

College Athlete Name, Image, and Likeness Act

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Division of Legislative Services
Uniform Law Commission Presentation
June 29, 2021

2019: California Fair Pay to Play Act

Athletes can hire agents, earn compensation, and not be banned by the NCAA

Since then...

Effective 2021: Alabama, Arizona, Connecticut, Florida, Georgia, Illinois, Iowa, Kentucky, Mississippi, Missouri, Nebraska,* New Mexico, Ohio, Oklahoma,* Texas

Effective 2022: Arkansas, Michigan, Nevada, South Carolina, Tennessee

Effective 2023: California,* Colorado, Montana, Maryland

Introduced: Hawai'i, Kansas, Louisiana,* Massachusetts, Minnesota, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia



Associations



Institutions



Athletes



Agents & Professionals

Issues:

Institutional Perspective

- Transparency, disclosure, and reporting requirements
- Institutional involvement
- Minimum academic standards
- Group licensing and institutional marks
- Providing NIL-related education
- Which institutions are covered?
- Guardrails to ensure legitimacy of NIL deals

Agents & Professionals

- Regulatory body to oversee NIL deals
- Restrictions on third parties
- Athletes' use of agents and professionals
- Certifying or regulating agents
- Transparency, disclosure, and reporting requirements
- Restrictions on boosters

Athletes' Rights

- Compensation for NIL in game broadcasts
- Transparency, disclosure, and reporting requirements
- Right of action
- High school, youth, and recreational sports

2020: Federal legislation proposed

Student Athlete Level Playing Field Act

| Federal standards & Congressional oversight

Fairness in Collegiate Athletics Act

| Athletes' right to market NIL

| Deference to NCAA to determine extent of NIL rights

Collegiate Athlete and Compensatory Rights Act

| Compensation after completing 12% of college credits required

| Antitrust protections to NCAA

| Private, independent, self-regulatory, nonprofit oversight entity for administering NIL rules

2021: Federal legislation proposed

College Athletic Economic Freedom Act

Athletes' right to market NIL

Collective and legal representation

Amateur Athletes Protection and Compensation Act

Prohibit NCAA and member schools from invalidating athlete based on receiving compensation

College Athletes Bill of Rights

Allow athletes to market NIL rights in individual deals and group licensing arrangements + revenue sharing agreements w/ associations and institutions

Virginia HB 300 (2020)

Applies to:

- Private or public institutions of higher education
- Athletic associations
- Athletic conferences
- Other organization with authority over collegiate athletics

Virginia HB 300 (2020)

Prohibits:

- Providing compensation for NIL to a prospective student athlete
- Prohibiting or preventing student athlete from earning compensation from NIL (limited exceptions)
- Prohibiting or preventing student athlete from obtaining professional representation by an agent or attorney
- Declaring ineligible for or revoking a scholarship to student athlete who earns compensation from NIL

Virginia HB 300 (2020)

Prohibits:

- Athletic associations, conferences, and other organizations from prohibiting or preventing a public or private institution of higher education from becoming a member as a consequence of student athlete compensation for NIL

Virginia HB 300 (2020)

Team Contract:

- Teams may require student athletes to enter a contract prohibiting the student from earning compensation from NIL while engaged in official team activities.

Effective:

- July 1, 2024

Work Group:

- Convened by the Chancellor of the VA Community College System to make recommendations by July 1, 2022 relating to compensation and representation of college athletes enrolled in community college in VA

VA HB 300:

Institutional Perspective

Institutional involvement

Minimum academic standards

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In the News...

Virginia Tech

- June 7: Athletic directors' presentation to school board of visitors
- Established NIL Committee
- Debuted "Jump Start" Program to educate students about personal branding
- Anticipate certain restrictions on NIL - e.g. tobacco, gambling, weapons
- Currently, students sign waivers for VA Tech marketing use

University of Virginia

- Athletic director composed a letter asking Governor Northam to step in; signed by over a dozen Virginia colleges and universities

NCAA

- 1948: “Sanity Code” - NCAA opposes pay to athletes in any form, except for athletes’ tuition
- 1956: Allowable payments include room, board, books, fees, and “cash for incidental expenses such as laundry”
- 2014: NCAA member schools can increase scholarships up to the full cost of attendance
- 2018: NCAA made \$84 million available to student assistance funds
- 2021: NCAA cannot prohibit education-related compensation to student athletes

Alston v. NCAA



SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION *v.*
ALSTON ET AL.

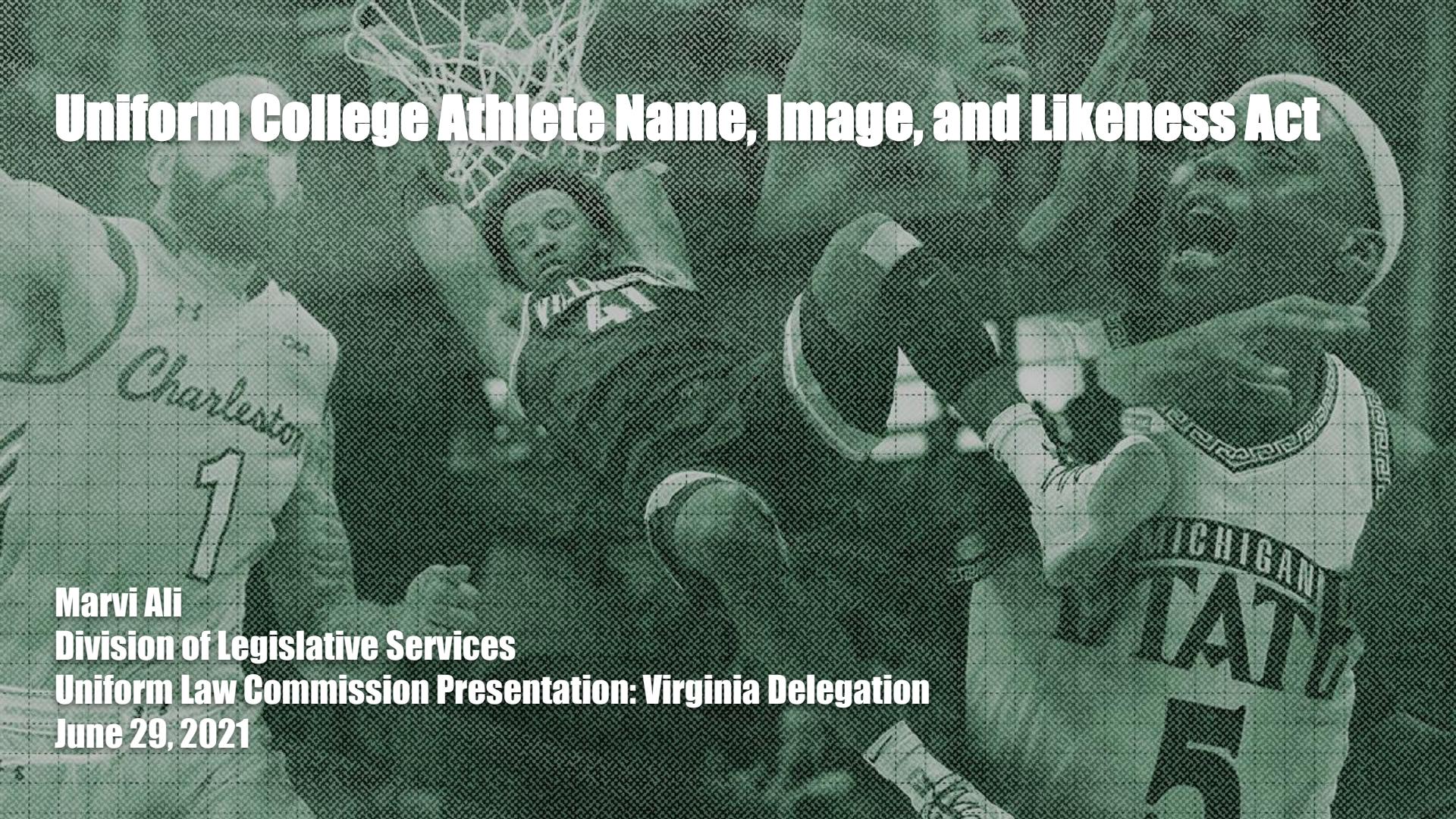
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 20-512. Argued March 31, 2021—Decided June 21, 2021*

Colleges and universities across the country have leveraged sports to bring in revenue, attract attention, boost enrollment, and raise money from alumni. That profitable enterprise relies on “amateur” student-athletes who compete under horizontal restraints that restrict how the schools may compensate them for their play. The National Collegiate Athletic Association (NCAA) issues and enforces these rules, which restrict compensation for student-athletes in various ways. These rules depress compensation for at least some student-athletes below what a competitive market would yield.

June 21, 2021

- Held that **NCAA rules artificially restrict compensation in the relevant market** (athletic services in D1 basketball and football)
- The NCAA’s “product” (amateur athletes) would not be harmed by education-related benefits
- Used “rule of reason” test to determine if alleged restraint is unreasonable
- NCAA cannot ban schools from providing education-related benefits to college athletes
- A blanket prohibition against compensation for student-athlete NIL violates federal antitrust laws



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Uniform Law Commission Presentation: Virginia Delegation

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