

# Student Athletes in the Age of NIL: America's Newest Brand Ambassadors

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Presented By:

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**Megan Jerabek** is a Shareholder and chair of von Briesen’s Sports Law Section. She is also co-chair of the firm’s Trusts and Estates Section. Her practice focuses on estate planning, trust and estate administration, business succession planning, real estate leasing and business transactions. She represents current and former professional athletes on a variety of matters, including real estate, business formation and transactions, and estate planning. Megan frequently presents throughout Wisconsin on estate and business succession planning to professional trade associations, wealth advisors and insurance representatives, planned giving societies, and employees and executives as part of health and wellness programming offered by corporations.

Megan is listed in *The Best Lawyers in America*® in Trusts and Estates Law (2019-2023). In 2016, Megan was recognized as a “40 Under 40” by *InBusiness Magazine*.



## Name, Image, and Likeness Basics

- Refers to the three components of a person's right to publicity, which is a widely-recognized intellectual property right.
- Includes things such as name, nickname, voice, video or film portrayals, photograph, likeness, image, and any other means by which a person may be recognized.



## Where We Were

- Historically, the NCAA compensation rules prohibited student-athletes from profiting off of their name, image, or likeness.
- The theory: This prohibition was necessary to preserve the integrity of college athletics as amateur sports and delineate college athletes from professionals.
- After years of this system, athletes began to challenge these restrictions as unlawful violations of antitrust laws.



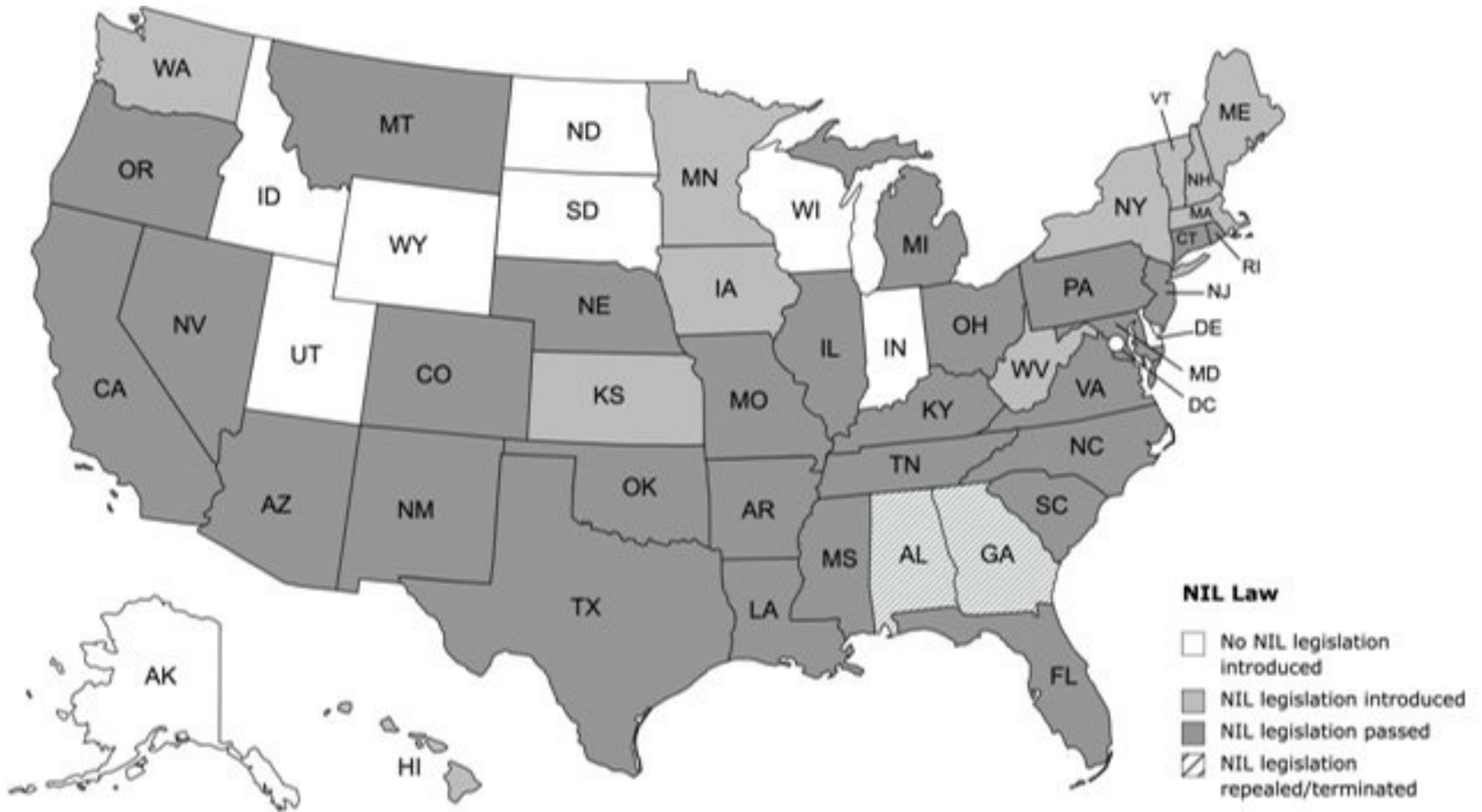
**Then...everything changed.**



## State Law Action

- In fall of 2019, California became the first state to pass a law allowing athletes in their state to profit from their NIL.
- That begin a domino effect of states across the nation introducing their own legislation (29 states have laws in place, but this is changing rapidly).
- The first round of state laws were to take effect on July 1, 2021.





## Supreme Court Action

- In June of 2021, a landmark (9-0) decision was reached by the Supreme Court in ***NCAA v. Alton***, holding that the NCAA's education-related compensation restrictions were unlawful.
- The decision did not pertain to rules restricting compensation unrelated to education, but did provide a roadmap for future challenges to NCAA compensation restrictions.





## Supreme Court Action

- Justice Kavanaugh directly confronted the potential legal problems in the remaining NCAA compensation restrictions stating “price-fixing labor is price-fixing labor”:

*There are serious questions whether the NCAA’s remaining compensation rules can pass muster under ordinary rule of reason scrutiny. Under the rule of reason, the NCAA must supply a legally valid procompetitive justification for its remaining compensation rules. As I see it, however, the NCAA may lack such a justification.*



## NCAA Action

- Following the *Alston* case, the NCAA adopted an interim policy suspending NCAA's rules prohibiting NIL compensation at the exact same time as the first of the state laws allowing NIL compensation were to take effect.
- The interim policy allows college athletes to engage in NIL activities that are consistent with the law of the state where the school is located provided they do not violate a few specific parameters.



# NCAA: Prohibited Arrangements

- NIL agreements without *quid pro quo*.
- NIL agreements that make compensation contingent upon enrollment at a particular school.
- NIL agreements that tie compensation to athletic participation or achievement.
- Institutions providing compensation in exchange for the use of a student-athlete's name, image or likeness.



## Institutional Action

- Many institutions adopted their own NIL policies, which address items such as:
  - Use of the institution's intellectual property
  - Prohibited categories
  - Prohibitions against deals that conflict with institutional contracts
  - Utilization of professional service providers
  - Use of facilities
  - Reporting procedures



## Who Can Help?

- Per the NCAA rules, athletes can use a professional services providers for NIL activities
- NCAA defines this as “an individual who provides third-party services to a student-athlete” including:
  - Sports Marketing Agents
  - Tax Advisors
  - Marketing Consultants
  - Attorneys
  - Brand Management Companies



# Reporting/Enforcement

- Institutions can (and should) require reporting of NIL activity to the Athletic Department.
- Institutions are required to:
  - Report violations of the remaining NCAA legislation.
  - Certify eligibility.
  - Complete due diligence if required.
  - Enforce their own policies.



## Institutional Participation

- The NCAA initial interim policy seemed to prohibit institutions from participating in NIL activity, but there was little understanding of what this meant.
- In October 2022, the NCAA updated its guidance regarding institutional participation, which confirmed an expanded ability for institutional involvement and shifted the burden of proof for violations (guilty until proven innocent).



# NCAA: Revised Guidance



## INSTITUTIONS CAN:

- Provide educational resources to athletes, collectives, donors
- Inform athletes of NIL opportunities/create deal marketplaces
- Fundraise for Collectives
- Promote student NIL activities
- Require NIL reporting



## INSTITUTIONS CANNOT:

- Engage in negotiations of deals
- Provide free services (tax prep, etc.) or equipment (cameras, etc.) for NIL opportunities if not offered to all students
- Donate to or own an interest in the Collectives
- Allow athletes to promote their NIL deals during team activities





## Where Are We Going – Federal Law

- Calls for federal legislation to create more uniform laws in this area have grown louder, especially as we are seeing more creative arrangements that push even the newly expanded boundaries in this space.
- Many of the Bills remain under consideration.



## Where Are We Going – State Law

- Prior to the ***Alston*** case and the NCAA's change in policy, many felt that the states with NIL laws in place would have an advantage.
- Now, however, some states are finding that their laws are actually more restrictive than the NCAA policy and some are going back seeking revision or repeal.
- Experts now say states without NIL laws may have an advantage.



## Where Are We Going – NCAA

- Remains active in the call for federal legislation.
- Has formed a Division I Transformation Committee/NIL Working Group charged with developing a response to the issues that continually challenge the division.



## Trends – Deals

- In the first few months of the new NIL landscape, student-athletes have signed millions of dollars of deals.
- Deals range from large national endorsement contracts to small local deals that provide athletes with cash compensation or free product.
- Marketability extends beyond performance on the field, with social media influence rising to the top.
- Deals are beginning to extend down to players who have not yet even started their college sports careers.



## Trends – Deals

- Projected market spend of more than \$1B in year two.
- Approximately 2/3 of NIL deals involve social media posts.
- Football is top transactional sport.
- Woman involved in nearly 53% of non-football deals.
- Seasonality trends showing (popularity highest in season of sport, but many athletes turn their focus to NIL during off-season).



# Publicly Announced Deals

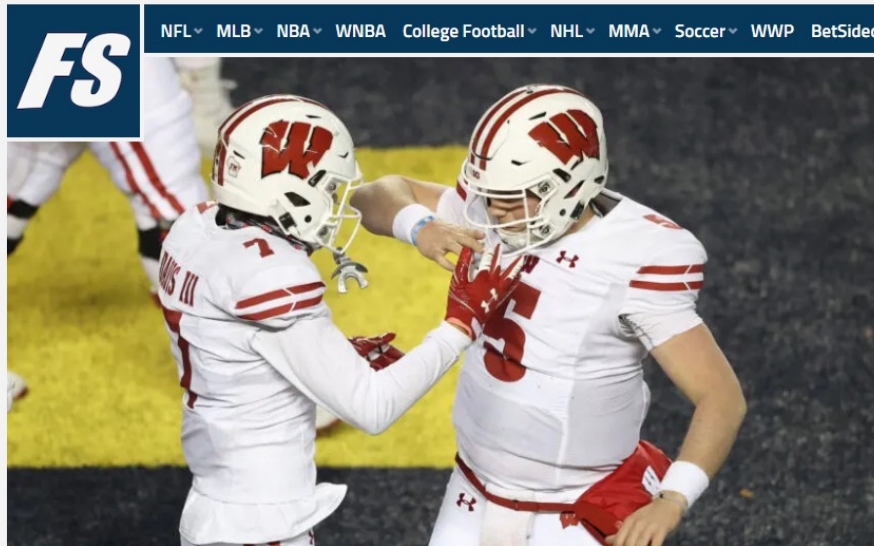


(Photo by Jevone Moore/Icon Sportswire via Getty Images)

**Wisconsin** quarterback **Graham Mertz** and running back **Braelon Allen** announced on **Twitter** and **Instagram**, respectively, that each signed an **NIL** deal with Pepsi in the latest example of a national brand reaching an agreement with college athletes.



# Publicly Announced Deals



**Wisconsin's entire offensive line signed a NIL deal with Mission BBQ**



**Logan Bruss**

@LoganBruss · [Follow](#)



Excited to announce our partnership with [@MissionBBQ](#) as the official BBQ of the Wisconsin O-Line!



# Publicly Announced Deals

Sprecher Brewing Co. may not be the first private company to land a name, image and likeness deal with a university student-athlete, but the craft beverage producer known for its Sprecher root beer as well as being the oldest craft brewery in Wisconsin since prohibition, may have produced a first-of-its-kind deal with University of Wisconsin-Madison's football program.

Glendale-based Sprecher made a new name, image and likeness (NIL) agreement with 10 members of the UW-Madison football program, specifically the five starters and five reserves on the Badgers offensive line.

The 10 student-athletes that are part of this Sprecher sponsorship include Logan Brown, Dylan Barrett, Tanor Bortolini, Tyler Beach, Nolan Rucci, Riley Mahlman, Michael Furtney, Joe Tippman, Treyton Wedig and Jack Nelson



**Sprecher**<sup>™</sup>  
BREWING CO.





# Publicly Announced Deals



Star outside linebacker **Nick Herbig** has multiple deals, the biggest one being Fresh Fit Cuisine in Madison, which benefits his wallet and nutrition.

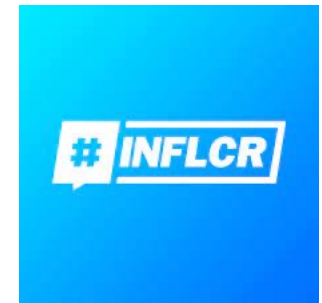
"They do a lot of meal prepping stuff, and the lady that works there is a dietician," Herbig said on Tuesday. "She's done a great job this offseason of making sure I get great meals."



# Trends – Startup Companies

- The change in NIL rules has led to a flurry of startup companies looking to capitalize on this new industry.

- Sports-Marketing Companies



- Technology Companies



- Content Creation Companies



## Trends – Collectives

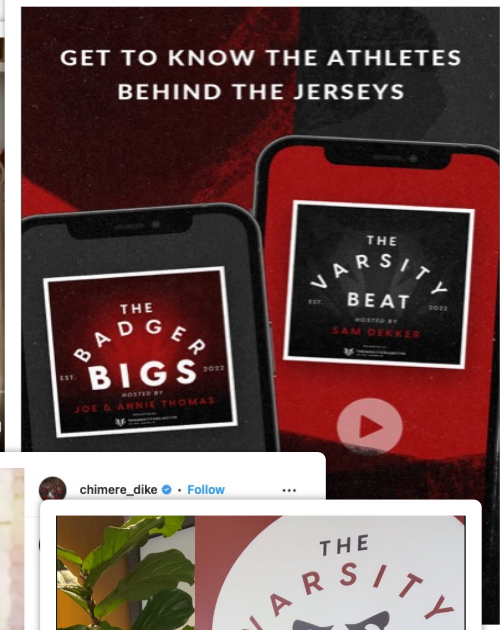
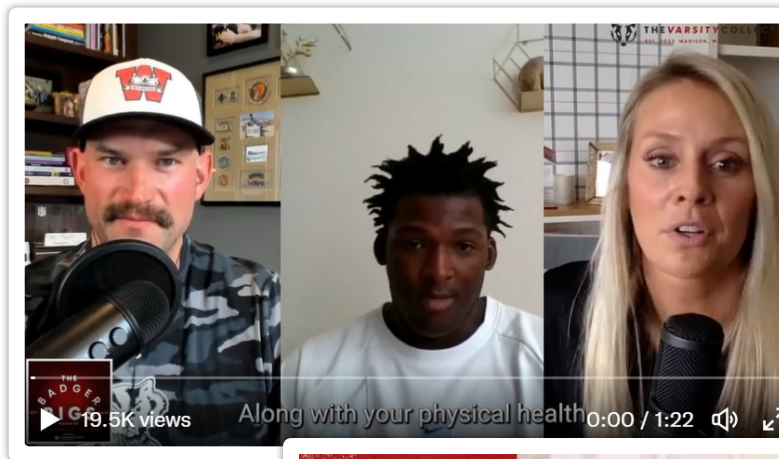
- Collectives are stand-alone startup companies established to assist athletes in cultivating and facilitating NIL opportunities.
- Most are run by business or marketing professionals, donors, alumni, financial professionals, and others.
- Legal structures vary, with some established as for-profit entities and others as non-stock non-profit organizations.



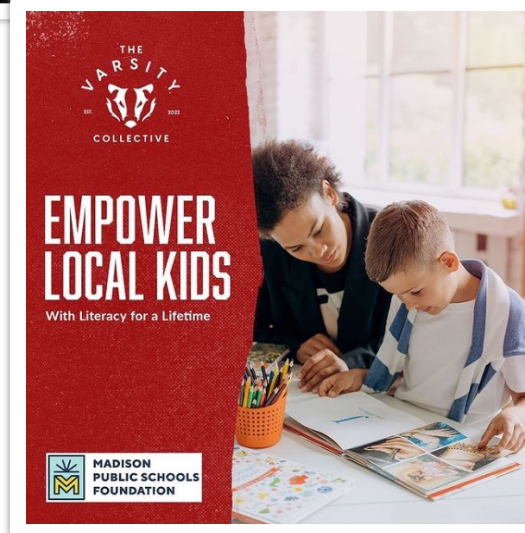
## Trends – Collectives

- While these entities are created to support athletes from a specific college or university, they do not have ownership ties to the college or university itself.
- They provide an opportunity for donors and fans to pool their resources and get in front of student-athletes on a larger scale.
- The services offered by the collectives vary – from connecting athletes with businesses and non-profits, to education and compliance/reporting assistance.





MISSION: Inspired by the **Wisconsin Idea**, we're building bridges for Badger student-athletes with a foundation of lifelong success — empowering and supporting all student-athletes with a holistic and sustainable model that maximizes NIL while equipping them with education and mentorship for the game of life.





**NIL Support:** Facilitating opportunities and compensating student-athletes as influencers and brand ambassadors in support of charities and philanthropic programs

**Student Development:** Unique programming that is accessible to all student-athletes

- **Rep Yourself** — Education program designed to help student-athletes build their brands
- **Life Currency™** — Mentorship program that connects alumni with student-athletes across a range of career disciplines

**Funding the Future:** Establish a sustainable base of donors, businesses and 501(c)(3) charitable partnerships to foster ever-growing NIL opportunities for student-athletes



# How to Connect with Athletes?

- Social Media
- NIL Marketplaces (ex. YouDub, Opendorse, etc.)
- Collectives
- Athletic Departments
- NIL Sports Agents



## Deal Type/Size

- Deals range from single transaction to multi-year contracts.
- Types of NIL being contracted for varies:
  - Traditional endorsements and social media posts
  - Appearances, autographs, camps, clinics
  - In-kind deals
- Fair market value still being set.
- No NIL contract template / “standard deal”.

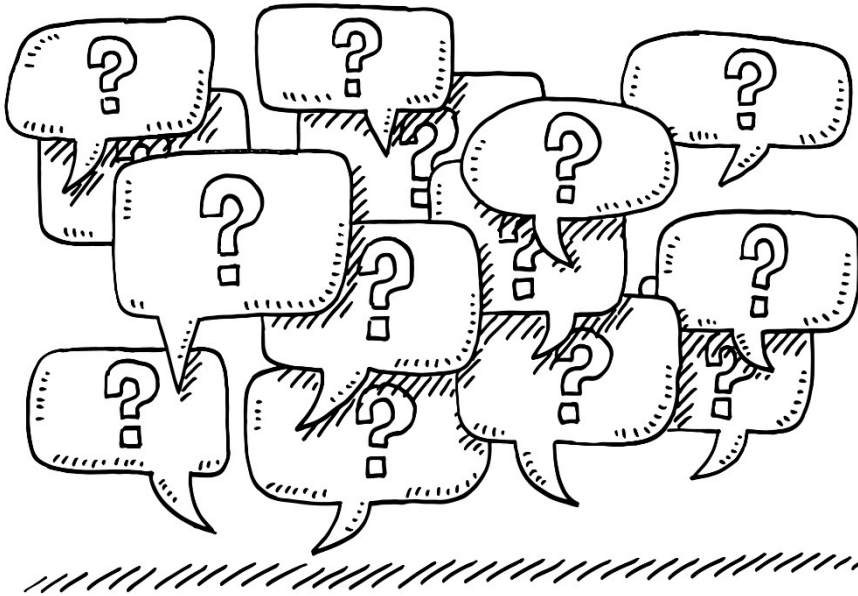




# Tips for Negotiating NIL Deals

1. Know the prohibited terms (and stay away from them).
2. Identify an athlete that aligns with your brand/audience/product.
3. Determine the type of NIL, frequency, and budget you are working with before starting discussions.
4. Communicate expectations, brand standards, prohibited conduct or other “deal breakers” clearly and up front.
5. Have contract drafted/reviewed by someone familiar with this space.





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