

# THE LEGAL

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## Stopping the Spread of COVID-19? *There's an App for That*

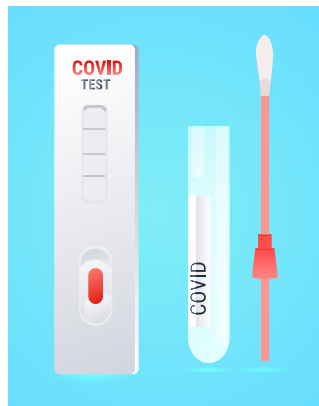
by Maria Wood

The concept of contact tracing is not new, having been used for centuries to jurisprudence halt the spread of disease, with the first known use in the 1500s during the outbreak of the bubonic plague. The practice is now being employed to stop the spread of coronavirus disease 2019 (COVID-19).

While contact tracing is not new, it is labor intensive. Here's how it works. Once an infected individual reports a positive test to health authorities, a contact tracer—usually an employee of a local health department—interviews that person to find out everyone they were in contact with during the two days before the onset of symptoms or prior to a positive test.

The tracer will then reach out to those people

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## Support Growing for Paying College Athletes

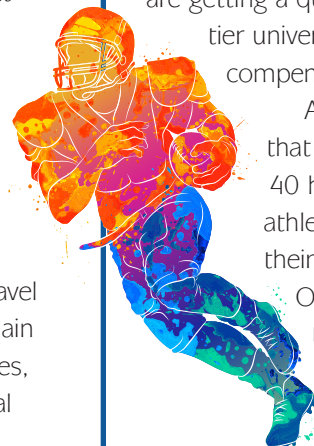
by Michael Barbella

In 2019, college athletics generated nearly \$19 billion for colleges and universities, according to the National Collegiate Athletic Association (NCAA), the nonprofit organization that regulates student athletes. The NCAA maintains that more than 480,000 students in nearly 1,300 colleges or universities across the country compete at the collegiate level, with the largest numbers in football and men's basketball.

According to *Forbes* magazine, college football's 25 top teams alone generate revenue upwards of \$2.5 billion, clearing \$1.4 billion after expenses. Compensation for the players is not one of those expenses, though many feel they should be rewarded in some way since they are providing the labor. Others feel that student-athletes are getting a quality education at a top tier university and that should be compensation enough.

An NCAA study revealed that college athletes average 40 hours per week just on athletic commitments while their sport is in season.

Other studies have put that number closer to 60 hours per week. Athletes must also



## Battling Stay-at-Home Orders in the Land of the Free

by Michael Barbella

Among the many things that the COVID-19 pandemic has brought to light is that staying at home all the time is no fun and everyone has a different idea of what "essential" means.

For example, California's Santa Clara County—one of the nation's first coronavirus hotspots and the site of its first American death from the virus—imposed strict isolation orders in March 2020. Santa Clara County's stay-at-home order was one of the toughest in the country. It curtailed travel and all gatherings, requiring residents to remain at home unless engaged in "essential" activities, government functions, or to operate essential



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## Stay-at-Home Orders CONTINUED FROM PAGE 1

businesses (grocery stores, gas stations, media services, hardware stores, plumbing services, banks).

The power to order citizens to shelter in place for health and public safety resides with the individual states, specifically the governor and also local officials. There is U.S. Supreme Court **precedent** on this issue. In 1824, the Court ruled that what are known as “**police powers**” belong to the state and not the federal government. Those police powers include imposing “isolation or quarantine orders.” In addition, the 1905 case of *Jacobson v. Commonwealth of Massachusetts* concerned whether Massachusetts could mandate that its citizens be vaccinated for smallpox. The Court ruled that it could. The decision stated that under the 10th Amendment to the U.S. Constitution “a community has the right

to protect itself against an epidemic of disease which threatens the safety of its members.”

Despite the previous U.S. Supreme Court decisions, stay-at-home orders have triggered numerous lawsuits during the pandemic. According to Hunton Andrews Kurth, a law firm tracking COVID-19 legal complaints, nearly 1,300 coronavirus-related civil rights lawsuits were filed in U.S. courts as of January 2021.

### Orders overturned in Badger State

In March 2020, Wisconsin Governor Tony Evers imposed the state’s “Safer at Home” order, which directed that “all Wisconsinites must stay at home as much as possible and non-essential businesses and operations must cease...” The order also halted all public and private gatherings of any size and detailed a list of 23 essential businesses, including grocery stores, gas stations and financial institutions.

In May 2020, Wisconsin’s Supreme Court overturned the “Safer at Home” directive, ruling the order was not properly implemented. The court also questioned Governor Evers’ authority to impose extensive restrictions during a pandemic, noting, “The Governor cannot rely on emergency powers indefinitely.” Governor Evers wanted to extend Wisconsin’s stay-at-home order to May 26, 2020.

In a **dissenting opinion**, Wisconsin Supreme Court Justice Rebecca Dallet wrote, “This decision will undoubtedly go down as one of the most blatant examples of judicial activism in this court’s history. And it will be Wisconsinites who pay the price.”

Immediately after the Wisconsin Supreme Court’s decision, issued on May 13, 2020, restaurants and bars reopened. Before the decision,

COVID-19 cases in Wisconsin were around 11,000 with 421 deaths. By the end of May 2020, cases had risen to over 18,000 and deaths to nearly 600.

Jacob T. Elberg, a professor at Seton Hall University School of Law who teaches health law, explains that the arguments against restricting gatherings are not focused on constitutionality, but on a governor’s use of statutory authority.

“Some such arguments have been successful where courts in some states have held that particular restrictions have exceeded the governor’s

authority,” Professor Elberg says. “Other constitutional arguments—such as those brought by business owners

arguing that limitations constitute unconstitutional takings without **due process** in violation of the Fifth Amendment, have generally not been successful, with some limited exceptions where the orders at issue were viewed by the courts as not narrowly tailored.”

### What about religious services?

Constitutional issues can arise, Professor Elberg says, when restrictions target religious gatherings specifically, rather than just being general bans that sweep religious gatherings within them. Many of the coronavirus civil rights-related lawsuits have concerned restrictions on religious gatherings.

The U.S. Supreme Court fielded numerous pandemic-related emergency requests in 2020. Among those it accepted were two that involved violations of religious freedom, with litigants in California and Nevada accusing their respective state governments of violating First Amendment rights to freedom of religion and assembly. The high court **upheld** shelter-in-place orders in both states in separate 5-4 rulings.



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The majority of the Court didn't give a reason for rejecting a Nevada church's complaint in July 2020, but in a similar California case, decided in May 2020, U.S. Supreme Court Chief Justice John G. Roberts wrote that judges should defer decisions of public health to local and state officials.

"Although California's guidelines place restrictions on places of worship, those restrictions appear consistent with the free exercise clause of the First Amendment," Justice Roberts wrote. He also wrote that public health is a "dynamic and fact-intensive matter subject to reasonable disagreement, but one the Constitution principally entrusts to elected officials." He went on to say that the decisions "should not be subject to second-guessing by an unelected federal judiciary, which lacks the background, competence and expertise to assess public health and is not accountable to the people."

Justice Brett Kavanaugh **dissented** in the California case, writing, "The church and its congregants simply want to be treated equally to comparable **secular** businesses. California already trusts its residents and any number of businesses to adhere to proper social distancing and hygiene practices."

But Chief Justice Roberts pointed out in his **majority opinion**, "Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports and theatrical performances, where large groups of people gather in close proximity for extended periods of time. And the order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods."

Supreme Court Justice Neil M. Gorsuch, one of four dissenters in the Nevada decision, said the

state's emergency order "obviously" discriminated against religion.

"In Nevada, it seems, it is better to be in entertainment than religion," Justice Gorsuch wrote. "Maybe that is nothing new. But the First Amendment prohibits such obvious discrimination against the exercise of religion. The world we inhabit today, with a pandemic upon us, poses unusual challenges. But there is no world in which the Constitution permits Nevada to favor Caesars Palace over Calvary Chapel."

### A Supreme Court reversal

In November 2020, the U.S. Supreme Court accepted another religious liberty case related to pandemic restrictions. This time it concerned a complaint brought by the Roman Catholic Diocese of Brooklyn and several Jewish organizations. The **plaintiffs** challenged New York Governor Andrew Cuomo's strict rules for in-person religious services.

Under New York's plan at the time, if a religious institution was in a designated red zone (where the number of COVID-19 cases were high), religious services were capped at 10 people—no matter how large the facility. In an orange zone, 25 congregants were allowed. These restrictions proved problematic, particularly for Orthodox Jewish services, which require a minimum of 10 adult men. The restrictions effectively prohibited Orthodox women from worshiping.

In an unsigned opinion that granted a **stay** [essentially putting a hold] of New York's orders, the U.S. Supreme Court said, "Even in a pandemic, the Constitution cannot be put away and



### NO MASS GATHERINGS

forgotten. The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty."

In a dissent, Justice Sonia Sotomayor noted "bike repair shops and liquor stores generally do not feature customers gathering inside to sing and speak together for an hour or more at a time." Justice Sotomayor went on to write in her dissent, "Justices of this Court play a deadly game in second guessing the expert judgment of health officials about the environments in which a contagious virus, now infecting a million Americans each week, spreads most easily."

In light of the Court's ruling in the New York case, an appeals court decision in a New Jersey case that went against a North Caldwell priest and a Lakewood rabbi was **vacated**. The priest and rabbi sued New Jersey Governor Phil Murphy over his limiting religious gatherings to 25 percent capacity. The unsigned order from the U.S. Supreme Court, issued in December 2020, ordered the U.S. 3rd Circuit Court of Appeals to reconsider its decision. At press time, the review was still pending.

### Safeguarding public health


In general, overturning various stay-at-home orders has proven difficult, as the courts recognize states' authority to limit individual freedoms in order to safeguard public health.

"Public health laws need to be based on good evidence about the need for governmental intervention and the likely effectiveness of the interventions selected," notes Seton Hall University School

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of Law professor Carl H. Coleman, who specializes in public health law. “It’s also important to ensure that laws rely on the least restrictive means available, and that they don’t impose disproportionate burdens on disadvantaged groups.”

Professor Elberg notes that states are generally given wide latitude in terms of their authority to take action against impending threats to public safety, particularly when an emergency has been declared.

“That being said, states are not allowed to exercise that power in an arbitrary or an unreasonable manner,” Professor Elberg says. “Public health orders must have a real and substantial relation to protecting public health, and cannot be discriminatory or used as a pretext to meet other ends.” 

### DISCUSSION QUESTIONS

1. States differ on what is considered an “essential” activity. What activities would you consider “essential?” Would you consider holding or attending religious services an essential activity?
2. “Police powers” allow states to mandate that people be vaccinated. What do you think about this?
3. The article mentions three U.S. Supreme Court decisions concerning religious liberty. How do you feel about those decisions? Which decisions do you agree with and why?

## There’s an App for That **CONTINUED FROM PAGE 1**

who had been in close contact with the person infected with COVID-19. The Centers for Disease Control and Prevention (CDC) defines close contact as being “within six feet of an infected person for at least 15 minutes starting from two days before illness onset.” The tracer will keep in contact with the people exposed to the virus (estimates are that each case generates at least 10 contacts) and follow up with them every other day to see if they have developed symptoms and advise them of what to do, such as get tested or self-isolate for 14 days. The aim is to prevent further contact between COVID-19 patients and healthy people in order to slow the transmission of the virus.

With cases in the United States approaching 25 million, it’s not surprising that contact tracing requires an army of contact tracers. According to Johns Hopkins Center for Health Security, the United States needs at least 100,000 contact tracers to meet its current need. As of October 2020, the U.S. employed a little over 53,000 contact tracers, with plans to hire approximately 3,500 more. Only Oregon, Vermont and Washington, DC employed enough contact tracers to meet the need in their states, according to Johns Hopkins. As of November 30th, New Jersey employed 3,000 contact tracers.

In this digital age, rather than rely on traditional contact tracing, several states have turned to technology in the form of contact tracing apps for smartphones. These apps, however, have raised concerns over data privacy, as well as accuracy.

teamed up to create a contact tracing app for smartphones that uses Bluetooth technology. With Bluetooth, each smartphone contains a unique key or code that doesn’t identify the smartphone owner’s identity or location. When two smartphones are in close contact, as defined by the CDC, the anonymous keys are exchanged. If a smartphone owner tests positive for COVID-19, they report that result to a local health authority through the contact tracing app. With that individual’s permission, the app alerts each person the infected individual’s smartphone exchanged keys with over the prior two weeks. The infected individual’s name is never disclosed;

only the unique keys are passed between the two smartphones. A person who has been in close contact with a COVID-19 patient is then advised as to what steps to take, whether to get tested or quarantine.

Contact tracing apps might reduce the time spent on traditional contact tracing; but these tech tools are far from perfect. One problem is that the apps only measure the distance between people, not the circumstances in which they met. For example, one or both may have been wearing protective gear, decreasing exposure. Another hitch with the apps is that,

according to estimates, only one in six people in the U.S. own a smartphone, and only a little over half of senior citizens—a large at-risk population—owning one.

Another hurdle is whether enough people will download an app to make it an effective tool in stopping the spread of COVID-19. Researchers at Oxford University have estimated that in order for the app to be effective, at least 60 percent of the population needs to use it. Singapore was the first country to use a contact tracing app, though not with the



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### How do the apps work?

In April 2020, tech giants Google and Apple

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Apple/Google technology. The app, called TraceTogether, was launched in May 2020 and by November 2020 only 45 percent of Singapore's 5.6 million residents had downloaded it.

Here in the United States, Virginia was the first state to launch its contact tracing app, called Covidwise, in August 2020. As of November 2020, only 10 percent of the state's 8.5 million citizens had downloaded it. In the Garden State, COVID Alert NJ was launched in September 2020 and had 260,000 downloads in its first month. Approximately 20 states have launched contact tracing apps; however, no state has reached the 60 percent threshold.

"It's hard enough to get people to wear masks," David Opderbeck, a law professor and co-director of the Gibbons Institute of Law, Science and Technology at Seton Hall University School of Law School, says. "Downloading an app on your phone with privacy concerns is a harder sell."

In September 2020, Apple and Google came together again to launch Exposure Notifications Express (EN Express), which is a pre-formatted version of a contact tracing app that can also work with apps already created by state health agencies. One of the features of the new technology that seems to be making a difference is that states can send out push notifications for users to opt in. The process has also been made easier for iPhone owners. They can just turn on EN Express in their settings with no need to download the app. The new technology seems to be doing better than previous contact tracing apps. For example, California launched its EN Express app in early December. According to its state health department, 13 percent of adults opted in within the first day.

### What about privacy?

Collecting health data even in an effort to stop the spread of COVID-19 has run into legal questions regarding protecting personal health information. Google and Apple stress the app will safeguard each individual's privacy by not divulging locations and only allowing health agencies to use the data. The app is also voluntary and smartphone users can delete it at any time. Nevertheless, many are hesitating to download the apps because of fear their health information will end up in the wrong hands or possibly used against them.

Public reluctance to use a contact tracing app might be its biggest obstacle, according to a *Washington Post*-University of Maryland poll conducted in April 2020. The poll found that three out of five Americans say they are either unwilling

or unable to download an app. Among smartphone users, about half said they would use a contact tracing app. When it came to which organization would better protect privacy, smartphone users expressed more trust in public health agencies and universities than tech companies.



### Balancing act

Professor Opderbeck, who specializes in cyber security and technology law, says the country must balance the need to end the pandemic with legitimate privacy concerns.

"We absolutely for public health reasons have to do this, but it's very invasive," he says. "Even privacy advocates realize for public health reasons there are some compromises we're going to have to make."

To persuade more people to use a contact tracing app, Professor Opderbeck suggests there should be a national standard that sets out a technical model on encryption, meaning who has

access to the data, and how long it is stored. The data would only be used for public health purposes, and the apps would be deleted when the pandemic ends, he says.

Lawmakers in Washington have introduced several bills specifically designed to address privacy issues raised by contact tracing apps. Senator Maria Cantwell of Washington and Senator Bill Cassidy of Louisiana introduced the Exposure Notification Privacy Act in June 2020. The bill would mandate app providers collect only the minimal amount of data needed for contact tracing, make participation strictly voluntary, and create strong security measures. A federal law would replace state **statutes** on data privacy, which sometimes differ. California, for instance, has a strict data privacy law. At press time, the bill had yet to be referred to a Senate committee for review.

### What does the Constitution say?

Jennifer D. Oliva, a professor at Seton Hall University School of Law who specializes in health law and policy, wrote a chapter titled, *Surveillance, Privacy, and App Tracking*, which was published in a 2020 report produced by Public Health Watch. In the report, titled *Addressing Legal Responses to COVID-19*, Professor Oliva writes that the Constitution "does not expressly recognize a right to information privacy." However, she noted that the U.S. Supreme Court recognized a "qualified right to health data privacy" in the 1977 case of *Whalen v. Roe*, which involved a New York state law requiring all prescriptions for controlled substances with the potential for abuse be recorded in a central database. Physicians challenged the law on the basis

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it violated Fourteenth Amendment rights for “nondisclosure of private information.”


The U.S. Supreme Court rejected that argument. According to Professor Oliva, the Court recognized “individuals have Fourteenth Amendment privacy interests in their health data” so long as the data is shielded by the health agency.

Professor Opderbeck says that people shouldn't look to the Fourth Amendment, which outlaws unlawful searches and seizures by the government, for health data protection. Since the app provider collects the data, and not the government, “in most cases it's not going to be a constitutional issue,” he says.

Currently, the Health Insurance Portability and Accountability Act (HIPAA) sets out a set of guidelines on safeguarding health data. It details which entities are covered by the act, such as health insurers, and what qualifies as protected health information. Again, information collected by a contact tracing app might not be covered under that legislation.

“Mere location data that you were in the vicinity of someone who later reported symptoms might not be

protected health information under HIPAA,” Professor Opderbeck says. “Health care providers are covered entities, and business affiliates of health care providers are covered entities. But companies making contact tracing apps might not fall under either of those categories.”

Professor Opderbeck views contact tracing apps as a supplement to traditional contact tracing methods. He says such apps could work as part of an overall national response. 

### DISCUSSION QUESTIONS



1. Which method of contact tracing do you think is more effective—a contact tracer that is human or a contact tracing app? Explain your answer.
2. Would you download a contact tracing app? Why or why not?
3. Whom would you trust to protect your data, a tech company like Google or Apple or a government public health agency? Explain your reasoning.

## Paying College Athletes **CONTINUED FROM PAGE 1**

keep up with their course work in addition to the time spent on athletics or risk being cut from the team and losing their athletic scholarships.

NCAA rules for student-athletes are lengthy and include, among other things, academic requirements, as well as restrictions on employment and accepting gifts. College athletes and players' rights proponents have been seeking fair market pay and name/image/likeness rights (also known as NIL rights) for years to no avail. NIL rights means that athletes' names, images or likenesses could not be used without their consent and/or without compensation. For example, a video game could not use images of college players either in the game itself or in advertising/marketing without paying the athletes.

“The NCAA does not permit universities to pay athletes for their NIL or their ‘labor’

for actually playing the sport,” explains Camille Spinello Andrews, a professor at Rutgers Law School—Camden with an expertise in sports and entertainment law.

Former National Basketball Players Association union chief Charles Grantham helped pioneer the revenue-sharing concept in college sports 30 years ago and implored university athletic systems to allocate financial resources to amateur players.

“Revenue-sharing is practiced in college athletics...it just does not include the athlete,” Grantham wrote in a March 1990 editorial for *The New York Times*. “It is disgraceful to think that in our capitalistic society that allegedly rewards uniqueness of talent, these athletes who are in such great demand cannot be compensated in some form.”



### Money, money, money

In an audited financial report, the NCAA reported more than \$1 billion in revenue for the 2016-2017 season. That revenue was generated mainly by ticket sales, marketing rights, television contracts and sports tournaments like March Madness. The NCAA also reported in its documents that in 2018-2019 a combined \$549 million was paid to conferences and colleges who made it to the top six bowl games—the Rose, Sugar, Orange, Fiesta, Peach and Cotton bowls.

In addition, according to available published reports, the five largest conferences, known as the Power Five, include 4,400 coaches who earn a

## Paying College Athletes **CONTINUED FROM PAGE 6**

combined \$1.2 billion. *Sports Illustrated* reported that Nick Saban, the head coach for the University of Alabama's football team, is the highest paid with a salary of over \$9 million.

The National Bureau of Economic Research conducted a study to see how much money college athletes could potentially make if they were compensated via revenue-sharing similar to professional athletes. In one example, the study found that every starting basketball player for a team represented in the Power Five could potentially earn between \$800,000 and \$1.2 million per season, depending on the school and the percentage of revenue shared.

### Changing tide

A 2019 survey conducted by the polling platform College Pulse revealed that most college students support paying college athletes in some form, with some believing they deserve an actual salary.

Compensation for student-athletes could soon take many forms, as the NCAA is considering changing its age-old rules to grant student-athletes name, image, and likeness (NIL) pay. In October 2020, the NCAA Division 1 Council approved proposed NIL rules that would give college athletes certain NIL marketing rights, including: using their NIL to promote camps and clinics, private lessons, their own products and services, and commercial products or services; permission to be paid for their autographs and personal appearances; and authorization to crowdfund for nonprofit or charitable organizations, catastrophic events and family hardships, and/or educational expenses not covered by the cost of attendance.

The NCAA was prompted to take action after California, in November 2019, passed its Fair Pay to Play Act, which is scheduled to go into effect in 2023 and allows college athletes to make money from endorsement deals.

Other states, including Colorado, Florida and Nebraska have already adopted NIL legislation and more states are expected to follow suit.

The Garden State passed its law in September 2020. The New Jersey Fair Play Act protects student-athletes attending New Jersey colleges and universities by allowing them to earn financial compensation from third-party companies for the use of their name, image and likeness (NIL). The law also permits student-athletes to hire an attorney or agent without jeopardizing their scholarship eligibility. While New Jersey's law is "effective immediately," the provisions don't kick in for five years, or until 2025. Professor Andrews believes this was done to "allow schools to fully cycle through all current athletes."

Even with its proposed rule changes, the NCAA will still place limitations on potential NIL income sources. Athletes, for example, cannot use their school's logos or trademarks, or endorse products/services that conflict with current NCAA rules, such as sports betting and banned substances. Additional refinements to the NCAA's proposal could still be made before its final vote scheduled for January 2021. The conclusive regulation would then take effect in August 2021, according to the NCAA.

Tim Nevius, a former NCAA investigator and lawyer who founded the College Athletic Advocacy Initiative and Nevius Legal, is an ardent supporter of compensating college athletes.

"Restricting economic opportunities [for student-athletes] while they are in college and they're adored by fans across the country is unconscionable," Nevius says.

He is skeptical of the NCAA's motives in instituting these new rules, saying the organization has resisted providing athletes with marketing rights for years and will push for a federal bill that

defers to its own rules.

"The only reason the NCAA came around to this was because of the pressure from states like California passing legislation," Nevius says.

### Federal legislation

There are currently four bills being considered in Congress. All would allow student-athletes the right to capitalize from their name, image and likeness and some would grant the NCAA the antitrust exemption they've been lobbying for.

A bill, called the College Athlete's Bill of Rights, introduced by New Jersey Senator Cory Booker, a former college athlete himself, would not only grant athletes NIL rights, but is the only federal legislation containing a provision that would give athletes a share of the profits generated from their sports. That would mean if a sport turns a profit after expenses, the revenue would be shared equally among scholarship players.

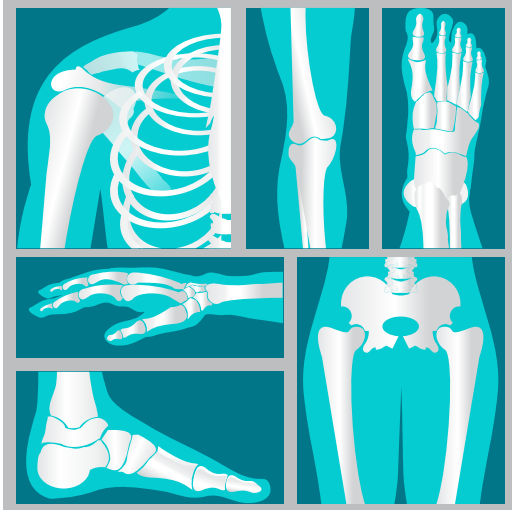
According to Senator Booker's bill, college sports that currently generate profits are football, men's and women's basketball and baseball. The bill, which uses Department of Education data, estimates that football players could receive payments of \$173,000 a year, men's basketball players could receive \$115,600, women's basketball players would receive \$19,050 and baseball players \$8,670.

In addition, Senator Booker's bill, which is co-sponsored by Senators Kirsten Gillibrand of New York and Richard Blumenthal of Connecticut, along with Representative Jan Schakowsky of Illinois in the House of Representatives, would extend athletic scholarships for as long it takes to receive a degree no



matter if the student-athlete is eligible to play. The bill would also extend healthcare coverage for athletes to cover sports-related injuries five years after their playing time expires.

Congress may not have much time to act. Florida's



**statute** is scheduled to take effect on July 1, 2021, which means that Sunshine State schools could potentially play by different rules in the fall.

Another factor that could affect any possible

legislation is that the U.S. Supreme Court agreed to review a Ninth U.S. Circuit Court of Appeals decision in *National Collegiate Athletic Association v. Alston*, which was handed down in May 2020. The ruling held that the NCAA violated **antitrust laws** when it refused to permit non-cash, education-related benefits for athletes. Those benefits would include, for example, gifts of computers or study abroad and post-graduate scholarships, as well as paid internships. The NCAA **appealed** the decision to the U.S. Supreme Court, who will likely hear oral arguments in the case by April 2021, with a decision expected before its term ends in June 2021.

Professor Andrews says that if the Court comes down on the side of student-athletes, competition would be opened up.

"Schools and conferences could now optionally decide if they want to offer education-related benefits in competing for certain athletes," she says.

On the other hand, if the Court sides with NCAA and **overturns** the Ninth Circuit's decision, the restrictions on competition will stay in place, as well as the amateur status that the NCAA wants to maintain.

"In a multi-billion dollar industry very different from the 1906 industry that led to the original creation of the NCAA, the argument in favor of amateurism is becoming very difficult to maintain," Professor Andrews says. "Yet,

NCAA concerns are not wholly without merit. What if an internship with a favored alum pays \$500,000?

Presumably, only reasonable compensation would be

allowed, but there are a lot of murky questions in defining 'education-related' benefits." 

### DISCUSSION QUESTIONS



1. How could granting student-athletes NIL rights potentially impact their time spent on their studies and their money earning capabilities? Do you think student-athletes should have NIL rights?
2. What do you think about student-athletes being paid for playing their sport? Should a free college education be payment enough?
3. Should all student-athletes (including gymnasts, golfers, fencers, etc.) receive payment even if their sports aren't big revenue makers for the college/university? Why or why not?

### GLOSSARY

**antitrust laws** — federal laws that regulate big business with the intention of promoting competition to benefit consumers.

**appealed** — when a decision from a lower court is reviewed by a higher court.

**dissent** — to disagree with the majority.

**dissenting opinion** — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

**due process** — legal safeguards that a citizen may claim if a state or court makes a decision that could affect any right of that citizen.

**majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

**overturned** — in the law, to void a prior legal precedent.

**plaintiff** — person or persons bringing a civil lawsuit against another person or entity.

**precedent** — a legal case that will serve as a model for any future case dealing with the same issues.

**police powers** — the ability of a state to regulate the behavior of its citizens and enforce order within its borders.

**secular** — not sacred or concerned with religion.

**statute** — legislation that has been signed into law.

**stay** — an order to stop a judicial proceeding or put a hold on it.

**upheld** — supported; kept the same.

**vacate** — to cancel or invalidate a judgment.