not work for everyone else. If the intercollegiate student-athlete model disappears, what else will disappear along with it? If the commercial upside to revenue-generating sports grows ever larger, will institutions be willing or able to pay for traditional money-losers that serve as feeders for U.S. Olympic teams,



UNIVERSITY OF NEBRASKA ATHLETICS

*Nebraska Athletics launched the #NILbraska program on its flagship campus in Lincoln in June. Its stated goal is to create “a core curriculum that will benefit not just student-athletes, but all students on campus who may be interested in leveraging their personal brands.”*

the Chicago office of the National Labor Relations Board. The university challenged the move, and the full National Labor Relations Board agreed. The local ruling was overturned, and the union was blocked because players were not considered employees.

But that was seven years ago. Another attempt by athletes might have different results in the current environment.

These trends bode well for players at bigger universities, especially in the South and Midwest where college football is

like diving, volleyball, and swimming?

During the pandemic, universities started cutting sports at an alarming rate to make up for lost revenue, with at least 350 programs eliminated nationwide in 2020 alone. Smaller school teams and less visible sports were most vulnerable and will continue to be endangered as revenue programs thrive. It may well be time for schools to consider the value of these programs, both in terms of helping meet federal requirements such as Title IX and supporting

their institutional missions. But it also may be that these programs need to find more sustainable financial models. That could mean canceling programs or downgrading them from competitive divisions within NCAA sports to less formal club status.

It's also worth asking how allowing student-athletes to build and monetize their personal brands could affect colleges and classmates outside of the sports complex. After all, it is these athletes' classmates who help pay for college-sports programs through required annual fees buried within their tuition bills. In 2018, the 358 large colleges and universities classified as Division I schools collected \$1.2 billion in student fees to support sports, up 51 percent from 10 years ago.

As Emmert said, this is the year to reconsider everything. Do big-time football programs fit alongside other college sports—which, at some schools, they partially subsidize—and should they continue to be held to the same rules? In considering alternatives, one approach would be for the most elite 65 schools, members of the “Power Five” conferences, to break off their football programs from the rest of the NCAA. There is already a precedent for this, such as post-season tournaments like the College Football Playoff. Or perhaps the football-heavy Southeastern Conference, which will grow to include powerhouse teams at the universities of Texas and Oklahoma by 2025, could take a more central role in leading the biggest programs.

The cultural impact of college sports runs deep. It is an important community builder for undergraduates. Games give students something to look forward to and rally around. At some places, especially in the South, college football is the one American sport that can rival international soccer for crowd engagement. If you get a chance to go to a night game at Louisiana State or sit in Kyle Field to watch the Texas A&M Aggies, you'll hear the loudest, most passionate fans in the nation.

But what does that look like on campus the next day? Can a football player generating a six-figure income still be considered a student? Will they be isolated from the rest of their student body?

The prospect of NIL endorsements has actually provided a surprising academic opportunity. Schools like the University of Nebraska, Florida State, Penn State, and the universities of Arkansas and Colorado were among the first to develop robust cross-departmental education programs to help student-athletes learn branding and marketing. Nebraska Athletics, which launched the #NILbraska program on its flagship campus in Lincoln in June, stated its goal to create “a core curriculum that will benefit not just student-athletes, but all students on campus who may be interested in leveraging their personal brands.” The entrepreneur-focused program was designed

by business-school faculty and features pop-up classes across campus, including at the schools of communications and law.

We're about to see how NIL deals and performance on the field go together. This year's Chick-Fil-A kickoff game pits the Alabama Crimson Tide against the Miami Hurricanes, teams led by quarterbacks who are also leaders in signing NIL deals. In addition to King, Alabama's sophomore quarterback Bryce Young has reportedly signed more than \$800,000 in NIL deals—sums that his coach called “ungodly.” (His coach being Nick Saban, whose salary of \$9.5 million this year makes him the highest-paid college coach in the nation.) Does this destroy the “joy” of the sport? Do we need our college stars to be humble and hungry? It's

**“The Supreme Court made it clear that antitrust laws will apply to college sports. The NCAA has to be prepared to face serious legal challenges moving forward.”**  
**—University of New Hampshire law professor Michael McCann**

hard to imagine why that would be the case. Fans around the world are used to watching millionaires play games and are no less passionate about their favorite sports.

During oral arguments in *Alston*, Chief Justice John Roberts compared limiting the NCAA's powers to playing a precarious game of Jenga, in which players painstakingly remove blocks from a tower and lose if they cause it to fall. If we keep removing pieces of the NCAA's authority, will a once-solid base of college sports suddenly crumble? Or will the base for revenue-generating sports become even stronger? How will that affect other sports, other students, and entire campuses? This fast-moving period of change provides each school the opportunity to step back and decide which role it wants to play in the uniquely American phenomenon of college sports.

*Andrew Perloff is a freelance writer and producer and on-air contributor for the nationally syndicated sports radio show The Dan Patrick Show.*