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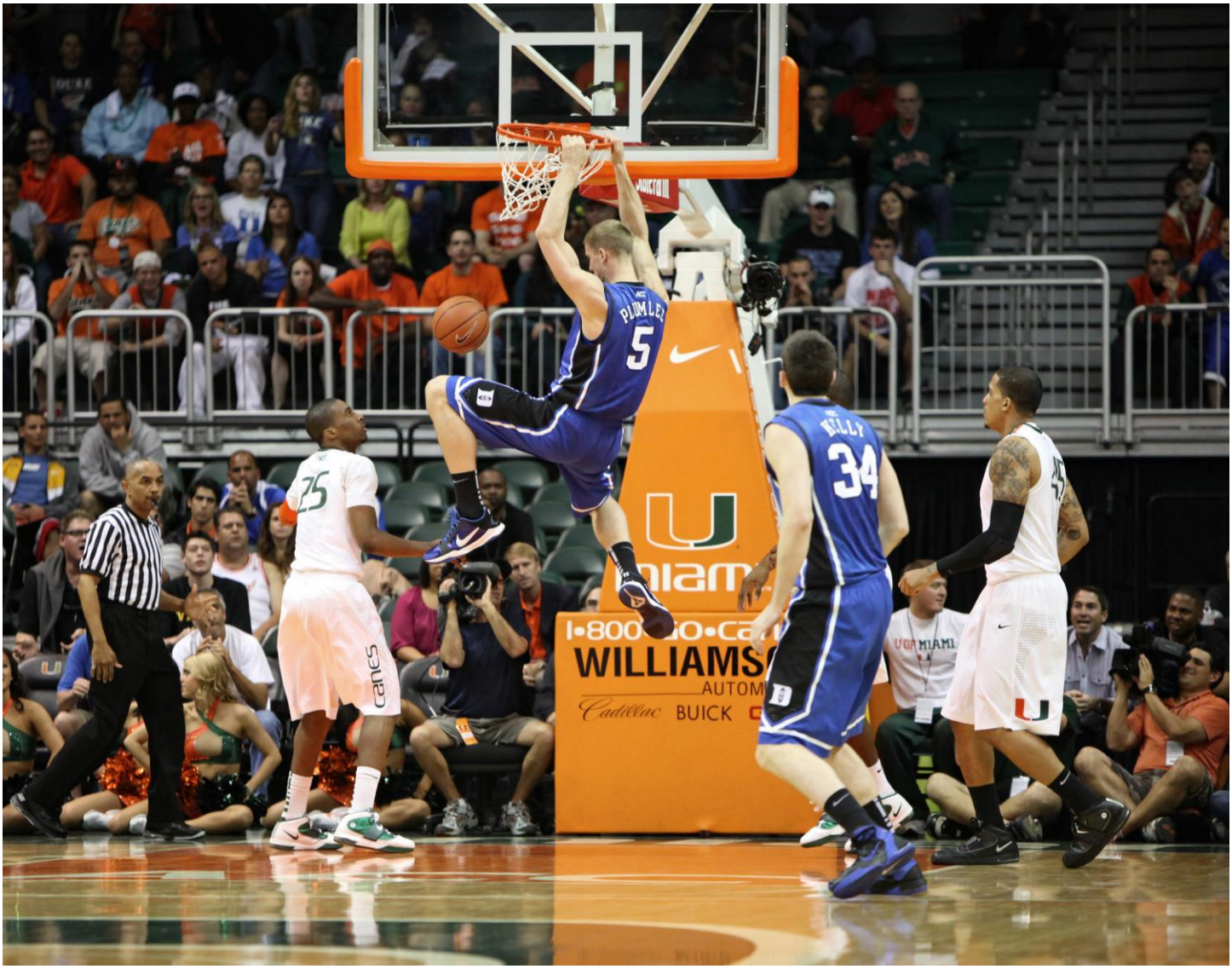

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College sports is a multibillion-dollar industry, generating profits for schools, coaches, and conferences. Everyone seems to be getting rich off of these college athletes—everyone, that is, except the players.

Since 1906, college athletics have operated under the National Collegiate Athletic Association (NCAA),[1] which is a nonprofit organization that regulates student athletes. Under current NCAA regulations, student athlete compensation is limited to educational scholarships.[2] Thus, student athletes are prohibited from marketing or monetizing their name, image, and likeness. Colleges, on the other hand, make million dollar deals with cable networks like ESPN and Fox

and athletic brands like Nike and Adidas by profiting from the names, images, and likenesses of student athletes.

However, the long-standing ban on college athletes using their names, images, and likenesses may soon be over. This past December, the U.S. Supreme Court announced that it will consider whether restrictions on compensation for college athletes violate federal antitrust laws.[3] The decision may be a huge step towards athletes receiving greater education-related benefits, such as graduate school scholarships, study abroad opportunities, or computers.[4] But the most recent legislative push has been made by Senator Chris Murphy and Representative Lori Trahan, who introduced in Congress the College Athlete Economic Freedom Act.[5]

Historically, the NCAA prohibits student athletes from receiving pay for their name, image, and likeness rights. Thus, student athletes may not, "get an agent, enter a professional draft after enrollment, or accept pay in any form in their sport."[6] However, this Act would effectively give college athletes control over the use of their names, images, and likenesses by prohibiting the NCAA and universities from creating and further implementing restrictive rules that limit how current and prospective athletes use their name, image, and likeness rights.[7]

The Act would establish a federal right for college athletes to participate in individual or group licensing agreements for the use of their name, image, and likeness rights.[8] This would allow them to enter into deals with video-game publishers that want to use them in a new NBA2K game or with apparel companies that wish to have their name plastered on the back of a new collection of sport jerseys.[9]

Further, the Act would allow college athletes to organize through a collective representative by preventing the NCAA and colleges from regulating the "legal, financial, or agency representation of college athletes and prospective college athletes with respect to the marketing of their names, images, likenesses, or athletic reputations, including the certification of such legal, financial, or agency representation."[10]

Additionally, by establishing a federal right for college athletes, the Act would effectively give college athletes a private right of action under antitrust law.[11] Notably, the Act does not provide antitrust protections for the NCAA and includes antitrust penalties if colleges or the NCAA violate the Act.[12] Furthermore, the Act would also effectively preempt any state law that would limit this new federal right of college athletes.[13]

"Big-time college athletics look no different than professional leagues, and it's time for us to stop denying the right of college athletes to make money off their talents," Senator Murphy stated in announcing the bill.[14] "It's simple: this is about restoring athletes' ownership over the use of their own names and likeness, [and] giving students a right to make money off endorsements is just one part of a much broader package of reforms that need to be made to college athletics, but it's a good start."[15]

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1. Dan Treadway, Why Does the NCAA Exist?, Huffpost (Aug. 6, 2013, 1:39 PM), https://www.huffpost.com/entry/johnny-manziel-ncaa-eligibility_b_3020985 [https://perma.cc/ZF9J-EAR2].
2. NCAA, https://www.ncaa.org [https://perma.cc/FQ48-ULBB] (last visited Feb. 12, 2021).
3. Brent Kendall, Louise Radnofsky, & Laine Higgins, Supreme Court to Hear NCAA Antitrust Case on College-Athlete Compensation, Wall St. J. (Dec. 16, 2020, 3:40 PM), https://www.wsj.com/articles/supreme-court-to-consider-ncaa-antitrust-case-on-college-athlete-compensation-11608129891 [https://perma.cc/99QB-HSJK]; See NCAA v. Alston, OYEZ, https://www.oyez.org/cases/2020/20-512 [https://perma.cc/4P6H-97Y3] (last visited Feb. 12, 2021).
4. Brianna Rauenzahn, Jamison Chung, & Aaron Kaufman, Paying College Athletes, Reg. Rev. (Feb. 6, 2021), https://www.theregreview.org/2021/02/06/saturday-seminar-paying-college-athletes/ [https://perma.cc/U9CP-V798].
5. Andrew Zimbalist, The College Athlete Economic Freedom Act Proposed in Congress is a Step Forwards on NIL Rights, Forbes (Feb. 7, 2021), https://www.forbes.com/sites/andrewzimbalist/2021/02/07/the-college-athlete-economic-freedom-act-proposed-by-senator-chris-murphy-d-ct-and-congresswoman-lori-trahan-d-ma-is-a-step-forward/?sh=41d138362bbd [https://perma.cc/39B7-6NZL].
6. Jeffrey A. Wakolbinger, Game On: Are New Opportunities Opening up for Brands to Use Student Athletes' Name, Image and Likeness Rights?, NAT'L L. Rev. (Feb. 11, 2021), https://www.natlawreview.com/article/game-are-new-opportunities-opening-brands-to-use-student-athletes-name-image-and [https://perma.cc/CV2E-MBGH].
7. Chandelis Duster, Democrats Make New Push for College Athlete Compensation, CNN (Feb. 4, 2021, 5:52 PM), https://www.cnn.com/2021/02/04/politics/college-athlete-economic-freedom-act/index.html [https://perma.cc/4N8R-LQA3].
8. Michael McCann, Murphy, Trahan Propose College Athlete Compensation Legislation, Yahoo Sports (Feb. 4, 2021), https://sports.yahoo.com/murphy-trahan-propose-college-athlete-180002669.html [https://perma.cc/9SUV-2Z64].
9. Id.
10. Duster, supra note 7.
11. McCann, supra note 8.
12. Ross Dellenger, New Congressional NIL Bill Targets Expansive Change to Athlete Compensation, Video Game Licensing, Sports Illustrated (Feb. 4. 2021), https://www.si.com/college/2021/02/04/ncaa-nil-video-game-rights-congress-bill [https://perma.cc/R3D4-GN5A].
13. McCann, supra note 8.

14. Dellenger, supra note 12.
15. Ralph D. Russo, Latest Bill Would Bar NCAA Limits On Athlete NIL Rights, Durango Herald (Feb. 4, 2021, 7:34 PM), https://durangoherald.com/articles/363339 [https://perma.cc/537Y-AJGT].