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Solving Louisiana's Identity Crisis: Requiring Judicial Approval of Minors' NIL Contracts

Taylor Roos

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Solving Louisiana’s Identity Crisis: Requiring Judicial Approval of Minors’ NIL Contracts

*Taylor Roos**

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* J.D./D.C.L., 2024, Paul M. Hebert Law Center, Louisiana State University. I would like to thank my friends and family for always supporting, encouraging, and inspiring me to pursue my dreams. This Comment is dedicated to my mother, Teresa Black, and grandmother, Pat Black, who have always and undoubtably acted in my best interest.

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INTRODUCTION

Arch Manning is a former high school football prospect from New Orleans.¹ During his high school career, Manning's name, image, and likeness (NIL) was valued at \$3.4 million.² The Louisiana High School Athletic Association's (LHSAA) decision to allow high school student-athletes to profit from their NIL meant Manning's valuation could have gone from fantasy to fact.³ However, because Manning's parents chose not to commercialize his NIL during his high school career, this valuation did not materialize.⁴ The decision to commercialize Manning's NIL was up to Manning's parents, as Louisiana law grants parents the power to enter into contracts, including NIL contracts, on behalf of their minor.⁵ This unrestrained power has the potential to create significant issues.⁶

1. *High School Football NIL Rankings*, ON3NIL, <https://www.on3.com/nil/rankings/player/high-school/football/> [<https://perma.cc/X2ZZ-EUA4>] (last updated Aug. 15, 2023).

2. *Id.*

3. Jeremy Crabtree, *NIL is a geaux in Louisiana for high school student-athletes*, ON3NIL (Apr. 7, 2022), <https://www.on3.com/nil/news/nil-is-a-geaux-in-louisiana-for-high-school-student-athletes/> [<https://perma.cc/7XBQ-K2SM>].

4. Joseph Zucker, *Arch Manning Reportedly Doesn't Plan on Doing Any NIL Deals Before Committing*, BLEACHER REP. (May 19, 2022), <https://bleacherreport.com/articles/10036296-arch-manning-reportedly-doesnt-plan-on-doing-any-nil-deals-before-committing> [<https://perma.cc/J8TK-2VRN>].

5. See LA. CIV. CODE art. 222 (2014). See also LA. REV. STAT. § 51:470.3(D) (2024).

6. See Jon Solomon, *Youth Sports Parents Still Don't have Much Help Navigating the NIL Era*, GLOB. SPORTS MATTERS (Jan. 17, 2023), <https://global.sportmatters.com/youth/2023/01/17/what-youth-sports-parents-need-to-know->

Consider the potential issues which could have arisen if Manning's parents had entered into a NIL contract on his behalf. Manning's parents, with a greedy intent, could have entered a contract to use Manning's NIL in an illicit manner to personally profit from the contract. Conversely, Manning's parents could have entered into an unfavorable contract with provisions such as an exclusivity clause and an indefinite term, resulting in a complete restriction on Manning's use of his NIL in perpetuity. Furthermore, Manning's parents could have entered into a contract against the wishes of Manning, resulting in the loss of Manning's right to self-autonomy and an unstable relationship with his parents. While the possibilities are endless, the outcome remains the same. Manning, as a minor, is bound by the decisions of his parents—for better or for worse.

These potentially troublesome outcomes became apparent after the Louisiana legislature enacted the Allen Toussaint Legacy Act (the Act) in June 2022.⁷ The Act creates a property right in the commercial value of an individual's identity.⁸ The Act encourages the exercise of this property right through the license, transfer, or assignment of one's NIL.⁹ Despite extending these rights to all living and deceased persons, the Act provides little regulation on the commercialization of a living individual's NIL—especially that of a minor.¹⁰ A minor's NIL contract only requires the written consent of the minor's parents.¹¹ By allowing parents to control the commercialization of their minor's NIL, the Act aims to prevent the exploitation of the minor's identity.¹² This goal is achieved when parents act in the best interest of their minor.¹³ However, parents do not always act in the best interest of their minor.¹⁴ This can happen when the parents either act in bad faith or simply do not understand the legal effects of their

about-nil-before-college/ [<https://perma.cc/Q8GS-DA4R>] (discussing the issues arising from parents entering NIL contracts on minors' behalf).

7. Act No. 425, 2022 La. Acts 625 (codified at LA. REV. STAT. §§ 51:470.1–470.6 (2024)).

8. LA. REV. STAT. § 51:470.3(A) (2024).

9. *Id.* § 51:470.3(C).

10. *See id.* § 51:470.3(D).

11. *See id.*

12. *Id.*

13. *Contra* *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983); *Faloona by Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000 (5th Cir. 1986) (both showing the grave effects of parents not acting within the best interest of the minor).

14. *See Shields*, 448 N.E.2d at 108 (reviewing a mother's consent to commercialize the nude images of her ten-year-old daughter). *See also Faloona*, 799 F.2d at 1000 (reviewing a mother's consent to commercialize the nude images of her children).

actions.¹⁵ Regardless of the parents' intent in commercializing their minor's NIL, the minor is bound by the parents' decision.¹⁶ As a result, it is imperative that minors' NIL contracts are checked to ensure that minors' best interests are upheld.

The need for this safeguard is even more apparent in light of the increasing ability to commercialize a minor's NIL.¹⁷ There are several ways a minor may realize the value of his or her NIL in Louisiana, one being through sports.¹⁸ Louisiana is the nation's top producer of NFL draft prospects per capita.¹⁹ While the prowess of a state's athletes may be measured by draft selections, many athletes experience notable success well before becoming a professional athlete.²⁰ This success can occur during an athlete's high school career and can lead to an increase in the

15. See generally *Shields*, 448 N.E.2d 108 (involving a mother's consent to the commercial use of her ten-year-old daughter's nude photos when the mother knew of the contract's legal effects). See generally *Faloona*, 799 F.2d 1000 (involving a mother's consent to the commercial use of her children's nude photos when she was unaware that the photos would be published in a magazine).

16. See *Shields*, 448 N.E.2d at 112 (finding a minor unable to disaffirm the parent's consent to use her image). See also *Faloona*, 799 F.2d at 1004–05 (providing no relief to minors whose parent consented to the use of their nude images).

17. See Crabtree, *supra* note 3. See also Vanessa Cezarita Corderio, "Kidfluencers" and Social Media: The Evolution of Child Exploitation in the Digital Age, HUMANIUM (Feb. 23, 2021), <https://www.humanium.org/en/kidfluencers-and-social-media-the-evolution-of-child-exploitation-in-the-digital-age/> [<https://perma.cc/LKK7-N49B>] (both describing ways in which minors may profit from their identities).

18. This references the LHSAA's allowance of student-athletes to enter into NIL contracts. See Crabtree, *supra* note 3. See also Rick Burton, *Youth Sports NIL: A New Way to Milk an Old Cash Cow*, SPORTICO (Dec. 9, 2021), <https://www.sportico.com/leagues/college-sports/2021/high-school-nil-1234648024/> [<https://perma.cc/48UT-2K2H>].

19. Jeremy Crabtree, *Southern states dominate in producing most NFL draft picks per capita*, ON3NIL (Mar. 16, 2022), <https://www.on3.com/news/southern-states-dominate-in-producing-most-nfl-draft-picks-per-capita/> [<https://perma.cc/EC6B-YF6X>].

20. See *Peyton Manning*, ACAD. OF ACHIEVEMENT, <https://achievement.org/achiever/peyton-manning/> [<https://perma.cc/QJ7W-MH3X>] (last accessed Nov. 2, 2022) (describing how Peyton Manning's impressive high-school football stats "attract[ed] the attention of the highest-rank[ed] . . . college football teams.").

athlete's NIL valuation while he or she is still a minor.²¹ Acknowledging this possibility, the LHSAA allows high school student-athletes to profit off their NIL.²² However, the entanglement of minors and the NIL movement is not limited to sports. Social media platforms like Instagram and TikTok have given minors a forum to become *internet famous*.²³ With the expanding use of social media, minors have risen to fame and experienced an increase in the value of their NIL.²⁴

These modes of increasing the value of a minor's NIL, coupled with the enactment of Louisiana's right of publicity law, have led to an increase in the number of parents entering into NIL contracts on behalf of their minor children.²⁵ As a result, it is only a matter of time until Louisiana courts will encounter a case originating from a minor's NIL contract. Therefore, it is imperative that Louisiana courts determine a means of ensuring that the best interest of the minor is maintained within these contracts without relying solely on the minor's parents.

Louisiana Civil Code article 230 requires parents to seek judicial approval prior to selling or compromising their minor's property and legal

21. See *High School Football NIL Rankings*, *supra* note 1 (estimating Louisiana high school student-athlete Arch Manning's NIL valuation at \$3.4 million).

22. Crabtree, *supra* note 3.

23. See Corderio, *supra* note 17.

24. See Melinda Wenner Moyer, *Kids as Young as 8 Are Using Social Media More Than Ever, Study Finds*, N.Y. TIMES (Mar. 24, 2022), <https://www.nytimes.com/2022/03/24/well/family/child-social-media-use.html> [<https://perma.cc/GG3Y-F62V>] (describing the increasing use of social media among minors). See also Mike McDaniel, *Former 'Popeyes Meme Kid' Rides Social Media Wave to NIL Deal*, WEAREGREENBAY.COM (Jan. 12, 2023), <https://www.wearegreenbay.com/sports/sports-illustrated/41874876/former-popeyes-meme-kid-rides-social-media-wave-to-nil-deal/> [<https://perma.cc/4K5D-AZJ9>] (describing how Collin Dieunerst used his social media presence as a minor to secure a NIL deal in college).

25. See Keymonte Avery, *Catholic High Teammates Agree to First NIL Deal*, BRPROUD.COM (Aug. 30, 2022), <https://www.brproud.com/news/local-news/catholic-high-teammates-agree-to-first-nil-deal/> [<https://perma.cc/97UM-FXYJ>]. See also *New Orleans Wrestler Richie Clementi Reaches Four-Figure Deal to Become First Louisiana High School Athlete to Sign NIL Deal*, BUSINESSWIRE (Apr. 21, 2022), <https://www.businesswire.com/news/home/20220421005846/en/New-Orleans-Wrestler-Richie-Clementi-Reaches-Four-Figure-Deal-to-Become-the-First-Louisiana-High-School-Athlete-to-Sign-NIL-Deal> [<https://perma.cc/B8P5-DN2U>] (both discussing Louisiana high school student-athletes' NIL deals).

claims.²⁶ Courts should apply this article to the commercialization of a minors' identities by requiring parents to seek judicial review of minors' NIL contracts. In applying this article, courts would uphold the article's literal meaning and intent of assuring minors' interests are protected.²⁷

To further assure the protection of minors' interests, courts must establish a process and standard of review to sufficiently weigh the interests of all contracting parties while ultimately advocating for the minor's best interest. To establish this procedure and standard of review, courts should look to other states' laws governing minors' employment contracts, as well as Louisiana's preexisting laws governing the payment of minors' legal claims.²⁸ By looking to these sources, it becomes clear that courts must first determine whether entering into a NIL contract is in the minor's best interest by weighing factors that consider both the economic and non-economic interests of the minor.²⁹ If these interests favor the commercialization of the minor's identity, courts should determine whether the proposed contract is reasonable.³⁰ If the court determines that the contract should be entered into based on the interests of the minor and reasonableness of the contract, the court should carry the discretion to govern how the contract's payment is distributed.³¹

Part I of this Comment will discuss the history of identity rights, noting the evolution of privacy and publicity rights in general and in Louisiana. Part I will also examine property interests in an individual's identity, taking extra care to analyze property rights under Louisiana's civil property laws. Part II will discuss the parent-child dichotomy, paying

26. LA. CIV. CODE art. 230 (2024).

27. *See id.*

28. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 2024) (describing New York's law governing minors' entertainment-related contracts). *See also* CAL. FAM. CODE §§ 6750–52 (West 2024) (describing California's laws governing minors' entertainment-related contracts). *See also* LA. CODE CIV. PROC. art. 4521 (2024) (describing Louisiana's payment distribution of a minor's legal claim).

29. *See generally* N.Y. ARTS & CULT. AFF. LAW § 35.03. *See generally* CAL. FAM. CODE § 6750 (both inferring through petition requirements economic and non-economic considerations to examine within minors' entertainment-related employment contracts). *See also* Warner Bros. Pic. v. Brodel, 192 P.2d 949, 953 (Cal. 1948) (examining a minor's entertainment-related employment contract and acknowledging the court's duty to review the contract with the minor's interests in mind).

30. *See Brodel*, 192 P.2d at 953 (examining a minor's entertainment-related employment contract and acknowledging the court's duty to examine the contract's reasonableness for all parties).

31. *See* LA. CODE CIV. PROC. art. 4521.

special attention to Louisiana's parental rights and situations in which courts review parental decisions. Part III will identify the need to review parents' decisions to commercialize their minor's NIL by looking to cases arising from other states. Part IV will propose requiring judicial review for minors' NIL contracts. Part IV will also propose a three-step, factor-based process under which courts should review these contracts to uphold the well-being of minors and balance the interests of all parties to the contract.

I. IDENTITY RIGHTS—THE RIGHT OF PRIVACY AND THE RIGHT OF PUBLICITY

The law recognizes an individual's right to his or her identity.³² This identity right falls under two broadly recognized rights: (1) the right of privacy, and (2) the right of publicity.³³ While both rights operate to define an individual's right to prevent others from using his or her identity without consent, the two rights have differing justifications.³⁴ The right of privacy is supported through the well-established concept of an individual's right to be left alone, while the right of publicity was established to account for the modern concept of monetizing one's NIL.³⁵

A. Snapshot of Identity Rights: General Protections on NIL

Legal protection over an individual's identity was first proposed by Samuel Warren and Louis Brandeis in one of the most cited law review articles of all time, *The Right to Privacy*.³⁶ In 1890, the duo expressed their growing concerns over the press's infringement of individuals' privacy through the unauthorized publication of individuals' private details.³⁷ In response to these concerns, the authors proposed a right of an individual to enjoy his or her life free from the emotional damages associated with public intrusion.³⁸ The authors called this the *right of privacy* and justified

32. See RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 46 cmt. a (Am. L. Inst. 1995).

33. See *id.*

34. See *id.*

35. See Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193 (1890); RESTATEMENT (THIRD) OF UNFAIR COMPETITION, *supra* note 32, § 46.

36. See generally Warren & Brandeis, *supra* note 35. See also Fred R. Shapiro & Michelle Pearse, *The Most-Cited Law Review Articles of All Time*, 110 MICH. L. REV. 1483, 1489 (2012).

37. Warren & Brandeis, *supra* note 35, at 196.

38. *Id.* at 213.

it through the Fourteenth Amendment's Due Process Clause in light of society's evolving perception of liberty rights.³⁹ Warren and Brandeis defined the right as an individual's right to "be left alone" and proposed a prohibition on the unauthorized use of an individual's "personal appearance, sayings, acts, and [] personal relation[s]."⁴⁰

Following Warren and Brandeis's proposal, courts were tasked with determining whether they would acknowledge a common law right to privacy.⁴¹ Without explicitly adopting the right to privacy, several courts left the door open to the possibility by granting injunctive relief to prevent the unauthorized use of individuals' names and images in public settings.⁴² Despite courts moving toward the adoption of the right to privacy, the New York Court of Appeals expressly rejected the notion in *Roberson v. Rochester Folding Box Co.*⁴³

Twelve years after the right of privacy was initially proposed, the New York Court of Appeals became one of the first courts to explicitly examine the possibility of a common law right to privacy.⁴⁴ In *Roberson*, the Court found no cause of action for the unauthorized use of an individual's likeness.⁴⁵ In doing so, the Court noted its concerns with the lack of jurisprudence, the sole emotional injury suffered, and the potential floodgate issues courts would experience.⁴⁶ While the New York Court of Appeals' ruling was certainly a bump in the road on the journey to the adoption of a right to privacy, courts in other states continued to examine the possibility of a common law right of privacy.⁴⁷

39. *Id.* at 193.

40. *Id.* at 193, 213.

41. *See generally id.* (calling for courts to recognize a common law right of privacy).

42. *See Mackenzie v. Soden Min. Springs Co.*, 27 Abb. N. Cas. 402, 410–11 (N.Y. Sup. Ct. 1891) (restricting a company's use of an individual's name in advertisements). *See also Marks v. Jaffa*, 26 N.Y.S. 908, 908 (N.Y. Sup. Ct. 1893) (restricting the unconsented to use of an individual's image in a newspaper).

43. *Roberson v. Rochester Folding Box Co.*, 64 N.E. 442, 447 (N.Y. 1902) (finding the plaintiff without relief after her likeness was used on advertisement flyers without her permission).

44. *See generally id.*

45. *Id.* at 447–48. Despite the Court's rejection of a common law right to privacy, New York's state legislature codified the right to privacy in response to the public outrage. *See N.Y. CIV. RIGHTS LAW* § 50 (McKinney 2003).

46. *Roberson*, 64 N.E. at 443.

47. *See id.* at 447 (finding no common law right of privacy in New York). *See also Pavesich v. New England Life Ins. Co.*, 50 S.E. 68, 69–71 (Ga. 1905) (establishing Georgia's common law right of privacy). *See also Foster-Milburn*

Georgia became the first state to formally adopt a common law right to privacy in *Pavesich v. New England Life Insurance Co.*⁴⁸ The Supreme Court of Georgia, paying special attention to an individual's liberty interest in being free from unwanted intrusions, identified a right of action for the unauthorized use of an individual's image for advertising purposes.⁴⁹ Since the *Pavesich* decision, 40 states have either judicially recognized or codified a right to privacy.⁵⁰

While courts have generally acknowledged protection from the public disclosure of the average person's private information, courts have not extended this protection to celebrities and public figures.⁵¹ As privacy rights were originally implemented to protect an individual's emotional interest in his or her personal life, courts have declined to extend such rights to individuals, such as celebrities, whose private details are voluntarily disclosed to the public.⁵² Courts found that since celebrities willingly subject themselves to public scrutiny, they suffer no emotional harm from the unauthorized use of their name or image.⁵³ Instead, these celebrities are more concerned with the monetary effects of unlicensed public disclosures.⁵⁴ As a result, celebrities whose information was publicly disclosed without their consent had no legal recourse until the

Co. v. Chinn, 120 S.W. 364, 366 (Ky. Ct. App. 1909) (establishing Kentucky's common law right of privacy).

48. *Pavesich*, 50 S.E. at 69–71 (evaluating the ability of a newspaper to use the likeness of an individual without the individual's consent).

49. *Id.*

50. The following states have acknowledged a tort action for invasions of an individual's right to privacy: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and West Virginia. RESTATEMENT (SECOND) OF TORTS § 652A (Am. L. Inst. 1977). The following states have a statutory protection of privacy: New York, Oklahoma, Utah, and Virginia. *Id.*

51. *See O'Brien v. Pabst Sales Co.*, 124 F.2d 167, 169–70 (5th Cir. 1941) (denying a famous football player's right of privacy claim after his image was used on a company's publicly distributed calendar without the football player's consent).

52. *See id.* (denying a famous football player's right of privacy claim because the player experienced no emotional harm due to the use of his image).

53. *See id.* at 170.

54. *See id.*

United States Second Circuit Court of Appeals posed a potential solution.⁵⁵

In *Haelan Labs, Inc. v. Topps Chewing Gum, Inc.*, the United States Second Circuit Court of Appeals acknowledged the legal gap created by not recognizing an economic interest in an individual's identity.⁵⁶ In *Haelan*, the court evaluated the exclusiveness of a license to use images of famous baseball players in connection with the commercial sale of gum.⁵⁷ Finding the traditional privacy right to be a non-assignable interest in "not [having one's] feelings hurt by [the publication of his or her image,]" the court acknowledged that an individual technically had no right to license his or her likeness.⁵⁸ The court saw this as an issue and defied the traditional notions of identity rights by acknowledging an economic interest in an individual's identity.⁵⁹ In doing so, the court created an assignable, economic interest in an individual's identity, thus allowing an individual to license his or her image.⁶⁰ The court called this right the *right of publicity*.⁶¹

The creation of this new right of publicity sparked debate.⁶² Scholars disagreed as to whether the creation of a new right was necessary.⁶³ Melville Nimmer was the first scholar to chime in on the matter in his article *The Right of Publicity*.⁶⁴ There, Nimmer justified the creation of the right of publicity and advocated for the widespread adoption of the newly recognized right.⁶⁵ In doing so, Nimmer focused on the right of privacy's inability to protect against the economic loss suffered by the disclosure of an individual's information and identity.⁶⁶ Unlike Nimmer, William Prosser believed the right to privacy could be expanded to protect both the emotional and economic damages incurred through the infringement of an

55. See *Haelan Labs, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953) (acknowledging previous courts' choices to not acknowledge a right of privacy action for *prominent persons*).

56. See *id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. See generally Melville B. Nimmer, *The Right of Publicity*, 19 L. & CONTEMP. PROBS. 203 (1954). See generally William L. Prosser, *Privacy*, 48 CAL. L. REV. 383 (1960).

63. See generally Nimmer, *supra* note 62; Prosser, *supra* note 62.

64. Nimmer, *supra* note 62, at 203–04.

65. *Id.*

66. *Id.* at 204–10.

individual's identity.⁶⁷ Prosser, the author of the leading treatises on tort law, defined the right to privacy as an expansive, categorical umbrella encompassing four distinct tort claims: (1) the misappropriation of an individual's name or likeness for the benefit of another; (2) the physical intrusion of an individual's solitude; (3) the public disclosure of an individual's private facts; and (4) the public portrayal of an individual in a false light.⁶⁸ Prosser posited that the first tort claim, misappropriation, was sufficient to account for the economic damages suffered by the public disclosure of an individual's identity and argued that the creation of a new right of publicity was unnecessary.⁶⁹

The conflicting views of Nimmer and Prosser have forced states to either follow Nimmer and identify a separate right to publicity or follow Prosser and apply privacy rights to the commercial loss suffered by identity appropriation.⁷⁰ Half of the nation's states have followed Nimmer's suggestion by adopting the right to publicity.⁷¹ However, states vary in the extent to which the right extends.⁷²

B. Zoomed in: Louisiana's Protections on NIL

Louisiana became the most recent state to acknowledge a right of publicity with the enactment of the Allen Toussaint Legacy Act in June 2022.⁷³ Prior to the Act's adoption, Louisiana did not acknowledge a

67. Prosser, *supra* note 62, at 406–07.

68. *Id.* at 389.

69. *Id.* at 406–07 (“The interest [by misappropriation] is not so much a mental as a proprietary one, in the exclusive use of the plaintiff's name and likeness as an aspect of his identity.”).

70. For more information on the evolution of the misappropriation tort in accord with the creation of the right of publicity, *see generally* Samantha Barbas, *From Privacy to Publicity: The Tort of Appropriation in the Age of Mass Consumption*, 61 BUFF. L. REV. 1119 (2013).

71. The 25 states that have acknowledged a statutory right to publicity include Alabama, Arizona, Arkansas, California, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Jonathan Faber, *A Concise History of the Right of Publicity*, RIGHT OF PUBLICITY, <https://rightofpublicity.com/brief-history-of-rop> [<https://perma.cc/Y8S4-Z9FH>] (last visited Sept. 22, 2022).

72. States typically vary on whether the right to publicity extends to deceased individuals. As a result, heritable and transfer provisions vary between states. Faber, *supra* note 71.

73. Act No. 425, 2022 La. Acts 625 (codified at LA. REV. STAT. §§ 51:470.1–470.6 (2024)).

commercial interest in an individual's identity.⁷⁴ However, Louisiana courts did acknowledge a personal interest in an individual's identity by granting misappropriation tort relief for the unauthorized use of an individual's identity, but only in cases where the unauthorized use of an individual's name and image "seriously interfere[d] with [the individual]'s privacy interests."⁷⁵ Therefore, the court acknowledged only a privacy interest in an individual's identity.⁷⁶

While courts did not expressly reject the notion of a commercial interest in an individual's identity, they failed to recognize the right in the absence of legislation.⁷⁷ Louisiana has legislation providing identity protection for one distinct group of individuals—deceased soldiers—by making it "unlawful for any person to use . . . the name, portrait, or picture of any deceased soldier, without having obtained prior consent to such use"⁷⁸ However, despite providing protection to this one group, a vast majority of the state's population remained unprotected from the economic harms originating from the commercial appropriation of their identities.⁷⁹

This gap became apparent to Louisiana legislators following the death of Allen Toussaint, a famous musician from New Orleans.⁸⁰ After

74. See *Tatum v. New Orleans Aviation Bd.*, 102 So. 3d 144, 147 (La. Ct. App. 4th Cir. 2012) (defining the right of privacy as a personal right rather than a real right with a "proprietary interest").

75. *Id.* at 147 (identifying the misappropriation privacy tort as the proper claim to bring for the use of the individual's image in a mural, but finding the individual's son lacked the standing to bring the claim on behalf of his mother). See also *Slocum v. Sears Roebuck & Co.*, 542 So. 2d 777, 779 (La. Ct. App. 3d Cir. 1989) (denying relief for the tortious invasion of privacy since no actual injury was suffered as a result of the use of child's picture for advertising purposes).

76. See *Slocum*, 542 So. 2d at 779 (explicitly identifying a "plaintiff's interest in protecting his [or her] privacy from serious invasions").

77. See *Prudhomme v. Procter & Gamble Co.*, 800 F. Supp. 390, 395–96 (E.D. La. 1992) (noting Louisiana's lack of legislation regarding the right of publicity but allowing a plaintiff to proceed in his right of privacy claims for the unauthorized use of his likeness). See also *Frigon v. Universal Pictures, Inc.*, 255 So. 3d 591, 598–99 (La. Ct. App. 1st Cir. 2018) (declining to create a jurisprudential right of publicity and finding no cause of action in a right of publicity claim due to the lack of legislation).

78. LA. REV. STAT. § 14:102.21(A) (2024).

79. See *id.*

80. James A. Smith, *Toussaint Legacy Act would outlaw use of deceased celebrities' name, image without consent*, DAILY ADVERTISER (May 1, 2019), <https://www.theadvertiser.com/story/news/local/louisiana/2019/05/01/toussaint->

Toussaint's death, companies began manufacturing koozies featuring the musician's image.⁸¹ Observing the economic loss associated with the use of the musician's image, legislators began to push for a statutory right of publicity to provide a remedy for the commercial appropriation of an individual's NIL.⁸² This statutory right of publicity, named in honor of Toussaint, was formally proposed by Louisiana legislators in March 2017.⁸³

Legislators acknowledged the need for a right of publicity, but they disagreed over the protections granted to the use of digital avatars; the 70-year protections granted post-mortem; and the level of consent needed from the heirs of deceased individuals.⁸⁴ As a result, the initial version of the Act failed to receive the votes necessary to become law.⁸⁵ Despite the unsuccessful first attempt to codify a right of publicity, legislators continued to advocate for the passage of the Act.⁸⁶ These efforts, coupled with the influence of the national NIL movement and other states' right of publicity laws, allowed the Act to gain the necessary votes; the Act was passed in June 2022.⁸⁷

The Act establishes a proprietary interest in an individual's identity through the creation of a property right.⁸⁸ While the Act's statutory language establishes a property right in an individual's identity, the classification of this right warrants further analysis.⁸⁹ The Act's self-classifying property right is consistent with common law states' classification of publicity rights.⁹⁰ However, this classification must be

legacy-act-would-outlaw-use-deceased-celebrities-name-image-without-consent/3636574002/ [https://perma.cc/85TY-SBC3].

81. *Id.*

82. *Id.*

83. H.B. 415, 2017 Leg., Reg. Sess. (La. 2017); Smith, *supra* note 80.

84. Smith, *supra* note 80.

85. Jake Clapp, *A new law protects 'identity rights' of deceased Louisiana musicians and artists*, GAMBIT (July 3, 2022), https://www.nola.com/gambit/music/article_df66fa02-f96b-11ec-a364-9fb4b0f492a9.html [https://perma.cc/2TM3-LNTN].

86. *Id.*

87. *Id.*

88. See LA. REV. STAT. § 51:470.3(A) (2024) (stating "[e]very individual has a property right in connection with the use of that individual's identity for commercial purposes").

89. See *id.* See generally A.N. YIANNOPOULOS & RONALD J. SCALISE JR., PROPERTY § 9:1, in 2 LOUISIANA CIVIL LAW TREATISE (5th ed. 2022).

90. See RESTATEMENT (THIRD) OF UNFAIR COMPETITION, *supra* note 32, § 46 cmt. g.

evaluated under Louisiana's civil property laws.⁹¹ Louisiana's law acknowledges two fundamental categories of rights: patrimonial and extra-patrimonial.⁹² Patrimonial rights, typically associated with rights over things or assets, pertain to an individual's economic being and are susceptible of pecuniary valuation.⁹³ Extra-patrimonial rights are rights over intangible things pertaining to an individual's moral being and are insusceptible of pecuniary valuation.⁹⁴ Historically, an individual's identity, synonymous with an individual's personality, has been classified as an extra-patrimonial right.⁹⁵ However, the Act defies this conventional classification by identifying an economic, or patrimonial, interest in an individual's identity.⁹⁶ On its face the classification may seem radical in light of civilian tradition, but the right of publicity's object is not an individual's identity itself.⁹⁷ Rather, the object of the right is the commercial interest an individual has in his or her identity.⁹⁸ Commercial interests and economic protections are susceptible of pecuniary valuation.⁹⁹ As a result, classifying the right to publicity as a patrimonial right aligns with Louisiana's civil laws on property.¹⁰⁰

As a property right in Louisiana, an individual's NIL is both transferable and heritable.¹⁰¹ Acknowledging this, the Act's statutory language explicitly permits an individual to commercialize his or her NIL through license, transfer, or assignment.¹⁰² This commercialization extends to both living and deceased individuals; it may take place through the fundraising, sale, or advertisement of goods, services, and performances.¹⁰³ Furthermore, the Act defines an individual's identity as his or her "name, voice, signature, photograph, image, likeness, or digital

91. See generally YIANNOPOULOS & SCALISE, *supra* note 89.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* Patrick Broyles, *Intercontinental Identity: The Right to the Identity in the Louisiana Civil Code*, 65 LA. L. REV. 824, 848–49 (2005).

96. LA. REV. STAT. §§ 51:470.2–470.3 (2024) (tying an individual's identity to commercial acts such as those "in connection with . . . goods [and] services" or "for advertising" purposes).

97. Broyles, *supra* note 95, at 858–60.

98. *Id.*

99. *Id.* at 857–60.

100. *Id.*

101. See A.N. YIANNOPOULOS, CIVIL LAW SYSTEM: LOUISIANA AND COMPARATIVE LAW 436 (2d ed. 1999).

102. LA. REV. STAT. § 51:470.3(C) (2024).

103. *Id.* §§ 51:470.2(3), (7), 470.3(C).

replica.”¹⁰⁴ The Act places restrictions on the licensing and transfer of deceased individuals’ identity rights such as time limitations on their use; however, it only requires the transfer or license of a living individual’s identity to be “in writing and signed by the individual or the individual’s authorized representative.”¹⁰⁵ The Act defines an individual’s *authorized representative* as the “assignee, licensee, executor, heir, legatee, or other representative of [the] individual.”¹⁰⁶

As applied to minors, the Act permits parents to enter into NIL contracts on their minor’s behalf.¹⁰⁷ Like common law states, Louisiana finds minors incapable of consenting to legally binding contracts since they lack the capacity to do so.¹⁰⁸ Louisiana law accounts for this by authorizing a minor’s guardian to enter into contracts on the minor’s behalf.¹⁰⁹ As a result, it is clear that parents constitute *authorized representatives* under the Act and are permitted to commercialize their minor child’s NIL.¹¹⁰ Therefore, the Act aims to prevent the exploitation of the minor’s identity.¹¹¹ The law achieves this goal when parents act in the best interest of their minor; however, parents do not always act in the best interest of their minor.¹¹²

104. *Id.* § 51:470.2(6).

105. *Id.* § 51:470.3(D).

106. *Id.* § 51:470.2(2).

107. *See id.* § 51:470.3(D).

108. LA. CIV. CODE art. 1918 (2024). *See generally* SAUL LITVINOFF, CONTRACTUAL INCAPACITY VS. QUASI-DELICTUAL LIABILITY § 16.4, *in* 6 LOUISIANA CIVIL LAW TREATISE (2d ed. 2021). Emancipated minors are an exception to this general rule. *See* LA. CIV. CODE art. 235 (terminating parental authority “upon the child’s emancipation.”). Emancipated minors are deemed to possess the capacity to enter into contracts without the concurrence of a parent. *Id.*

109. *See* LA. CIV. CODE art. 230 (allowing parents to enter into contracts to sell, lease, or encumber their minor’s property).

110. *See id.* *See also* LA. REV. STAT. §§ 51:470.2, 3(D).

111. *See generally* Janet L. Dolgin, *The Fate of Childhood: Legal Models of Children and the Parent-Child Relationship*, 61 ALB. L. REV. 345, 378 (1998) (discussing the traditional model of authority and its theory that “strong parental control safeguard[s] the best interests of children.”).

112. *See generally* *Shields v. Gross*, 58 N.Y. 2d 338 (N.Y. 1983) (involving a mother’s consent to the commercial use of her the ten-year old daughter’s nude photos when the mother knew of the contract’s legal effects); *Faloon v. Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000 (5th Cir. 1986) (involving a mother’s consent to the commercial use of her the children’s nude photos when she was unaware that the photos would be published in a magazine).

II. PARENT-CHILD RIGHTS

Parents' power to act and make decisions on behalf of their children has long been recognized as a fundamental right.¹¹³ Traditionally, children were seen as property of their parents.¹¹⁴ However, as society has evolved and children's rights have become more established, parents have become viewed as trustees of their children's best interests.¹¹⁵ This shift in the role of parents as stewards of their children's legal interests has caused debate as to how far parental rights extend.¹¹⁶

A. You are the father! A General Overview of the Parent-Child Dichotomy

It is well established that children are individuals entitled to fundamental liberties, including the right to autonomy.¹¹⁷ However, it is also well established that children lack the maturity to fully exercise this autonomy and are unequipped to make legal decisions for themselves.¹¹⁸ This is evidenced in contract law, which finds minors lack the capacity to contract.¹¹⁹ It is clear that some parental authority must be maintained over children's decisions and legal matters, but there are conflicting views as to how much authority should be granted.¹²⁰

Parental authority can be viewed under two primary models: the Traditional Model and the Individualist Model.¹²¹ The models are justified under differing views of children as autonomous beings.¹²² The Traditional

113. See *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (identifying a parent's right to "direct the education and upbringing of one's children" as a fundamental liberty). See also *Troxel v. Granville*, 530 U.S. 57, 57 (2000) (internal citation omitted) (reiterating "parents' fundamental right to make decisions concerning the care, custody, and control of their children.").

114. Barbara Bennett Woodhouse, "Who Owns the Child?": *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995, 1037-39 (1992).

115. *Id.*

116. See Dolgin, *supra* note 111, at 374-76.

117. As individuals, children receive the same constitutional protections as adults. For a further analysis of children's autonomous rights, see *id.* at 366-68 (discussing *In re Gault*'s steps in identifying children as autonomous individuals).

118. See *id.* (discussing *In re Gault*'s steps in identifying children as autonomous individuals).

119. RESTATEMENT (SECOND) OF CONTRACTS § 12 (Am. L. Inst. 1981).

120. See Dolgin, *supra* note 111, at 371 (identifying two prominent legal models of the parent-child relationship).

121. *Id.* at 374-76.

122. *Id.*

Model views children as incapable of fully exercising their right of autonomy due to their lack of ability to make “mature choices.”¹²³ This model views parents as capable of making these mature choices and views parents as the best caregivers of their children.¹²⁴ As a result, the Traditional Model “re[i]nforces strong parental authority, and assumes children’s choices to be nonexistent, or to be rightly displaced by the choices of their parents.”¹²⁵ Conversely, the Individualist Model views children “as complete, or almost complete, human beings, capable of making their own decisions.”¹²⁶ As a result, the Individualist Model advocates for minimal parental authority over children’s choices, viewing excessive parental authority as an infringement of children’s constitutional rights.¹²⁷ Courts have inconsistently applied these models by typically utilizing the Traditional Model in disputes between parents and children and the Individualist Model in disputes between parents and the state.¹²⁸ Regardless of the model used, courts have assumed the ultimate responsibility of ensuring that the well-being of children is maintained.¹²⁹

The most apparent example of courts advocating for minors’ well-being arises in child custody disputes.¹³⁰ In custody disputes, parents’ interests typically involve maintaining custody of their child, while the child’s interest lies in maintaining his or her well-being.¹³¹ In evaluating these conflicting interests, courts employ the best-interest-of-the-child standard.¹³² This standard involves weighing a number of factors, which allows courts to make decisions in various matters related to children.¹³³ The specific factors vary by state, but the general principles serve to uphold the child’s best interest while also ensuring fairness to parents.¹³⁴ While the best-interest-of-the-child standard is most commonly applied to child custody disputes, courts have applied it to other matters including

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *See generally* PRINCIPLES OF THE L. OF FAM. DISSOLUTION § 2.02 (Am. L. Inst. 2002).

131. *See generally id.*

132. *Id.*

133. *Id.*

134. *Id.*

decisions pertaining to a child's medical care, criminal penalties, and property.¹³⁵

B. Louisiana's Parent-Child Dichotomy: What's yours is mine . . . or is it?

The parent-child dichotomy in Louisiana aims to uphold both parental and minor rights.¹³⁶ The Louisiana Civil Code expressly grants parents parental authority over their children.¹³⁷ This authority encompasses several rights and obligations.¹³⁸ Parents are obligated to provide "physical care, supervision, protection, discipline, and instruction [to] the child"; "support, maintain, and educate their child"; offer "moral, social, and material direction for their child"; and "administer the property of the child."¹³⁹ In exchange, parents are granted the right to maintain "a meaningful relationship with [their] child[]" by making decisions about the "care, custody, and management of [the] child."¹⁴⁰

Louisiana courts acknowledge the importance of these rights by deeming them constitutionally protected.¹⁴¹ However, courts also acknowledge the state's "right to intervene in the parent-child relationship so as to protect the interest of minor children."¹⁴² In recognizing the need for intervention, Louisiana law illustrates several situations in which a court can terminate parental rights.¹⁴³ These situations include, but are not

135. See *In re Richardson*, 283 So. 2d 185, 187 (La. Ct. App. 4th Cir. 1973) (finding the donation of the child's kidney to her sister not in the child's best interest). See also *K.B. v. Commonwealth*, No. 10-000559, 2012 WL 28679, at *4 (Ky. Ct. App. Jan. 6, 2012) (finding a 14-year old's payment of restitution following his criminal charges in his best interest). See also *Gill v. Phelps*, 230 S.W.2d 892, 892–93 (Ky. Ct. App. 1950) (affirming the sale of a minor's property by a guardian ad litem when the sale was in the best interest of the minor).

136. See LA. CIV. CODE art. 223 (2024) (acknowledging parental rights over children and parental obligations to children).

137. *Id.* arts. 223, 232.

138. *Id.* arts. 223–26, 229, 232.

139. *Id.* arts. 223–26, 229.

140. *In re Interest of A.C.*, 643 So. 2d 719, 724 (La. 1994) (evaluating the constitutionality of restricting a parent's rights after the parent sexually assaulted his child).

141. See *id.* ("the parent-child relationship is a fundamental liberty interest that is entitled to full protection under the Equal Protection and Due Process clauses of both the federal and Louisiana constitutions.").

142. *Id.* at 725.

143. LA. CHILD. CODE ANN. art. 1015 (2024).

limited to, the abusive or negligent behavior by the parent toward the child; the parent's failure to provide substantial contributions to the child's care; and the parent's failure to maintain significant contact with the child.¹⁴⁴

Aside from situations resulting in the termination of parents' rights, Louisiana law intervenes in the parent-child relationship in several instances.¹⁴⁵ For example, Louisiana courts regularly intervene in child-custody disputes.¹⁴⁶ In doing so, courts have distinguished a termination of parental rights from a mere restriction of parental rights.¹⁴⁷ Finding no constitutional violation in the mere restriction on parents' right to govern their children, courts actively employ the "best-interest-of-the-child" standard to ensure children's fundamental liberties.¹⁴⁸ Louisiana's best-interest-of-the-child factors are defined in Louisiana Civil Code article 134.¹⁴⁹ While these factors are almost exclusively applied to child-

144. *Id.* (defining ten situations calling for the termination of parental rights).

145. *See* LA. CIV. CODE art. 131 (2024) (allowing the court to intervene in child custody disputes). *See id.* art. 230 (requiring courts to review the sale of a minor's property for the settlement of his or her legal claims).

146. *Id.* art. 131.

147. *In re Interest of A.C.*, 643 So. 2d at 726 (finding that restrictions on parental custody and unsupervised visitation did not amount to the complete termination of parental rights).

148. *Id.* at 723.

149. LA. CIV. CODE art. 134. These factors include:

- (1) The potential for the child to be abused, as defined by Children's Code Article 603, which shall be the primary consideration.
- (2) The love, affection, and other emotional ties between each party and the child.
- (3) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.
- (4) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.
- (5) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.
- (6) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (7) The moral fitness of each party, insofar as it affects the welfare of the child.
- (8) The history of substance abuse, violence, or criminal activity of any party.
- (9) The mental and physical health of each party. Evidence that an abused parent suffers from the effects of past abuse by the other parent shall not be grounds for denying that parent custody.

custody matters with the intent of “recogniz[ing] the child’s substantive right[s] . . . that best promote his [or her] welfare,” they would easily apply to any situation in which parents’ interests may misalign with their child’s interest.¹⁵⁰

One situation in which parents’ interests may conflict with their child’s interest is in acts related to the child’s property.¹⁵¹ Louisiana Civil Code article 229 grants parents the right and duty to carry out administrative acts over their child’s property.¹⁵² Administrative acts are those that preserve and maintain the property while not substantially changing the minor’s rights over his or her property.¹⁵³ The law does not limit parents’ ability to carry out these acts.¹⁵⁴ However, the law does limit parents’ ability to carry out non-administrative acts related to their minor’s property.¹⁵⁵ These acts, broadly categorized as acts of disposition, require parents to obtain judicial approval.¹⁵⁶ This requirement is found in Louisiana Civil Code article 230, which states:

Either parent may alienate, encumber, or lease the property of the child, compromise a claim of the child, or incur an obligation of the child for his education, support, and maintenance only with prior court approval, except as otherwise provided by law.

(10) The home, school, and community history of the child.

(11) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.

(12) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party, except when objectively substantial evidence of specific abusive, reckless, or illegal conduct has caused one party to have reasonable concerns for the child’s safety or well-being while in the care of the other party.

(13) The distance between the respective residences of the parties.

(14) The responsibility for the care and rearing of the child previously exercised by each party.

150. *See* *Shambley v. Holmes*, 821 So. 2d 21, 27 (La. Ct. App. 5th Cir. 2002) (citing *Bergeron v. Bergeron*, 492 So. 2d 1193, 1196 (La. 1986)) (using the best-interest-of-the-child standard to uphold the child’s welfare in determining child custody).

151. *See* LA. CIV. CODE art. 230. *See also* LA. CODE CIV. PROC. art. 4501 (2024).

152. *See* LA. CIV. CODE art. 229.

153. *See* LA. CIV. CODE ANN. art. 229 cmt. c (2024).

154. *See* LA. CIV. CODE art. 229.

155. *See id.* art. 230. *See also* LA. CODE CIV. PROC. art. 4501.

156. *See* LA. CODE CIV. PROC. art. 4501. *See also* LA. CIV. CODE ANN. art. 229 cmt. c. *See also id.* art. 230.

Nevertheless, a parent may expend, without court approval, the fruits of the child's property for the shared benefit of the family, excluding major children not living in the household, or for the expenses of the child's household or property.¹⁵⁷

Louisiana's Code of Civil Procedure article 4501 reiterates the requirement nearly verbatim, stating:

Except as otherwise provided by law, during marriage, the parents shall seek court approval to alienate, encumber, or lease the property of the minor, incur an obligation of the minor, or compromise a claim of the minor, in the same manner and using the same procedure as a tutor. The parents shall petition jointly, unless one parent is mentally incompetent, interdicted, or imprisoned, or is an absent person, in which case the other parent shall petition alone. One parent may also petition alone, with permission of the court, if the other parent fails or refuses to do so.¹⁵⁸

By requiring judicial review of parental acts of disposition, these articles allow a judge to uphold the interests of the child and protect against the parental misuse of the child's property.¹⁵⁹ This process of judicial approval requires parents to comply with the laws of tutorship and petition the court for approval of these acts.¹⁶⁰ Parents must explain the act of disposition they seek to carry out and their reasons for doing so.¹⁶¹ Failing to do so renders the act relatively null.¹⁶² While the language of Louisiana

157. See LA. CODE CIV. PROC. art. 4501. See also LA. CIV. CODE ANN. art. 229 cmt. c. See also LA. CIV. CODE art. 230.

158. LA. CODE CIV. PROC. art. 4501.

159. See generally *id.* See generally LA. CIV. CODE ANN. art. 230 cmt. a.

160. See generally LA. CIV. CODE ANN. art. 230 cmt. a. See generally LA. CODE CIV. PROC. art. 4501. Judicial approval is not required when the property disposed of is of lesser value. See LA. REV. STAT. §§ 9:196, 9:572 (2024). Parents acting under their parental authority do not have to seek judicial approval to dispose of less than \$15,000 of property. *Id.* § 9:572. Parents acting as natural tutors do not have to seek judicial approval to dispose of less than \$10,000 of property. *Id.* § 9:196.

161. See LA. CIV. CODE art. 4501.

162. See *id.* art. 2031 (defining a contract as “relatively null when it violates a rule intended for the protection of private parties, as when a party lacked capacity or did not give free consent at the time the contract was made”). See generally

Civil Code article 230 and Louisiana Code of Civil Procedure article 4501 mirror the laws governing tutorship, these similarities did not always exist.¹⁶³

Unlike the current articles, the prior versions of Louisiana Civil Code article 230 and Louisiana Code of Civil Procedure article 4501 only referenced the sale and mortgage of a minor's property.¹⁶⁴ However, the law governing tutorship required judicial approval of both the sale and mortgage of a minor's property *and* the compromise of a minor's legal claim.¹⁶⁵ As a result, the lack of reference to the compromise of a minor's legal claim within Louisiana Civil Code article 230's and Louisiana Code of Civil Procedure article 4501's prior versions created uncertainty.¹⁶⁶ It became unclear whether parents were only subject to the judicial approval requirements for the sale and mortgage of their minor's property, or whether parents were also subject to the judicial approval requirements for the compromise of their minor's legal claims.¹⁶⁷

The Louisiana Supreme Court attempted to answer this question in *Blades v. Southern Farm Bureau Causality Ins. Co.* and found parents were not required to seek judicial approval of the settlement of their minor's legal claims.¹⁶⁸ In doing so, the Louisiana Supreme Court distinguished the sale of a minor's property from the settlement of a minor's legal claim.¹⁶⁹ The court determined that the settlement of a minor's legal claim fell within the scope of parents' right to administer the property of their child; whereas, the sale or mortgage of the minor's property were acts of disposition that exceeded the scope of this parental right.¹⁷⁰

Finding the *Blades* decision to undermine the law's intent of protecting minors' interests, the Louisiana legislature enacted the current versions of Louisiana Civil Code article 230 and Louisiana Code of Civil

Snowden v. Huey P. Long Mem'l Hosp., 581 So. 2d 287 (La. Ct. App. 3d Cir. 1991).

163. See LA. CIV. CODE ANN. art. 230 cmt. a. See LA. CIV. CODE arts. 4501, 2462, 4265. See also LA. CIV. CODE art. 222 (1870).

164. See LA. CIV. CODE ANN. art. 230 cmt. a. See LA. CIV. CODE arts. 4501, 2462, 4265. See also LA. CIV. CODE art. 222 (1870).

165. See LA. CIV. CODE art. 353 (1870).

166. *Id.*

167. See generally *Blades v. S. Farm Bureau Cas. Ins. Co.*, 110 So. 2d 116 (La. 1959).

168. *Id.* at 119.

169. *Id.*

170. *Id.*

Procedure article 4501.¹⁷¹ Thus, the legislature overturned *Blades* and created consistency between the laws governing parental authority and tutorship by explicitly requiring judicial approval for the settlement of a minor's legal claim, the incurrence of obligations of the minor, and the sale of his or her property.¹⁷² The United States Fifth Circuit Court of Appeals justified and reiterated the significance of this expanded judicial approval requirement in *Johnson v. Ford Motor Company*.¹⁷³ In *Johnson*, a father attempted to settle the personal injury claims of his children after they were involved in a car accident.¹⁷⁴ The Fifth Circuit determined that the release signed by the father on behalf of his children lacked legal effect since the court had not authorized the release.¹⁷⁵ The Fifth Circuit cited to Louisiana's Code of Civil Procedure article 4501 and found the article to "impose upon parental administrators the obligations [of seeking] court approval . . . for actions affecting the minor's interest."¹⁷⁶ The Fifth Circuit went on to identify Louisiana courts' duty to "maintain a careful oversight of the interests of the minors brought before them by parents or tutors."¹⁷⁷ The Fifth Circuit advocated for an "increased judicial scrutiny . . . leaving the courts as the final preventative from unrestrained and unwise compromise of the minor's interests."¹⁷⁸ Louisiana Civil Code article 230, Louisiana Code of Civil Procedure article 4501, and the Fifth Circuit's interpretation of these articles make it clear that courts are the ultimate custodians of minors' legal interests.¹⁷⁹

Louisiana legislators created Louisiana Code of Civil Procedure article 4521 to further support the idea that courts act as the ultimate custodian of minors' legal interests.¹⁸⁰ This article gives courts the discretion to determine how judgement or settlement payments are made to minors.¹⁸¹ The court may order the funds to be: (1) deposited into the court's registry; (2) invested; (3) placed in a trust; (4) paid under a

171. See LA. CIV. CODE art. 230 (2024). See also LA. CODE CIV. PROC. art. 4501 (2024).

172. See LA. CIV. CODE art. 230. See also LA. CODE CIV. PROC. arts. 4501, 4262, 4265. See also *Blades*, 110 So. 2d at 119.

173. *Johnson v. Ford Motor Co.*, 707 F.2d 189, 193–95 (5th Cir. 1983).

174. *Id.* at 191.

175. *Id.* at 193–95.

176. *Id.* at 193.

177. *Id.* at 194.

178. *Id.*

179. See LA. CIV. CODE art. 230 (2024). See also LA. CODE CIV. PROC. art. 4501 (2024). See also *Johnson*, 707 F.2d at 194.

180. LA. CODE CIV. PROC. art. 4501.

181. *Id.*

structured settlement; or (5) any combination thereof.¹⁸² However, this power is discretionary, meaning courts also have the option to allow parties to determine a payment method themselves.¹⁸³ In making this determination, the court considers factors including the minor's age; the minor's current financial needs; the income and tax implications; the impact on governmental benefit eligibility; and the present value of the proposed payment arrangement.¹⁸⁴ Thus, courts act to ensure only the economic interests of minors are upheld.¹⁸⁵

C. Court's Roof, Court's Rules: Judicial Regulation on Parental Decisions

Louisiana is not unique in its judicial approval requirements for matters dealing with minors' property.¹⁸⁶ In Tennessee, legislators have implemented a nearly identical prerequisite by requiring parents to obtain judicial approval prior to the sale of minors' property.¹⁸⁷ While Tennessee courts have not discussed whether this requirement extends to the sale of minors' intangible property rights, it is presumed to apply to intangible property sales like recording and publishing agreements.¹⁸⁸

Similarly, New York and California have extended judicial review to contracts related to services provided by minors.¹⁸⁹ Judicial review of these contracts is discretionary, meaning the parties have the choice to seek judicial approval.¹⁹⁰ However, by obtaining judicial approval of these

182. *Id.*

183. *See Pike v. Calcasieu Par. Sch. Bd.*, 272 So. 3d 943, 955 (La. Ct. App. 3d Cir. 2019) (acknowledging no jurisprudence that “mandates that sums paid to a minor must be placed in one of the five allowable options”).

184. LA. CODE CIV. PROC. art. 4501.

185. *Pike*, 272 So. 3d at 955 (acknowledging article 4521's payment as “options . . . codified to expand a trial court's options to protect a minor child's funds”).

186. *See* TENN. CODE ANN. § 34-1-116 (West 2024) (requiring Tennessee courts to approve the sale of a minor's property).

187. *Id.*

188. Wallace Collins, *A Guide to Judicial Approval of Contracts for Series of Minors*, <http://wallacecollins.com> [<https://perma.cc/TZ54-M57W>] (last accessed Oct. 12, 2022) (current website access to the cited page is unavailable; however, the permalink provided accurately preserves the cited source).

189. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 2024). *See also* CAL. FAM. CODE §§ 6750–52 (West 2024).

190. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03 (“A contract . . . may be approved by the supreme court . . .”) (emphasis added). *See also* CAL. FAM.

contracts, the parties receive contractual stability.¹⁹¹ Judicial approval limits the minor's ability to disaffirm the contract on the grounds of capacity in exchange for the assurance that the minor's interests are upheld.¹⁹² As a result, the legislation's intent is to uphold the minor's well-being within contracts, as well as provide certainty to those contracting with minors.¹⁹³

To seek judicial approval in New York and California, the parties must first submit to the court a petition and a copy of the proposed contract.¹⁹⁴ New York requires the petition to disclose information such as the name, residence, and age of the minor; the name and residence of the minor's parents; a statement describing the minor's potential employment, his or her compensation, and the length of the employment; a summary of the parents' property and financial circumstances; and a schedule of the minor's projected earnings.¹⁹⁵ California's petition requires parties to fill out a form answering questions related to the nature and contents of the proposed contract.¹⁹⁶ While New York and California's procedure for seeking judicial review are similar, the states differ slightly in the requirements for approval.¹⁹⁷

New York limits judicial approval to contracts related to minors' services as actors, actresses, models, dancers, musicians, vocalists, and professional sports players.¹⁹⁸ Furthermore, New York requires these contracts to contain a term of less than three years.¹⁹⁹ Like New York,

CODE § 6751(a) (“A contract . . . cannot be disaffirmed [by the minor] . . . if the contract had been approved by the superior court.” (emphasis added)).

191. See N.Y. ARTS & CULT. AFF. LAW § 35.03. See also CAL. FAM. CODE § 6751(a).

192. See N.Y. ARTS & CULT. AFF. LAW § 35.03. See also CAL. FAM. CODE § 6751(a).

193. See *Prinze v. Jonas*, 345 N.E.2d 295, 299 (N.Y. 1976) (“a major reason for [providing judicial review to minor's entertainment-related employment contracts] was to provide a degree of certainty for parties contracting with infants . . .”).

194. N.Y. ARTS & CULT. AFF. LAW § 35.03.4(a); CAL. FAM. CODE § 6751(b).

195. N.Y. ARTS & CULT. AFF. LAW § 35.03.5.

196. *Petition to Approve Contract(s) of Minor(s)*, SUPERIOR CT. OF CA. CNTY. OF L.A., <https://www.lacourt.org/forms/pdf/FAM172.pdf> [<https://perma.cc/4PWW-UVBQ>] (last accessed Jan. 18, 2023).

197. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03. See generally CAL. FAM. CODE § 6750.

198. N.Y. ARTS & CULT. AFF. LAW § 35.03.1.

199. *Id.* § 35.03.2(d). New York's law does extend this three-year limit to seven years for minors who are represented by counsel with experience in the entertainment industry. See *id.*

California also limits this approval to entertainment-related service contracts.²⁰⁰ California's law further encompasses contracts related to the purchase, sale, or lease of minors' intellectual property rights for use in the entertainment field.²⁰¹ California's law acknowledges minors' intellectual property rights over their musical or literary works and over their "likeness, voice recording, [and] performance[s]."²⁰² However, unlike New York, California does not invoke any special term requirements within these contracts.²⁰³ Instead, these contracts are subject to the general seven-year time limitations applied to all employment contracts.²⁰⁴ While the laws defining the applicable contracts are well-defined, the judicial standard of review for these contracts remains ambiguous.²⁰⁵

It is clear both New York and California evaluate the contracts to ensure that they are fair and in the best interest of the minor.²⁰⁶ However, courts and legislatures have failed to further define how fairness and best interests are measured.²⁰⁷ New York's law indirectly references some considerations through its petition and general contractual requirements.²⁰⁸ These include: (1) the minor's age; (2) the nature of the employment; (3) the length of the employment; (4) the earning potential of the minor; and (5) the financial status of the parents.²⁰⁹ California's law makes no

200. CAL. FAM. CODE § 6750(a).

201. *Id.* § 6750(c).

202. *Id.*

203. *See id.* §§ 6750–52. *See also* Warner Bros. Pic. v. Brodel, 192 P.2d 949, 954 (Cal. 1948) (finding a minor's entertainment-related employment contract subject to the seven-year term limitation of all employment contracts).

204. CAL. LAB. CODE § 2855 (West 2024). *See Brodel*, 192 P.2d at 954 (finding a minor's entertainment-related employment contract subject to the seven-year term limitation of all employment contracts).

205. *See generally* N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 2024). *See generally* CAL. FAM. CODE §§ 6750–52.

206. N.Y. ARTS & CULT. AFF. LAW § 35.03.5(k) (providing an opportunity for petitioners to show that the contract is reasonable and in the best interest of the minor). *See Brodel*, 192 P.2d at 953 (stating that California law leads courts to review contracts to ensure the contract is fair and adequately protects the interests of the minor).

207. *See generally* N.Y. ARTS & CULT. AFF. LAW § 35.03.1. *See generally* CAL. FAM. CODE §§ 6750–52. *See also Brodel*, 192 P.2d at 953 (stating there is no legislative standard upon which the contracts are reviewed and courts have broad discretion within the contractual review process).

208. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03.5 (listing the information that must be included within the petition for judicial review).

209. *See id.*

reference to such considerations.²¹⁰ However, California courts have attempted to help define an applicable standard by considering the following: (1) the fairness and reasonableness of the contract; (2) the minor's financial interests; (3) the proper development of the minor's talents; and (4) the chances of the minor's professional success.²¹¹ Although the review process of obtaining approval remains vague, both New York and California require 15% of the minor's earnings from the contract to be set aside in a trust to be redeemed by the minor once he or she reaches the age of majority.²¹² New York's law further gives courts discretion to award the minor a larger portion of the contract's proceeds, but it limits this award to 50% of the total payment.²¹³ Meanwhile, California's laws are silent as to how the remaining 85% of the contract's proceeds are treated; however, the law grants courts power over the minor's trust.²¹⁴

Unlike New York and California, Louisiana does not require the judicial review of minors' entertainment-related employment contracts.²¹⁵ In Louisiana, employers must only obtain a written permit from the Louisiana Workforce Commission after filing an application.²¹⁶ Louisiana has followed California and New York's lead in requiring 15% of the minor's earnings to be placed into a trust account redeemable upon reaching the age of majority.²¹⁷ Under Louisiana Revised Statutes § 51:2132 and § 51:2133, a trust must be created following "[e]very contract executed by or on behalf of a minor rendering artistic or creative services for compensation" in which the minor is paid at least \$500.²¹⁸ The law provides a list, defining *artistic* or *creative services* as services of "an

210. See CAL. FAM. CODE §§ 6750–52.

211. See *Brodel*, 192 P.2d at 953.

212. N.Y. EST. POWERS & TRUSTS LAW § 7-7.1 (McKinney 2024); CAL. FAM. CODE § 6752(b)(1) (West 2024). This trust account is known as a Coogan Trust. For more information on the background of Coogan Trusts, see *Coogan Law*, SAG AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [https://perma.cc/VR5W-AKHT] (last accessed Nov. 3, 2022).

213. N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b).

214. CAL. FAM. CODE §§ 6752(4), (7).

215. See generally LA. REV. STAT. § 51:2135 (2024) (referencing only the need for approval from the Louisiana Workforce Commission for minor employment).

216. *Id.* See also *Application to Employ Minors Under the Age of 18*, LA. WORKFORCE COMM'N, <https://www.laworks.net/Downloads/WFD/MinorApplicationToEmployForm.pdf> [https://perma.cc/8LBT-HK3C] (last visited Jan. 30, 2023).

217. LA. REV. STAT. § 51:2133.

218. *Id.* See also *id.* § 51:2132.

actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist or other performer or entertainer in any motion picture, television, radio, theatrical or sports production or commercial production."²¹⁹

Although laws have been implemented to protect minors' interests in employment situations, courts consistently fail to apply judicial review to contracts dealing with the commercialization of minors' identities.²²⁰ For example, in *Shields v. Gross*, the New York Court of Appeals evaluated a minor's request for injunctive relief and damages after her mother consented to the commercial use of the minor's nude images.²²¹ There, the minor was a model who was hired to pose nude at age ten.²²² The mother consented to the commercial use of the image, resulting in the image being displayed in magazines and store-front displays.²²³ The minor contested her mother's consent by bringing contract and tort actions.²²⁴ The New York Court of Appeals found the consent valid despite failing to seek judicial approval of the contract under New York's minor employment laws.²²⁵ Justifying this decision, the Court interpreted the law as only applying to the employment of child performers, not models.²²⁶ The New York Court of Appeals further found Shields incapable of disaffirming her mother's consent.²²⁷ Based on the valid consent provided by Shield's mother and the court's unwillingness to apply New York's minor entertainment-related employment laws, the minor was denied relief and bound in perpetuity by the decisions of her mother.²²⁸

Similarly, in *Faloona by Fredrickson v. Hustler Magazine, Inc.*, a mother gave unrestricted consent to the use of nude images of her children in a book entitled the *Mediations on the Gift of Sexuality*.²²⁹ Interested in

219. *Id.* § 51:2132(b).

220. *See Shields v. Gross*, 448 N.E.2d 108, 111 (N.Y. 1983) (finding a minor unable to disaffirm the parent's consent to use her image). *See also Faloona by Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000, 1005 (5th Cir. 1986) (providing no relief to minors whose parent consented to the use of their nude images).

221. *Shields*, 448 N.E.2d at 108.

222. *Id.* at 109.

223. *Id.*

224. *Id.*

225. *Id.* at 111.

226. *Id.*

227. *Id.*

228. Since the Court failed to apply minor entertainment-related service contract laws, New York's three-year contract limit did not apply. *See generally id.*

229. *Faloona by Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000, 1002-03 (5th Cir. 1986).

reviewing the book in its magazine, Hustler purchased the rights to the book's images and used the images within its review article.²³⁰ In response, the children brought suit against the magazine, alleging violations of their privacy rights through the misappropriation of their images.²³¹ The minors argued that California law permitted them to disaffirm their mother's consent and urged the United States Fifth Circuit Court of Appeals to require the "judicial approval of any photographic release before the nude photograph of a child may be published."²³² The court found the minors were incapable of disaffirming the consent of their mother.²³³ Furthermore, the Fifth Circuit found that California's law at that time did not call for judicial intervention in authorizing the use of minors' images.²³⁴ Therefore, the court declined to require judicial approval of the publication of the minor's photographs.²³⁵ Although California's minor entertainment-related employment law now includes contracts related to a minor's likeness, *Faloon*'s outcome serves to show the somber effects of failing to review a parent's consent to the use of his or her minor's identity.²³⁶ Together, *Faloon* and *Shields* show a reoccurring issue—minors bound by the questionable decisions of their parents resulting in the loss of the minors' rights over their names and images.²³⁷

III. HOW MUCH IS A PICTURE WORTH?

As seen in *Shields* and *Faloon*, parents' unchecked power to consent to the commercialization of their minor's identity can lead to a minor losing control over his or her identity in perpetuity.²³⁸ Louisiana's right of publicity law provides individuals a property right in their commercial identities.²³⁹ The law encourages individuals to exercise this property right by codifying an individual's ability to license, transfer, and assign his or her NIL.²⁴⁰ However, like the laws applied in *Shields* and *Faloon*, Louisiana's law fails to restrict parents' authority to enter into NIL

230. *Id.*

231. *Id.*

232. *Id.* at 1004.

233. *Id.* at 1005.

234. *Id.*

235. *Id.*

236. See CAL. FAM. CODE § 6750(a) (West 2024).

237. See *Faloon*, 799 F.2d at 1000. See generally *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983).

238. See *Faloon*, 799 F.2d at 1000. See generally *Shields*, 448 N.E.2d 108.

239. LA. REV. STAT. § 51:470.3(C) (2024).

240. *Id.*

contracts on behalf of their minor children.²⁴¹ In Louisiana, the commercialization of a minor's identity is only contingent on the parents' consent.²⁴² In allowing parents to control their minor's NIL, the law aims to protect minors.²⁴³ However, this goal is only achieved when parents act in their minor's best interest.²⁴⁴ Unfortunately, there are situations in which parents fail to act in the best interest of their minor, either by attempting to advance their own financial interests or by failing to foresee the legal effects of their actions.²⁴⁵ These deviations from the minor's best interest can result in the minor being bound to exclusive and perpetual contracts beyond his or her minority.²⁴⁶

While Louisiana has not yet seen a case arising from a minor's NIL contract, it is inevitable that Louisiana courts will be presented with the issue in the near future.²⁴⁷ Louisiana is seeing a rise in the commercialization of minors' identities following the LHSAA's decision to allow high school-athletes to commercialize their NIL.²⁴⁸ However, LHSAA's decision is not the sole cause of this increase in minors' NIL

241. *See id.* § 51:470.3(D).

242. *See id.*

243. *Id.* § 51:470.3(C). *See Dolgin, supra* note 111, at 378 (discussing the traditional model of authority and its theory that "strong parental control safeguard[s] the best interests of children.").

244. *See generally* *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983). *See generally* *Faloon* by *Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000 (5th Cir. 1986) (both showing the grave effects of parents acting outside of the minor's best interest).

245. *See Shields*, 448 N.E.2d at 111 (finding a minor unable to disaffirm the parent's consent to use her image). *See also Faloon*, 799 F.2d at 1005 (providing no relief to minors whose parent consented to the use of their nude images).

246. *See Shields*, 448 N.E.2d at 111 (finding a minor unable to disaffirm the parent's consent to use her image). *See also Faloon*, 799 F.2d at 1005 (providing no relief to minors whose parent consented to the use of their nude images).

247. *See* Jon Solomon, *Ready or Not, High School NIL Is Here*, GLOB. SPORT MATTERS, <https://globalsportmatters.com/youth/2021/12/07/high-school-sports-nil-mikey-williams/> [<https://perma.cc/J5SG-K2C4>] (discussing the rising rates of minor NIL deals).

248. *See Avery, supra* note 25. *See also New Orleans Wrestler Richie Clementi Reaches Four-Figure Deal to Become First Louisiana High School Athlete to Sign NIL Deal, supra* note 25 (both discussing Louisiana high school student athletes' NIL deals).

contracts.²⁴⁹ The rising use of social media platforms amongst minors also contributes to this increase in minors' NIL contracts.²⁵⁰

It is only a matter of time until a situation arises in which parents act outside of their minor's best interest in a NIL contract; therefore, it is imperative that Louisiana courts review parents' consent in such contracts. When parents are the bad actors in situations related to a minor, the minor likely has no one to advocate on his or her behalf.²⁵¹ In these situations, courts have assumed the role of advocating for the minor's best interest.²⁵² A highly publicized example is Louisiana native Britney Spears.²⁵³ Britney Spears was subject to a conservatorship which allowed her father to control nearly every aspect of her life.²⁵⁴ Britney's father abused this power and controlled not only her \$60 million fortune, but also who she was allowed to be friends with.²⁵⁵ This serves as a clear example of both economic and non-economic interests being misappropriated by a parent.²⁵⁶ When Britney tried to escape her father's control, she struggled to do so as she lacked conservatorship support.²⁵⁷ The court ultimately acted as the custodian of her best interest and ended her father's conservatorship.²⁵⁸ Britney's situation is a prime example of the struggle to escape the overreaching actions of parents and the need for courts to advocate for those who cannot advocate for themselves—especially minors.²⁵⁹

Courts advocate for minors by requiring judicial review of minors' contracts, yet courts have failed to consistently extend judicial review to

249. See Crabtree, *supra* note 3; Moyer, *supra* note 24; McDaniel, *supra* note 24.

250. See Crabtree, *supra* note 3; Moyer, *supra* note 24; McDaniel, *supra* note 24.

251. A bad actor does not necessarily refer to bad-faith actors only. This broad category also encompasses actors who are ignorant of the law and do not know the legal effects of their actions.

252. See *Johnson v. Ford Motor Co.*, 707 F.2d 189, 194 (5th Cir. 1983) (discussing the court's role of preventing parental decisions from adversely affecting minors).

253. *Britney Spears: Singer's conservatorship case explained*, BBC NEWS (Nov. 12, 2021), <https://www.bbc.com/news/world-us-canada-53494405> [<https://perma.cc/DYU3-AFAT>].

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

minors' NIL contracts.²⁶⁰ While other states' courts believe extending judicial review beyond minors' employment contracts would stretch the law too far, Louisiana's judicial review requirement dealing with the disposition of minors' property applies to minors' NIL contracts with relatively little stretching.²⁶¹ However, the precautions Louisiana implements must consider all parties' interests by reaching a solution that is equitable to all parties involved. To do so, courts must pay special attention to the rights of each party to ensure the constitutional rights of parents are maintained, uphold the best interest of the minor, and provide certainty to contracting parties. Courts must also be conscious of the judicial review's effects on the barriers to contracting by focusing on the added costs, time, and difficulty within the parties' contracting process. Furthermore, courts must be aware of the judicial review's effects on judicial economy to avoid overwhelming the judicial system with extensive and time-consuming matters.

IV. PUTTING PARENTS IN TIME-OUT—REVIEWING PARENTAL CONSENT TO MINORS' NIL CONTRACTS

Louisiana courts do not have to look far for the authorization to review parental consent in minors' NIL contracts.²⁶² Louisiana has continuously acted to uphold minors' best interests by requiring the judicial approval of actions related to minors.²⁶³ The most relevant example is found in Louisiana Civil Code article 230.²⁶⁴ Article 230 requires the judicial approval of any sale, lease, or encumbrance of a minor's property.²⁶⁵ While the article primarily applies to minors' physical property and legal claims, the article can easily be applied to the transfer and license of minors' identity rights by looking to other states' contractual review

260. See N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 2024). See also CAL. FAM. CODE §§ 6750–52 (West 2024). See generally *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983). See generally *Faloon* by *Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000 (5th Cir. 1986).

261. See generally *Shields*, 448 N.E.2d 108; *Faloon*, 799 F.2d 1000. See also LA. CIV. CODE art. 230 (2024); LA. CODE CIV. PROC. art. 4501 (2024).

262. See LA. CIV. CODE art. 230; LA. CODE CIV. PROC. art. 4501 (giving courts the power to uphold minors' interest(s) through judicial approval).

263. See LA. CIV. CODE art. 230; LA. CODE CIV. PROC. art. 4501 (giving courts the power to uphold minors' interest(s) through judicial approval).

264. See LA. CIV. CODE art. 230 (giving courts the power to uphold minors' interest(s) through judicial review of the sale and disposition of minors' property).

265. *Id.* See also LA. CODE CIV. PROC. art. 4501.

procedures.²⁶⁶ Applying judicial review to minors' NIL contracts will uphold the language and intent of Louisiana's laws; remain consistent with the trends of other states; and efficiently balance the rights of all parties with the potential effects on judicial economy. To achieve this balance, a three-step, factor-based review process should be implemented to uphold the best interest of the minor.

A. Giving them the Boot: Applying Louisiana's Preexisting Judicial Review Laws

In an effort to protect minors, the Louisiana legislature has required courts to approve certain acts related to minors.²⁶⁷ Of these acts, the disposition of minors' property presents issues most similar to those presented by minors' NIL contracts. In both cases, parents are put in a position where they must make potentially uninformed legal decisions that affect their minor's interests. Furthermore, parents are in the position to personally benefit from the exploitation of their minor's rights. To prevent parents' selfish or ill-informed decision from adversely affecting their minor's legal and personal interests, the legislature implemented judicial review of the disposition of minors' property.²⁶⁸ Based on the similar issues presented in both situations, Louisiana courts should apply the same practice of judicial review to minors' NIL contracts.

Louisiana Civil Code article 230 requires judicial review of acts of disposition of a minor's property.²⁶⁹ The article gives parents the freedom to "alienate, encumber, or lease the property of the child, compromise a claim of the child, or incur an obligation of the child for his education, support, and maintenance[.]" but only after obtaining prior court approval.²⁷⁰ Therefore, this law upholds the parents' right to govern their minor by expressly granting parents the right to make choices related to their minor's property.²⁷¹ However, the law also acknowledges the potentially conflicting interests of the parents and minor by granting courts the task of ensuring the minor's interests are upheld.²⁷² Applied to a

266. See N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 2024). See also CAL. FAM. CODE §§ 6750–52 (West 2024).

267. See LA. CIV. CODE art. 230. See also LA. CODE CIV. PROC. art. 4501.

268. See LA. CIV. CODE art. 230. See also LA. CODE CIV. PROC. art. 4501.

269. See LA. CIV. CODE art. 230. See also LA. CODE CIV. PROC. art. 4501.

270. LA. CIV. CODE art. 230.

271. See *id.*

272. See *id.* See also LA. CODE CIV. PROC. art. 4501; *Johnson v. Ford Motor Co.*, 707 F.2d 189, 194 (5th Cir. 1983) (finding that it was the court's duty to "maintain a careful oversight of the interests of [a minor.]").

minor's NIL contract, the concept of judicial review upholds the parents' right to ultimately decide whether to enter into the contract, while also ensuring the contract is within the minor's best interest. As a result, applying this law to minors' NIL contracts respects the law's intent of upholding both the rights and interests of parents and minors alike.

Furthermore, applying article 230's practice of judicial review to minors' NIL contracts complies with the article's literal language.²⁷³ Article 230 requires parents to obtain judicial approval prior to carrying out any act of disposition over their minor's property.²⁷⁴ A minor's right to his or her commercial identity falls within the scope of this article, as an individual's interest in his or her commercial identity is defined as a property right.²⁷⁵ While it is tempting to imagine article 230 as applying to only corporeal property, the article's language does not draw a distinction between corporeal and incorporeal property.²⁷⁶ To the contrary, the article establishes its intent to extend to incorporeal property by expressly referencing interests in intangible things, such as the interest in a legal claim.²⁷⁷ It is clear the law sees both corporeal and incorporeal property as presenting the same issues under which the same solution would govern.²⁷⁸ Therefore, under article 230, any disposition of a minor's NIL would warrant judicial approval.²⁷⁹ Such acts of disposition include any act that does not aim to maintain or preserve the minor's right without substantial modification thereto.²⁸⁰ The transfer or license of a minor's commercial identity right would fall under this classification, as these acts surpass the simple maintenance or preservation of the minor's right over his or her commercial identity—these acts instead substantially limit the minor's right over the use of his or her NIL. As a result, article 230 applies to any transfer or license of a minor's NIL, meaning courts must require parties to seek judicial review of minors' NIL contracts.²⁸¹

273. See LA. CIV. CODE art. 230.

274. *Id.*

275. LA. REV. STAT. § 51:470.3(A) (2024).

276. See LA. CIV. CODE art. 230. Louisiana law defines tangible things as corporeals and intangible things as incorporeals. See *id.* art. 461.

277. See *id.* art. 230.

278. See generally *id.*

279. See LA. REV. STAT. § 51:470.1. See also Broyles, *supra* note 95, at 857–60.

280. See LA. CIV. CODE ANN. art. 229 cmt. c (2024).

281. See *id.*

B. It's as easy as 1, 2, 3: A Three-Step, Factor-Based Judicial Review Process

Although Louisiana law addresses the need for judicial review of minors' contracts and provides general petition requirements, Louisiana law is silent as to how to execute this judicial review.²⁸² As a result, Louisiana's courts should look to other states' procedures governing the review of minors' contracts.²⁸³ California and New York laws allow courts to review minors' entertainment-related employment contracts to ensure minors' interests are upheld and provide contractual stability to those contracting with minors.²⁸⁴ California has further applied this review process to contracts related to the sale and license of minors' entertainment-related intellectual property rights.²⁸⁵ It is clear that these courts share Louisiana's goal of maintaining minors' well-being while also balancing the interests of all parties involved in the contract.²⁸⁶ The parties' interests include: parents' monetary interests in the proceeds of the contract; parents' interests in maintaining parental rights over their minor; minors' monetary interests in the proceeds of the contract; minors' interests in maintaining their well-being; and the contracting parties' interests in entering into a binding contract with certainty.²⁸⁷ While New York and California laws certainly give more guidance than Louisiana law in weighing these interests, New York and California have not specified a clear standard of review for these contracts.²⁸⁸ However, by using New York and California's laws as a starting point, Louisiana can establish a clear standard of review. This defined review standard will not only provide consistency across Louisiana courts' review processes, but it will also provide contracting parties criteria on which to structure their NIL contracts.

282. *See generally id.* *See also* LA. CODE CIV. PROC. art. 4501 (2024) (both failing to address the process and judicial review standard).

283. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 2024). *See also* CAL. FAM. CODE §§ 6750–52 (West 2024).

284. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03. *See also* CAL. FAM. CODE §§ 6750–52.

285. CAL. FAM. CODE § 6750.

286. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03; CAL. FAM. CODE §§ 6750–52.

287. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03; CAL. FAM. CODE §§ 6750–52.

288. *Id.* *See also* Warner Bros. Pic. v. Brodel, 192 P.2d 949, 953 (Cal. 1948) (stating that there is no legislative standard upon which the contracts are reviewed and courts have broad discretion within the contractual review process).

Although New York and California have failed to clearly define a standard of review for minors' entertainment-related employment contracts, broad considerations may be derived from these states' laws.²⁸⁹ These considerations include: (1) the well-being of the minor; (2) the reasonableness of the contract; and (3) the payment of the contract.²⁹⁰ Louisiana courts should utilize these three considerations when analyzing minors' NIL contracts. First, the court must determine whether the minor's NIL should be commercialized by asking whether the contract upholds the minor's well-being. If it is determined that the minor's NIL should be commercialized, the court must review the proposed contract to ensure it is reasonable. Finally, if the contract is reasonable, the court must determine how the contract's payment is distributed. To make these decisions, factors must be established at each step of the judicial review process to ensure the court acts in the minor's best interest while also balancing the other parties' interests.

1. Mother Doesn't Always Know Best: Is commercialization in the best interest of the minor?

The law continuously upholds minors' interests by appointing courts as the ultimate custodians of minors' best interests.²⁹¹ As a result, Louisiana courts should begin their analysis by asking whether the minor's well-being is honored within the contract. When inquiring into a minor's well-being within contracts, New York's and California's courts and legislatures address two concerns: (1) the minor's economic well-being, and (2) the minor's non-economic well-being.²⁹² These two concerns should also be voiced by Louisiana courts within their evaluation of minors' NIL contracts.

In accounting for both the economic and non-economic well-being of the minor, New York's and California's courts and legislatures have emphasized the age of the minor; the nature of the employment; the

289. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03; CAL. FAM. CODE §§ 6750–52. See also *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

290. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03; CAL. FAM. CODE §§ 6750–52. See also *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

291. Dolgin, *supra* note 111, at 374–76 (concluding the court ultimately acts as the custodian of a minor's best interest).

292. See N.Y. ARTS & CULT. AFF. LAW § 35.03(5) (listing petition requirements which are presumptively considered by the court in determining whether the contract upholds the minor's interest).

minor's development of his or her talents; the chances of the minor's professional success; and the interests of the parent as potential considerations within minors' contracts.²⁹³ Louisiana's legislature and courts have established and applied similar considerations when determining a minor's well-being within child custody cases through the best-interest-of-the-child standard.²⁹⁴ While not all of these factors are relevant to minors' NIL contracts, some factors are relevant and can be adopted to use in the court's analysis of such contracts. These factors include: the potential abuse of the minor's rights; the intent of the parents in acting on behalf of the minor; the preferences of the minor; the financial needs of the minor; and the disposition of parents to continue to give love and affection to the minor.²⁹⁵

Combining the relevant considerations from Louisiana and other states results in the following economic factors: (1) the financial situation of the minor, and (2) the chances of the minor's professional success.²⁹⁶ Furthermore, the following non-economic factors are derived: (1) the age of the minor; (2) the minor's preferences; (3) the nature of the employment; (4) the minor's development of his or her talents; (5) the potential for abuse of the minor's rights; (6) the intent of the parents in acting on behalf of the minor; and (7) the disposition of the parents to continue to give love and affection to the minor.²⁹⁷ An application of these factors ensures that every aspect of a minor's well-being is upheld.

a. Economic Factors

In determining whether the commercialization of a minor's identity is in the best pecuniary interest of the minor, Louisiana courts should consider economic factors such as: (1) the financial situation of the minor, and (2) the chances of the minor's professional success.²⁹⁸ In evaluating

293. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03. See also CAL. FAM. CODE §§ 6750–52; *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

294. See LA. CIV. CODE art. 134 (2024).

295. *Id.* art. 134(1), (3), (7), (11).

296. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03(5). See also LA. CIV. CODE art. 134; *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

297. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03(5). See also LA. CIV. CODE art. 134; *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

298. See LA. CIV. CODE art. 134(A)(4) (using the child's access to food, clothing, and other material needs as a factor in determining parental custody).

the minor's financial situation, the court should consider the minor's access to essentials such as food, clothing, and shelter.²⁹⁹ It is apparent that minors have a substantial interest in accessing these life-sustaining necessities, so much so that the need for these necessities supersedes their interest in maintaining absolute control over their NIL. Accordingly, if the potential contract would allow the minor access to these life-sustaining necessities that the minor would otherwise not have access to, then this factor would weigh largely in favor of finding that the commercialization of the minor's NIL was in his or her best interest.³⁰⁰

Looking at the chances of the minor's professional success, the court should consider the earning-potential of the minor.³⁰¹ In doing so, the court should specifically look to the NIL valuation of the minor. Certainly, the minor has a monetary interest in profiting from his or her NIL. However, this monetary interest must be weighed against the minor's interest in retaining absolute control over his or her NIL.

b. Non-Economic Factors

In determining whether the commercialization of the minor's identity is in the best non-pecuniary interest of the minor, Louisiana courts should consider non-economic factors such as: (1) the reasonable preferences of the minor and the age of the minor; (2) the nature of the use of the minor's identity and the potential for abuse of the minor's rights; (3) the development of the minor's opportunities; (4) the intent of the parents in acting on behalf of the minor; and (5) the disposition of the parents to continue to give love and affection to the minor.³⁰² In evaluating the reasonable preferences of a minor, the court must also consider the age of the minor.³⁰³ Specifically, the court should look to the minor's ability to

See also Brodel, 192 P.2d at 953 (voicing the professional success of the minor as a consideration in evaluating minors' entertainment-related employment contracts).

299. *See* LA. CIV. CODE. art. 134(4) (using the child's access to food, clothing, and other material needs as a factor in determining parental custody).

300. *See id.*

301. *See Brodel*, 192 P.2d at 953 (voicing the professional success of the minor as a consideration in evaluating minors' entertainment-related employment contracts).

302. *See generally* N.Y. ARTS & CULT. AFF. LAW § 35.03(5). *See* LA. CIV. CODE art. 134(1), (3), (7), (11); *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

303. *See* N.Y. ARTS & CULT. AFF. LAW § 35.03(5) (requiring the minor's age be included within the petition to seek judicial review of the minor's contract).

rationality justify his or her preferences. If the court ultimately finds that a minor is mature enough to make rational decisions on his or her own, then the court should heavily consider and weigh the reasonable preferences of the minor. In doing so, the court respects and upholds the minor's right to autonomy. However, to ensure that courts also consider the parents' right to make decisions on behalf of their minor, the court should consider the minor's reasonable preferences in light of the additional non-economic factors.

When looking at the potential abuse of the minor's identity, the court must look to the general nature of the use of the minor's identity and pay special attention to the context in which the identity is being used.³⁰⁴ If the minor's identity is used for an illicit purpose, then the factor would weigh against the approval of the contract. Conversely, if the minor's identity is used for a non-illicit purpose, then the factor would weigh in favor of the approval of the contract. By looking to the context in which the minor's identity is being used, the court upholds the minor's right to be free from emotional harm through the use of his or her identity.³⁰⁵

In considering the development of the minor's opportunities, the court should look to the contract's effects on the development of the minor's career.³⁰⁶ The court must ask whether entering the contract would have adverse effects on the minor's future professional opportunities. In doing so, the court pays homage to the minor's professional well-being and upholds the minor's interests in furthering his or her career.

When balancing the moral intent of the parents, the court should look to the parents' subjective intent of entering into the contract on their minor child's behalf.³⁰⁷ A good moral intent, evidenced through a good faith belief the contract would benefit the minor's well-being, is not wholly dispositive. The court must consider this good faith in light of the remaining factors. However, a bad moral intent, evidenced through the parents' motive to personally benefit from the contract, would weigh heavily against a finding that the contract upholds the minor's well-being. By accounting for the parents' intent in entering the contract, the court

304. *See id.* (requiring a description of the minor's employment be included within the petition to seek judicial review of the minor's contract).

305. *See generally* *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983) (discussing the embarrassment of a child actress after her nude photographs were displayed in store fronts on Fifth Avenue in New York City).

306. *See Brodel*, 192 P.2d at 953 (voicing the professional success of the minor as a consideration in evaluating minors' entertainment-related employment contracts).

307. *See* LA. CIV. CODE art. 134(7) (looking to the moral fitness of the parent when determining parental custody).

gains insight into the motivating factors of entering into the contract. In turn, the court more accurately interprets the contract in the context of the minor's well-being.

In assessing the disposition of the parents to continue to give love and affection to their minor, the court should consider the proposed contract's effects on the familial relationship between the parent and the minor.³⁰⁸ This consideration is most relevant when the minor's preferences conflict with the parents' preferences. The court should consider whether abiding by the wishes of the parents would significantly alter or end the minor's relationship with his or her parents. To uphold the minor's interest in maintaining parental guidance and the parents' right to have a meaningful relationship with their minor, the court should avoid making a decision that would negatively impact the parent-child relationship.³⁰⁹

2. Sugar, Spice, and Everything Nice: Is the proposed contract equitable to all parties?

Although the court is especially concerned with upholding the well-being of minors, the court is also interested in upholding fair and equitable results.³¹⁰ Accordingly, the court must ensure that the contract is reasonable for all parties involved.³¹¹ After determining that entering into a NIL contract is within the minor's best interests, the court must ask whether the contract itself is reasonable.³¹² In doing so, the court protects all parties: the parent from being taken advantage of by companies and other contracting parties; the minor from relying on his or her parents to make sound legal choices on his or her behalf; and the companies from legal issues that may arise regarding the contract's enforceability.

When inquiring about the reasonableness of minors' contracts, New York and California courts and legislatures have emphasized the

308. *See id.* art. 134(3).

309. *See id.* arts. 223–25, 229 (establishing a parent's obligation to his or her child). *See also* *In re Interest of A.C.*, 643 So. 2d 719, 724 (La. 1994) (discussing the parent's right to have a meaningful relationship with his or her child).

310. *See* LA. CIV. CODE art. 2055 (stating “no one is allowed to take unfair advantage of another”).

311. *See Brodel*, 192 P.2d at 953 (voicing concerns about the reasonableness of the contract for all parties).

312. *Id.* (examining a minor's entertainment-related employment contract and noting that the legislature was concerned with the contract's reasonableness for all parties).

contract's term and the earnings of the minor.³¹³ However, NIL contracts raise additional concerns related to the limitations on the use of the minor's identity and the exclusivity of the contract.³¹⁴ As a result, in considering the reasonableness of the contract, the court should look to the following factors: (1) the term of the contract; (2) the earnings of the minor; (3) the limitations on the use of the minor's identity; and (4) the exclusivity of the contract.³¹⁵

When looking to the term of the contract, the court should ensure the contract will not remain valid in perpetuity.³¹⁶ New York requires minors' entertainment-related employment contracts to span no longer than three years.³¹⁷ California has not specified a maximum term for minors' entertainment-related employment contracts, but California courts have acknowledged the need for a definite term.³¹⁸ In accounting for such need, California applies the standard term limits of all employment contracts and grants courts broad discretion in examining the reasonableness of the contract for all parties.³¹⁹ Following this justification, Louisiana courts should not define a maximum term, but instead ensure an appropriate term is defined. While companies would prefer to have indefinite terms, such

313. See N.Y. ARTS & CULT. AFF. LAW § 35.03.5(k) (McKinney 2024) (limiting minor entertainment-related employment contracts to three years with some exceptions). See also *Brodel*, 192 P.2d at 953 (applying the general employment contract term limit of seven years to a minor's entertainment-related employment contract).

314. See Tay Hawker, *NIL Contract Considerations: Exclusivity*, NIL NETWORK (May 16, 2022), <https://www.nilnetwork.com/nil-contract-for-college-athletes/> [https://perma.cc/6RMF-SE8C].

315. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03.5 (requiring the length of the contract and earnings of the minor to be disclosed within the petition seeking judicial review). See *Brodel*, 192 P.2d at 953 (considering the length of the contract and professional success of the minor as considerations within the minor's entertainment-related employment contract). See also Hawker, *supra* note 314.

316. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03.2(d) (defining a limit on the minor's entertainment-related employment contract); *Brodel*, 192 P.2d at 953 (acknowledging a limit on the employment contract).

317. N.Y. ARTS & CULT. AFF. LAW § 35.03.2(d). New York's law does extend this three-year limit to seven years for minors who are represented by counsel with experience in the entertainment-related industry.

318. *Brodel*, 192 P.2d at 953 (acknowledging a limit on the employment contract employed through general employment law).

319. *Id.* (examining a minor's entertainment-related employment contract, applying general state employment law, and noting that the legislature was concerned with the contract's reasonableness for all parties).

application would cause the minor to lose control over the choice to commercialize his or her identity.³²⁰ In ensuring the contract is not indefinite, the court guarantees that the minor maintains his or her choice to relicense his or her identity after the contract expires. As a result, the minor's desire to maintain self-autonomy further justifies the need to look at the length of the contract to ensure an appropriate term exists.

When considering the earnings of the minor, the court should ensure the monetary award granted through the contract is reasonable.³²¹ To do so, the court should compare the amount paid to the minor with the minor's NIL valuation. Furthermore, the court should look to similar contracts in the industry and ensure the proposed contract is comparable. When examining comparable contracts, the court should strive to compare the proposed contract with contracts of similarly valued or similarly situated minors. To do so, the court should compare the contracts' terms, the contracts' limits on the use of the minor's identity, and the contracts' exclusivity. Accordingly, a contract that closely aligns with the minor's NIL valuation in light of similar contracts within the industry would weigh in favor of reasonableness, while a contract that does not align with these benchmarks must be further considered in light of the remaining factors.

In examining the limitations on the use of the minor's identity, the court should determine whether the contract limits the use of the minor's identity to a particular industry or category of use.³²² In failing to restrict the use of the minor's identity to a particular industry or category, the minor's control over his or her identity is compromised. However, companies have an interest in acquiring an unrestricted use of the minor's identity since it opens additional marketing uses. As a result, an unrestricted use of a minor's identity should not itself result in a finding of unreasonableness. Instead, the court should consider this factor in light of the length, price, and exclusiveness of the proposed contract.

When looking to the exclusivity of the contract, the court should determine whether an exclusive contract is reasonable under the specific facts and circumstances presented.³²³ Like unrestricted uses of the minor's identity, an exclusive license restricts the minor's control over his or her

320. See Hawker, *supra* note 314.

321. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03.5 (requiring the minor's earnings to be disclosed within the petition seeking judicial review). See also Brodel, 192 P.2d at 953 (considering the reasonableness of the contract for all parties).

322. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03.5 (requiring parties to disclose the nature of the minor's employment).

323. See Brodel, 192 P.2d at 953 (finding courts to have broad discretion in considering the reasonableness of the contract for all parties).

identity since the contract's exclusivity prevents the minor from licensing his or her identity to another party.³²⁴ However, companies have a substantial interest in maintaining an exclusive license when it comes to NIL contracts, as exclusive partnerships provide more effective marketing strategies and allow companies to more effectively compete against rivals.³²⁵ Thus, exclusivity is often where the contract gains value for companies.³²⁶ As a result, an exclusive contract should not be dispositive of an unreasonable contract. Instead, like the limitations on the use of the minor's identity, the court should consider this factor in light of the longevity and price of the proposed contract.

3. *Grab Your Piggybank: How should the payment be made?*

If the court ultimately concludes that the contract should be approved, the court may determine how the payment to the minor is distributed and subsequently managed.³²⁷ Louisiana Revised Statutes § 51:2133 requires 15% of compensation earned through “contract[s] executed by or on behalf of a minor rendering artistic or creative services” to be placed into a trust account for the minor to redeem upon the age of majority.³²⁸ While contracts related to the commercialization of a minor's identity do not fall under the *artistic* or *creative services* defined by the statute, the statute should still apply.³²⁹ The legislature implemented Louisiana Revised Statutes § 51:2133 to protect minors' economic interests in their employment earnings.³³⁰ Like employment contracts, minors have an economic interest in the earnings of their NIL contracts. As a result, courts should apply Louisiana Revised Statutes § 51:2133 to the proceeds earned through the commercialization of minors' NIL and require a minimum of 15% of the contractual proceeds to go directly to the minor in order to assure the minor gains an economic benefit from the contract.³³¹ However, the court should not stop there. The court should further exercise discretion

324. *See generally* Hawker, *supra* note 314.

325. *See generally* *Traps in NIL Agreements: Watch Out for Perpetual Licenses and Exclusivity*, BG&S (Sept. 14, 2021), <https://bgsfirm.com/traps-in-nil-agreements-watch-out-for-perpetual-licenses-and-exclusivity/> [<https://perma.cc/9F4S-RQCQ>] (discussing exclusive NIL contracts).

326. *Id.*

327. *See* LA. CODE CIV. PROC. art. 4521 (2024).

328. LA. REV. STAT. § 51:2133 (2024).

329. *Id.*

330. *Id.*

331. *Id.*

in determining how the remaining 85% of the contractual proceeds are distributed.

Both New York and California require at least 15% of the contract's proceeds to be placed in a trust for the minor; however, the states are not in agreement on how to treat the remaining 85% of the contract's proceeds.³³² California's law makes no reference to the remaining 85% of the proceeds, but the law does grant the court jurisdiction over the trust and permits the court to amend the trust.³³³ Concurrently, New York's law more clearly defines the court's power by stating that the court may set aside additional earnings for the minor.³³⁴ The New York law provides several considerations the court may account for when considering whether to set aside additional earnings such as the financial circumstances of the parents; the needs of the parents' additional children; and the minor's marital status.³³⁵ Although New York's law provides the court discretion to award the minor additional proceeds from the remaining 85%, the law limits this amount to 50% of the contract's proceeds.³³⁶

As the ultimate custodian of minors' rights, Louisiana courts should follow New York's lead and determine how the remaining 85% of the contractual proceeds are distributed.³³⁷ However, unlike New York, Louisiana should not limit the court's ability to advocate for minors' rights by limiting the amount apportioned to minors. The Louisiana legislature acknowledged the need for this unrestrained judicial discretion by granting courts the power to govern how the payment of minors' legal claims are made.³³⁸ Louisiana Code of Civil Procedure article 4521 defines the factors used by the court to determine whether judicial intervention is needed in determining how the payment of a minor's claim should be made.³³⁹ These factors include the "[a]ge and life expectancy of the minor"; "[c]urrent and anticipated financial needs of the minor";

332. See N.Y. EST. POWERS & TRUSTS LAW § 7-7.1 (McKinney 2024). See also CAL. FAM. CODE § 6752(b)(1) (West 2024). See also N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b) (McKinney 2024).

333. See CAL. FAM. CODE § 6752(b)(1).

334. See N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b).

335. See *id.*

336. See *id.*

337. See LA. CIV. CODE art. 230 (2024). See also LA. CODE CIV. PROC. art. 4501 (2024). See also N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b); *Johnson v. Ford Motor Co.*, 707 F.2d 189, 194 (5th Cir. 1983) (finding that it was the court's duty to "maintain a careful oversight of the interests of [a minor.]").

338. LA. CODE CIV. PROC. art. 4521.

339. See *id.*

“[i]ncome and estate tax implications”; “[i]mpact on eligibility for government benefits”; and the “[p]resent value of the proposed payment arrangement and the method by which the value is calculated.”³⁴⁰ To uphold both the parent and minor’s interests in profiting from the proposed contract, the following New York and Louisiana factors should be considered when determining the disbursement of the contract’s proceeds: (1) the financial circumstances of the parents; (2) the needs of the parents’ additional children; (3) the minor’s marital status and age; (4) the financial needs of the minor; (5) tax implications; (6) impact on potential government benefits; and (7) the value of the payment arrangement.³⁴¹

C. Having Their Cake and Eating It Too: Court’s Procedural Considerations for Judicial Efficiency

The largest concern in applying judicial review involves its enforcement. While New York and California’s laws grant parents and companies the choice of seeking judicial approval, Louisiana’s preexisting law makes such judicial approval a requirement.³⁴² Non-compliance with Louisiana Civil Code article 230 renders a contract relatively null.³⁴³ As a result, minors would be able to successfully attack unapproved NIL contracts on the grounds of nullity.³⁴⁴ However, establishing the proposed review standard would encourage parties to comply with the required judicial review process. By providing transparency within the review process, parties will not feel blindsided by ambiguous law. Instead, the parties act as active participants within the review process and use the clearly defined standard of review as a guide in creating the proposed contract. Thus, parties will be encouraged to comply with the judicial review requirements due to ensured predictability and consistency.

Applying the more detailed petition-commenced review steps of New York and California encourages parties to comply with the judicial review

340. *Id.*

341. *See id.* *See also* N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b).

342. *See* LA. CIV. CODE art. 230.

343. *Id.* arts. 2031, 2033. *See generally* Snowden v. Huey P. Long Mem’l Hosp., 581 So. 2d 287 (La. Ct. App. 3d Cir. 1991) (annulling a minor’s settlement agreement after the minor’s parent failed to obtain judicial approval of the settlement agreement).

344. LA. CIV. CODE arts. 2031, 2033. *See generally* Snowden, 581 So. 2d 287 (annulling a minor’s settlement agreement after the minor’s parent failed to obtain judicial approval of the settlement agreement).

requirement as well.³⁴⁵ Supplying parties with a pre-made petition form to submit to the court adds convenience to the process. The parties do not have to belabor over what information to provide the court, and the courts do not have to go on a fishing expedition to obtain the information relevant to the review process. Furthermore, the petition would override the need for physical, in-person court hearings in most cases. Therefore, the standardized process provides ease to both the parties and the courts by allowing for a cheap and expedited review process. While the court's added responsibility of reviewing minors' NIL contracts affects judicial efficiency, this streamlined process minimizes this effect. This small burden on the judicial efficiency is justified in assuring and upholding minors' interests in the commercialization of their NIL.

D. Practice Makes Perfect: Applying Judicial Review to NIL Contracts

To show how Louisiana courts should apply this analysis, suppose Arch Manning's parents had entered a NIL contract with Nike on his behalf during his high school career.³⁴⁶ The contract grants an exclusive license over Manning's NIL and limits its use to the marketing of football apparel and equipment. The contract's term is indefinite and is priced at \$1 million.

First, the court must determine if the commercialization of Manning's NIL is appropriate in this situation by weighing the economic and non-economic factors. The court should look to the economic factors including: (1) Manning's financial situation, and (2) Manning's chances of professional success.³⁴⁷ Manning's access to food, clothing, and shelter is not dependent on the income from a potential contract. However, based on his NIL valuation, Manning has the potential to earn \$3.4 million by entering into NIL contracts.³⁴⁸ Nevertheless, these economic factors must be evaluated in light of non-economic considerations.

Next, the court should look to non-economic factors such as: (1) the reasonable preferences of Manning; (2) the nature of the use of Manning's

345. See N.Y. ARTS & CULT. AFF. LAW § 35.03; CAL. FAM. CODE §§ 6750–52 (West 2024).

346. For purposes of this hypothetical situation, assume that the contract was entered into while Manning was 17 years old.

347. See *Warner Bros. Pic. v. Brodel*, 192 P.2d 949, 953 (Cal. 1948) (voicing the professional success of the minor as a consideration in evaluating minors' entertainment-related employment contracts); LA. CIV. CODE art. 134(A)(4) (using the child's access to food, clothing, and other material needs as a factor in determining parental custody).

348. *High School Football NIL Rankings*, *supra* note 1.

identity and the potential for abuse of his rights; (3) the future development of Manning's opportunities; (4) the intent of the parents in acting on behalf of Manning; and (5) the disposition of the parents to continue to give love and affection to Manning.³⁴⁹ Here, Manning's NIL is limited to uses related to football apparel and equipment. This use leads to very little risk of identity abuse as football-related goods are not a part of an illicit market. Manning's career would likely be unaffected by entering into the contract, as he will continue to have additional NIL opportunities based on his skill and recognition. Manning's parents entered the contract in good faith, presuming there is no overwhelming evidence showing a bad-faith intent. However, Manning has expressed his preference of not being bound to a contract until after committing to a college. Manning is still a minor, but as a 17-year-old, he is mature enough to make reasonable decisions. As a result, the court should pay special attention to Manning's preference, which weighs against the commercialization of his NIL. Similarly, the court should consider the effects of its decision on Manning's relationship with his parents by acknowledging the resentment that may arise if the contract is granted.

If the court found that the commercialization of Manning's NIL was in his best interest, the court should evaluate the contract's reasonableness. To do so, the court should look to the following factors: (1) the term of the contract; (2) the earnings of the minor; (3) the exclusivity of the contract; and (4) the limitations on the use of the minor's identity.³⁵⁰ The proposed contract is limited to the use of Manning's identity in relation to football apparel and equipment. This limited use of his identity weighs in favor of the reasonableness of the contract. However, the contract grants Nike the exclusive right to use his NIL. This exclusivity creates a potential concern as it restricts Manning from using his name and image. However, the exclusivity of Manning's NIL creates value in Nike's marketing efforts. The contract's term is indefinite, which greatly benefits Nike by ensuring its right to use Manning's NIL for years to come. However, it does not benefit Manning as he has the potential for growth in his career and the potential for better opportunities in the future. The contract is worth

349. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03.5. See also LA. CIV. CODE art. 134(1), (3), (7), (11); *Brodel*, 192 P.2d at 953 (voicing several considerations in evaluating minors' entertainment-related employment contracts).

350. See generally N.Y. ARTS & CULT. AFF. LAW § 35.03.5 (requiring the length of the contract and earnings of the minor to be disclosed within the petition seeking judicial review). See also *Brodel*, 192 P.2d at 953 (considering the length of the contract and professional success of the minor as considerations within the minor's entertainment-related employment contract); Hawker, *supra* note 314.

\$1 million while Manning's total valuation is \$3.4 million. This price is fair as a significant amount of Manning's valuation is derived from football equipment deals, but not all of the valuation stems from football equipment deals alone. In considering all these factors, the court should not approve this contract since it heavily favors Nike. Here, Nike receives both an exclusive and indefinite contract. If the contract allows for either a non-exclusive contract or a defined term, then the court may consider approving the contract.

Finally, upon approving the contract, the court may determine how the contract's payment should be executed. In accordance with Louisiana Revised Statutes § 51:2133, 15% of the earnings should be submitted to a trust account for Manning to redeem once he reaches the age of majority.³⁵¹ Here the contract was worth \$1 million, so \$150,000 should be placed into a trust account. In regard to the remaining proceeds, the court should carry the discretion in choosing whether to intervene and decide the disbursement of the payment.³⁵² In making this decision, the court should consider: (1) the financial circumstances of Manning's parents; (2) the needs of the parents' additional children; (3) Manning's marital status and age; (4) the financial needs of Manning; (5) tax implications; (6) impact on potential government benefits; and (7) the value of the payment arrangement.³⁵³ Since neither Manning or his family are reliant on the contract's proceeds to maintain financial stability, the court may consider intervening in the disbursement of the remaining proceeds. In doing so, the court may place the remaining payment into a trust for Manning to accrue interest and maximize the value of the payment.

CONCLUSION

Louisiana's right of publicity law provides parents the unrestricted power to enter into NIL contracts on their minor's behalf.³⁵⁴ In doing so, the law attempts to protect the best interest of minors by allowing parents to be the custodian of minors' interests. However, the law assumes parents always act in the best interest of their minor. Unfortunately, this is not

351. See LA. REV. STAT. § 51:2133 (2024).

352. See LA. CODE CIV. PROC. art. 4521 (2024). See also N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b).

353. See LA. CODE CIV. PROC. art. 4521; N.Y. ARTS & CULT. AFF. LAW § 35.03.3(b).

354. LA. REV. STAT. § 51:470.1.

always the case.³⁵⁵ Minors are typically bound to the consent of their parents, so a minor whose parents act outside of his or her best interest is bound in perpetuity to his or her parents' decision.³⁵⁶ Due to the grave consequences and the increase in minors' NIL opportunities, Louisiana must enforce a system of checks and balances on minors' NIL contracts.

Louisiana state courts review parents' actions related to the sale of minors' property and the compromise of minors' legal claim by requiring parents to seek judicial review prior to acting.³⁵⁷ Courts should extend this requirement to minors' NIL contracts as well. In doing so, courts abide by the literal meaning and statutory intent of preexisting Louisiana laws and remain consistent with the practices of other states.³⁵⁸ By adding an additional layer of protection to minors' interests, courts are upholding minors' rights without infringing on parents' rights or unduly restricting parties' ability to contract.

355. *See generally* *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983) (finding a minor unable to disaffirm the parent's consent to use her image). *See generally* *Faloon* by *Fredrickson v. Hustler Mag., Inc.*, 799 F.2d 1000 (5th Cir. 1986) (providing no relief to minors whose parent consented to the use of their nude images).

356. *See generally* *Shields*, 448 N.E.2d 108 (finding a minor unable to disaffirm the parent's consent to use her image); *Faloon*, 799 F.2d 1000 (providing no relief to minors whose parent consented to the use of their nude images).

357. LA. CIV. CODE art. 230 (2024).

358. *See id.* *See also* N.Y. ARTS & CULT. AFF. LAW § 35.03; CAL. FAM. CODE §§ 6750–52 (West 2024).