

Background..... 6

    Courts Do Not Consider the Employees Under the FLSA Now..... 7

    The Cases..... 15

    NRLA..... 18

    History of Football..... 20

    Unionization History..... 23

    Bannon Case Doesn’t Solve..... 24

    Background on How Athletic Scholarships Work..... 25

Definitions ..... 27

    Employee..... 32

    “Student Athlete”..... 33

    Fair Labor Standards Act – Wages..... **Error! Bookmark not defined.**

    National Labor Relations Act (NLRA) Deals with Collective Bargaining/Unions..... **Error! Bookmark not defined.**

    NCAA..... 36

    Recognize..... 38

Pro ..... 39

    General – “Employee” Designation Effective/They are Employees..... 41

        “Employee” Designation Solvency..... 44

        “Employee” Advocacy..... 46

        Should Pay..... 49

        Answers to: FLSA Doesn’t Apply Everywhere..... **Error! Bookmark not defined.**

        College Athletes are Employees (Under NRLA)..... 51

        Other Definitions of “Employee”..... 55

        Generally Meet Definition of “Employee”..... 56

        Answers to: Definitionally Excludes..... 57

        Answers to: Brown/Primary Purpose Test..... 60

Exploitation..... 62

    NCAA an Exploitive Business..... 63

Answers to: Kids Get full Scholarships .....	65
Answers to: The Value of a College Degree Exceeds the Scholarship Value.....	67
Answers to: Players Only Have to Work 20 Hours a Week .....	68
Answers to: We Can't Figure Out How Much To Pay Them .....	70
Answers to: Hurts Team Unity .....	71
Racism.....	75
First Constructive Evidence .....	88
Plantation/Time Control/Racism.....	105
Percentage of Black Males Who Graduate is Low.....	116
"Education Good" Turns Don't Apply to Black Athletes.....	120
Racism Impacts – Health/Death .....	123
Racism Impacts -- Consequential .....	125
Racism Impacts -- Moral.....	129
Racism Outweighs Other Impacts .....	131
Racism Impacts -- Discrimination .....	135
Racism Impacts – Whites Responsible .....	137
Pro – Need to Stop Exploitation .....	139
Answers to: Not Intentionally Racist .....	141
College Athletes Making Administrators Rich .....	143
Student Poverty.....	144
High Value Students Living in Poverty.....	145
Answers to Common Arguments .....	147
Answers to: Students First.....	148
Answers to: It's Amateur Athletics.....	152
Answers to: They Can Go Pro and Make a Lot of Money.....	159
Answers to: No Jurisdiction.....	165
Answers to: Unions Bad .....	169
Collective Bargaining Advantage .....	173
Unions Good Advantage -- Uniqueness.....	178

Answers to: Title IX Blocks Solvency.....	179
Answers to: It’s Not Fair, Can’t Pay Everyone .....	183
Disadvantage Answers .....	184
Answers to: Need Equality of Opportunity Amongst Schools/Rich Schools Would Pay More .....	185
Answers to: Revenue Benefits Universities Academic Programs.....	186
Answers to: Action at the State Level is Better .....	187
Answers to: Students Will Have to Pay Taxes .....	189
Answers to Spending – General .....	<b>Error! Bookmark not defined.</b>
Answers to: Schools Can’t Afford to Pay .....	<b>Error! Bookmark not defined.</b>
Answers to: Hurts Other Sports .....	<b>Error! Bookmark not defined.</b>
Answers to: Causes Competitive Inequity.....	190
Answers to: Corruption .....	191
Answers to: Will Cause Tuition to Rise .....	192
Answers to: Paying Students Means they Don’t Focus on School .....	194
Answers to: Economic Gap Creates a Competitive Imbalance .....	203
Answers to: Reduces Popularity of the Sport.....	207
Answers to: Students Can’t Manage the Money.....	210
Answers to: Value of an Education.....	212
Answers to: Other Students Oppose Spending Money on Student Athletes.....	214
Con.....	220
Solvency Answers .....	222
NRLA Recognition Useless .....	<b>Error! Bookmark not defined.</b>
Not Employees .....	225
Spending Disadvantage .....	229
Reasons Costs Increase for Schools.....	230
Consequences of Increased Costs – Shutting Down Athletic Programs.....	236
Undermines College Academics .....	238
Bankrupts Schools .....	240

Turns Case – Scholarship Cuts .....	241
Answers to: Alums Pay .....	244
Answers to: Lots of Money in College Sports/Rising Revenues .....	245
Answers to: Schools Can Afford to Pay Athletes .....	246
Answers to: College Sports Revenues Increasing.....	252
Undermines College Sports .....	253
Cutting Other Sports Programs Reduces Diversity.....	259
Answers to: Big Time Sports Benefit Schools .....	261
Costs Passed on To Students .....	262
High Student Debt Bad .....	265
Amateurism DA/Education Valuable.....	266
Advantage Answers .....	271
Answers to: Exploited.....	272
Answers to: Students Do Not Have An Education.....	285
Answers to: Students Don't Care About School .....	286
Exploitation Turn .....	287
Exploitation Turn – Education Good .....	291
Exploitation Turn – Many Benefits to an Education.....	292
Answers to: They Aren't Getting Paid Fair Market Value .....	295
Answers to: Poor Athletes Need More Money .....	296
Answers to: Social Justice.....	297
Answers to: Unioniization Good.....	298
Answers to: Corruption .....	303
Answers to: Racism/Plantations.....	304
Competitive Imbalance DA.....	311
General Solvency Answers .....	312
Practicality/Feasibility .....	313
Answers to: Paying Solves the Scandals/Corruption.....	322
Answers to: Profits are Super High.....	323

Status Quo Solves .....	324
General States Solvency .....	325
State Action Better -- Diversity.....	330
State Innovation Critical to the Economy.....	333
Answers to: Federal Preemption.....	335
Answers to: Federal Best.....	336
Alternative Solutions .....	337
Articles Don't Support Paying ALL student Athletes .....	341
College Sports Bad.....	342

# Background

## **National Relations Labor Board (NRLB) Has Declared them Employees, Not Final Yet**

### **An NRLB regional director has determined they are employees, but this could be overturned by the employees or the courts**

Ross Delanger, 2, 5, 24, Explainer: What does NLRB ruling on Dartmouth men's basketball actually mean?, <https://sports.yahoo.com/explainer-what-does-nlrp-ruling-on-dartmouth-mens-basketball-actually-mean-011400172.html>

In September of 2021, at an event of college athletic administrators gathered in Washington, D.C., Notre Dame athletic director Jack Swarbrick delivered a jarring statement that startled many in the room.

“Sometime in this school year, somewhere in the legal world, or administrative level,” he told them, “a student-athlete will be declared an employee.”

It took a little longer than he expected, but Swarbrick’s prediction has, officially, arrived two-and-a-half years later: The National Labor Relations Board’s regional director in Boston found that members of the Dartmouth men’s basketball team are employees and granted them the right to unionize. The National Labor Relations Board (NLRB) is the independent agency that enforces U.S. labor law as it relates to collective bargaining.

While not such a surprising ruling — the NLRB has, after all, expressed strongly its belief that college athletes are employees — the decision is another significant step in the march toward employment for all college athletes. Though the decision will be appealed, many legal experts believe that the ruling is a landmark move to further turn athletes into employees.

“This is the first shoe to drop in the long-running effort by college athletes to be declared employees,” said Michael LeRoy, an Illinois professor and expert on labor policy. “It is consequential.”

“If Dartmouth basketball players are employees, then it’s easy to imagine that all other athletes at the collegiate level would also be considered employees,” adds Gabe Feldman, a Tulane sports law professor and an expert on such NCAA matters. “This could be the first domino that leads to full-fledged employee status for many college athletes or it could be like the Northwestern case — a false alarm.”

There will likely be an appeal

The NLRB Boston regional director's decision on Monday is not unprecedented.

A similar ruling took place a decade ago when another regional director of the NLRB deemed that Northwestern football players were employees and could unionize. However, the NLRB's national panel overturned the ruling on appeal citing a number of factors.

The board declined to recognize Northwestern football's unionization, in part, because the NLRB only applies to private employers. Though it is a private school, Northwestern competes in the Big Ten, where, at the time, all other schools were public (the league has since added another private school in USC). The NLRB ruled against jurisdiction, arguing that one school having the ability to collectively bargain while others operate differently would be a detriment to college sports.

In a striking difference between the two cases, Dartmouth competes in the Ivy League, made up of only private schools.

There are more signs, too, that the NLRB will treat this case differently than Northwestern, said LeRoy.

Two years ago, NLRB general counsel Jennifer Abruzzo encouraged entities to file unfair labor charges against the NCAA. In a memo, she deemed college athletes employees under the National Labor Relations Act, a thundering message from the agency's lead lawyer that invited athletes and athlete advocates to bring forth petitions to unionize.

But an appeal to the NLRB's national board is only the start of what could be a lengthy process. Any ruling can be appealed in federal court as well.

"There is a long way to go," Feldman said.

In the meantime, a union election can transpire in which Dartmouth players could vote to unionize.



What does it mean for everyone else?

Based on the ruling in Boston, more college athletes may be more likely now to follow suit. They too could file a complaint with their respective local NLRB regional director.

However, a more significant precedent could be set if the NLRB's national board and the courts uphold the ruling from the regional director in Boston.

"If this holds, it would be difficult to argue that any DI athlete is not also an employee under the National Labor Relations Act and would also have a right to unionize," Feldman said.

No matter the appeals decision, the ruling is a further warning to college athletic leaders, Feldman said. The move continues the wave of college athletes getting more rights.

"It's become a tidal wave," Feldman continued. "It could open the door to massive salaries at the top end of college sports and minimum wage at the bottom. It's a further wakeup call to college athletic leaders that the status quo is not sustainable."

There could soon be plenty more "wakeup calls" as well.

Beyond the NLRB, there are several avenues in which athletes can be ruled employees, including a collective action suit out of Pennsylvania: *Johnson v. the NCAA*. Meanwhile, the NLRB's Los Angeles regional office is pursuing unfair labor practice charges against USC, the Pac-12 and the NCAA as single and joint employers of FBS football players and Division I men's and women's basketball players. A hearing is ongoing in that case.

What's next from college leaders?

In appropriate timing, the NLRB's ruling dropped as some of the most powerful leaders in college sports — the FBS commissioners — met in Dallas over College Football Playoff matters.

For months now, college athletic leaders have publicly pushed back against the notion of college athletes becoming employees. As part of their lobbying efforts with Congress, NCAA and college leaders have encouraged lawmakers to deem athletes as students and not employees.

However, more than four years into the congressional lobbying effort and nearly 12 hearings held, no piece of legislation has advanced out of a committee for a vote.

Some believe that a new model is needed, something that goes beyond NCAA president Charlie Baker's Project DI, which needs congressional assistance. Such a model would presumably include an athlete revenue-sharing concept, or something similar.

The Big Ten and SEC recently announced a joint advisory group to study the future and potentially arrive at solutions for such issues.

"Clearly, major changes are on the horizon and the longer college leaders go without making the changes themselves, the more likely we'll continue to see change forced upon them by governmental agencies and the courts," Feldman said.

Monday's ruling, while a long way from being final, is yet another shot across the bow of college athletics amateurism.

## **Courts Do Not Consider the Employees Under the FLSA Now**

Caler, Donten, Levine Law firm, no date, Court: Student Athletes are not employees under the Fair Labor Standards Act, <https://www.cdllcpa.com/court-student-athletes-arent-employees-fair-labor-standards-act/>

**Courts have consistently found that student athletes aren't employees who are required to be paid under federal law — and a U.S. Appeals Court came to the same conclusion in a new case.** Facts of the Latest Case **The U.S. Court of Appeals for the Seventh Circuit has upheld a lower court decision finding that** National Collegiate Athletic Association (**NCAA**) **athletes aren't "employees" of their colleges, and, therefore, aren't entitled to receive the minimum wage rate for their services.** (Berger v. National Collegiate Athletic Association, et al., CA 7, Dkt. No. 16-1558, 12/5/16) The case began when two former student athletes from the University of Pennsylvania sued the school, the NCAA, and more than 120 other NCAA Division I universities and colleges alleging that student athletes are employees who are entitled to a minimum wage under the Fair Labor Standards Act (FLSA). The two former students participated on the women's track and field team. Like many collegiate athletic teams across the country, Penn's women's track and field team is regulated by the NCAA. The NCAA is a member-driven, unincorporated association of 1,121 colleges and universities. It's divided into three divisions — Divisions I, II, and III — based roughly on the size of the schools and their athletic programs with Division I being the largest. The Law **The FLSA requires employers to pay its employees a minimum wage** rate of \$7.25 per hour. (If state law has a higher minimum wage, an employer must pay the higher rate.) **The law defines "employee" as "any individual employed by an employer" and broadly defines "employ" as "to suffer or permit to work." Thus, to qualify as an employee for purposes of the FLSA, one must perform "work" for an "employer." The FLSA doesn't define the term "work."** The Ruling **The Seventh Circuit noted that a majority of courts have issued rulings, albeit in different contexts, that student athletes aren't employees. For example, most courts have held that student athletes aren't employees in the workers' compensation context and thus, aren't entitled to compensation from their schools for injuries they suffer while playing their respective sports. Note: More than 50 years ago, two courts reached the opposite conclusion that athletes were employees, but they did so, at least in part, because the student athletes in those cases were also separately employed by their universities. This was not the case in the current ruling.** The court stated: "The long tradition of amateurism in college sports, by definition, shows that student athletes — like all amateur athletes — participate in their sports for reasons wholly unrelated to immediate compensation." The court added that it had no doubt that student athletes spend a tremendous amount of time playing for their respective schools, as they've done for more than a hundred years under the NCAA but "student-athletic 'play' is not 'work,' at least as the term is used in the FLSA." DOL Handbook **In addition, the Seventh Circuit cited the Department of Labor's Field Operations Handbook (FOH), which states that student athletes aren't employees under the FLSA. The Department of Labor believes that the athletic activities are conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution, and are not work of the kind contemplated by the FLSA.** "We find the FOH's interpretation of the student-athlete experience to be persuasive," the court stated.

However, the FOH does state that students who participate in a work-study program and, for example, “work at food service counters or sell programs or usher at athletic events, or who wait on tables or wash dishes in dormitories in anticipation of some compensation” are “generally considered employees under the FLSA.”





## The Cases

### **Penn Case - FLSA specific – Student athletes specifically not defined as employees under FLSA**

Michelle Piasecki is a lawyer who specializes in several areas of law, including U.S. collegiate sports. She is a former collegiate athlete and coach and is currently an associate at the law firm of Harris Beach, Spring 2016, Insights on Law & Society, Are College Employees Athletes? [https://www.americanbar.org/publications/insights\\_on\\_law\\_and\\_society/16/spring-2016/law-review--are-college-athletes-employees-.html](https://www.americanbar.org/publications/insights_on_law_and_society/16/spring-2016/law-review--are-college-athletes-employees-.html)

Berger v. Nat'l Collegiate Athletic Ass'n

Not long after the Northwestern football team filed for unionization, **three female track and field athletes from the University of Pennsylvania (Penn) sued the NCAA and more than one hundred of its member institutions for alleged violations of the Fair Labor Standards Act (FLSA).** In the complaint, **Gillian Berger and her teammates argued that student-athletes, by virtue of their participation in athletics, were employees of their respective collegiate institutions. Under the FLSA, that meant that student-athletes were entitled to compensation in the form of federal minimum wages. To support their argument, Berger and her teammates noted the similarities between students participating in Division I athletics and those engaging in work study programs. Both categories of students perform “non-academic functions for no academic credit at the behest, and for the benefit, of the NCAA Division I Member Schools.” The only exception between the two is that work-study participants are paid while student-athletes are not. The failure to pay student athletes as employees, according to Berger and her teammates, creates a “perverse result” wherein some work study participants are allowed to reap financial benefits off the backs of uncompensated student-athletes without whom such work would be unavailable. The federal district court reviewing the case disagreed. In deciding the case, the court looked at whether the student or the school derived the primary benefit of the work performed. The court concluded that several factors weighed in favor of finding that a student’s participation in collegiate athletics was primarily for the student’s benefit. First, the NCAA has developed a “revered tradition of amateurism” that puts student-athletes on notice that they will not be compensated for participation in intercollegiate athletics. Students enrolled in Penn in particular could have no expectation that they would be paid for playing a college sport because Penn does not offer academic or athletic scholarships. Second, the Department of Labor has taken no action to apply the FLSA to student-athletes, despite the well-known existence of thousands of unpaid college athletes on campuses across the country. In fact, guidance from the Department of Labor explicitly excludes student-athletes from coverage under the FLSA. Pursuant to the Department’s Field Operations Handbook, “[a]ctivities of students in [interscholastic athletics] programs, conducted primarily for the benefit of the participants as part of the educational opportunities provided to the students by the school or institution, are not ‘work’ [under the FLSA] and do not result in an employee-employer relationship between the student and the**

**school or institution.” These factors prompted the court to rule that Berger and her teammates were not employees of Penn and therefore not entitled to compensation under the FLSA.**

### **The Northwestern football players case – about the NLRA**

Michelle Piasecki is a lawyer who specializes in several areas of law, including U.S. collegiate sports. She is a former collegiate athlete and coach and is currently an associate at the law firm of Harris Beach, Spring 2016, Insights on Law & Society, Are College Employees Athletes? [https://www.americanbar.org/publications/insights\\_on\\_law\\_and\\_society/16/spring-2016/law-review--are-college-athletes-employees-.html](https://www.americanbar.org/publications/insights_on_law_and_society/16/spring-2016/law-review--are-college-athletes-employees-.html)

**On January 28, 2014, representatives for the College Athletes Players Association (CAPA) walked into the National Labor Relations Board (NLRB) office in downtown Chicago and filed a petition to unionize the Northwestern University football team.** The move sparked a national debate about the status of college athletes as employees that still reverberates today. **CAPA’s petition, spearheaded by the team’s starting quarterback Kain Colter and supported by nearly all of his teammates, argued that college athletes were primarily employees entitled to protection under the *National Labor Relations Act*, including the right to unionize.** CAPA cited the millions of dollars in revenue generated by the Northwestern football team each year, the amount of time football players dedicated to participating in their sport, and the influence the coaching staff and the school exerted over the players as evidence that the football players were employees of Northwestern. CAPA hoped that unionization would provide a seat at the table with the NCAA to negotiate better physical, academic, and financial protections for college athletes. **On March 26, 2014, in what was viewed as a groundbreaking decision, the Regional Director for the NLRB granted CAPA’s petition, ruling that football players on scholarship at Northwestern were employees of the university.** In support of his finding, the Regional Director noted that the football players performed valuable services for the university (resulting in approximately \$235 million in revenue over a ten year period) for which they were compensated. Although this compensation did not come in the form of a traditional paycheck, athletic scholarships provided by Northwestern paid for the players’ tuition, fees, room, board and books during their four to five year playing careers. The Regional Director determined that the threat of losing that scholarship, which could be revoked for any number of reasons including a violation of team rules or voluntarily withdrawing from the team, compelled players to cede all manner of control over their athletic lives at Northwestern. Players were routinely required to spend 40 to 50 hours per week on football related activities during the regular season and an additional 20 hours per week during the off-season. Missing or arriving late to a practice or game could result in discipline or removal from the team. **Northwestern controlled nearly every aspect of the players’ personal lives as well. Players were required to obtain a coaches permission before they could: “(1) make their living arrangements; (2) apply for outside employment; (3) drive personal vehicles; (4) travel off campus; (5) post items on the Internet; (6) speak to the media; (7) use alcohol and drugs; [or] (8) engage in gambling.” When taken together, the Regional Director surmised that these factors supported a finding that the players were employees of Northwestern.** The decision allowed the players to choose (through



the NLRB's election process) whether to be represented by CAPA in collective bargaining negotiations with Northwestern. **CAPA's victory was ultimately short-lived as Northwestern appealed the Regional Director's decision to the full NLRB panel. On review, the NLRB declined to assert jurisdiction over the case on the basis that its decision "would not promote stability in labor relations." The NLRB noted that the unique nature of college football, wherein there exists a "symbiotic relationship" between the teams, conferences, and the NCAA, makes it difficult, if not impossible, to assert jurisdiction over only one team. Issues impacting the players at Northwestern would also affect the Big Ten Conference, its conference members, the NCAA, and other Division I institutions. For this reason, every previous sports case decided by the NLRB only covered league-wide bargaining arrangements. The NLRB also observed that the majority of teams competing in Division I FBS football were public institutions and therefore exempt from NLRB jurisdiction.** Of the more than 125 colleges and universities participating in FBS football, only 17 would be impacted by a decision from the NLRB, and in the Big Ten Conference, a decision would only affect Northwestern. With so little anticipated impact on college athletics as a whole, the NLRB declined to issue a decision in the case. Although not a primary reason for declining to assert jurisdiction, recent changes in the college athletics landscape made the NLRB's decision easier. In the months leading up to the NLRB's ruling, several prominent colleges and universities began offering four year athletic scholarships, the NCAA approved financial aid up to the full cost of attendance (granting athletes additional funds to cover meals, school supplies, multiple trips home per year, and other miscellaneous expenses), schools were allowed to provide athletes with unlimited meals and snacks, and the NCAA began taking steps to address concussion injuries among college athletes. In a somewhat thinly veiled threat to the NCAA, the NLRB warned that "subsequent changes in the treatment of scholarship players could outweigh the considerations that motivated its decision to decline jurisdiction in this case." The NLRB was also careful to note that its decision was limited to the football players at Northwestern and was not an indication of how the NLRB would approach a petition on behalf of all Division I scholarship football players; potentially leaving the door open for CAPA, or some other organization, to renew the case.

## NRLA

### **NRLA background/history**

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, Cardozo Law Review, <https://goo.gl/FNxGnE>

**Congress passed the NLRA in May 1935 to grant private employees the right to self-organize and "engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection."** n3 The Act arose "out of the necessities of ... [a labor] situation ... that a single employee was helpless in dealing with an employer" based on fundamental differences in size and bargaining power between the parties. n4 **The Act's goal was "to give laborers opportunity to deal on ... [equal footing] with their employer."** n5 Since 1935, **the right to unionize under federal (and later, state) labor law has changed workplace dynamics across many industries.** n6 **Under the NLRA, employers in a unionized workplace incur the affirmative duty to bargain collectively with their workers over the mandatory terms and conditions of bargaining - hours, wages, and working conditions.** n7 Employers also must bargain over disciplinary procedures, such as the right to discipline for "just cause." n8 To a large extent, **the values advanced by U.S. labor laws conflate with the broader values of the U.S. Civil Rights movement - equality, equity, and procedural fairness.** n9 Some of the most prominent Civil Rights leaders in the United States, including the revered Dr. Martin Luther King Jr., have even gone as far as to describe workers' rights as an important component of the broader pursuit for social justice.

### **NRLA only applies in the private sector**

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, Cardozo Law Review, <https://goo.gl/FNxGnE>

n3. National Labor Relations Act, ch. 372, § 7, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. § 157 (2012)). See generally Michael H. LeRoy, Courts and the Future of "Athletic Labor" in College Sports, 57 *Ariz. L. Rev.* 475, 504 (2015) [hereinafter LeRoy, Courts and the Future of "Athletic Labor"] (explaining that the NLRA "applies only to private-sector employment"); Steven L. Willborn, College Athletes as Employees: An Overflowing Quiver, 69 *U. Miami L. Rev.* 65, 69 (2014) (**describing the NLRA as "a preemptive federal law governing collective employee rights in the private sector"**). Jay D. Lonick, Note, Bargaining with the Real Boss: How the Joint-Employer Doctrine Can Expand Student-Athlete Unionization to the NCAA as an Employer, 15 *Va. Sports & Ent. L.J.* 135, 138 (2015) (estimating the revenue generated by the college sports industry to be even higher, at "\$ 12 billion per year"); LeRoy, Courts and the Future of "Athletic Labor", supra note 3, at 489 (stating that the NCAA's annual revenues have reached \$ 16 billion per year).



## **Current NRLB Action**

The National Labor Relations Board (NRLB) says they are employees, though there is no final decision

NICK NIEDZWIADK, 12/15/2022, <https://www.politico.com/news/2022/12/15/nlrp-ncaa-student-athlete-misclassification-00074250>, Student athletes should be classified employees, labor cop says,

The National Collegiate Athletic Association is breaking federal law by not classifying student athletes as employees, according to the National Labor Relations Board.

NLRB officials in Los Angeles determined that the NCAA, along with the Pac-12 Conference and the University of Southern California, are joint employers of athletes — an assessment that could ultimately allow student athletes to unionize.

By not designating athletes as employees, the trio are infringing on those students' labor rights, General Counsel Jennifer Abruzzo said Thursday.

"This kind of misclassification deprives these players of their statutory right to organize and to join together to improve their working/playing conditions if they wish to do so," Abruzzo said in a statement. "Our aim is to ensure that these players can fully and freely exercise their rights."

Abruzzo issued a memo last September 2021 outlining her belief that student athletes should be treated as employees for the purposes of the National Labor Relations Act and vowed to take action to enforce that view.

For decades, colleges and the NCAA have resisted attempts to rein in their control over athletes in the system. But the business model has come under intense scrutiny in recent years and has led to several court rulings that have forced major changes to how collegiate sports operate.

The definition of who is and is not an employee has been the subject of fierce political debate, and has been a focus of President Joe Biden's labor appointees. Beyond the NLRB, the

Department of Labor this fall released a proposed rule to distinguish employees from independent contractors that garnered well over 50,000 public comments.

The NCAA, Pac-12 and USC will have the opportunity to settle the case, which was filed by the National College Players Association in February. If no agreement is reached, the NLRB will move to issue a complaint against the three organizations.

Thursday's development comes just hours after outgoing Massachusetts Gov. Charlie Baker — a former college basketball player — was tapped to be the NCAA's next president after he leaves office in early January.

In a statement, the NCAA disputed the labor agency's characterization of student athletes.

“Contrary to the claims presented in the NLRB charges, college athletes are not employees of the NCAA, regardless of sport or division,” the governing body said. “The NCAA's commitment is to student-athletes, and it will continue to vigorously defend any attempts to divide them based on arbitrary standards, as it demeans the hard work and sacrifice of all who participate in college sports.”

Even if the NLRB takes further action, the case could take years to work its way through the agency's process and end up before its five-member board, which is currently stocked with three Democratic appointees — including one who was formerly the general counsel for the Major League Baseball Players Association.

However, the NLRB is susceptible to ideological swings as power trades hands in Washington. In 2015, the agency rebuffed an effort to hold a union election involving Northwestern University's football team.

## History of Football

### History of football

Branch, 2011, *The Atlantic*, *The Shame of College Sports*, Taylor Branch is the author of, among other works, *America in the King Years*, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

#### **Walter Camp graduated from Yale in 1880 so intoxicated by the sport that he devoted his life**

**to it without pay,** becoming “the father of American football.” He persuaded other schools to reduce the chaos on the field by trimming each side from 15 players to 11, and it was his idea to paint measuring lines on the field. He conceived functional designations for players, coining terms such as quarterback. His game remained violent by design. Crawlers could push the ball forward beneath piles of flying elbows without pause until they cried “Down!” in submission. **In an 1892 game against its archrival, Yale, the Harvard football team was the first to deploy a “flying wedge,” based on Napoleon’s surprise concentrations of military force.** In an editorial calling for the abolition of the play, *The New York Times*

described it as “half a ton of bone and muscle coming into collision with a man weighing 160 or 170 pounds,” noting that surgeons often had to be called onto the field. **Three years later, the continuing mayhem prompted the Harvard faculty to take the first of two votes to abolish football.** Charles Eliot, the university’s president, brought up other concerns. **“Deaths and injuries are not the strongest argument against football,” declared Eliot. “That cheating and brutality are profitable is the main evil.”** Still, Harvard football persisted. In 1903, fervent alumni built Harvard Stadium with zero college funds. The team’s first paid

head coach, Bill Reid, started in 1905 at nearly twice the average salary for a full professor. **A newspaper story from that year, illustrated with the Grim Reaper laughing on a goalpost, counted 25 college players killed during football season.** A fairy-tale version of the founding of the NCAA holds that **President Theodore Roosevelt, upset by a photograph**

**of a bloodied Swarthmore College player, vowed to civilize or destroy football.** The real story is that Roosevelt maneuvered shrewdly to preserve the sport—and give a boost to his beloved Harvard. After McClure’s magazine published a story on corrupt teams with phantom students, a muckraker exposed Walter Camp’s \$100,000 slush fund at Yale. In response to mounting outrage, Roosevelt summoned leaders from Harvard, Princeton, and Yale to the White House, where Camp parried mounting criticism and conceded nothing irresponsible in the college football rules he’d established. At Roosevelt’s behest, the three schools issued a public statement that college sports must reform to survive, and representatives from 68 colleges founded a new organization that would soon be called the National Collegiate Athletic Association. A Haverford College official was confirmed as secretary but then promptly resigned in favor of Bill Reid, the new Harvard coach, who instituted new rules that benefited Harvard’s playing style at the expense of Yale’s. At a stroke, Roosevelt saved football and dethroned Yale. For nearly 50 years, the NCAA, with no real authority and no staff to speak of, enshrined amateur ideals that it was helpless to enforce. (Not until 1939 did it gain the power even to mandate helmets.) **In 1929, the**

**Carnegie Foundation made headlines with a report, “American College Athletics,” which concluded that the scramble for players had “reached the proportions of nationwide commerce.” Of the 112 schools surveyed, 81 flouted NCAA recommendations with inducements to students ranging from open payrolls and disguised booster funds to no-show jobs at movie studios.** Fans ignored the uproar, and two-thirds of the colleges mentioned told *The New York Times* that they planned no changes. In 1939,

freshman players at the University of Pittsburgh went on strike because they were getting paid less than their upperclassman teammates. Embarrassed, **the NCAA in 1948 enacted a “Sanity Code,” which was supposed to prohibit all concealed and indirect benefits for college athletes; any money for athletes was to be limited to transparent scholarships awarded solely on financial need.** Schools that violated this code would be expelled from NCAA membership and thus exiled

from competitive sports. This bold effort flopped. Colleges balked at imposing such a drastic penalty on each other, and the Sanity Code was repealed within a few years. The University of Virginia went so far as to call a press conference to say that if its athletes were ever accused of being paid, they should be forgiven, because their studies at Thomas Jefferson’s university were so rigorous.

## Unionization History

### History of attempts by college athletes to unionize

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, Cardozo Law Review, <https://goo.gl/FNxGnE>

In response to these extraordinary inequities, **former UCLA football player Ramogi Huma founded the Collegiate Athletes Coalition (CAC) in 2001**.<sup>n25</sup> The CAC began as an informal trade association with general support from the United Steelworkers of America, the largest industrial labor union in North America. **The coalition's long-term goal was "to establish a national players association in Division I football and basketball."**<sup>n27</sup> Most college presidents initially opposed their athletes joining an organized coalition to promote systematic reform.<sup>n28</sup> Nevertheless, an enlightened minority of former college presidents, perhaps with less at stake personally, have adopted a more favorable view of the college athletes' rights movement.<sup>n29</sup> **Former University of Michigan president James Duderstadt, for example, stated in a 2002 news article that "maybe collective bargaining, or at least the threat of it, is the way to get the attention of these [big-time college sports] programs and these institutions."**<sup>n30</sup> Meanwhile, former Princeton University president William Bowen and Macalester College president Michael S. McPherson have suggested that if college athletes exert their legal rights, it could lead to "a bifurcation" among colleges, where a few colleges pay their athletes a fair market wage, while others abandon big-time college sports entirely.<sup>n31</sup> With growing support for the college athlete reform movement, Huma's coalition eventually expanded into advocating on behalf of athletes' health.<sup>n32</sup> In 2008, Huma "designed a grading system that rates each [college] athletic program's medical policies."<sup>n33</sup> He also began to advocate for broader health insurance protections and better testing protocols for concussions.<sup>n34</sup> In 2013, Huma (along with former University of Massachusetts men's basketball player Luke Bonner) then formed the College Athlete Players Association (CAPA), to directly represent college football and men's basketball players in their attempts to unionize and engage in collective bargaining with their universities.<sup>n35</sup> The first college athletes that CAPA sought to unionize were the Northwestern University grant-in-aid football players, who were led by their star quarterback, Kain Colter.<sup>n36</sup> **These efforts marked an important step toward promoting practical change in the labor dynamics underlying big-time college sports.**<sup>n37</sup>

## Bannon Case Doesn't Solve

### **Bannon case – students cannot receive cash for use of their image/likeness**

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,  
<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

Picture **the star basketball player on one of the University of California, Los Angeles's historic teams**.<sup>n1</sup> The team has just won the 1995 National Collegiate Athletic Association (NCAA) national championship, and the athlete is a consensus All-American and has been voted the most outstanding player in the tournament.<sup>n2</sup> A **couple months later, the athlete is selected ninth overall in the National Basketball Association (NBA) draft and is destined for stardom**.<sup>n3</sup> **Fast-forward nearly twenty years later: The fame and fortune has deteriorated, and the former star is now just a six-foot-eight salesman at a Toyota dealership in Henderson, Nevada**.<sup>n4</sup> After a long day at work, the former collegiate star decides to visit his friend.<sup>n5</sup> While at his friend's home, he comes across his friend's child playing a college basketball video game that displayed a playable avatar of the former star's younger self.<sup>n6</sup> **The avatar depicted his same position, jersey number, uniform accessories, home state, height, weight, handedness, and skin color**.<sup>n7</sup> **The former athlete is perplexed that his likeness is being used without his approval or compensation**.<sup>n8</sup> **This is the life of Edward O'Bannon, who receives questions from fans every year during the NCAA tournament about how much he receives in royalties for his old games that are replayed on television**.<sup>n9</sup> The answer is always the same: nothing.<sup>n10</sup> **In August 2014, the Northern California United States District Court decided O'Bannon v. National Collegiate Athletic Ass'n, holding that the NCAA violated the Sherman Antitrust Act by restraining trade through \$=P262 price fixing in the relevant markets for collegiate athletics**.<sup>n11</sup> The NCAA prohibited Division I men's college basketball and Football Bowl Subdivision<sup>n12</sup> (FBS) football players from receiving any compensation for the use of their names, images, and likenesses in videogames, live-game telecasts, and other footage.<sup>n13</sup> **This decision marked a major change in college sports, allowing Division I male college basketball and FBS football players to receive compensation for the use of their names, images, and likenesses in different media platforms**.<sup>n14</sup> While some believe that this opinion does not protect the amateurism of college sports and shifts the focus away from education,<sup>n15</sup> **others believe that it rightfully compensates exploited student--athletes**.<sup>n16</sup> **However, in March 2015, the NCAA appealed the district court's decision**.<sup>n17</sup> While the U.S. Court of Appeals for the Ninth Circuit largely affirmed the district court's holding, **it vacated the district court's decision to allow students to receive cash payments separate from their educational expenses for the use of their names, images, and likenesses**.<sup>n18</sup> This decision places a burden on the NCAA to determine a feasible solution to compensate student--athletes for the use of their names, images, and likenesses while maintaining its focus on amateurism and preservation of consumer demand.<sup>n19</sup> In addition to preserving amateurism and consumer \$=P263 demand, other potential problems, such as **tax and Title IX implications, may arise because the O'Bannon decision only allows for the compensation of male college football and basketball athletes rather than all college athletes**.



### Background on How Athletic Scholarships Work

#### **1-2% of college students receive an athletic scholarship, these are worth approximately \$1 billion per year**

Deborah Ziff is a Chicago area-based freelance education reporter for U.S. News, covering [college savings and 529 plans](#), 4 Myths About Athletic Scholarships, US News & World Report, October 4, 2017, <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-10-04/4-myths-about-athletic-scholarships>

**Athletic scholarships are rare. Only about 1 to 2 percent of undergraduate students in bachelor's degree programs receive these awards**, says Kathryn Randolph, contributing editor at Fastweb, an online scholarship matching and search service. **But the amount athletes receive is about \$1 billion a year**, she says.

#### **All athletic scholarships are not full rides. If athletes are paid, they would have to pay all 500,000 of them!**

Deborah Ziff is a Chicago area-based freelance education reporter for U.S. News, covering college savings and 529 plans, 4 Myths About Athletic Scholarships, US News & World Report, October 4, 2017, <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-10-04/4-myths-about-athletic-scholarships>

Mesa Sr. knew his son wasn't going to play for a NCAA Division I school – at 6'2" Mesa Jr. didn't have the height – but by focusing on smaller colleges, Mesa Jr. received some generous scholarship offers.

"He got a very handsome offer from St. Xavier," Mesa says, adding that St. Xavier University's estimated cost of attendance is more than \$45,000 per year. "He had to take out a Stafford loan for \$5,500. They paid the rest, but you do still have to pay a portion." **One of the biggest misconceptions among prospective student athletes and their families is that everyone gets a full ride**, says Joe Leccesi, head recruiting coach manager at Next College Student Athlete. Here are four myths and the truths about athletic scholarships. Myth 1: Everyone on an athletic scholarship gets a full ride. **Only some sports offer full-ride scholarships. These are called "head count" sports**, Leccesi says. **In the NCAA, these include only football for Division I-A and basketball for Division I. For instance, an NCAA Division I Football Bowl Subdivision team is allowed 85 scholarships per year for 85 athletes. These cannot be divided among more athletes**, Leccesi says. **For women, basketball, volleyball, tennis and gymnastics offer full-ride scholarships. All other sports are called "equivalency" sports, which means the available scholarships for each team can be divided among players. There are no restrictions on how many athletes can be on scholarship, and the allotted number of awards can be divided in whichever way the coach chooses**, says Leccesi. This includes all other Division I sports and all

NCAA Division II sports, NAIA sports and junior colleges. **There are almost 500,000 NCAA student athletes, all of whom would have to be paid.** Jenkins, Sally. [American sports columnist and feature writer for The Washington Post. She was previously a senior writer for Sports Illustrated]. "College athletics have many problems, but a union is the wrong way to try and fix them," Wall Street Journal. April 15, 2014

### **Division I and Division II sports/schools offer scholarships, but not division III**

Deborah Ziff is a Chicago area-based freelance education reporter for U.S. News, covering college savings and 529 plans, 4 Myths About Athletic Scholarships, US News & World Report, October 4, 2017, <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-10-04/4-myths-about-athletic-scholarships>

Myth 3: You have to be able to play at the Division I level. Although NCAA Division I schools may be among the most prominent ones to offer athletic scholarships, talented student athletes can look to Division II, junior colleges or other conferences for scholarship offers.

Mesa Sr. says his son found he got a more lucrative offer from St. Xavier, which is in the National Association of Intercollegiate Athletics. He says that **an NCAA school "may tell you they want you to come play football, but they may only offer you 10 percent of your tuition and room and board."** **Division III schools do not award athletic scholarships**, but they do grant other forms of financial aid, Randolph says. Often, schools will take into account extracurricular activities, such as sports, when awarding merit scholarships, she says. "These Division III schools have athletic teams, and they do want good players on their teams," she says. "They do take into account if a student is a student athlete, and they're looking to recruit them to come to that Division III school."

## **Payment Approaches**

## **Free Market Payment Approach**

David Grenardo, 2023, Professor of Law & Associate Director of the Holloran Center for Ethical Leadership in the Professions, University of St. Thomas School of Law, Preparing for the Inevitable— Compensating College Athletes for Playing—by Comparing Two Payfor-Play Methods: The Duke Model Versus the Free Market Model, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4323937](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4323937)

The question surrounding pay-for-play then changes from whether it will happen to when it will start and what it will look like. A date certain cannot be placed on when college athletes will receive compensation for playing, but the time is coming near. **As for how they will be paid, this Article focuses on examining two potential methods to pay college athletes—a performance-based model and a free market model. The Duke Model relies solely on the performance of college athletes to determine the amount of payment each college athlete will receive. It allows universities and colleges to compensate athletes based on their academic and athletic achievements. The amounts and various categories of payment (as described below in detail) can be adjusted quite easily depending on the varying levels of financial success of each conference. The free market system is another attractive payment model as it serves as the primary means of recompense in the United States economy. College athletes would be free to negotiate and obtain compensation for playing just as everyone else involved in college athletics is currently able to negotiate and obtain compensation for themselves, including NCAA executives and employees, college sports announcers and analysts, coaches, and athletic directors. Part I of this Article examines the signs of the times that clearly indicate pay-for-play is coming sooner rather than later.**

### **Different ways to compensate players**

Kellogg Insight, February 4, 2021, <https://insight.kellogg.northwestern.edu/article/college-athletes-dont-get-paid-racial-inequities>, Big-Time College Athletes Don't Get Paid. Here's How This Amplifies Racial Inequities.

Garthwaite says the findings make it increasingly hard to support arguments against paying players.

He notes the stark contrast between coach and player compensation: “If you look at the 2018 Ohio State versus Michigan football game, the coaching staffs were making over \$30 million total. Michigan’s strength and conditioning coach makes \$600,000 a year. The athletes on the field had zero salary.”

The researchers came up with “hypothetical wages” for revenue-generating athletes. They based them on the way professional sports distribute income, which is largely the result of collective bargaining by unions. If Power 5 football and men’s basketball players all split 50 percent of revenue from their sport equally, each football player would receive \$360,000 a year

and each basketball player would get nearly \$500,000 a year. That doesn't account for the large range in compensation by position and starter status-.

Garthwaite points out that moving toward a system that compensates players would make one set of stakeholders considerably worse off: coaches, with the highest burden likely falling on those from non-revenue-generating sports. The researchers' model predicts that if there were less money generated by big-revenue sports, schools would cut spending for non-revenue sports, including for coaches and facilities. Indeed, that's exactly what has happened during the pandemic, as multiple universities have cut less lucrative sports due to budget shortfalls.

But compensation for athletes could take multiple forms beyond a direct salary, such as allowing players to be paid for the use of their image or likeness. Garthwaite notes that many states have already passed laws that would allow athletes to do this by signing endorsement deals, selling autographs, and earning appearance fees.

"It is clear that the business model of college sports is facing a fundamental reckoning," he says. Policymakers and the public, he points out, have grown increasingly uncomfortable with the pattern shown in the paper—where athletes who are more likely to be Black and come from lower-income families work hard to generate revenue that we transfer to coaches and athletes in sports where athletes are more likely to be white and from higher-income neighborhoods. "I predict we will see more federal and state legislative action to force the NCAA and universities to confront the fundamental inequities that are embedded into the current model."

How best to resolve this dilemma "is a question for ethicists, not economists," Garthwaite says. "That's about societal preference for what type of equity matters more."

## Additional Citations

See, e.g., David A. Grenardo, *The Duke Model: A Performance-Based Solution for Compensating College Athletes*, 83 BROOK. L. REV. 157, 225 (2017); Darren Heitner, *Money and Sports, Economic Realities of Being an Athlete*, 8 DEPAUL J. OF SPORTS L. & CONTEMPORARY PROBLEMS 161, 161 (2012) (stating that college athletics is a billion-dollar business “built on the backs of amateur athletes”); Herbert Hovenkamp, *Antitrust Balancing*, 12 N.Y.U.J.L. & BUS. 369, 378-79 (2016); Carl T. Bogus, *The New Road to Serfdom: The Curse of Bigness and the Failure of Antitrust*, 49 U. MICH. J.L. REFORM 1, 34 (2015); *National Collegiate Athletic Assn. v. Alston*, 141 S. Ct. 2141, 2169 (2021) (Kavanaugh, J., concurring); Felix Richter, *U.S. College Sports Are a Billion-Dollar Game*, STATISTA (July 2, 2021), <https://www.statista.com/chart/25236/ncaa-athletic-department-revenue/#:~:text=Universities%20collectively%20generate%20billions%20of%20dollars%20from%20TV,while%20athletes%20are%20forced%20to%20maintain%20%E2%80%9Camateur%20status%E2%80%9D> (noting that college athletics is an \$18.9 billion business).

Laine Higgins, *Should College Athletes Be Paid? A Once-Radical Idea Gains Momentum*, WALL ST.J. (Jul. 24, 2022), <https://www.wsj.com/articles/collegeathlete-pay-ncaa-employees-11658502884> [<https://perma.cc/B949-65GH>]; Ralph. D. Russo, *Athlete Advocacy Group Files Complaint with DOJ Against NCAA*, ASSOCIATED PRESS (Oct. 21, 2022), <https://apnews.com/article/college-footballsports-business-fff804a5099209796e29a97d5f7a95f3> [<https://perma.cc/RSY4-GR6C>]; Ross Dellenger, *Legal Complaint Around Student Athlete Compensation Takes ‘Aggressive’ Next Step*, SPORTS ILLUSTRATED (Sept. 15, 2022) <https://www.si.com/college/2022/09/15/ncaa-compensation-complaint-next-step-student-athlete-employees> [<https://perma.cc/39KD-CURD>]

See, e.g., Amy C. McCormick & Robert A. McCormick, *The Emperor’s New Clothes: Lifting the NCAA’s Veil of Amateurism*, 45 SAN DIEGO L. REV. 495, 497–98 (2008) (arguing for the compensation of college athletes); Brennan Thomas, *Pay for Play: Should College Athletes Be Compensated?*, BLEACHER REPORT (Apr. 4, 2011), <https://bleacherreport.com/articles/654808-pay-for-play-should-college-athletes-be-compensated> [<https://perma.cc/L79D-KNZQ>]; Andrew Smalley, *Pay for Play for College Athletes?*, NAT’L CONF. OF STATE LEGISLATURES BLOG, <https://www.ncsl.org/blog/2019/09/30/pay-for-play-for-college-athletes.aspx> [<https://perma.cc/C6LT-55X8>]; Taylor Branch, *The Shame of College Sports*, ATLANTIC (Oct. 2011), <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/> [<https://perma.cc/9GS3-HC5U>] (same); Michael Wilbon, *College Athletes Deserve to Be Paid*, ESPN (July 18, 2011), [http://www.espn.com/college-sports/story/\\_/id/6778847/college-athletes-deservepaid](http://www.espn.com/college-sports/story/_/id/6778847/college-athletes-deservepaid) [<https://perma.cc/2F3K-BJLX>]; Joe Nocera, *Let’s Start Paying College Athletes*, N.Y. TIMES (Dec. 30, 2011), <http://www.nytimes.com/2012/01/01/magazine/lets-start-paying-college-athletes.html?mcubz=3> [<https://perma.cc/7Y3XKXFT>].

# Definitions

## Employee

### Federal definitions

n27 29 U.S.C. § 152(2) (2006) ("The term 'employer' . . . shall not include the United States or any wholly owned Government corporation . . . or any State or political subdivision thereof . . .").

n29 See 29 U.S.C. § 152(2) (excluding employees of state and local government from NLRA protection); Clark, *supra* note 24, at 278 n.53.

### State definitions

n277 See 115 ILL. COMP. STAT. 5/2(b) (West 2011) ("'Educational employee' or 'employee' means any individual, excluding supervisors, managerial, confidential, short term employees, student, and part-time academic employees of community colleges employed full or part time by an educational employer . . .").

MASSACHUSETTS LABOR RELATIONS COMMISSION, A GUIDE TO THE MASSACHUSETTS PUBLIC EMPLOYEE COLLECTIVE BARGAINING LAW IV-8, IV-9 (2002) ("The Commission has broadly interpreted the terms 'employee' or 'public employee' to encompass all individuals employed by a public employer, except those specifically excluded. The Commission has defined "employee" to include: regularly employed part-time employees, part-time reserve police officers, per diem substitute teachers, call fire fighters, visiting lecturers, full-time students [citing Quincy Library Department], graduate teaching and research assistants, and undergraduate resident assistants . . .")(citations omitted).



## “Student Athlete”

### Official definition of “Student Athlete”

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,  
<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

n31 See NCAA, 2015-16 NCAA DIVISION I MANUAL 60, art. 12.02.13 (2015), <https://www.ncaapublications.com/p-4388-2015-2016-ncaa-division-i-manual-august-versionavailable-august-2015.aspx> [hereinafter NCAA 2015-16 MANUAL] (defining “student--athlete” as “a student whose enrollment was solicited by a member of the athletics staff or other representative of athletics interests with a view toward the student's ultimate participation in the intercollegiate athletics program. Any other student becomes a student--athlete only when the student reports for an intercollegiate squad that is under the jurisdiction of the athletics department, as specified in Constitution 3.2.4.5. A student is not deemed a student--athlete solely on the basis of prior high school athletics participation.”).

### History of “Student Athlete” and the professionalization of college athletics

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

#### I. The Myth of the "Student-Athlete"

##### A. Creation Stories

**When William Rainey Harper became the first president of the University of Chicago in 1892, among his first (and highest paid) faculty appointments was former All-American football standout Amos Alonzo Stagg. n40 Intercollegiate athletic competitions had blossomed over the past five decades, n41 and Harper recognized that an acclaimed football squad could be a "drawing card" for the fledgling institution. n42 He charged his new coach with "developing teams which we can send around the country and knock out all the colleges. We will give them a palace car and a vacation, too." n43 Department chairs quipped that Harper was "The P.T. Barnum of Higher Education," n44 but his marketing strategies worked: Chicago soon built a nationally-renowned football program (despite allegations that Stagg was "employing professional athletes"), and enrollment tripled to 5500 by 1909.**

**Amidst public outcry over the increasingly brutal nature of college football-at least twenty players were killed during the 1904 season n46 -sixty-two colleges met in 1905 to form what would become the National Collegiate Athletics Association. From the outset, the NCAA promoted an ethos of strict amateurism, including a ban on all forms of monetary**

**incentives like athletic scholarships. But for the first fifty years of its existence, the organization lacked meaningful mechanisms to enforce its principles.** In a major survey conducted by the Carnegie Foundation in 1929, 81 of 112 schools openly admitted violating NCAA policy, "ranging from open payrolls and disguised booster funds to no-show jobs [for athletes] at movie studios." With member institutions hungry to satisfy the burgeoning commercial market for college sports, **"the NCAA's amateur code, like the Eighteenth Amendment, proved almost impossible to enforce."** **By the late 1950s, the NCAA had abandoned a central tenet of its original amateur ideal: universities would now be allowed to pay for promising athletes' tuition, housing, and other living expenses, regardless of academic distinction or economic need.** n52 Such payments to students were already commonplace, of course, but the NCAA hoped formal recognition would sanitize the practice and curb its excesses. n53 In affixing its imprimatur to the payment of athletic scholarships, however, the NCAA was also positioning itself to guide the explosive economic growth of college athletics that would come in subsequent years. As Professors Sack and Staurowsky explain, highly commercialized college athletics require both a pool of high-caliber athletes and a regulated distribution mechanism for spreading this talent between competing schools. n54 The NCAA's 1950s reforms "rationalized the recruitment, distribution, and subsidization of player talent . . . laying the foundation for today's corporate college sport." n55 Awarding tuition payments on the basis of athletic talent, once anathema to concept of amateurism, became the centerpiece of professionalized college athletics.

**But while the NCAA reluctantly embraced this new vision of "amateurism," the courts initially balked, finding it a facade for an underlying employer-employee relationship. In two cases in 1953 and 1963, state courts held that scholarship students, injured or killed in the course of their athletic duties, were actually university "employees" for workers' compensation purposes. n56 Recognizing that "higher education in this day is a business, and a big one," n57 the courts found that an injured athlete could have "the dual capacity of student and employee. . . . The form of remuneration is immaterial." n58**

**Shaken by the prospect that courts might recognize college athletes as "employees," the NCAA invented the now ubiquitous watchword "student-athlete" as a direct response to these legal defeats. n59 Walter Byers, who served as the NCAA's influential executive director from 1951 to 1987, recounts in his memoir the panic such cases provoked. The workers' compensations cases raised the dreaded notion that NCAA athletes could be identified as employees by state industrial commissions and the courts. . . . We crafted the term student-athlete, and soon it was embedded in all NCAA rules and interpretations as a mandated substitute for such words as players and athletes . . . . n60**

**The term "student-athlete" was designed not only to "conjure the nobility of amateurism, and the precedence of scholarship over athletic endeavor," but to obfuscate the nature of the legal relationship at the heart of a growing commercial enterprise.**

It worked. Since the 1960s, the NCAA has repeatedly prevailed in workers' compensation claims brought by severely injured college athletes. n62 Likewise in the antitrust context, courts have afforded the NCAA considerable deference, accepting NCAA practices as necessary "to preserve the unique atmosphere of competition between 'student-athletes.'" n63 "Even in the increasingly commercial modern world," a federal district judge explained in 1990, "there is still validity to the Athenian concept of a complete education derived from fostering full growth of both mind and body." n64 The notion that athletes "sell their services" and that universities are

"purchasers of labor," the Seventh Circuit held in 1992, is a "surprisingly cynical view of college athletics." n65 College football players are not market participants, the court reasoned, because they are "student-athletes." n66

Yet upon even modest cross-examination, the NCAA's "amateur defense" seems vulnerable. Consider a recent interview of former NCAA president Myles Brand appearing in Sports Illustrated:

[Brand:] They can't be paid.

[Q:] Why?

[Brand:] Because they're amateurs.

[Q:] What makes them amateurs?

[Brand:] Well, they can't be paid.

[Q:] Why not?

[Brand:] Because they're amateurs.

[Q:] Who decided they are amateurs?

[Brand:] We did.

[Q:] Why?

[Brand:] Because we don't pay them. n67

**The exchange, with its shades of Abbot and Costello, highlights the arbitrariness (and precarity) of what it means to be a "worker." With additional tens of millions of dollars flowing into college sports every year, the fiction of amateurism becomes harder to maintain.**

## NCAA

### Basic Explanation of the NCAA/2 Divisions

Wikipedia, [https://en.wikipedia.org/wiki/National\\_Collegiate\\_Athletic\\_Association](https://en.wikipedia.org/wiki/National_Collegiate_Athletic_Association)

The **National Collegiate Athletic Association (NCAA)**<sup>[a]</sup> is a **non-profit organization** which regulates athletes of 1,281 institutions, conferences, and individuals. It also organizes the **athletic programs** of many **colleges** and **universities** in the **United States** and Canada, and helps more than 450,000 college **student-athletes** who compete annually in college sports. The organization is headquartered in **Indianapolis, Indiana**. In 2014, the NCAA generated almost a billion dollars in revenue. 80 to 90% of this revenue was due to the **Division I Men's Basketball Tournament**. This revenue is then distributed back into various organizations and institutions across the United States.<sup>[3]</sup>

In August 1973, the current three-division system of **Division I**, **Division II**, and **Division III** was adopted by the NCAA membership in a special convention. Under NCAA rules, Division I and Division II schools can offer **scholarships** to **athletes** for playing a sport. Division III schools may not offer any athletic scholarships. Generally, larger schools compete in Division I and smaller schools in II and III. Division I **football** was further divided into I-A and I-AA in 1978. Subsequently, the term "Division I-AAA" was briefly added to delineate Division I schools which do not field a football program at all, but that term is no longer officially used by the NCAA.<sup>[4]</sup> In 2006, Divisions I-A and I-AA were respectively renamed the **Football Bowl Subdivision (FBS)** and **Football Championship Subdivision (FCS)**..... In 1999, the NCAA was sued for discriminating against female athletes under **Title IX** for systematically giving men in graduate school more waivers than a woman to participate in college sports. In *National Collegiate Athletic Association v. Smith*, the U.S. Supreme Court ruled that the NCAA was not subject to that law, without reviewing the merits of the discrimination claim.<sup>[12]</sup>

Over the last two decades recruiting international athletes has become a growing trend among NCAA institutions. For example, most German athletes outside of Germany are based at US universities. For many European athletes, the American universities are the only option to pursue an academic and athletic career at the same time. Many of these students come to the US with high academic expectations and aspirations.<sup>[13]</sup>

In 2009, **Simon Fraser University** in **Burnaby, British Columbia**, became the NCAA's first non-US member institution.<sup>[14][15]</sup>

In 2014, the NCAA set a record high of a \$989 Million in net revenue. Being just shy of \$1 Billion is among the highest of all large sports organizations.

### History of the NCAA

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

A. The NCAA's History **The NCAA is a private, voluntary association, which regulates approximately 1,000 active members n3 and more than 400,000 competing student athletes in the United**

**States**.<sup>n4</sup> The NCAA is made up of three memberships that are known as Division I, II and III, which reflect the differences in size, scope, and competitive level of the athletic programs. <sup>n5</sup> Each division creates their own governing rules in accordance with the overall principles of the Association set out in the NCAA Manual. <sup>n6</sup> Every member institution must affiliate its program with one of the three divisions. <sup>n7</sup> [\*237] In 1905, sixty-two colleges became the charter institutions of the Intercollegiate Athletic Association of the United States (hereinafter "IAAUS"). <sup>n8</sup> **Initially, the Association's purpose was to end college football's**

increasing number of injuries and deaths by initiating changes in football playing rules. n9 Five years

later, the IAAUS took the name of the National Collegiate Athletic Association (hereinafter "NCAA"). n10 **For the next decade, the NCAA**

**functioned as a discussion group and rule making body, but in 1921 the NCAA held its first**

**NCAA National Championship in Track and Field.** n11 During the 1930s and 1940s, it was not uncommon for an alumnus to adopt a

local high school athlete and pay for his college tuition. n12 The alumnus, passionate about his school, would get to know the athletically gifted high school athlete, establish a relationship with him and proceed to help the student attend his alma mater. n13 The NCAA banned this practice, claiming it was compensation for play and inconsistent with their

amateurism principal. n14 **A report conducted by the Carnegie Foundation concluded that the scramble for**

**the top athlete had become the nationwide norm; 81 out of the 112 universities surveyed admitted to their student athletes having open payrolls ranging from disguised booster funds**

**to no-show jobs.** n15 In 1948, the NCAA enacted the Sanity Code, motivated by a need to prohibit all concealed and indirect benefits for collegiate athletes in order to promote fairness across their

member universities. n16 **Under the Sanity Code, a student athlete could receive tuition**

**expenses contingent on the athlete's financial need.** n17 Failure to comply with the rules of the Sanity Code was considered grounds

for the NCAA to expel the violating [\*238] university from collegiate athletics. n18 Enforcement of the Sanity Code was unsuccessful in 1950 when the NCAA failed to obtain the requisite two-thirds majority vote, from their member universities, necessary to expel seven admitted violators. n19 In 1956, the NCAA's member universities implemented their own payment system called grant-in-aid n20 or more commonly known today as an athletic scholarship. n21 That year, the NCAA officially amended the organization's bylaws to

permit universities to award an athletic scholarship consisting of all commonly accepted educational expenses for the undergraduate athlete. n22 **The NCAA found**

**it necessary in order to clean up college sports and restore amateurism.** n23 **The athletic**

**scholarship was promulgated to put a halt to the need for booster payments to athletes.** n24

**The idea was that if a university athlete only received the necessary expenses to attend**

**college, then the scholarship did not amount to the athlete being paid to participate in the**

**university's athletic program.** n25 Although payments and perks from boosters have never been eliminated, this was the NCAA's first step in pursuing

their notion of amateurism. The Term "student athletes" was designed to support the continued exploitation of Since the NCAA's formation, the association has continued to

evolve. The **NCAA established itself on the principle of protecting the student athlete and to this**

**day continues to stand by it with increased emphasis on both athletics and academia.** n26 **The**

**NCAA has long maintained that college sports are distinct from professional sports because**

**[\*239] student athletes are amateurs.** n27 Further, participation in college athletics is contingent on the validity of a student athlete's amateur

status. n28 **The NCAA crafted the term student athlete to preserve their principle of amateurism.** In

1953, in University of Denver v. Nemeth, n29 the Colorado Supreme Court held that Ernest Nemeth, a football player at the University of Denver, was an employee within the

meaning of the Colorado workers' compensation statute. n30 Nemeth sustained injuries while playing football during spring practice on the university's grounds. n31 **In**

**labeling Nemeth as an employee of the university, the Supreme Court obligated the university**

**to provide workers' compensation benefits for his football related injuries.** n32 **As more**

**universities continued to offer full athletic scholarships to the best high school athletes, the**

**NCAA and their members faced a legitimate threat that courts would conceive the**

**relationship between the student athlete and their university as an employment relationship.**

By allowing full scholarships to be given to prospective student athletes as a form of compensation for athletic prowess, courts could imply an employer-employee relationship and expose these universities to liability for workers' compensation. n33 In response, the NCAA coined the term 'student athlete' to refer to the young men participating in

intercollegiate athletics. **The NCAA classified their athletes as student athletes in order to strengthen the**

**public's perception that such individuals were students of the university and not employees.** In

Walter Byers' book Exploiting College Athletes, the former NCAA Executive Director noted: **To address the threat that NCAA athletes**

**could be identified as employees, we crafted the term student-athlete and soon it was**

**embedded in all NCAA rules and interpretations as a mandated substitute for such words as**

**players and athletes.** We told college publicists to speak of "college teams" not football or basketball "clubs," a word common to the pros. n34 However, despite

it's literal meaning, the NCAA's purpose in creating the term 'student athlete' was to disguise and prevent any thought that the athlete and university shared an employment relationship in order to avoid any legal consequences that would follow as employers. Ultimately, the NCAA crafted the term student athlete to provide a shield against potential workers' compensation claims and compiled a number of victories since their inception of the student athlete defense.

Recognize

Recognize means to acknowledge the legal validity of

Google Definitions,

[https://www.google.com/search?source=hp&ei=DelKWq2vJYWkmwGo9In4Bg&q=define%3A+recognize&oq=define%3A+recognize&gs\\_l=psy-ab..0j0i20i264k1j0j0i10k1j0l5.609.2905.0.3059.18.10.0.0.0.0.357.1481.0j1j1j3.5.0....0...1.1.64.psy-ab..13.5.1476.0..35i39k1j0i131k1j0i67k1.0.zlEgIT\\_puqI](https://www.google.com/search?source=hp&ei=DelKWq2vJYWkmwGo9In4Bg&q=define%3A+recognize&oq=define%3A+recognize&gs_l=psy-ab..0j0i20i264k1j0j0i10k1j0l5.609.2905.0.3059.18.10.0.0.0.0.357.1481.0j1j1j3.5.0....0...1.1.64.psy-ab..13.5.1476.0..35i39k1j0i131k1j0i67k1.0.zlEgIT_puqI)

1. identify (someone or something) from having encountered them before; know again.

"I recognized her when her wig fell off"

○

○

2. **2.** acknowledge the existence, validity, or legality of.  
"the defense is recognized in Mexican law"

**Pro**





## **New Proposal --- “Educational Benefits” But No Pay**

Provide \$30,000+ in educational benefits in a new division, but not as employees

Steve Berkowitz, December 5, 2023,

<https://www.usatoday.com/story/sports/college/2023/12/05/ncaa-proposal-athletes-compensation-trust-fund-new-subdivision/71811018007/>, NCAA President Charlie Baker proposing new subdivision that will pay athletes via trust fund,  
<https://www.usatoday.com/story/sports/college/2023/12/05/ncaa-proposal-athletes-compensation-trust-fund-new-subdivision/71811018007/>

NCAA president Charlie Baker on Tuesday sent a letter to Division I members proposing the creation of a new competitive subdivision whose schools would be required to provide significantly greater compensation for their athletes than current association rules allow.

Under Baker’s plan, “within the framework” of Title IX, the federal gender-equity law, schools in this new group would have to “invest at least \$30,000 per year into an enhanced educational trust fund for at least half of the institution’s eligible student-athletes.”

For now, the particulars of how and when athletes would be able to access these payments would be left up to the schools. And the schools not only would be allowed to pay athletes amounts greater than \$30,000, they also would be able to provide the payments to more than half of their athletes.

Regardless of how schools would implement this, the concept creates the possibility of a fundamental change in how — and how much — the NCAA allows schools to compensate athletes for participating in their sports.

Baker’s proposal also involves the schools in the new competitive group committing to work together to “create rules that may differ from the rules in place for the rest of Division I. Those rules could include a wide range of policies, such as scholarship commitment and roster size, recruitment, transfers or” policies connected to athletes’ activities making money from their name, image and likeness (NIL).

For example, this could result in schools in the new subdivision having no limits on the number of scholarship awarded in a particular sport or sports. At present, Division I schools are subject to sport-by-sport limits on the number of scholarships they can award, and there are some sports with roster limits.

OPINION:NCAA's new proposal could help ensure its survival if Congress gets on board

Across all of Division I, Baker says the association should change its rules to “make it possible for all Division I colleges and universities to offer student-athletes any level of enhanced educational benefits they deem appropriate. Second, rules should change for any Division I

school, at their choice, to enter into name, image and likeness licensing opportunities with their student-athletes.”

Under pressure from antitrust lawsuits and from some members of Congress, athletics administrators at those schools and their conferences have grown increasingly open to the idea of providing greater benefits for athletes as they collect billions of dollars in TV money and have coaches who are being paid millions of dollars annually and tens of millions in buyouts if they get fired.

At the same time, though, the NCAA and its schools are seeking federal legislation that would include protection from antitrust challenges and specify that athletes cannot be deemed to be employees of their schools.

Sen. Chris Murphy, D-Conn., a longtime critic of the NCAA, said in a statement Tuesday night: "It has been a slow and painful process, but the NCAA is finally realizing if they want to survive, business as usual is not an option. Anyone who watches college sports today would tell you these players are anything but amateurs. I have always said the NCAA doesn't need permission from Congress to do the right thing, and while this proposal might be a small step, it hopefully suggests they're moving in a positive direction."

**General – “Employee” Designation**  
**Effective/They are Employees**

## “Employee” Designation Solvency

### **“Employee” status allows athletes to pursue better scholarship deals and obtain long-term health insurance**

Anderson Tax, 2014, <https://andersen.com/publications/newsletter/september-2014/student-athlete-athlete-employee-tax-consequences-for-sure>,

**As employees, the student-athletes would be able to use their new union to seek fair compensation, negotiate better contracts (including scholarship deals), and pursue long-term health insurance (to name a few).**

### **Reasons they should be considered employees**

David Grenardo, 2023, Professor of Law & Associate Director of the Holloran Center for Ethical Leadership in the Professions, University of St. Thomas School of Law, Preparing for the Inevitable— Compensating College Athletes for Playing—by Comparing Two Payfor-Play Methods: The Duke Model Versus the Free Market Model, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4323937](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4323937)

On September 29, 2021, Jennifer A. Abruzzo, General Counsel for the NLRB, addressed Memorandum 21-08 to all regional directors, officers-in-charge, and resident officers.<sup>104</sup> In her memorandum, she discusses how Griffith’s memorandum determined scholarship college athletes are employees under the NLRA, but Robb’s memorandum rescinded that determination.<sup>105</sup> Abruzzo’s memorandum reinstates Griffith’s memorandum to the extent it finds scholarship college athletes are employees under the NLRA, and it goes even further.<sup>106</sup> Abruzzo provides notice that “misclassifying such employees as mere ‘studentathletes’, and leading them to believe that they do not have statutory protections” violate the NLRA.<sup>107</sup> Abruzzo’s memorandum states that scholarship college athletes at Division I FBS private colleges and universities, and similarly situated athletes at academic institutions (“scholarship college athletes”), which would include scholarship college athletes who generate revenue for their universities, are employees for two reasons.<sup>108</sup> First, the NLRA defines employees broadly and includes enumerated exceptions to categories of groups that are not employees—college athletes are not listed in the exceptions, which provides strong evidence that they fall under the category of employees according to the NLRA.<sup>109</sup> Second, scholarship college athletes satisfy the elements under the common law definition of employee.<sup>110</sup> The definition of an employee under common law consists of the following: a person “‘who perform[s] services for another and [is] subject to the other’s control or right of control.’ In addition, ‘[c]onsideration, i.e., payment, is strongly indicative of employee status.’”<sup>111</sup> Abruzzo concludes that scholarship college athletes “perform services for their colleges and the NCAA, in return for compensation, and subject to their control.”<sup>112</sup> In particular, scholarship college athletes (at Northwestern University, for example) perform the service of playing football for their university and the NCAA, which “generat(es) tens of millions of dollars in profit and provid(es) an immeasurable

positive impact on the university's reputation, which in turn boosts student applications and alumni financial donations."113 In return, the "football players receive[] significant compensation, including up to \$76,000 per year, covering their tuition, fees, room, board, and books, and a stipend covering additional expenses such as travel and childcare."114 The university controls the college athlete's lives in a number of ways, including when they practice, train, and play games, as well as their daily schedules, meals, living arrangements, and classes.115 The university ensures the college athlete's compliance with NCAA rules to maintain eligibility, and the university can remove a player from a team and withdraw a player's scholarship for violating NCAA rules.116 The NCAA maintains control over players by dictating "the players' terms and conditions of employment, including maximum number of practice and competition hours, scholarship eligibility, limits on compensation, minimum grade point average, and restrictions on gifts and benefits players may accept, and ensures compliance with those rules through its 'Compliance Assistance Program.'"117 The General Counsel for the NLRB concludes that scholarship football players, and other similarly situated athletes, qualify as employees under both the NLRA and the common law definition of employee.118 Thus, athletes "should be protected by Section 7 when they act concertedly to speak out about their terms and conditions of employment, or to self-organize, regardless of whether the Board ultimately certifies a bargaining unit."119 Abruzzo, recognizing that the NCAA initially began using the phrase "student-athlete" unabashedly in the 1950s to avoid paying college athletes worker's compensation, and the NCAA still uses the phrase today, asserts that she will prosecute employers, universities, and colleges that apply this misleading misnomer to college athletes who are employees under the act because it creates a chilling effect on Section 7 activities.120 Abruzzo acknowledges that the NLRB maintains jurisdiction only over private entities,121 which is what the NLRB pointed out in its opinion that declined to exercise jurisdiction over the Northwestern case because Northwestern is the only private institution in the Big 10 Conference.122 Abruzzo asserts that she could bring a case against the conferences and/or the NCAA, which are private entities, to reach public institutions in determining that its players are employees under the NLRA.123 The NLRB could use a similar tactic—naming the NCAA as a joint employer—to allow the unionization of players at public and private institutions.124 Abruzzo's memorandum points out the significance of the Alston case and the NCAA's about-face when it comes to allowing college athletes to profit from their NIL, which is based not only on the Alston case, but also on the state legislatures that passed laws to allow NIL deals for college athletes.125 All of these events are leading to pay-for-play for college athletes. When that time comes, the Duke Model would be an excellent approach to compensate athletes.

## “Employee” Advocacy

### **National Relations Labor Board (NRLB) believes they are employees**

NICK NIEDZWIADK, 12/15/2022, Politico, EMPLOYMENT & IMMIGRATION, Student athletes should be classified employees, labor cop says, <https://www.politico.com/news/2022/12/15/nlrb-ncaa-student-athlete-misclassification-00074250>

The National Collegiate Athletic Association is breaking federal law by not classifying student athletes as employees, according to the National Labor Relations Board. NLRB officials in Los Angeles determined that the NCAA, along with the Pac-12 Conference and the University of Southern California, are joint employers of athletes — an assessment that could ultimately allow student athletes to unionize. By not designating athletes as employees, the trio are infringing on those students’ labor rights, General Counsel Jennifer Abruzzo said Thursday. “This kind of misclassification deprives these players of their statutory right to organize and to join together to improve their working/playing conditions if they wish to do so,” Abruzzo said in a statement. “Our aim is to ensure that these players can fully and freely exercise their rights.” Abruzzo issued a memo last September 2021 outlining her belief that student athletes should be treated as employees for the purposes of the National Labor Relations Act and vowed to take action to enforce that view. For decades, colleges and the NCAA have resisted attempts to rein in their control over athletes in the system. But the business model has come under intense scrutiny in recent years and has led to several court rulings that have forced major changes to how collegiate sports operate.

### **Payment proposal**

Scott Jennings is a former adviser to President George W. Bush and U.S. Sen. Mitch McConnell. He is a partner at RunSwitch Public Relations. This originally appeared in The Courier-Journal(Louisville), 4-2-14, USA Today, Don’t Unionize College Athletes: Column, <https://www.usatoday.com/story/opinion/2014/04/02/ncaa-march-madness-louisville-northwestern-column/7173943/>

How to compensate college athletes is a trickier question. **Author Samuel Freedman argued on ESPN.com for a "royalties-and-escrow system" that would compensate players similarly to how "songwriters, producers and musicians are compensated in popular music." Players would get some money up front but most would go in to an escrow account available once the players earned a college degree. Freedman's plan solves the immediate problem of putting living expense money in the pockets of athletes and carries the added bonus of incentivizing graduation. Freedman points out that just 2% of basketball and football players make a**

**professional roster, so most athletes would be interested in a post-degree escrow account. Bilas, on the other hand, wonders why money should be held back and that players should be compensated immediately based on their personal value to the free marketplace. Regardless of how it gets done (certainly details matter when you are talking about this much money), it is time to compensate athletes for the massive revenues made from their talents and likenesses. Surely a solution can be reached that is fair to the kids who make our Marches so special without involving union bosses who would love to dip into the till.**

### **The NCAA position on “employee” is flawed**

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, EXCUSES, NOT REASONS: 13 MYTHS ABOUT (NOT) PAYING COLLEGE ATHLETE. Sportsgeekconomics<https://drive.google.com/file/d/0BxM4wdtZ5ul-OWFhNGE1ZTItZTIiYS00YmVlLTk0YmItYTM4ZDUyY2MwNTE2/view>

Although the circularity of this argument should be clear, nevertheless this argument is made all the time by otherwise intelligent people, including the NCAA’s Mark Emmert.[1] The primary reason that college athletes are not employees is because the NCAA doesn’t pay them. So they aren’t employees because they don’t get paid and they can’t get paid because they are not employees. Amazingly, this completely irrational argument appears to be the new centerpiece of the current NCAA defense. Indeed, if it were not so central to the NCAA’s new public relations blitz, I would have hesitated to include it as myth because it’s really too inane to be worthy of discussion. However, since it is the current NCAA position, here goes. This argument is the equivalent of banning airplanes from leaving the ground and then saying air travel is physically impossible because after all airplanes don’t fly. Other than in name, college athletes are like employees. They perform a service for the school and are compensated via a GIA. For many college athletes, a GIA includes a monthly amount in cash. The school reserves the right to “fire” them at the end of every year, because all scholarships (by NCAA mandate) are one-year-only, and must be renewed each year, [2] and so many athletes have had their scholarships terminated when the school found a better “non-employee” to do their “non-job” that there is pending litigation over the practice.[3] Colleges used to argue that graduate students who serve as teaching assistants on campus were “amateur,” but many states have recognized that teaching assistants perform a service like any other employee. Many schools treat graduate instructors as employees, and even the ones that refuse to grant them employee status still pay them. The IRS taxes all of them as employees, whether the schools call them that or not.[4] The only reason that the NCAA is able to say that athletes are not employees is because the NCAA forbids schools from paying them – it’s not the reason we can’t pay them, it’s the result of not paying them (and indeed, we could pay them like graduate teaching instructors and still not call them employees). But whether we do or do not call them employees, the reason they are not paid is because of a collusive agreement among the NCAA Division 1 schools. End the collusive agreement and this argument goes away too.





## Should Pay

### Should be paid

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, Excuses, Not Reasons: 13 Myths About (Not) Paying College Athlete. Sportsgeekonomics<https://drive.google.com/file/d/0BxM4wdtZ5ul-OWFhNGE1ZTtZTIIYS00YmVlTt0YmItYTM4ZDUyY2MwNTE2/view>

The NCAA myths laid out here are, in essence, a laundry list of potential pro-competitive defenses for what, on the surface, is naked price fixing. Several of the myths[1] can be boiled down to a concern that without collusion, costs would rise. This includes inter alia the claim that schools are too poor to pay, that some schools cannot afford to keep up with others, that schools might have to use non-football money to support other sports, and even, when properly analyzed, that Title IX makes it more expensive to pay male athletes. It also includes the concern about making students into employees, which in some sense is really a concern about the increasing cost of workers' comp insurance or payroll taxes. But cost savings is a poor antitrust justification for the NCAA's collusion, as Law v. NCAA makes clear.[2] A few of the myths[3] speak to a claim that the NCAA does not have market power, such as when the NCAA posits that anyone who doesn't like their GIA can go play in Europe or pump gas. This seems easily dispatched with a simple analysis of the NCAA's market share in a relevant antitrust market. A few myths essentially question whether the market is an appropriate or efficient tool for setting prices.[4] I would hope the antitrust laws would not find in favor of an argument that markets are bad vehicles for setting prices. Finally, what remains is the dubious claim that but-for the collusion, the product would not exist. Increasingly, this seems ridiculous. Does anyone feel that next year's BCS championship would have lower ratings or lower attendance if the NCAA stops enforcing a maximum cap on athletic compensation? Of course, this is also an empirical question, which could be answered with data. One way is by natural experiment where some conferences could try paying their athletes and as the quality players gravitated to those schools, we could determine if fans gravitated away towards lower quality, but unpaid teams. Another is with a well-crafted, unbiased survey that got at what drives fan interest in the game. It's hard to imagine a fan, when asked what the best thing about college football is, who responds, "because they are unpaid!" But again, this is an empirical question that can be resolved with further research. As it stands now, **we have an NCAA assertion that the unpaid status of the player drives the popularity of the sport balanced against a wealth of circumstantial evidence that fans love high-quality college sports and that when sports of all sorts in the past have "gone pro," the fans did not shift away to more amateur endeavors.**

When the myths are stripped away, what's left? **We could have a vibrant college athletics system where the elite programs pay competitive wages to their athletes and continue to dominate the sports as they do now. Other schools would pay less, get lesser talent, and win less often, just like they do now. Fans would still attend and watch on television. The government would not cut off schools for violating Title IX because they would comply as much or more than they do now. Costs would rise, but not as much as you might think because other costs would decline. Coaches would earn a little less, weight rooms would be a little less lavish. And some fairer portion of the billions in revenue would flow to the college athletes who generate them. And that's no myth.**

### Should pay

Earl Scott, Master's Candidate, Wake Forest University, IMPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA," May 2015.  
[https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Lewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

Despite the flaws pointed out, the NCAA system still has a number of positives that help its student athletes. The organization allows its athletes to showcase their talent on a high level, provides student-athletes with educational opportunities, along with allowing them to interact and build networking opportunities with a number of people. However, reflecting on the facts and arguments stated, **the NCAA still has many things it should change in order to improve its organization. Based on the amount of labor today's student-athletes are forced to perform and the money they are responsible for generating, Division I football and men's basketball players** should be paid by the NCAA and/or their universities. In order to maintain the current college athletic system, **this payout should not be in an amount similar to a professional league. However, it should be enough to eliminate the thought that college athletes are being taken advantage of. A possible method that could work would be one that allowed men's basketball and football players to receive checks from their universities, their conferences, and the NCAA at the end of each year that would provide them all with a small, equal portion of the money they helped to generate.** In addition to the checks given to them, players should be allowed to participate in business opportunities on their own that will allow them to make additional money from their image through institutions other than their schools, conferences, and the NCAA. Placing a limit on how much a player can make from his image each year would be a positive change that would help student-athletes financially without damaging the integrity of college sports. A method that would allow a player to make money up to a certain amount through signing autographs, appearing in advertisements, or hosting camps, would be fair and beneficial to the student athlete. This kind of model would allow all players to be compensated properly and allow athletes to participate in other business opportunities on their own if they wish to do so. In all, **even though the NCAA provides great opportunities for its student-athletes, there are many revisions that could be made in order to better serve these young adults. Instead of changing the way the current NCAA model operates, the NCAA should construct a method that allows big-time college athletes the right to make money from their image through resources outside of their university, and also figure out a way for universities and/or the NCAA to pay athletes a small percentage of the money they are responsible for generating**

## College Athletes are Employees (Under NRLA) – National Labor Relations Act

### College athletes meet the definition of an employee

Jake Simpson, 2014, August 7, The Atlantic, Of course student athletes are university employees, <https://www.theatlantic.com/entertainment/archive/2014/04/of-course-student-athletes-are-university-employees/360065/>

There's more to consider, however, than just the amount of time athletes put into their sports. At Division I schools (and at major Division II and III programs), athletes are still a world apart from students who spend just as much time in extracurricular activities like the debate team—which multiple legal experts mentioned as a comparison to college athletics—or the college newspaper. And I say that as someone who had more than his share of 40-hour weeks working in the sports department of The Daily Northwestern while in college. The **Northwestern football players**, as Patrick Hruby noted at Sports on Earth, **do meet all four prongs of the common-law definition of an employee: Someone performing work for another person or entity under a contract of hire who is under that entity's control, in return for payment or other compensation. The work (football), the payment (a scholarship) and the control (the school has the power to revoke scholarships, not to mention that the NCAA has exhaustively detailed codes of athlete conduct) are easily identifiable in the relationship between student-athletes and their universities.** But, crucially, Ohr's decision also spelled out that **a contract of hire is in effect signed by a recruit before he or she is officially accepted by the school.** Ohr noted in his ruling that **"when [Northwestern football coach Pat Fitzgerald] makes a scholarship offer to a recruit, he provides** the individual both **a national Letter of Intent and a four-year scholarship offer that is referred to as a 'tender.'** **Both documents must be signed by the recruit, and the 'tender' describes the terms and conditions of the offer."** I have yet to hear of a master high school debater, or glee club member, or newspaper reporter that signed a tender or any similar contract with a university prior to joining the school. The explicit terms of the tender signed by all scholarship college athletes—indeed, **the tender's very existence** as a required part of the pre-acceptance process—**separates them from other college students, even those who are significantly involved in an extracurricular activity.** It also seems to jibe with Ohr's finding that most scholarship student-athletes are brought into the school explicitly for their athletic abilities, with the "student" part coming second. And while **football and men's basketball**, as the two sports that **generate the bulk of most schools' athletic revenues**, have dominated the conversation about the unionization of college sports, it's worth noting that time commitments and **tenders are not limited to players in those two sports—which means other college athletes could be considered employees as well.** Hudson Taylor, a former scholarship athlete who was a three-time All-American wrestler for the University of Maryland, said he trained daily, two times a day, for more than half the year. "There were only maybe one or two months a year where I wasn't wrestling, lifting, running, training—living the life of a college athlete," he said. "I would train or spend time on wrestling for four or five hours almost every day, except for Sunday."

### Explanation as to why the NLRB says they are employees

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, The Future of College Athlete Players Unions: Lessons Learned from Northwestern

University and Potential Next Steps in the College Athletes' Rights Movement, Cardozo Law Review, <https://goo.gl/FNxGnE>

Upon review of the respective parties' briefs, the Northwestern University football players prevailed, as Region 13 ruled that the Northwestern University football players indeed constituted employees under section 2(3) of the NLRA.<sup>n54</sup> The Region 13 decision defined the term "employee" to include any person "who performs services for another under a contract of hire, subject to the other's control or right of control, and in return for payment."<sup>n55</sup> Applying this definition, the decision concluded that the Northwestern University football players performed services for their school under a "tender," which is an employment contract that guarantees the football players compensation in the form of both a free education and living stipends.<sup>n56</sup> The decision also found that Northwestern University benefited from this "tender" because the college generated approximately \$ 235 million in revenue from the services of its football players during the nine year period from 2003 to 2012.<sup>n57</sup> With respect to the issue of "control," the Region 13 decision similarly found that the Northwestern University football players met their burden.<sup>n58</sup> The decision explained that during the six weeks of football training camp before the start of each academic year, coaches provided the Northwestern University football players with an hour-by-hour itinerary of their activities "from as early as 5:45 a.m. until 10:30 p.m."<sup>n59</sup> Meanwhile, during the season, the Northwestern University football players "devoted 40 to 50 hours per week on football related activities" including "25 hours [each week] over a two day period traveling to and from their game, attending practices and meetings, and competing in the game [itself]."<sup>n60</sup> Beyond these heavy time commitments, the Region 13 decision found that Northwestern University exercised control in more specific ways.<sup>n61</sup> For example, Northwestern University coaches determined the football players' attire when traveling to road games, and what cars the players would drive while on campus.<sup>n62</sup> Northwestern University coaches also determined whether the football players could seek outside employment, if the players were allowed to speak with the media, and what content the players could post on the Internet.<sup>n63</sup> Finally, the decision even recognized that Northwestern University exercised control over its grant-in-aid football players by requiring them to miss classes and select course schedules built around the obligations placed upon them in their role as football players.<sup>n64</sup> This particular finding entirely differentiates the Northwestern University football players from students in the general Northwestern University student body.<sup>n65</sup> To some, it even more broadly substantiates their reasons for seeking to unionize.<sup>n66</sup> C. Appeal to the National Labor Relations Board Upon learning of Region 13's decision, Northwestern University swiftly appealed the ruling to the Board Members of the NLRB.<sup>n67</sup> On April 24, 2014, the Board Members agreed to hear the case.<sup>n68</sup> But, after listening to oral arguments, the Board Members waited an unprecedented sixteen months before issuing a ruling.<sup>n69</sup> When the Board Members finally ruled on August 17, 2015, they reversed Region 13's decision, *declining to assert jurisdiction over the Northwestern University grant-in-aid football players.*<sup>n70</sup> *The NLRB Board Members did not reject Region 13's conclusion that Northwestern University football players constituted employees,*<sup>n71</sup> **but they still found the proposed bargaining unit to be inappropriate because they determined that college sports requires a "symbiotic relationship" between the teams in a sports league.**<sup>n72</sup> Because Northwestern University was the only private college in the Big Ten Conference to fall under the NLRB's direct jurisdiction (and thus the only college in their athletic conference to do so), the Board Members believed that asserting jurisdiction did not serve to support a "symbiotic relationship" or "promote stability in labor relations" within big-time college sports.<sup>n73</sup>

## Student athletes meet the definition of "employee" under NRLA

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

The dispositive inquiry of this Note is whether a student athlete is an employee of the university under state or federal law. Neither state nor federal statutes explicitly define the term employee.<sup>n83</sup> In lieu thereof, state and federal courts have uniformly embraced the common law definition of employee. The court in *CCNV v. Reid*<sup>n84</sup> acknowledged that Congress intended the term "employee ... to be understood [\*247] in light of the general common law definition rather than on the law of any particular state."<sup>n85</sup> For this Note, I

will use the National Labor Relations Act n86 (hereinafter "NLRA") as an example of a federal statute. **Although the NLRA's jurisdiction is limited to private corporate enterprises, n87 this Note focuses on student athletes attending public and private universities. Application of the NLRA's employee standard remains a good starting point for our analysis of the employee status of scholarship athletes under federal law.** Initially, courts applied a contractual test based solely on the element of intent to analyze the employer-employee relationship of the scholarship athlete. n88 Since then, courts have developed two tests for determining whether an employment relationship exists under common law: (1) the right of control test and (2) the economic realities test. Sometimes courts use a blended approach, measuring the degree of control an alleged employer may exercise over an alleged employee alongside a consideration of the alleged employee's economic dependence upon the employer. n89 Additionally, the National Labor Relations Board (hereinafter "NLRB") developed a statutory test for students seeking status as employees of their university under federal law. This Note will demonstrate that under any of the three common law approaches and the NLRB statutory test, scholarship athletes are employees of their university. [\*248] A. Common Law Employment Tests i. Contractual Intent The Indiana Supreme Court's ruling in *Rensing v. Indiana State University* n90 was a primary reason why scholarship athletes were initially not considered employees of their respective universities. In 1976, a former collegiate football player, Fred Rensing, sustained a career ending injury during football practice that rendered him a quadriplegic.

Relying on a contractual theory, the court concluded that **Rensing's athletic scholarship did not create an employment relationship because "there was no intent to enter into an employee-employer relationship at the time the parties entered into the agreement."** n91 Put differently, there must be a mutual belief that an employer-employee

relationship did exist. n92 **The court supported its decision on four factors: (1) student athletes are first and foremost students; n93 (2) scholarships are not considered compensation; n94 (3) the athletic scholarship is not taxed; n95 and (4) the university was unable to terminate the relationship. n96 Contrary to the principles of analyzing employer-employee status, the courts erred in focusing solely on intent.** n97 Further, economical, policy and legal changes do not support the conclusion reached in *Rensing*. [\*249] *Rensing* relies on the university's intent in reaching the conclusion that scholarship athletes are first and foremost students. n98 However, this notion has become archaic. Today, student athletes should be considered athletes first and students second. From the outset, student athletes are recruited to participate in university's revenue competing sports programs. To stay competitive, NCAA member institutions will admit athletically gifted prospects that failed to qualify academically as partial qualifiers in order to enhance their athletic department. Partial qualifiers, n99 according to NCAA bylaws, are student athletes who either achieved a grade point average below 2.0 in high school or obtained a score below 700 on the SAT, or both. Thus, these student athletes enter college underprepared to perform in the classroom. n100 Universities have created academic courses offered exclusively to student athletes such as Contemporary Issues in Social Welfare, known to students as Palm Trees 101 or Varsity Football in order to boost their student athlete's grade point average. n101 Universities invest considerable resources in academic support services to help keep their student athletes eligible to participate in athletics. n102 James Duderstadt, a former president at the University of Michigan, stated at Michigan the student-athlete academic support program consisted of a director, six full time advisors, three assistant advisors, seventy tutors, ten specialized writing instructors, and fifteen proctors for supervised study sessions. n103 Duderstadt went on to state that Michigan, "brought in students who had no hopes of getting a meaningful education, we keep them eligible as long as we can and then 'toss them aside' when they lose it." n104 The dominance of athletics over education in the typical student athlete's life supports a finding that these student athletes are first and foremost athletes. [\*250] ii. The Right of Control The control test was created to differentiate between persons who were employees versus independent contractors. n105 In 1947, the Taft-Hartley Amendments to the NLRA endorsed the common law right of control test as the proper measure for determining whether individuals are employees under the Act. n106 The Control Test focuses on the employer's degree of control maintained over the working life of the employee. n107 Courts place greater emphasis on the employer's right to control rather than on the actual exercise of control over the employee. n108 Similar to the "master-servant" analysis under the Restatement (Second) of Agency, n109 the control test incorporates four factors: (1) direct evidence of right or exercise of control; (2) method of payment; (3) the furnishing of equipment; and (4) the right to fire. n110 In application, [\*251] each of the factors must be balanced to determine their respective weight and importance, however, none of the factors are controlling. n111 The first factor of the control test seeks direct evidence of an employer's right or exercise of control. This test distinguishes independent contractors from employees by focusing on the degree of control an employer exercises over an employee's time, manner, and method of executing the work. n112 Courts have previously found athletes to be employees due to the extreme amount of control the employer exercises over the athlete's actions on and off the playing field as well as during the off-season. n113 University athletic departments have the right to exercise an enormous amount of control over their scholarship athletes. An athletic scholarship certainly has its benefits, but it comes with a host of conditions that must be met in order for the athlete to retain its renewal. n114 Satisfying scholarship agreements requires an athlete to comply with their coach's wishes by attending mandatory practices, games, film sessions, and study hall. n115 In an interview, Fred Mims, former Director of Athletic Student Services at the University of Iowa, described the typical day for a first year basketball player as follows, "8:00-11:30 a.m. (class); 11:30-12:00 p.m. (lunch); 1:00-3:30 p.m. (practice); 4:00-5:30 p.m. (mandatory study hall or

weight lifting, (alternating days); 6:00-7:00 p.m. (mandatory dinner); 7:30-9:00 p.m. (mandatory study hall)." n116 **Constantly forced to miss class due to their rigorous athletic schedule, [\*252] student athletes are commonly prohibited from enrolling in certain majors or specific classes due to their conflicting schedule. n117 These obligations keep a scholarship athlete occupied all day with little, if any, free time. The regimented schedule of a scholarship athlete shows the extreme degree of control universities exercise over their athletes.** The second factor of the control test focuses on whether the university compensates the student athlete. While an independent contractor provides similar services to a diverse and abundant number of employers, an employee provides continuous service to a single employer. n118 Upon signing a letter of intent, a student athlete exchanges his athletic services exclusively to a single university for an athletic scholarship that lasts a minimum of one year. An employment contract requires consideration or some form of remuneration for the employee. n119 Potential employees must prove they do not perform services gratuitously and that they seek to collect for their efforts. n120 In a variety of cases, courts have held that consideration need not be in the form of money. n121

Further, athletic scholarships have been held to constitute wages. n122 **In *Coleman v. Western Michigan University*, the court held that an athletic scholarship constituted wages.** n123 The court stated, "in return for his athletic services as a football player, plaintiff received certain items of compensation which are measurable in money, including room and board, tuition and books." n124 In their 1991 Report, the Knight Commission, an advocacy group that seeks to reform college sports, supported this notion in stating that "scholarship [\*253] athletes are already paid in the most meaningful way possible, a free education." n125 A full scholarship includes tuition, room and board, textbooks and a \$ 2,000 additional stipend. **These benefits clearly constitute compensation from the university in exchange for the athlete's athletic prowess.** The next factor courts consider is which party provides the equipment. Independent contractors generally supply and maintain their own equipment, whereas employees use their employer's equipment or perform services on their employer's premises. n126 While the scholarship athlete brings his talent to the university, his athletic services are performed on the university's premises with their facilities, apparel, athletic footwear, and other incidental equipment necessary to compete. Undoubtedly, universities

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are the party to provide the employee the equipment for the act of employment. Lastly, the control test analyzes whether the employer has the right to fire the employee. Distinguishable from an independent contractor, an employer can fire a contract employee or an employee at will without liability. n127 Likewise, universities retain the right to unilaterally terminate an athletic scholarship without liability. Section 15.3.4 of the NCAA bylaws permits member institutions to cancel a recipient's athletic scholarship in a number of ways if the recipient n128: (a) renders himself ineligible for intercollegiate competition; n129 (b) fraudulently misrepresents any information on an application, letter of intent, or financial aid agreement; n130 (c) engages in serious misconduct warranting [\*254] substantial disciplinary penalty; n131 or (d) voluntarily withdraws from a sport at any time for personal reasons. n132 Universities may choose not to renew their scholarship agreements with student athletes, even absent one of the cancellation factors set forth in the NCAA bylaws. In *Conrad v. University of Washington*, n133 two scholarship athletes missed football practices and the university chose not to renew their aid at the end of the

academic year. **The court held that the university had no obligation to reinstate these scholarships because the terms of the contract required that the university only consider granting aid renewal.** n134 **An institution's ability to terminate their student athlete's scholarships foreshadows the existence of an employment relationship between the institution**

**and its student athletes.** Application of the control test shows the existence of a relationship between the university and the scholarship athlete is that of employer and employee. iii. Economic Reality The economic reality test is another common law test used to determine the existence of an employment relationship. In evaluating whether an employment relationship exists, courts consider the following factors: (1) the proposed employer's right to control or dictate the activities of the proposed employee; (2) the proposed employer's right to discipline or fire the proposed employee; (3) the payment of wages and specifically the extent to which the proposed employee is dependent upon the payment of wages or other benefits for his living expenses; and (4) whether the task performed by the proposed employee was an integral part of the proposed employer's

business. n135 Each factor must be considered separately in determining the existence of an employment relationship. n136 [\*255] **The first two factors, the right to control and the right to fire, have been analyzed in the application of the control test.** n137 The third factor, the payment of wages, has also been discussed, but not to the extent demanded under the economic reality test. This factor

evaluates the payment of wages, specifically the proposed employee's dependence on these wages. As previously noted, student athletes are clearly compensated by their universities in the form of an athletic scholarship. n138 In *Coleman*, the plaintiff was in fact dependent on the payment of these benefits for his living expenses and testified directly that he could not have met all of his expenses without scholarship aid. n139 Also, the NCAA bylaws restrict the type of outside employment a student athlete may seek to

supplement his income. n140 **Moreover, the NCAA bylaws expressly prohibit players from accepting cash, loans or gifts from non-family members and even limit the amount of gifts that can be given by family members.** n141 **Current data suggests that the financial aid permitted under the NCAA rules sometimes runs anywhere from \$ 200 to over \$ 10,000 per athlete.** n142 Limited in the ability to supplement their income and barred from accepting gifts outside the university, the

student is left economically dependent upon their athletic scholarships. The last factor of the economic reality test is whether the task performed was an integral part of the university's business. Despite failing to find an employment relationship with a scholarship wrestler and his university, the California Appeals Board in *Cheatham v. Workers' Comp. Appeals Bd.*, n143 recognized that athletics are an integral part of universities. The court stated "the student athlete brings the school measurable and tangible benefits, including money, sufficient to establish an employment relationship." n144 Similarly, the economic realities test supports a finding that student athletes are employees of their universities. Applying any of the [\*256] three common law tests presented shows that scholarship athletes are employees of their universities. Endorsed by the NLRB, an employee under common law "is a person who performs services for another under a contract of hire, subject to the other's control or right of control and in return for payment." n145 Given the preceding analysis, scholarship athletes are employees under the common law because they serve under the direct control of their universities, in return for compensation that they are economically dependent upon.

## Other Definitions of “Employee”

### Have been defined as an employee in Van Horn v. Industrial Accident Commission

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

Ten years later, Van Horn v. Industrial Accident Commission, n35 a California workers' compensation case, again confronted the question of whether a student athlete was an employee of the university. **The wife of Edward Van Horn, a football player on an athletic scholarship at California State Polytechnic College, who had been killed in a plane crash while returning home from a game in Ohio with his teammates, brought an action seeking workers' compensation benefits.** n36 The California Industrial Accident Commission denied the widow and her minor dependent children's application for death benefits by holding that Van Horn had not been an employee of the university. n37 However, **the California Court of Appeals reversed the Commission's findings and held that there was an employment contract between Van Horn and the university.** n38 The court stated, **"the fact that academic credit is given for participation in the activity is immaterial ... Student athletes may have the dual capacity of being labeled a student as well as an employee in respect to an activity."** n39 Further, the court explained that direct compensation in the form of wages is not necessary to establish an employment relationship, so long as the service is not [\*241] gratuitous. n40 The case stands for the proposition that a student athlete may have a contract of employment with a university in which a scholarship served as compensation for athletic prowess. n41

### Wisconsin definition of “employee”

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A careful review of **state labor laws indicates that Wisconsin's laws have the broadest definition of "employee."** n109 Under Wisconsin labor law, **an "employee" includes "any person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment."** n110 Recent changes to the rules for collective bargaining in Wisconsin, nevertheless, reduce the upside for college athletes attempting to unionize. n111 For example, Wisconsin's new rules about collective bargaining greatly restrict the topics over which public unions may bargain and include requirements that unions re-certify each year to maintain their collective bargaining status. n112 Neither of these requirements facilitates a long-term, complex bargaining relationship. n113 Florida, meanwhile, represents another state where there is a reasonable prospect of unionizing public colleges' FBS football and Division I men's basketball players. n114 Florida currently uses the "right of control" test to determine whether one constitutes an "employee" under state labor law. n115 Pursuant to this test, Florida has long recognized that graduate assistants who are employed by the University of Florida and University of South Florida constitute a legitimate bargaining unit. n116 Although the Florida state legislature had attempted to change state labor laws to exclude graduate assistants from the right to collectively bargain, the Florida District Court of Appeal has since held that denying any category of "employee," under the ordinary meaning of the word, of the right to collectively bargain violates the state constitution. n117 Thus, it would be extraordinarily difficult for Florida to establish a carve-out to per se deny college athletes access to collective bargaining rights. n118

## **Generally Meet Definition of “Employee”**

### **Many reasons athletes meet the definition of “employee”**

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1. The typical Division I college football player devotes 43.3 hours per week to his sport -- 3.3 more hours than the typical American work week.
2. Although the NCAA claims college athletes are just students, the NCAA's own tournament schedules require college athletes to miss classes for nationally televised games that bring in revenue.
3. Currently, the NCAA Division I football championship is played on a Monday night. This year, the national football championship game required Florida State football players to miss the first day of spring classes.
4. Meanwhile, the annual NCAA men's basketball tournament affects more than six days of classes (truly "Madness" if the players aren't "employees").
5. At some schools, the road to the NCAA men's basketball championship may require student-athletes to miss up to a quarter of all class days during their Spring semester.
6. At other schools, college coaches regulate student-athlete speech on Facebook and Twitter -- even when their sport is not in session.



## Answers to: Definitionally Excludes

**No, it's not obvious, the definition is vague**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

B. The Medical & Graduate Student Analogy Soon after the NLRB ruled that universities are "employers" under federal labor law, the question arose whether certain students—those performing labor for their university in exchange for tuition or other compensation—qualify as "employees" under § 2(3) of the Act. This determination is critical, of course, because only statutory "employees" are entitled to the basic rights and protections contemplated by the Act. n136 Unhelpfully, **though, the NLRA**

**provides a circular definition of "employee" ("the term 'employee' shall include any employee . . .") with several categorical exceptions. n137 Over seventy-five years since the NLRA's enactment, as several cases brought by students claiming "employee" status have shown, the precise contours of this statutory definition are still in dispute.** n138 1. The "Right-of-Control"

Test: College Athletes Under Boston Medical Center and New York University. **Because the NLRA provides little explicit guidance as to the term "employee," the Board and courts have regularly relied upon the "right-of-control" test** (also referred to as the common law agency test) to determine "employee" status. n139 This [\*1030] standard, based on the feudal master-servant relationship described in Blackstone's COMMENTARIES, n140 uses traditional agency principles to determine if a cognizable employment relationship exists.

n141 As the RESTATEMENT (SECOND) OF AGENCY explains, a "servant" is "a person employed to perform services in the affairs of another and who[,] with respect to the physical conduct in the performance of the services[,] is subject to the other's control or right to control." n142 In two important cases involving students in 1999 and 2000, the NLRB emphasized that the "definition of the term 'employee' as used in the Act reflects the common law agency doctrine of the conventional master-servant relationship," and

used this standard to recognize student-workers' right to unionize as statutory "employees." n143 First, **in Boston Medical Center, the Board reversed twenty-three years of precedent and held that medical "house staff" (interns, residents, and fellows) were statutory employees, "notwithstanding that a purpose of their being at a hospital may also be, in part, educational."** n144 The statutory formulation that "employee" shall include any

employee," the Board explained, was intended to emphasize the breadth of the ordinary definition of the term. n145 Thus, it must extend to any "person who works for another in return for financial or other compensation," or any "person in the [\*1031] service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employees in the material details of how the work is to be performed." n146 Because "the exclusions listed in [§ 2(3) of the NLRA]

are limited and narrow, and do not . . . encompass the category 'students,'" the house staff were found to be "employees" under the Act. n147 **The following year,**

**the Board similarly found graduate students serving as teaching and research assistants to be statutory "employees" in the New York University case.** n148 Again the Board relied on the common law definition of an employment relationship, which "exists when a servant performs services for another, under the other's control or right of control, and in return for payment." n149 The university attempted to distinguish Boston Medical Center by arguing that graduate assistants spend significantly less time than house staff performing services, and are compensated only as "financial aid," but the Board found both of these arguments unconvincing. n150 Next the Board considered two proffered "policy reasons" why (despite finding graduate assistants to be "employees") it might be preferable to exclude graduate students from coverage under the Act. n151 The university argued that the Board should not sanction collective bargaining because graduate students "do not have a traditional economic relationship with the Employer," and because doing so might "infringe [\*1032] on the Employer's academic freedom." n152 Again the Board rejected these arguments, finding "no basis to deny collective-bargaining rights to statutory employees merely because

they are employed by an educational institution in which they are enrolled as students." n153 **College athletes meet the criteria of this basic "common law test" as set forth in Boston Medical Center and New York University:**

**they: (a) perform services for another; (b) under the other's control or right of control; and**

**(c) do so in return for payment. First, as performers at the center of a multibillion dollar industry, college athletes plainly "perform services" (just like medical students and**

**graduate assistants) from which universities and others benefit.** In terms of actual services performed, big-time college athletes in football and basketball are largely indistinguishable from their unionized counterparts in professional sports. Second, to a degree surpassing almost any other type of university employee (including other student-employees), college athletes' labor and lives are subject to their employer's control. On the field, of course, big-time college athletes must undergo physically demanding (and occasionally hazardous) training regimens and competitions. n154 As noted in Part I, the time commitments of practice and competition schedules typically exceed those of a full-time job—sharply limiting the availability of a traditional "student" experience—and may extend even into the supposed "off-season." n155

**Off the field, too, universities' control over athletes extends in ways most other employees would consider intolerable: college athletes are closely monitored in terms of what**

**substances they should (protein supplements, creatine) and should not (alcohol) consume;**

**how they spend their free time and, per NCAA regulations, how they may benefit from their**

**labor outside of sports.**<sup>n156</sup> **Finally, college athletes receive "payment" for these services in the form of tuition, room and board, and [\*1033] potentially, for some, unrestricted \$ 2000 stipends.**

<sup>n157</sup> While the NCAA may characterize such compensation as "financial aid" or "scholarships" (as with the graduate assistants in New York University) they represent a form of valuable consideration for services rendered. Professors McCormick and McCormick, writing before the NCAA began allowing supplemental cash stipends, creatively likened this practice to payment in company scrip, redeemable only at a company-owned store (the university itself).<sup>n158</sup> That such remuneration constitutes "payment"-as opposed to, perhaps, "gifts"-is made clear when college athletes quit (or are cut) from a team. As University of Michigan football coach Brady Hoke recently explained, "Obviously you quit football, you're not going to be on scholarship."<sup>n159</sup>

**The law is vague enough to allow us to incorporate student athletes as employees**

**Fram & Frampton, August 2012, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)**

C. Conclusion: Taking a Step Back **In emphasizing the legal status of college athletes under presently existing law, this Article admittedly presents a [\*1076] narrow vision of how labor law traditionally operates in America.** In most of the states discussed in Part III, students organized and agitated (and often went on strike) prior to having any formal protection from or recognition under state law. **Labor law did not expand on its own accord, nor did labor boards "come to recognize" student-workers simply by way of analogy and disinterested reason.** Rather, recognition of graduate students' "employee" status came in response to the threat of disorderly labor relations with an organized and economically powerful group. The extent to which college athletes' organizing efforts pose a credible economic threat-like the averted 1995 wildcat strike during March Madness, or the recent organizing successes of the National College Player's Association-may ultimately dictate whether the law regards their activity as a cognizable category of labor. Equally as important is the growing social recognition that **big-time college athletes are, in some basic sense, a type of worker.** As labor law scholars have argued, along the historical arc of American labor relations, "the courts, the legislature, and the law have often lagged behind the general zeitgeist."<sup>n364</sup> Pulitzer Prize-winning historian Taylor Branch's monumental expose of the NCAA in *The Atlantic* in October 2011-which characterized the paternalism and exploitation inherent in the refusal to pay college athletes as a form of "colonialism"-is significant in this regard.<sup>n365</sup> So, too, is the January 2012 proposal in the *New York Times's Sunday Magazine* to "start paying college athletes," a plan that included support for collegiate collective bargaining.<sup>n366</sup> Even top coaches have jumped on the bandwagon. **For example, South Carolina football coach Steve Spurrier, with the backing of six other SEC coaches, recently proposed that coaches be allowed to pay players from their own salaries: "We need to get more money to our players . . . They bring in the money. They're the [\*1077] performers."**<sup>n367</sup> The popular recognition of big-time college-athletes as employees is already well underway. The basic problems at the root of this Article-what does it mean "to labor" and who do we recognize as "workers"?-are hardly confined to the sphere of labor law. In other disciplines-from history to sociology to cultural studies-"the broader theoretical and social understandings of what constitutes 'work' have also been thoroughly challenged and profoundly troubled" in recent decades.<sup>n368</sup> These interventions have increasingly looked beyond waged productive labor (the centerpiece of past scholarship on "work"), emphasizing instead themes of dispossession and expropriation,<sup>n369</sup> emotional labor,<sup>n370</sup> "immaterial" labor,<sup>n371</sup> or other categories of activity omitted from traditional "labor history's gaze."<sup>n372</sup> Alongside this vast and probing literature, [\*1078] American labor law's reliance on anachronistic formulas for delineating who constitutes an "employee" seems shallow, at best. Yet despite these shortcomings, **labor law has articulated theoretical frameworks** (in certain jurisdictions, at least) **that would likely encompass college athletes as "employees."** In at least a dozen states, we believe **college athletes would be among those individuals entitled to certain basic statutory protections, should they collectively undertake to alter the conditions under which they labor. Recognizing that college athletes who perform on the college gridiron or basketball court are both students and workers is not just descriptively honest, but in the final analysis, the fair thing to do. Those whose talents and efforts generate millions of dollars for others are entitled to basic collective rights with respect to the labor they provide.**



## Answers to: Brown/Primary Purpose Test

### **Brown helps, not hurts**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

2. The "Primary Purpose" Test: College Athletes Under Brown University. The newfound freedom of graduate students to organize proved short-lived, as the Board explicitly overruled New York University less than four years later in Brown University. n160 In a 3-2 decision, the Board denied graduate assistants the right to unionize, determining that they "are primarily students and have a primarily educational, not economic, relationship with their university." n161 As such, the petitioners were found to be "nonemployees" under the Act. n162 The Board's precise rationale for determining that graduate assistants were "primarily students" (and, therefore, not "employees") is somewhat difficult to discern, but four categories of concerns guided the decision. First, [\*1034] the **Board "emphasized the simple, undisputed fact that all the petitioned-for individuals are students and must first be enrolled" to be eligible for the job.** n163 Second, the Board discussed "the role of [the labor] in graduate education." n164 Under this heading, **the Board noted the "limited" time commitment required by graduate assistantships** (students' "principal time commitment . . . is focused on obtaining a degree [rather than graduate assistantships] and thus, being a student") n165 **and the extent to which the required labor "is part and parcel of the core elements" of the degree program.** n166 Third, the Board emphasized the extent to which assistantships received oversight by academic faculty, "often the same faculty that teach or advise the graduate assistant student in their coursework or dissertation." n167 Such oversight bolstered the university's assertion that graduate assistants were participating in academic (as opposed to economic) relationships. Fourth, the Board highlighted the form of financial support provided to graduate students in exchange for their labor. Noting that "a significant segment of the funds received . . . is for full tuition," and that the university "recognized the need for financial support" of its graduate students, the Board characterized the payments as a form of financial aid to students (not traditional "wages"). n168 Taken together, these factors established that **"the overall relationship between the graduate student assistants and Brown is primarily an educational one, rather than an economic one."** n169 **The primary purpose test articulated in Brown University is plainly less favorable to student-employees, and several of the emphasized factors would cut against a finding that college athletes are "employees" under § S 2(3) of the Act.** The Board's emphasis on whether the purported [\*1035] employees "must first be enrolled [as students]," n170 for example, establishes a presumption against recognizing a cognizable employment relationship wherever enrollment is an eligibility requirement for a job. Because college athletes must necessarily be enrolled students, this factor is unhelpful to college athletes' cases. Likewise, **the Board's attention to the form of financial remuneration is significant: compensation that helps pay for tuition and is characterized as "financial aid,"** n171 **it appears, is categorically different from ordinary consideration for work performed.** As universities and the NCAA often stress, grants-in-aid are not payment for "work," but rather a species of scholarship (albeit based on something other than economic need or academic merit). More generally, the majority approach in Brown University appears to ignore, or reject, the helpful insight that individuals can be both students and employees of an institution simultaneously. As a blistering dissent aptly noted, "the Act requires merely the existence of [a meaningful] economic relationship, not that it be the only or the primary relationship between a statutory employee and a statutory employer." n172 **Ironically, however, because of its focus on the academic relevance of the services rendered, the Board's decision divesting graduate assistants of their "employee" status may bolster analogous claims by college athletes.** In its lengthy discussion of the "role of graduate assistantships in graduate education," n173 **the Board noted that the assistantship labor consumes only a "limited" amount of the students' time, n174 and that "supervised teaching or research is an integral component of [graduate students'] academic development."** n175 **In Brown University, "it was beyond dispute that [the students'] principal time commitment . . . was focused on obtaining a degree,"** n176 **but for college athletes, the exact opposite is true.** Similarly, the Board emphasized that, for the vast majority of graduate students [\*1036] **at Brown University, serving as a graduate teaching or research assistant was a graduation requirement for their academic program.** n177 **Only a tiny minority of college students ever participate as varsity athletes in big-time college sports—certainly no college requires this—so it is unlikely that such services could be considered "part and parcel of the core elements" of a standard undergraduate degree.** And, of course, unlike graduate

assistantships, college athletes' labor is not overseen by academic faculty. **Particularly given the extraordinary sums their labor generates, there is a colorable claim that, under the primary purpose test, the overall relationship between college athletes and their universities is primarily an economic one.**<sup>n178</sup>

### **Athletes are like the choristers (NRLA related)**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

C. The Chorister Analogy? College Athletes Under Seattle Opera These "student-employee" cases will likely frame any NLRB treatment of college athletes, but **another** (entirely overlooked) **case involving "auxiliary choristers" at the Seattle Opera may lend additional support for college athletes. The case focused on the "employee" status of a group of choristers, who were essentially-at least as much as college athletes-"amateur" entertainers. Rejecting the Seattle Opera's claims that the choristers were "volunteers" motivated by their love of opera** (rather than the minimal compensation provided), **both the NLRB** (in 2000)<sup>n179</sup> **and the D.C. Circuit** (in 2002) **n180 held that the choristers were "employees" under the NLRA.** [\*1037] The employment relationships of the 200 "auxiliary choristers"-a pool of talented opera aficionados occasionally called upon to supplement large productions-are analogous to those of college athletes. Like promising athletic recruits, the choristers signed "Letters of Intent" with the Seattle Opera, obliging them to comply with attendance and decorum requirements set forth in a handbook.<sup>n181</sup> Once engaged, the opera "possessed the right to control the [] choristers in the material details of their performance," giving them "artistic feedback . . . and dramatic direction while on stage."<sup>n182</sup> **In exchange for their participation, the choristers received ten tickets to dress rehearsal performances<sup>n183</sup> and a modest one-time "honorarium" (equivalent to \$ 2.78 per hour, when spread over twenty-two rehearsals and performances) to defray parking and transportation expenses.**<sup>n184</sup> The "choristers provided a service to the community and presumably derived pleasure and satisfaction in performing," the Board conceded, but **the opera's reimbursements also constituted a form of material compensation for the choristers' labor or services.**<sup>n185</sup> **This created an "economic relationship," however rudimentary, making the choristers "employees" under § 2(3) of the NLRA.**<sup>n186</sup> Though the Seattle Opera and college athletics plainly cater to different audiences, in many significant respects-a prestigious non-profit employer, informal employment agreements, codified behavior guidelines, controlled and directed performances, disputed subjective motivations, and minimal (though artfully characterized) compensation-the labor of their indispensable performers is virtually identical.

# **Exploitation**

## **NCAA an Exploitive Business**

**NCAA college sports is a \$60 billion exploitive business. Everyone (but the players) are making money**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

**The legal insulation provided by college athletes' "non-employee" status has proven increasingly profitable for the NCAA and its member colleges** over the last several decades, as NCAA Division I basketball and football have evolved into lucrative industries. **The NCAA bylaws provide that competitors should be protected "from exploitation by professional and commercial enterprises."** n68 **but** in many ways, **the big-time college sports industry is itself an exploitive commercial endeavor.** This subsection explores only briefly what has become, **by one 2001 estimate, a \$ 60 billion industry,** n69 but it underscores the growing value of the services rendered by college athletes. Given the astronomical dollar figures involved, it comes as little surprise that college athletes now seek a larger slice of the pie. While gate receipts, licensing fees, and merchandise sales all accrue significant revenues for universities, **television contracts have been the greatest engine of commercialization of college sports in recent years.** n70 As noted above, **the NCAA recently sold the broadcasting rights for the men's basketball tournament for \$ 10.8 billion over the next fourteen years, generating over \$ 770 million in annual income.** n71 Lucrative **football television contracts are negotiated by schools and conferences without NCAA involvement, the result of** a successful **Sherman Act** challenge brought by universities against the NCAA **in 1984.** n72 **The University of Texas,** for example, **launched its own twenty-four-hour television channel** in August 2011, **after inking a twenty-year deal with ESPN that earns \$ 15 million annually for the school and its marketing partner.** n73 More common are package deals negotiated by athletic conferences, like the record-setting **\$ 3 billion, twelve-year contract the Pacific-12 (same as Pacific-10) reached in May 2011 with ESPN and Fox.** n74 These negotiations have triggered rapid conference realignments, in which "universities around the country are tossing aside longtime rivalries, geographic sensibilities and many of the quaint notions ascribed to amateur athletics in an attempt to cash in." n75 Universities and **the NCAA also profit off of college athletes' celebrity through licensing agreements and endorsement deals (which individual athletes, of course, are prohibited from doing).** Thus, while the NCAA investigated Auburn University's Cam Newton for alleged recruiting violations committed by his father, the standout quarterback "compliantly wore at least fifteen corporate logos-one on his jersey, four on his helmet visor, one on each wristband, one on his pants, six on his shoes, and one on the headband under his helmet-pursuant to Auburn's \$ 10.6 million deal with [apparel company] Under Armour." **New technologies generate novel ways for the NCAA to increase revenues beyond such traditional endorsement deals,** however. n77 **For example, an agreement between the NCAA and Electronic Arts ("EA") allows the videogame** manufacturer to produce and sell a popular title called **"NCAA Football."** n78 **Actual college athletes' individual names are not used, but the game's virtual players share the same "jersey number . . . height, weight, build, . . . home state . . . skin tone, hair color, and often even . . . hair style"** as real-life NCAA competitors. n79 **When EA negotiated a similar agreement with the NFL Players Association for its "Madden NFL" title, athletes received \$ 35 million in royalties, the college**

**athletes featured in "NCAA Football" received nothing.** n80 Big-time college sports benefit universities in other ways that are harder to measure on a balance sheet, raising a school's profile and offering students a ready-made source of campus entertainment. In recent years, for example, the football team at **Texas Christian University ("TCU") has emerged as one of the nation's finest athletic programs.** n81 The **team's success has spurred a four-fold increase in incoming applications-TCU recently receives 20,000 applicants for 1600 freshman slots-in just six years.** n82 Articulating a sentiment with which the University of Chicago's William Rainey Harper would undoubtedly identify, n83 **TCU chancellor Victor Boschini Jr. recently boasted, "our athletic notoriety is worth billions in publicity."** The tangible benefits of this rapid commercialization are easier to quantify for **coaches,** however, whose **salaries have skyrocketed along with the influx of television revenues.** n85 In part, **these inflated sums reflect the rising value (and absence of bargaining power) of the athletes themselves.** Unable to offer financial inducements to players, athletic departments invest heavily in marquee coaches, whose reputations can ensure the recruitment of top-level talent. n86 **Of the fifty-eight basketball coaches participating in the 2011 tournament,** for whom salary information is available, **total pay exceeded \$ 1 million per year for thirty-one.** n87 In 2011, **at least sixty-four college football coaches also earned more than \$ 1 million.** n88 These massive salaries are of recent vintage; adjusted for inflation, **the average professor's salary at forty-four public institutions increased by thirty-two percent since 1986** (to \$ 141,600); the average president's salary grew ninety percent (to \$ 559,700); **while the average head coach's ballooned 652 percent** (to \$ 2,054,700). n89 Public university presidents in 1986 slightly outearned head football coaches; **now coaches earn almost four times as much as university presidents.** n90 When reporters recently asked Ohio State President, E. Gorgon Gee, whether he would consider firing scandal implicated football coach Jim Tressel, his response reflected this shift: "I'm just hoping the coach doesn't dismiss me."



## Answers to: Kids Get full Scholarships

### Full scholarships do not cover expenses

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As NCAA critics frequently point out, however, **a full athletic scholarship often fails to cover basic expenses that college athletes incur.** n101 **A recent study conducted by the NCPA and Drexel University pegged the average "scholarship shortfall"-the gap between a "full" NCAA scholarship and the actual cost of attendance-of a Division I football player at \$ 3222 per year.** n102 At some institutions, the annual scholarship shortfall totals more than \$ 6000. n103 According to the study, **this leaves approximately eighty-five percent of "full" scholarship athletes living below federal poverty thresholds.** n104 Indeed, while **NCAA bylaws prohibit scholarship athletes from receiving many types of external assistance, the NCAA explicitly authorizes players to receive taxpayer-funded food stamps.** n105 The NCAA responded to these criticisms in late 2011, proposing legislation that allows individual institutions (if authorized by their athletic conference) to provide athletes additional grants "up to the cost of attendance or \$ 2,000, whichever is less." n106 While the measure would help reduce the scholarship shortfall for many players, this language [\*1023] ("whichever is less") implicitly concedes that even an additional \$ 2000 may not cover the "full cost of attendance."

### Scholarship money is miniscule compared to the money schools get

**Michelle Piasecki 2016**, Michelle Piasecki is a lawyer who specializes in several areas of law, including U.S. collegiate sports. She is a former collegiate athlete and coach and is currently an associate at the law firm of Harris Beach, Spring 2016, Insights on Law & Society, Are College Employees Athletes?

[https://www.americanbar.org/publications/insights\\_on\\_law\\_and\\_society/16/spring-2016/law-review--are-college-athletes-employees-.html](https://www.americanbar.org/publications/insights_on_law_and_society/16/spring-2016/law-review--are-college-athletes-employees-.html)

But at this moment in time, **college athletes are prohibited from profiting off their names, images and likenesses, essentially limiting their earnings to the cost of an athletics scholarship.** In the eyes of many current and former student-athletes, that benefit pales in comparison to the amount of revenue high-profile athletes generate for their school **When the University of Alabama's football team won the National Championship Trophy in January the school's athletic department earned a \$6 million payout.** The players walked away with some new merchandise and lasting memories, but nothing in the way of financial gain. At the conclusion of March Madness this year, **athletic departments in the Atlantic Coast Conference were notified that they would split just shy of \$40 million over the next six years. That's an extra \$400,000 annually per school, none of which will go into the players' pockets.**

### The NCAA is engaged in massive racist exploitation now

Dave Zirin, 2014, March 24, The Nation, It's the Racism, Stupid,  
<https://www.thenation.com/article/its-racism-stupid-meet-press-epic-ncaa-fail/>

I will say this for the much-maligned David Gregory era of Meet the Press: the weekly program, with the tenacity of a twitter-troll, remains pugnaciously beltway-centric in its perspective. This was seen in Sunday's "debate" about the state of the National Collegiate Athletic Association (NCAA). Their timing was certainly spot-on. It is March Madness, after all, when the NCAA makes 90% of its billion-dollar budget. **As the business of college football and basketball expands, and as more and more players find themselves used up and spit out with neither compensation nor education to show for their time**, this is the moment to talk about the future of the so-called "student-athlete." To discuss this issue, Gregory secured three people for the Meet the Press table, including NCAA President Mark Emmert. That's good start! Mark Emmert, is a man who makes a \$2 million annual salary defending the status quo. The people Emmert could have been in discussion with is tantalizing. Maybe we would see civil rights author Taylor Branch, whose piece on the NCAA rocked the sports world. Perhaps one of the other guests would be New York Times columnist William Rhoden, whose book \$40 Million Slaves examined the social position of African-American athletes. Or we could get USA Today's Christine Brennan, who has written extensively about equity for women in college athletics. Instead, according to David Gregory's twitter feed, the Meet the Press team wanted to bring in some former jocks. That is a great call! There are numerous ex-college players who have been actively organizing to wrest a degree of justice from the clutches of Mark Emmert. Maybe they booked former All-American Ed O'Bannon, who has led a lawsuit against the NCAA's use of player's likenesses without their permission. Or perhaps they would bring on Ramogi Huma, a onetime UCLA football player who started the National College Players Association. We could hear from a former NCAA athlete who is a woman, like Kate Fagan, who could speak to issues of Title IX and how paying certain athletes could affect others. Or best yet, Northwestern University quarterback Kain Colter, who led his team to actually organize a union. America could hear from the young man who said, "Right now the NCAA is like a dictatorship. No one represents us in negotiations. The only way things are going to change is if players have a union." ADVERTISING No. Instead, Gregory brought in President Barack Obama's personal aide Reggie Love and President Obama's Education Secretary Arne Duncan. Love apparently played basketball and football at Duke, and Duncan hooped it up for Harvard. Forget for a moment that I am a sports junkie and have no memory of the Reggie Love Experience in Durham. Forget that Duncan's Harvard playing days in the 1980s are hardly germane to the very modern issues at play. It speaks to either the poverty of ideas at Meet the Press or their immersion in beltway establishment culture that David Gregory and friends thought, "We need some former NCAA players to take on Mark Emmert. I know! Where are Reggie Love and Arne Duncan?" Love was unmemorable and Emmert just sat back like he was getting a spa treatment. It took Duncan to give us a couple of lines for the ages. I cannot decide on my favorite "let them eat cake" Duncan-moment. Maybe it was when he said, "This [issue] is very personal for me. I grew up playing in the inner-city on the South Side of Chicago." Inner-city Arne then outlined his plan to punish schools and effectively hollow out their athletic budgets if they did not meet graduation requirements. (This will sound familiar to anyone familiar with Duncan's federal education policies.) Or it could have been when Duncan called for "middle ground" between Emmert and those calling for athletic compensation. This middle ground for Duncan? "Making sure students are fed, making sure if there's an emergency at home and mom gets very sick or dad passes away, they have an ability to get home to attend the funeral." It's the Arne Duncan "Food n' Funerals Plan" to fix the NCAA. Yet far more glaring than the content of the discussion was what the discussion was missing. This is not surprising given the parties sitting around the table, but there was zero discussion about how **institutionalized racism animates the amassed wealth of the NCAA, the top college coaches and the power conferences**. It does not take Cornel West to point out that **the revenue producing sports of basketball and football are overwhelmingly populated by African-American athletes. The population of the United States that is most desperate for an escape out of poverty is the population that has gotten the rawest possible deal from an NCAA, which is actively benefiting from this state of affairs. That is why Dr. Harry Edwards called the issue of compensating NCAA athletes "the civil rights movement in sports of our time."** That is why **Bill Maher uncorked the most viral tweet of his life when he wrote over the weekend, "March Madness is a stirring reminder of what America was founded on: making tons of money off the labor of unpaid black people." The issue of the NCAA is a racial justice issue.** If you don't frame it in that way, if you don't challenge Mark Emmert on the fact that faux-amateurism saps black wealth in the United States, if you don't point out why Taylor Branch, Dr. King's biographer, said the NCAA "has the whiff of the plantation," then you are not having a serious discussion. You are bullshitting. Meet the Press did not give us a serious discussion. Instead you had Mark Emmert, a man on the hot-seat, sitting far too comfortably for our own good.

## **Answers to: The Value of a College Degree Exceeds the Scholarship Value**

### **Students aren't benefitting from the educational opportunities that are provided**

Allison Schrager, Paying college athletes won't solve the big problem with US college sports, March 21, 2016.: <https://qz.com/625014/payingcollege-athletes-wont-solve-the-big-problem-with-us-college-sports/>

Of course **the student athlete model only works if the education is valuable and athletes benefit from it. And there's evidence, as I saw in those of piles of unopened textbooks, that many do not.**

**Student athletes face grueling hours between team practices, games, and carrying a full course load. It would be a struggle for even the best student, and many elite athletes come to university ill-prepared for a college curriculum.**

**My experience with the textbooks isn't just anecdotal: There are numerous reports of athletes not writing their papers, taking fake classes, or studying subjects with dubious academic merit. Among students who enrolled in 2008—the most recent data available—student athletes overall graduated at a slightly higher rate than average, but in some sports (pdf), particularly men's basketball, they did far worse:**

### **Even when athletes get a degree, the degree is worthless**

Allison Schrager, Paying college athletes won't solve the big problem with US college sports, March 21, 2016. Available at: <https://qz.com/625014/payingcollege-athletes-wont-solve-the-big-problem-with-us-college-sports/>

And, disparity or no disparity, those student athletes who don't graduate are getting an education that is near-worthless. That means that their compensation for having given several years of their lives to student athletics is effectively zero. On top of that, sports take a toll on their bodies, and if they are injured they might lose their scholarships and health care.

## Answers to: Players Only Have to Work 20 Hours a Week

### **This rule is abused**

Earl Scott, Master's Candidate, Wake Forest University, "IMPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA," May 2015.  
[https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Llewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

This weekly time limit is supposed to serve as a method to make sure athletes have enough time to focus on their academics. This rule is commonly known as the "20-hour rule." According to CNN this rule states, "no matter the sport, coaches can't take up more than 20 hours of their players' time" (Ganim, "Labor Board"). **However, even though this rule has good intentions, Kain provides evidence that shows this rule gets abused frequently and is not strictly enforced by the NCAA. This shows yet another flaw in the NCAA system, along with the fact that athletes are working longer and harder than most people think.** Some of the evidence used by Northwestern football players was explained by CNN, "during his daylong testimony last week, **Colter talked about year-round time requirements, at times 50 hours a week devoted to football**" (Ganim, "Labor Board"). Also, a survey conducted by the NCAA showed, "the average time spent on athletics inseason hovered around 40 hours per week for all three sports" (Ganim, "Labor Board"). Finally, the NY Daily News reported similar information that proved the 20-hour rule was abused, "Colter, CAPA's star witness at the NLRB hearing on the Northwestern union drive in February, testified that players spend 50 to 60 hours a week on football," (Red). Kain added, "'I like to think of it like the military/Navy SEALs,' he testified. 'They spend months and weeks preparing for operations. It's the same thing as football. We spend months getting ready for our operations'" (Red). These examples show that in reality, college football players work around 40 hours per week, and in certain cases have even spent 50-60 hours on their sport, which is more than double the amount the NCAA allows. **This reveals that there is a high demand to win in college sports and shows that rules are broken and athletes are often taken advantage of because of that drive to win. Since truth reveals college athletes work close to 40 hours a week in reality, it is fair to consider college sports a job in itself rather than an extracurricular activity.** In America the average workday is referred to "9-to-5" because the average person is expected to be at their job from 9 a.m. that morning to 5 p.m. that evening. That adds up to eight hours a day and 40-hours per week, assuming they have Saturdays and Sundays off. Someone could make the counter argument that the average "40-hour" work week has risen in our country and is actually longer. According to a 2014 Gallup.com study, the average work week has grown to 47 hours (Saad). Regardless of whether the US average work week has grown or not, the fact remains that today's college athletes spend approximately the same amount of time on their sport as the average American does on their everyday job. Table 1 titled, "Average Number of Hours Worked by U.S. Workers, Aged 18+" illustrates that the student athlete data provided would fall right below the 47-hour per week average, but in certain cases would exceed that level by over 10-hours.



## **Answers to: We Can't Figure Out How Much To Pay Them**

### **We can figure out how much to pay the athletes**

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, EXCUSES, NOT REASONS: 13 MYTHS ABOUT (NOT) PAYING COLLEGE ATHLETE. Sportsgeekonomics<https://drive.google.com/file/d/0BxM4wdtZ5ul-OWFhNGE1ZTItZTIIYS00YmVlTt0YmItYTM4ZDUyY2MwNTE2/view>

Myth 1: It's too hard to figure out how to pay players fairly.

This myth rests deeply in the assumption that if we deign to allow college players to be paid, there would have to be a nationwide agreement by all 345 Division I schools (or perhaps just the 122 in FBS, the football bowl subdivision[1]) as to what each student would get, and it would be a nightmare, with committees meeting annually to review compensation to make sure it was fair to schools and athletes, and endless debates over the optimal pay level.

It makes you wonder how the Software Industry Wage Committee ever decides how much to pay computer programmers and how the Law Firm Pay Commissariat decides on associate and partner compensation each year.

The solution, of course, is just to pay them. There is no need for a central committee to make this decision. Since 1776, with the publication of Adam Smith's "The Wealth of Nations," we've understood that markets generally find their way to efficient outcomes without the need for a committee, NCAA or otherwise, acting as a wage politburo. No centralized commission or study group is needed to decide what we should pay the athletes. Let schools make offers, and let incoming high school athletes and their parents decide which to accept. Competition is a wonderful thing, on the playing field and in the marketplace. This is how salaries are set across the world. This is probably how your pay was set.

At first it might be a little messy, just as when a firm prices its stock in an IPO. The initial price may end up higher or lower than the right value, but the company picks a price, sells its stock, and then the market adjusts. For example, Linked-In went public on May 19, 2011 and closed up 107% from its initial offering after two days of trading.[2] The following month, Pandora went public but closed down 20% two days after its launch.[3] Opening up the market for student-athletes would not be much different. At first, many schools might continue to offer the Grant in Aid ("GIA") package without additional cash. A few programs might want to set the gold standard and offer \$10,000 stipends. A few up-and-comers might make a play for some talent and offer \$25,000 to see if they could jump-start their programs at a higher level. The following year, maybe a few more schools would up the ante, and maybe some of the Old Guard might start matching offers to avoid losing talent. Just as water finds its own level, so too do prices in a liquid market. A decade in, everyone would have a great sense of what a blue chipper is worth to a program and what it takes to land him. Problem solved.

## Answers to: Hurts Team Unity

### **It won't undermine team unity**

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Often, commentators point out that it would not be fair to pay some athletes on a team and not others, and that the result will be lack of team cohesion. In this view of the world, if a team had stars making more than role-players, blockers would stop protecting better-paid quarterbacks, unpaid power forwards would refuse to throw outlet passes to compensated point guards, and it would become impossible to play college sports. I wonder how many of these commentators have ever watched the college baseball world series, or NCAA hockey, or most any other college sport, including football at the Division I FCS level. Under NCAA scholarship rules, most schools provide very unequal compensation to their athletes in most sports.[1] In most NCAA teams, some of the athletes are on “full-rides,”[2] some are on half or quarter-scholarships, and some get no scholarships at all.[3] These teams very rarely dissolve into chaos because some players are earning four or more times what others are getting. Even in football and basketball, scholarship and non-scholarship players work together cohesively to win games and championships. Across the country, based on talent, baseball GIAs can range from a full scholarship to no scholarship at all. As one example, one of the schools in the West Coast Conference has thirty-four players on its 2011 baseball team. Three of them receive at least a 75% scholarship and another thirteen get a half-scholarship or more. Another five get some aid, but less than a half-scholarship, and thirteen get no scholarship at all. This disparity in compensation is fairly typical for college baseball, and it is not a secret that better players get better compensation. At the University of California, Berkeley (“Cal”), one baseball player is on an 75%+ scholarship, ten more are over 50%, fourteen got some aid but less than half, and eleven walk-ons get no aid at all.[4] Nevertheless, there is little evidence that cohesion disintegrated because athletes with different levels of talent received different levels of compensation. The WCC team made the college post-season this year and Cal reached the 2011 College World Series in Omaha. According to all accounts, everyone is still on speaking terms. So if team cohesion depends critically on each team member receiving perfectly identical scholarship offers, it's hard to explain the success of college baseball and softball teams, men's gymnastics, men's and women's lacrosse, etc., where stars sometimes earn full scholarships and most players are on partial scholarships or none at all. This ability of teams to cooperate successfully despite different levels of pay shouldn't be surprising, since professional sports teams have succeeded since the nineteenth century with pay that varies among the players on a team. Dirk Nowitski earned over \$17 million this year, J.J. Barea earned a little more than 10% of that, and Ian Mahinmi earned less than half of what Barea earned.[5] Yet somehow the

Mavericks were able to gel as a team and win this year's NBA championship despite Nowitski earning almost twenty-three times Mahinmi's salary.[6] Aaron Rodgers threw nine completions to Jordy Nelson in the 2011 Super Bowl, despite the fact that Rodgers was earning \$6 million to Nelson's \$475,000, and Rogers was able to hand the ball to James Starks, Green Bay's leading rusher, despite the fact that Starks earned only 5.3% of Rodgers salary.[7] Somehow the Packers overcame this income disparity to win the Super Bowl. When a team loses, no one even thinks to point to pay disparity as the driver, and when a team wins, no one is shocked by the team's success in the face of seemingly insurmountable lack of cohesion driven by disparities in pay. It's just not an issue because our capitalist society embraces the idea that people making different incomes based on merit work together better than if everyone earns the same amount. In every virtually every American industry, different workers earn different pay and yet companies are able to pull together as teams. Think of how equal pay for all worked out for Eastern Europe's cohesiveness. There isn't something special about college football players that make them too fragile to handle what the rest of us deal with on a daily basis. On the other hand, if we really think equal pay is needed for team cohesion, I'd say we pay the players exactly what we pay the head coach. Coaches would probably make less as a result, and players more. I mean, how can a team pull together knowing their coach is making millions and they are not? I'm surprised they even go on the field at all.

### **Other sports won't be cut**

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In terms of myths, this one is a two-headed hydra. It combines the idea that there has to be some sort of wage schedule set by a committee (i.e., Myth One) with the idea that the result will be that the committee would pick a number that some school can't afford. But a market system of pay will not impose a one-size-fits-all solution, mandatory minimum wage on all colleges. As an example, currently the University of Texas ("Texas") has a choice whether to pay its head football coach Mack Brown \$5 million per year in base salary. Texas negotiated with Brown, and when the dust settled decided it was in their interest to offer him \$5 million (plus bonuses), all without asking permission of the other NCAA schools. Grants to college athletes would be set the same way – each school (or conference) should be allowed to offer each student what it sees fit and let the market sort things out. Across American industries, there are high-paying and low-paying firms, and so there would be high-paying and low-paying schools. Schools that earn less money from football and basketball will make smaller offers, but they will still be able to field teams. The second head of this myth is the very pernicious idea, which has gained currency since Mark Emmert took the helm of the NCAA,[1] that because the Athletic Department at most of the thousand-plus schools in the NCAA lose money as a whole, almost no school can afford to pay their football and basketball players. In essence, the money that should go to pay players is being spent elsewhere, so we're very sorry players, but we're broke. Of course, this is



ridiculous on several layers. The simplest myth to dispatch is that we don't need to lump together the thousand-plus NCAA schools when talking about athletes who will end up being paid in a market-base system. Division II and Division III, the FCS level of Division I, and even a good chunk of the FBS would basically not change in the world where schools can choose to pay their college athletes. Most of those schools are hosting sports on their campus in a much more traditional amateur sense, for the benefits of the athletes, with some level of on-campus interest, and with very little outside fanfare or television coverage. In rare cases, a small school might want to add some cash to their current scholarship offer, but that's unlikely. In the real world outside the NCAA myth bubble, the changes we're talking about are going to take place at the approximately seventy-five schools in the six major conferences. What we call the NCAA or even what we call Division I, consists of two or three entirely different economic animals. Seventy-five or so schools are housing massive profit centers on their campuses in their football and basketball programs.[4] For the much larger groups of schools that are running their sports teams as much smaller, break-even activities,[5] sports are just not the same thing at all, and whenever the NCAA asks you to think about college sports economics and tries to talk about Division II and Division III, or even the lower two-thirds of Division I, they are playing hide the ball. Even when we keep the focus on the six BCS AQ conferences, the NCAA still wants to obscure the debate. Mark Emmert, NCAA president, has said that only fourteen NCAA schools make money on sports and so most schools can't afford to pay their athletes.[6] That seems hard to believe given that the seventy-three schools in the AQ conferences earned \$1.4 billion in aggregate. But the trick is that the NCAA is throwing in all of the non-revenue sports, and then asking you to believe that when college football players get paid, so too will college wrestlers, even though football players are bringing in over a billion dollars and wrestlers aren't bringing in anything. That's just not how markets work. More broadly though, the myth is that the Athletic Department as a whole is the right unit of analysis and that spending on football compensation will only occur when a school's entire program earns a profit. In other words, if the department loses money, no one gets paid. But campuses abound with money-losing departments that nevertheless pay the talent. Traditional colleges and universities do not exist to make money, and in general, most of the departments on a campus simply cannot make money. Instead, departments like Classics, Anthropology, History, and Psychology spend more than they bring in, and the school covers the cost of professors, of secretaries, of graduate students, and of academic scholarships with money from donors, with tuition money received, and in the case of public universities, with tax-payers' money. Schools do this because having a History Department (that has no real source of revenue) is part of the university's mission. If having big-time sports on a BCS AQs school's campus is also part of the total mission of the schools (a statement I think the NCAA would support),[7] then the entire college community should support the program, just as it supports History and Psychology and the like.[8] The idea that before we pay student-athletes, the Athletic Department must make money is a false argument. We do not ask History professors to work solely for room and board because the History Department doesn't make money, and in particular, we do not allow colleges to collude on the salaries of History professors in order to help History Departments break even. Similarly, we don't ask college sports coaches to work for a price-fixed wage just because the Athletic Departments don't earn money, although in the past the NCAA has tried to do just this and lost in court.[9] The profitability (or lack thereof) of the Athletic Department as a whole should not

be an excuse to collude on player compensation. Such an argument would never withstand rule-of-reason scrutiny. Indeed, under the antitrust rule of reason, cost cutting is not a valid justification for otherwise anticompetitive conduct.[10] But if the NCAA is right that almost everyone is losing money, then why are all of these money-losing schools spending millions on athletic programs now? Why are schools clamoring to get into Division I if it's a money-losing venture? There are now 345 Division I schools; in 1985 there were only 282.[11] Demand to move to Division I has been so great that in 2007, the NCAA imposed a four-year moratorium on new schools from moving up to Division I. This moratorium has only just ended, and immediately new schools are seeking to join.[12] Running a Division I program is much more expensive than Division II. When economic actors are clamoring to spend more, it means that spending is profitable. Either hundreds of universities are irrational, or, after looking at the total benefit of having great sports on campus, these schools are making a rational decision that paying the current cost of scholarships is actually worth the cost. Schools want to move to Division I because, taken as a whole, the school thinks Division I is more profitable, in money and in non-pecuniary benefits, than Division II. Maybe the accounting that shows schools losing money is riddled with problems that understate revenues and overstate costs, so they are more profitable than they look.[13] Maybe fielding a quality sports program helps attract better scientists and poets. Maybe donations go up after a March Madness win. Maybe it just feels better to have a Saturday football tradition and the university wants to offer its community that experience. Those are all great reasons to be in Division I, but they are bad reasons to collude with other schools just to keep the down cost of the on-field and on-court talent. A market system would let us test the NCAA's claim that further spending is impossible. End the collusion for a few years and let's see whether schools think they are too poor to pay for that star recruit, or instead if they decide, on the margin, the benefits of that athlete continue to exceed his (increased) cost.

## Monopoly/Wage Suppression

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**Treating players as “student athletes” rather than employees means monopolies are directed against wages secured from players** newly attracted to the market. **In a free market for labor, universities would compete against each other for the services of new high school graduate athletes.** With many universities and many high school graduates, such a market could be workably competitive. The result would be a competitive wage paid for player skills and probably a much reduced surplus earned by college athletic departments (where it is typically distributed as economic rents to department officials and to construct world-class facilities). **But the NCAA and its members collectively fix college athletes’ wages. Student-athletes appear to be the only category on a campus where an outside organization (the NCAA) is granted power to dictate compensation and hours of work. The American Library Association, for example, does not dictate pay levels for “student-library-workers.”** Moreover, financial aid packages at many doctoral programs exceed tuition and fees, including a stipend for living expenses, and graduate student stipends are not coordinated among the universities with PhD programs by an association of graduate schools. Moreover, **university athletic departments can essentially dictate many aspects of a “student-athlete’s” routine**, something that would not be possible if they had to obey general labor laws, such as restrictions on hours of work. Because Division I athletes have historically been considered “students” rather than employees, they are not covered by labor laws, are not eligible for workers compensation, and cannot bargain collectively via union representation.<sup>8</sup> Colleges and universities deal with the prospect of hiring players in a competitive market by engineering monopsony power as a group, and then collectively agreeing to a ceiling on remuneration. It is not at all clear under what authority the NCAA specifies the number and size of athletic grants-in-aid awarded to college football and basketball players.<sup>9</sup> There is no legislation, court

ruling, or collective bargaining agreement that permits this coordination. Because playing major college sports is attractive to many young men, and often is accompanied by perquisites like being a center of attention, possible future job offers from alumni, and, for a few of them, the chance of cashing in on a professional contract, there is a sufficiently elastic supply of players at a relatively low wage to fill all of the roster slots available on major college football and men's basketball teams. Division I football allows each FBS team to offer 85 football scholarships and each FCS team to offer 63, for a national total of about 19,000 football scholarships. Division I basketball includes about 350 teams at 13 scholarships each, yielding about 4,500 men's basketball grants-in-aid. To have a low and elastic supply curve to profit from, college and university sports teams need to limit the alternatives available to the more-talented prospective players. The National Football League (NFL) and National Basketball Association (NBA) aid and abet in this regard by restricting new player entry into their leagues, limiting access to the NFL only to players three years after high school graduation and entry into the NBA only to players who have reached age 19 (a limit that soon may be raised to 20). The pool of prospective players therefore has limited alternative ways to practice, improve, and audition for the professional leagues other than to attend college. The NFL and NBA have an interest in how the NCAA operates, because universities provide free specific training, increased maturity, and reduced risk for future professional players. Moreover, because the professional leagues' collective bargaining agreements with their respective players' associations grant free-agency to players after they have been in the league for a specific number of years, delaying entry of players to a time nearer their peak playing skill saves team owners the difference between the high free-agency salaries of star players and the constrained (by the collective bargaining agreement) salaries of entry-level players. Conversely, the relationship furnishes universities with prime athletic talent at far less than competitive wage rates. Agreements to restrict the alternatives available to prospective college athletes are essential to the NCAA's monopsony power in the athlete labor market. No organization other than the NBA and NFL specifies a minimum working age above 18 (except in a few cases where government imposes a minimum age, such as for a bartender or chauffeur). The implicit cooperation of professional sports leagues with the NCAA and its member institutions to enforce these requirements is unique. Whether the athlete labor market reaches equilibrium at a number of players or a level of player skill units that is less than that level where supply intersects demand in a free competitive market cannot be determined. In a free

market where the NCAA could not restrict roster sizes or the number of teams, the demand for the most skilled athletic labor would be higher. But in a competitive market the alternatives of prospective players would not be restricted, and so the supply curve also would require a higher wage at each level of skill unit offered. The first consideration leads to more players and skill units employed, while the second leads to fewer players and skill units employed than would otherwise occur. What is certain is that the compensation level of the college players is presently lower than it would be in a competitive market. The pay ceiling on intercollegiate athletes leads universities to “overdose” on complementary inputs. **The same institutions that have agreed not to compete on direct compensation to players instead compete furiously on the basis of other factors of production: program reputation; coach; quality of stadiums, arenas, weight-rooms, residence halls, and training-table food; scheduling games in attractive locations; and lavishing personal attention on recruits. The result is an 800-page book of NCAA rules and regulations for limiting recruiting expenses and player compensation, accompanied by a seemingly perpetual stream of scandals created by attempts to circumvent the cartel rules. There is also an incentive to overuse** underpaid inputs. When John Wooden coached UCLA basketball to ten national championships in the 1960s and 1970s, college basketball squads averaged about 25 regular-season games. The pretournament schedule now is 30–35 games for most teams. The college basketball season for elite programs essentially runs from October through March, the bulk of the academic year. In 1950, the regular college football season was eight games; now it is 12, with most conferences holding a championship game after the regular season.<sup>10</sup> As recently as 2001, there were 25 football bowl games; in 2014–15 there are 39. Thus, 62 percent of the FBS teams will play a bowl game. In addition, college football started a four-team playoff in January 2015 without reducing the number of regular-season games, which adds yet another game to the supply commitments for players on the two most successful tournament teams. There are already calls to expand the football playoffs to eight or even 16 teams, with each new round of playoffs adding yet another game to the schedules of successful teams. The 2015 NCAA national champion football team will most likely have played 15 games. Television exposure has also led to an increased number of games played at neutral sites, where both teams must travel, and to games played on weeknights during the academic year. **A chief reason for schedule expansion at the college level is that the marginal cost of the primary input in the production process is close to zero, and the players**

**have no voice in the decision to expand the schedule**, and no claim on the incremental revenues generated. In contrast, decisions to increase the number of games played by professional teams are made in consultation and agreement with the players' association. As a result, the NFL has played a 16-game schedule since 1978, and the players' union blocked recent attempts to lengthen it to 18 games. The regular season in the NBA has been fixed at 82 games since 1967–68. At the professional level, there are also safeguards regarding how long a coach can work his players, constraints imposed via negotiation between the players' association and the league. At the collegiate level there are no comparable controls over excessive hours. Although the NCAA unilaterally limits practice to 20 hours per week, there are innumerable ways coaches can circumvent the nominal limit. For example, compliance meetings, traveling to and from competitions, drug educational meetings, and community service projects do not count toward the 20-hour per week limit. Voluntary athletic-related activity in which a student-athlete participates and which is not required or supervised by coaches is also not counted against the totals. This could include strength and conditioning as well as athletic skill work. Many college football teams report for work near the end of July, one or sometimes even two months before other students return to campus from summer break. Yet another way the NCAA stifles competition for players is by limiting their opportunity to transfer. A regular degree-seeking student who is dissatisfied with the academic or social characteristics of a particular college can transfer easily. The student's initial college cannot stop such students from leaving, nor dictate where they enroll. But the NCAA and the student-athlete's initial coach can dictate where a scholarship athlete may not enroll (for example, at a conference rival); plus, the player must sit out from playing for a year. No similar cost is borne by other students or coaches. A football or basketball coach who changes jobs may be required to "buy" his way out, but only if he voluntarily signed a contract containing such a stipulation. And he can begin immediately elsewhere, even before the current season is over, or before the team plays in a bowl game. The longer one considers the NCAA-coordinated limits on what college athletes in the money-making sports can be paid and what they can do, the more uncomfortable comparisons arise. The NCAA used to fix the salaries of some assistant coaches, but a 1998 Court of Appeals ruling held that this limit was collusion in restraint of trade, an antitrust violation costing the NCAA a judgment of \$66 million (*Law v. National Collegiate Athletic Association*, 134 F.3d 1010 [10th Cir. 1998]). And as noted earlier, the median head coaches of big-time football and basketball

programs are paid well over \$1 million per year, not the adult equivalent of “room, board, tuition, books, and fees.” The real issue is not whether college athletes should be paid, or whether all schools pay the same amount. College athletes at the Division I level are in fact currently paid, in the sense that the majority receive grants-in-aid that cover most— although not all—of their college expenses. Athletes are also paid different amounts depending on the school they attend. The NCAA policy to compensate student athletes with room, board, tuition, books, and fees masks an enormous disparity across member institutions in the dollar value of that financial aid package. For example, at Brigham Young University the full-year tuition is less than \$5,000; Stanford’s tuition is roughly ten times as much. One might also argue that a diploma <sup>128</sup>Journal of Economic Perspectives from, or even attendance at, some colleges compared to others is worth a significant difference in terms of expected lifetime incomes. The NCAA’s Monopoly and Monopsony Power Sixty years ago, one might not have predicted the persistent and steadily increasing market power of the NCAA. One would have expected a group of more than 1,000 institutions to have difficulty maintaining cartel stability. Moreover, NCAA members are the epitome of heterogeneity. Some are public, others are private; they vary enormously in terms of budgets, wealth, and the size and academic quality of their student bodies; and they differ by mission and their scope of activities—for example, between colleges with a predominantly teaching focus and research-oriented universities. However, despite periodic squabbles among members about how to distribute the spoils, the NCAA has been remarkably adept at creating and marketing its brand, retaining loyalties, beating back challenges to its market power, and resisting incentives for individual teams to cheat on agreements. Other than losing the 1998 assistant coaches’ wage-fixing case and a 1984 US Supreme Court decision ending the collective sale of television broadcast rights (*National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma* 468 US 85 [1984]), until recently the NCAA generally has prevailed in legal disputes. This legal winning streak is now in serious jeopardy, as we discuss below. The NCAA benefits from various arrangements that allow it to exercise market power on the supply side of the market for college athletics. The range of conditions that must be met for entry means that the number of teams in the FBS and FCS of the NCAA is limited to about 250 and the number of teams in Division I for basketball to about 350. Because setting up new college sports conferences is difficult, an erosion of economic rents due to entry is of little concern to the elite. The NFL does not broadcast on Saturdays during the college football season

as a result of a compromise it reached with the US Congress in the Sports Broadcasting Act of 1961, cementing college football's market power in broadcasting live sporting contests on Saturdays. Nevertheless, the mighty edifice of big-time college athletics must still compete in selling its product with a range of other options for the consumer's discretionary time and entertainment dollar, including professional sports and nonsports options. Thus, it may be that the most important aspect of the NCAA's market power is its monopsony control over players. In the contemporary world of intercollegiate athletics, some parties benefit from current arrangements and others are harmed. One fact seems inescapable: rents are expropriated from the most talented football and men's basketball players Allen R. Sanderson and John J. Siegfried 129 in high-profile programs and redistributed to other parties. If a competitive labor market for athletes would return these rents to the players, it is important to understand who is benefiting now, because that will identify the most likely resistance to any movement toward a competitive labor market for college athletes. One set of redistributions might be among the athletes themselves. Not all Division I football or men's basketball players currently are exploited. The star quarterback, running back, or wide receiver, or the high-scoring shooting guard or 7-foot shot-blocking center would clearly be paid more in a competitive market for college athletics talent. But a bench warmer might be paid less. The 85th grant-in-aid player on the 2014 BCS champion Florida State University football team and the last substitute on the 2014 NCAA national champion University of Connecticut basketball team bench are both likely net beneficiaries of current arrangements. The relevant question is where along the talent continuum the needle moves from exploited to subsidized. Using conventional methodology, Lane, Nagel, and Netz (2014) measure the marginal revenue product of Division I men's college basketball players. Successively relating player performance to winning, and winning to gate receipts, they find that the playing contributions of about 60 percent of the players generate revenues exceeding the value of their grants-in-aid. For example, on most basketball teams the starting five and the first two substitutes generate net revenues, which is plausible. Those are the players likely to receive additional compensation if intercollegiate teams hired labor in a competitive market. While there is no analogous study of college football players, it is likely that 40 to 50 of the 85 scholarship players on most Division I football teams would also receive more than just a grant-in-aid in a competitive labor market. The rest would likely be worse off, particularly if more players on top Division I teams are "walk-ons," essentially nonscholarship players. Other Division



I college sports—such as wrestling, swimming, softball, and volleyball—that at most institutions do not bring in sufficient revenue from television, gate receipts, and private donations to cover their scholarships would probably be little affected by men’s basketball and football players being paid a competitive market wage. Many nonrevenue sports teams at Division I universities have far more athletes, male and female, than they have full grants-in-aid, so they are in essence already treating some of the athletes in these sports like regular students, eligible only for need-based scholarships. As Fort and Winfree (2013, Chap. 1) point out, most big-time sports programs lose money, and the nonrevenue sports are already being subsidized by general university funds. However, a competitive market for football and men’s basketball players could have implications for women athletes, depending on how the Title IX rules that require equity between male and female athletic scholarships are interpreted. If football players are considered employees, as the Illinois regional director of the National Labor Relations Board (NLRB) ruled in April 2014, does that remove 85 scholarships from the male side of the Title IX scales, allowing institutions to reduce female scholarships by a corresponding 85? The effect of having the highly-recruited quarterback earning, say, \$200,000 a year, with the right tackle receiving the economic value of a traditional grant-in-aid, 130 Journal of Economic Perspectives and perhaps the English graduate assistant who is teaching both of them being paid even less does not give us pause. There already are enormous salary disparities among and within universities—as illustrated by differences in what physics and philosophy professors are paid, and the persistent arguments over the unusually low pay of adjunct faculty. Competitive markets pay workers based on their marginal revenue products and opportunity costs, and when those factors differ among individuals, compensation varies accordingly. Another set of redistributions would presumably arise among the Division I colleges and universities with high-profile football and basketball programs. The effects could extend to shifts in intra-university transfers; shifts in authority, control, and power on their campuses; changes in the size and distribution of their applicant pools; and political costs of lobbying state legislators. Paying the players market-based wages might increase short-term financial operating losses at some—or many—universities. Those institutions with a high level of commitment to athletic excellence and a willingness to spend whatever it takes to beat their archrivals will presumably bid up the price of players. But over time, even elite programs would have to recalibrate how much they are willing to devote to paying their star performers in football or men’s

basketball. Such institutions would also need to consider where those monies come from—whether from academic programs, reductions in scholarships to other athletes, more fees imposed on students, larger contributions from legislatures or alumni, less spending on facilities or amenities for players, or from the salaries of the coaches and director of athletics. Otherwise, the zero-sum competitive recruiting game will drive even the highest revenue programs into bankruptcy. We think the primary reason for the plethora of big-time university sports teams is the binding ceiling on wages paid to players. With such a distortion in factor prices, an inefficiently large number of teams can survive. It is likely that paying players would move the market for college athletics to an equilibrium of fewer teams, probably closer to the number of teams that would exist in the corresponding premier professional leagues if those leagues did not restrict entry so as to increase the value of their franchises. If the current number of high-level basketball programs were to drop from around 350 to about 100, or in football a reduction to approximately 65 programs instead of the current 126 in FBS competition (65 is the number of teams in the five “power” conferences, plus Notre Dame), then either some of those who would have been scholarship football and men’s basketball players would become unemployed or work as volunteers—that is, as “walk-ons.”<sup>11</sup> If the NFL and NBA reacted to a smaller number of big-time college athletics programs by instituting viable training-leagues, some of the potential unemployment would be mitigated. But given that the NFL and NBA mostly draft players from elite programs, and those players are most likely to survive, the professional leagues might be comfortable with a shrunken version of the college status quo, seeing little

<sup>11</sup> The number of FBS football teams declined by one when the University of Alabama-Birmingham announced on December 1, 2014, that it was dropping football from its athletics program because of its high cost. This is the first football program to leave the FBS in over two decades. The Case for Paying College Athletes 131

need to pay for training “laid off” college athletes who were unlikely to make it in the premier professional leagues anyway. One possible outcome of paying players is that the major college conferences would break off from the NCAA entirely and conduct their athletics business in an entirely different way, including increasing the pay of players in revenue sports. In football, one could envision a world in which the five major conferences as a group, or as individual conferences, and maybe a few of the other strong conferences would reorganize into smaller cartels, and become the effective organizing unit. These cartels might pass muster with antitrust regulators, who have not challenged the conference-level coordinated

sale of college television broadcast rights that developed after the Supreme Court nullified the NCAA's national broadcast cartel in 1984. If college athletes were paid competitive market wages, how would the demand for in-venue and live broadcast game content among students, alumni, and other fans fare? Competitive balance is sometimes seen as a fundamental and necessary ingredient in any athletic contest. In his seminal sports economics article, Rottenberg (1956) wrote: "The nature of the [sports] industry is such that competitors must be of approximately equal size if any are to be successful." If college athletics moved from the current status quo to a situation that allows uncapped compensation, perhaps formally treating athletes as employees in some institutions, and reducing coordination across universities, competitive balance may change. However, it is not obvious in which direction. The existing system of capped compensation for players bestows enormous recruiting benefits on prestige programs. Institutions like Western Kentucky and the University of Massachusetts currently face an uphill battle recruiting against Notre Dame or Duke, with their high-profile programs and coaches. How competitive balance would change if players were compensated differently would depend on the relative preferences of players for cash compensation versus their perceived value of noncash benefits of playing for various colleges or universities. Since there must be at least some highly talented players whose preferences favor cash, the introduction of pay-for-play is likely to divert some players to universities that had no chance to attract them when the recruiting currency was limited to program prestige and playing facilities. Even if competitive balance were to decline, demand may not follow. Intercollegiate athletics currently is quite popular in spite of a fairly high degree of competitive imbalance. The demand for dominant teams and the enjoyment fans of nondominant teams receive when their team occasionally upsets a dominant team may outweigh the demand for more competitive balance (Coates, Humphreys, and Zhou 2014). After all, a few dominant teams create an opportunity for other teams to be dragon slayers. As a recent *Sports Illustrated* article put it, "without Goliath, David was just a dude throwing stones without a concealed weapons permit" (Gorant and Keith 2014). Sports fans currently enjoy a panoply of television viewing opportunities as well as an array of in-venue intercollegiate sports options. Paying athletes would affect fans' amenities, particularly at the institutions that may reduce support for high-profile commercial athletics. When thinking about potential losses to students 132 Journal of Economic Perspectives and alumni who are sports fans, however, it is

also worth remembering that many students and alumni have little or no interest in big-time sports contests. Some even dislike sports. Such students might well prefer that they are not assessed fees to pay for such contests or that sports subsidies coming from their tuition dollars be reallocated to different extracurricular or academic activities. There is also the fundamental question as to how paying players more, and correspondingly admitting publicly that these high-profile sports teams are comprised of hired-guns with at best only a loose affiliation to the university, might affect demand by spectators. If paying players overtly reduces the demand for viewing college sports, perhaps to levels experienced by minor leagues in baseball and ice hockey, the revenue-maximizing price fans or broadcast networks pay to watch in-person or to broadcast games on television will decline. But a simple increase in the cost of labor without any shift in demand should not affect ticket prices (Fort and Winfree 2013, chap. 10). How athletes in nonrevenue intercollegiate sports programs would be affected hinges on how universities would rebudget if the net revenues from their football and men's basketball programs fell, forcing resources from one part of the academic or athletic enterprise to another. In most cases, however, nonrevenue intercollegiate sports are already subsidized by general university funds. These intercollegiate sports teams, as well as intramural and club sports, are part of a set of amenities institutions provide to recruit talented students and to keep them satisfied. These activities are likely to survive any sea change—except on one score: What would be the implications for Title IX and female athletes if current restrictions on football and men's basketball player compensation were eliminated? For the most part, excluding a few select high-profile women's basketball programs (like Connecticut and Tennessee), female athletes play on a wide range of low- or nonrevenue teams. On the one hand, just as with nonrevenue sports teams for men, the impact might be minimal. However, when it comes to gender equity, the interests of the federal government and the courts, as well as the institutions themselves, could turn this into a larger issue. Next, among the many tentacles of the college sports octopus are the television and cable networks and their broadcast affiliates (an integral part of the college revenue machine); complementary firms such as Nike, Reebok, Under Armour, and other advertisers and sponsors; cities that play host to bowl games and regional March Madness weekends, whose mayors believe the events boost their local economies; and sports writers and broadcasters. They all benefit from the current overproduction of, and emphasis on, high-profile college athletics, which affords them an array of programming

alternatives, inexpensive advertising, and livelihoods that depend in large part on the status quo. They are likely to be worse off in a world of pay-for-play college athletics. When thinking about who benefits from the current arrangements, it is worth remembering that the vast majority of star Division I football and men's basketball players are African-Americans, many from low-income families. Athletes in nonrevenue sports, athletic department personnel, coaches, faculty and staff, and the student and alumni bodies of the Division I universities as a whole are Allen R. Sanderson and John J. Siegfried 133 predominantly white. Given that the NCAA and its members now suppress the wages of outstanding athletes to amass rents and then redistribute that largesse to other people and units on campus (as well as to the NCAA itself), the distributional implications are embarrassingly clear: lower-income (on average) minority athletes are "taxed" to provide benefits to other people who are overwhelmingly white and from higher socioeconomic strata. One can also raise concerns that a competitive free market in college football and basketball might in some ways offer too little protection for these young men, who will find themselves (and their families) in fine-print negotiations. One can imagine a limited role for the NCAA to ameliorate these asymmetrical information problems.

## **Racism**



## First Constructive Evidence

**College athletics exploits the physicality of black males for the enjoyment of and material gain of others. This is the same as slavery, sharecropping, and the prison industrial complex. It is unjust and it must end. And, the way it is currently constructed, the system does not provide educational benefits for Black athletes.**

Billy Hawkins, Professor at the University of Georgia in the department of Kinesiology, 2010, *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions*. Palgrave Macmillan US. Kindle Edition

At a time when the Democratic Party is embracing its first biracial candidate—Black by social norms—and when the United States has elected and is celebrating its first Black president, **race still matters**. Therefore, to extend W. E. B. Du Bois' proclamation of race being the problem of the twentieth century, **it continues to remain relevant and a challenge in the twenty-first century**. Race is entrenched in the sociocultural configurations of this country, and hinders many from transcending inequalities and barriers assigned to groups based on the superficiality of phenotypical differences. Despite the progress of the Democratic Party in endorsing its first biracial candidate and the United States in electing its first Black president, **race continues to be a thorn in the side of NCAA member institutions**. From the years of desegregating to the current years wherein Black males are disproportionately competing in revenue-generating sports, **these institutions reflect patterns of behavior toward Black males, specifically, that resemble practices witnessed in other institutions' interaction with Black males in the United States, for example, slavery, sharecropping, and the prison industrial complex**. **Our purpose as Black males in this country has largely been defined by structural demands and institutional needs, which has mainly required our physicality**. Therefore, to a significant degree, our experiences are shaped within the context of these demands and needs. The current racial demographics of NCAA revenue-generating sports provide an example of how millions of Black males' experiences have included either using sport or being used by sport to obtain a desired end; unfortunately the latter more frequently occurs. Again, history finds us burdened by our Blackness and physicality; **toiling to build so that others can occupy, performing so that others can enjoy, and sacrificing for the benefit of others**. Therein resides the significance of engaging the topic of Black athletes, college sports, and predominantly White NCAA institutions, **because in the words of Reverend Dr. Martin L. King, "Injustice anywhere is a threat to justice everywhere."**<sup>2</sup> This will be the mantra flowing through the chapters of this book. Therefore, **reforming college athletics must be about justice** and not about merely penalizing the victim. Nor can it be about providing a Band-Aid to mask deep wounds or about administering an analgesic for temporary relief. . The context that shaped my frame of reference for this work started in a small southern town in the late '60s and early '70s, where the options to become upwardly mobile for young Black males were extremely limited and routinely restricted. Racial segregation was the prevailing social condition that regulated Black life and determined our mobility. The legal roads most traveled by my predecessors and peers consisted of the following: as manual laborers in the local factory or as seasonal laborers (tobacco or peach fields, etc.)—a byproduct of the sharecropping systems that my grandparents endured; we could join the armed forces, where the majority were assigned to infantry divisions; or an athletic scholarship in the sports of basketball, football, and sometimes baseball (however, very rare in baseball). My hometown was a perfect example of how the Black body has been a valued commodity in generating revenue and wealth for the White establishment. I remember our summers involving seasonal patterns of labor where we rotated from tobacco to peach fields, to catching chickens at night, or to construction work when available, all for meager wages. Though these positions were an inadequate source of income, they provided a fear of being trapped in a lifestyle that relegated us to a subservient status, mistreatment, and exploitation from employers who never knew our name. In retrospect, the wages were more of a burden than a blessing in that we never made enough to invest in improving the quality of our lives. And, unfortunately this forced some of my peers to participate in "alternative," generally illegal, career paths to augment their income and increase their means. These alternative occupations were also options for those young Black brothers seeking survival against the odds and social barriers they



inherited at birth. Therefore, they became employees of the private and externally funded open-air drug markets that are pervasive in Black communities throughout the United States. Others participated in other criminal activities (e.g., petty robbery, etc.) that ultimately led to a life ensnared in the prison system. Thus, in order to leave this town, (voluntarily or involuntarily) we were mainly funneled through the following tracks: the military, athletics, or by way of the prison system. High-school dropout rates were generally high for Black males in my community. Part of it due to the perception we had about education and the nerds who excelled at it, and also because we viewed it as a long route to achieve the American Dream we witnessed White citizens in our town achieving and enjoying. This dream for us seemed too distant and elusive to achieve through the normal chain of command: get good grades, graduate from high school, go to college, get good grades, graduate from college, get a good job, get married . . . and live happily ever after. Although education was preached to us as a means of social mobility, the majority of my peers, including myself, did not view it in a similar fashion. In retrospect, in our conversations about education, we politicized it as a system of indoctrination and assimilation that further bound Blacks to the system of White supremacy. Especially when we did not find our presence or contributions situated anywhere in the curriculum. We only read how Europeans either discovered, invented, or created everything. The salient message propagated by this Eurocentric curriculum was that Europeans were the superior race, and that Blacks' major contributions to this nation were as slave laborers. Therefore, the last thing we cared to be deceived into thinking was that this educational system would somehow nullify racism and place us in equitable standing with Whites. Our method of rebellion was to drop out, or do just enough to get by. Besides, by doing too good academically would call into question the validity of our Blackness and masculinity. Our logic was obviously loose and misguided. As I grew older, I began to understand that the White power structure that ran this town was a major factor in our social mobility. We were only allowed to go so far up the economic ladder, move so close in adjoining neighborhoods, and to interact socially with extreme caution. I remember summers working with my Dad in his masonry business and having to eat lunch in the kitchen of restaurants among the Black cooks and dishwashers or out back under a shade tree. At a young impressionable age during my preteen years, while sitting in the kitchen of those restaurants near the door that led to the main dining area, I often wondered why we were not allowed to eat in the cool dining area. Furthermore, the beautiful homes my Dad constructed from his physical labor in the exclusive White neighborhoods provided me with images to dream and hope as well as images to reinforce the gap between the worlds of the White power structure and the Black community. Despite our limited options, we all had one thing in common: sport was a common denominator and a rite of passage in our coming into manhood. The majority of the Black males in my small town were filtered through the culture of sport and played until they either dropped out of school because there was a substantial decrease in academic interest and performance, or because reality set in and priorities shifted because they realized that they did not have enough talent to make it to the next level. \* \* \* Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 1). Palgrave Macmillan US. Kindle Edition. During this opportunity I began to reflect on the historical context of my collective experiences, began to shape my views toward activism; my desire to inquire into intercollegiate athletics was also birthed at this time. Writing about the experiences of Black athletes in intercollegiate athletics has been a way to channel my frustration and disappointment in a system with such potential, as well as providing me with an opportunity to speak for the voiceless Black male athletes caught in this maze. For example, **athletes like Jason4: an extremely talented teammate on my junior college team, who had several athletic scholarship offers to major universities. Unfortunately, he could not get past his freshman year academically. He was able to read defenses and calculate eminent traps, but lacked the confidence in basic academic skills— education was simply not a priority for him. Little effort was made to assist him beyond the basketball court, because there was always a new crop of athletes (Black) who was waiting in the wings and could run just as fast and shoot just as good.** I was one of those in the new crop waiting on my opportunity to take the place of those who transferred to four-year colleges or to replace the larger percentage of those athletes who succumbed to the demons of academic neglect. Little did I know that my opportunity to advance and compete would come at a price of another athlete having to be discarded because his eligibility expired or his value depreciated. **This perpetual system sustains a competitive environment and limits the opportunity for collective bargaining because ultimately your teammate is also your competitor.** Ralph Ellison best captures this fracturing competitive environment in the “battle royal.” In *The Invisible Man*, **Ellison illustrates how young Black men were placed in a ring to fight for prize money (coins), but most importantly, for the entertainment of White men.** Like Ellison's young Black males in the battle royal, the perceived value of the prize prevented any conscious assessment of the particular arrangements or any convergence and activism around a common plight. We simply competed and fought for the prize. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 8). Palgrave Macmillan US. Kindle Edition. **The system of intercollegiate athletics5 has remained relatively consistent with other social institutions where the Black body is a valued commodity: a cog or a tool for capitalist expansion.** Within the context of intercollegiate athletics, **the faces and voices change periodically, yet the goal of capital accumulation remains the same.** It is these recycled faces and voices that I have seen and heard from my various levels of experiences that haunt me. There are versions of lives that resembled the

reincarnated experiences of Connie Hawkins, Dexter Manley, Lloyd Daniels, and others that need a voice. Sports was ascribed to be their means of social mobility, and for some, it became their ticket to a collegiate education and a career in professional sports. Nevertheless, for the larger percentage, their narratives are different. They were labeled academically deficient and pathological, and unfortunately, many conformed to this stigma. Once their talents were exhausted and their eligibility ran out, their value decreased and room was available for the new crop of talent who was ready to fill the void they left. One face and voice in particular that is hard to erase is of a young man recruited out of the state of Texas (predominantly Black community) to a large predominantly White Midwest university—this university had an “athletic” pipeline to Texas for Black football talent. This individual, I will call Reggie for the sake of privacy, was recruited under considerable national scrutiny because it was alleged that his SAT was taken by someone else. I would notice during study tables his lack of academic confidence and distant interest in particular academic subjects. One day I happened to have a copy of the Askia Toure’s, *From the Pyramids to the Projects: Poems of Genocide and Resistance*, which piqued his interest, so he requested to borrow it for a class project. I kindly and innocently obliged because I was glad it sparked his interest. Besides, how can you reject anyone desiring to read an “old school” poet expounding on issues of genocide and resistance? The next day, Reggie came into study table with a slight grin of confidence. He began to recite verbatim various poems contained in this volume without error or hesitation. All I could think of was the power of the self-fulfilling prophecy, where here was a Black male, who was labeled academically deficient, and was conforming to that description. Yet, he had the mental capability and potential, and with the right nurturing, he could have risen above this stigma. I was too late. Reggie was fast, and they needed his speed and mental focus to be developed and fine-tuned for Saturday evenings’ performances. He did not last long at this academically rigorous university majoring in eligibility, and he did not obtain a lucrative career in professional sports. This is about him and others like him. Since the Black communities, more specifically, consistently provide a pipeline of athletic labor to meet these institutions’ demands for athletic excellence, each year I witness a new group of faces and voices; some ending up like Reggie, a few making it to the professional league, but not enough graduating. For the few who are navigating the system, it can be a turbulent ride. For example, the experiences of one Black athlete I had the opportunity to work with highlight the occupational hazards encountered on the way to academic success. He grew up with no running water in their home (during the seventies in the United States). His athletic abilities were recognized at a very young age. By junior high school, he had been kindly persuaded to attend a certain high school that would assure him in learning the style of football that would position him to transition smoothly into their collegiate program. He made all the right moves, changing residence to meet the district demands to attend this high school, excelling athletically, and receiving an athletic scholarship. All the right moves resulted in one wrong move that left him requiring reconstructive surgery on his knee, and cast doubt on his dreams of making it to the professional level. Devastated by the incident and disappointed by the treatment he received from members of the athletic staff, he was not without hope and a desire to focus on receiving an education. This young man fought back and competed, although not at the previous level, graduated with the goal of starting his own business. Athletics was a burden and a blessing to his personal desires and career aspirations: it initially equipped him only to see professional sports as his means of social mobility; consequently, it provided him with an opportunity to be successful academically. Despite the bitter taste he had because of the ill treatment he received when he was no longer a productive commodity, and notwithstanding, his dream of making it to the pros being unattainable, he persevered and graduated. It has sometime taken injuries in the form of concussions, spinal cord injuries, reconstructive surgery, and so on, to provide an epiphany. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 10). Palgrave Macmillan US. Kindle Edition. It is important to note that **structural inequalities<sup>6</sup> in the larger society and stereotypical racist beliefs<sup>7</sup> about athletic superiority produce an athletic labor force in Black communities that supply these institutions with a consistent flow of athletic labor**. Recruited mainly to play sports and produce winning seasons, **too many young Black males are indirectly encouraged to make academics a lower priority because of the athletic rigor required to meet the economic demands of athletic budgets**. Despite the dismal percentages (e.g., 1.1 percent of college football players and 1 percent of basketball players will be professional rookie players), there is still a pervasive system of channeling<sup>8</sup> young Black males, specifically, down the narrow path of athletics. For many, this channeling leads them into relationships with predominantly White NCAA Division I institutions that may not provide equitable returns for them. These institutions of higher learning have performed poorly in their relationship with many Black athletes who entered naively into a world where they sought acceptance and fame. The major focus of this book will examine the controversial relationship between PWIs and Black athletes. It seeks to position Black male athletic experiences within the broader historical and social context of exploitation endured by internally colonized people in the system of slavery. This analysis will examine how these institutions’ **athletic departments, like colonizers, mainly prey on the athletic prowess of young Black males, recruit them from predominantly Black communities, exploit their athletic talents, and discard them once they are injured or their eligibility is exhausted**. In the case of the athletes who are discarded after an injury, **it reinforces Oliver Cromwell Cox assessment of the master-slave relationship, where “the master may consciously decide to use up his slaves because their replacement is cheaper than their conservation.”<sup>9</sup>** An internal colonial framework, the plantation model, will be used to examine how the structures of these institutions and athletic departments work economically, politically, socially, and culturally, to shape the experiences of Black

athletes. Thus, **the basic premise is that these institutions continue a heritage of White supremacy, which is inherent in the American culture, where racist practices are embedded in these institutions' relationship with Black male athletes.** It is important to state at the onset that in this relationship there is a shared responsibility regarding the academic success or failure of Black athletes. These institutions, more specifically the athletic departments, are not solely responsible for the academic success or failure of Black athletes. However, with the resources they have available, they have not unreservedly worked to improve these results either. This is especially the case when they recruit student athletes that they know will be challenged academically at many premier academically rigorous universities. Yet, their profit-driven motives and interests in the athletic abilities of these student athletes overshadow the student athletes' academic challenges, thus, resulting in academic assistance that focuses on maintaining eligibility. Despite the creation and implementation of policies that require athletes to make successful progress toward a degree, or the policies that have been constructed to encourage athletic departments to recruit, retain, and graduate athletes, the practice of majoring in eligibility prevails (e.g., the Academic Progress Rate or APR—is the current piece of NCAA “legislation” to assist in the image construction and public relation of these institutions; it will be discussed in a later chapter). Even when athletes graduate, their degrees inform me of whether they majored in eligibility or not (this will be discussed in a later chapter). To expound further, on the issue of institutional responsibility and accountability for the educational achievement, the educational success rate, as measured by graduation rates, speaks volumes to a structural issue and not just an individual default. Several accounts that have chronicled the experiences of Black athletes have blamed the lack of Black academic achievement solely on the shoulders of Black athletes. When we critically examine graduation rates within the context of intercollegiate athletics, using C. Wright Mills' concepts of personal troubles and public issues,<sup>10</sup> the consistently low rates speak to concerns beyond the character and cognitive abilities of the individual. **There are inherent structural contradictions that contribute to the lack of educational achievement of Black athletes. This message begins to take shape when kids in the eighth grade are being courted by major shoe companies and Division I coaches because of their athletic potential. Kids are also being ranked as top prospects as early as the sixth grade.**<sup>11</sup> It is perpetuated throughout the subculture of youth and interscholastic sports, where athletic talent is awarded over academic abilities, and it is further exacerbated at the intercollegiate level. When the NCAA indirectly reports that 59 percent of Black basketball players and 50 percent of Black football players (Football Bowl Subdivision or BCS and Football Championship Subdivision schools combined) did not graduate in 2011,<sup>12</sup> in which 60.9 percent of the basketball players and 47.4 percent of football players at NCAA member institutions are Black, this cannot simply be attributed to racial intellectual shortcomings. Thus, according to Mills, “An [public] issue, in fact, often involves a crisis in institutional arrangements, and often too it involves what Marxists call ‘contradictions’ or ‘antagonism.’ ” (p. 9). This “crisis in institutional arrangement” is the topic under examination throughout this text. Furthermore, the fact that these institutional arrangements are consistent with the historical expropriative arrangements White institutions have had with Black people is paramount to this discussion. In order to negotiate strategies to navigate successfully in this current culture of intercollegiate athletics, it is imperative that young Black athletes understand that the playing fields and arenas at these institutions have replaced the cotton and tobacco fields that their ancestors toiled in from sun up to sun down. The slave-masters and overseers have also been transformed into positions where their identities are concealed and are not easily recognizable. During the recruiting process and the initial visits, these individuals appear to have Black athletes' best interest at heart, and like wolves in sheeps clothing their true agendas are undetected amidst the promotional promises of how great of an educational opportunity this will be for the recruiting prospect. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (pp. 12-13). Palgrave Macmillan US. Kindle Edition. This is not to imply that all athletic administrators and coaches at this level are only there to oppress and exploit the talents of Black athletes. I personally know of several coaches and administrators who have a genuine concern about the lives of Black athletes (and all athletes in general) on and off the field and even after their eligibility has expired. Unfortunately, the pressures produced from the commercialization of collegiate sports have often forced many athletic administrators and coaches to focus mainly on the athleticism and nurturing the physicality of Black athletes.

**Because winning equates to economic gains and increased job security, lucrative endorsements, and TV contracts for head coaches and other members of their coaching staffs, a premium is placed on enhancing the athletic abilities of Black athletes in sacrifice of their academic pursuit. This is evident when we see coaches' salaries escalating in the past ten years: where in 2007 the average salary for football coaches at FBS institutions was \$950,000, in 2012 the average compensation was \$1.47 million, with Nick Saban earning the highest salary package for a college football coach at \$5.62 million a year.** Furthermore, increased commercialization in the form of multibillion dollar TV contracts and multimillion dollar endorsements has created hidden agendas that often cause these athletic departments/institutions to neglect the minds of Black athletes while exploiting their athletic talents. Thus, to foster successful navigation, young Black athletes need to be aware of the institutional arrangements that place pressure on athletic administrators and coaches to win games, conference championships, bowl games, and the like. Within this framework, where “winning is the only thing,” academics will be given a “lower” priority unless athletes take full responsibility in

obtaining an education. **Coaches that once cared about the well-being, mental welfare, and human development of athletes are being replaced by athletic entrepreneurs, and athletic departments are being directed by MBA-trained corporate executives whose corporate mission supersedes the educational mission.** Regardless of these institutions' efforts to hide behind the veil of amateurism, intercollegiate athletics reflect the values of professional sports. Professional sports are profit driven; they are outcome oriented and winning is heavily valued and in most cases, "winning is the only thing." Similarly, intercollegiate athletics at the Division I level reflect this profit-driven motive, where images, careers, and money are at stake when teams do not win games and appear in bowl or championship games. Simply stated, winning and winning big is the only thing, with graduation rates of their players being a necessary distraction. In the age of corporate athletics, very few, if any, intercollegiate athletic programs can afford unsuccessful programs. It is unfortunate, but often times, the way some athletic programs develop success requires them to put a greater premium on athletic development and performance and less on academic performance. As an ideology, amateurism assists in maintaining these institutional arrangements and works paternalistically in keeping athletes in revenue-generating sports exploitable. As with most ideologies (i.e., dominant or prevailing systems of ideas that direct ones thinking and behavior), they are imperative for systems of oppression and exploitation (e.g., slavery or internal colonialism, etc.). According to the NCAA Manual, amateurism, as defined by the NCAA, declares that: Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental, and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.<sup>13</sup> **Couched within this definition of amateurism is the paternalistic nature of the NCAA and its member institutions. The Random House College Dictionary defines paternalism<sup>14</sup> as: The system, principle, or practice of managing or governing individuals, businesses, nations, and so on, in the manner of a father dealing with his children.**<sup>15</sup> Mary Jackman further expounds that: The traditional father-child relationship on which the term [paternalism] is based was one in which the father authoritatively dictated all the behaviors and significant life-decisions of his children within a moral framework that credited the father with an assailable understanding of the needs and best interests of his children. They, in turn, accepted implicitly and absolutely the authority of their father—occasional bouts of independence were not unexpected, but never tolerated. Good children learned to comply with and defer to the wishes of their father.<sup>16</sup> These institutions, according to the ideology of amateurism, are working in the best interest of Black athletes by protecting them from other exploiters while providing them with an educational opportunity. Thus, it appears that the welfare of athletes is the main priority, however, preserved in this expropriative arrangement is the exploitation of the Black athlete. When there are "occasional bouts of independence," the NCAA, in its fatherly manner and in the best interest of the family (many member institutions), provides the necessary discipline to encourage compliance. An example of a program being disciplined by the NCAA, which received national attention in 2007, was the Oklahoma Sooners' football program. The NCAA sanctions against the Oklahoma Sooners for not monitoring players' employment involved them erasing their wins from the 2005 season, and losing two scholarships for the 2008–2009 main priority, however, preserved in this expropriative arrangement is the exploitation of the Black athlete. When there are "occasional bouts of independence," the NCAA, in its fatherly manner and in the best interest of the family (many member institutions), provides the necessary discipline to encourage compliance. An example of a program being disciplined by the NCAA, which received national attention in 2007, was the Oklahoma Sooners' football program. The NCAA sanctions against the Oklahoma Sooners for not monitoring players' employment involved them erasing their wins from the 2005 season, and losing two scholarships for the 2008–2009 and 2009–2010 school years. An example of a player being disciplined by the NCAA is when JaRon Rush of UCLA received a multigame suspension by the NCAA because Rush received monetary benefits from an AAU coach and agent while in high school. The original sentence for JaRon's "unNCAA-like" conduct was a 29-game suspension and a \$6,125 fine; after an appeal, it was reduced to 9 games and repayment of the fine. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 15). Palgrave Macmillan US. Kindle Edition. Another occurrence in which the NCAA flexed its disciplinary muscle happened with the Florida State University cheating scandal where 61 athletes cheated on an online test or received inappropriate academic assistance from academic support staff.<sup>17</sup> The NCAA placed the school on a four-year probation, along with other penalties, and they had to forfeit victories they accomplished during the time of the indiscretion. These are only fractions of the way the NCAA operates in a father-like (paternalistic) manner to maintain amateurism, or to protect athletes from exploitation by professional and commercial enterprises. This operation further establishes an exploitable relationship between athletes and the NCAA, where the beneficiary of this athletic commodity has mainly been the NCAA. It keeps the Black athlete under the authority of these PWIs, and their talents exploitable to benefit these institutions. Thus, this system of paternalism functions like an iron fist in a velvet glove<sup>18</sup>; providing a "protective" environment for the development and expression of Black athletic talent, yet controlling and exploiting this talent as a commodity in the open market. Part of the paternalistic nature of PWIs is the support they provide to athletes for academic support. Within the constructs of athletic capitalism, athletic departments are providing academic support services for athletes and the NCAA will legislate rules (e.g., Academic Progress Report—APR) to give the illusion that academics are a priority, however, the fundamental principle of generating revenue prevails. Multimillion dollar facilities are being constructed as academic support centers that house computer labs, resources centers, academic support staff offices, tutorial services, and the like, all to insure athletic eligibility and give the illusion that they promote academic excellence. For example, the following institutions have or are in the process of constructing academic centers specifically for athletes: Louisiana State University spent \$15 million,

Mississippi State University spent \$10 million, University of South Carolina spent \$13 million, University of Michigan spent \$15 million, Texas A&M spent \$8 million, and the University of Georgia spent \$7 million. The NCAA reports that Division I athletic departments spend a minimum of \$150 million annually on academic support services. The University of Southern California spends \$1.5 million on tutors and academic support staff, while the University of Georgia has a budget of \$1.3 million for tutors. Clearly, the money is there to support athletes' academic endeavors, and the academic support services are extensive in several top-level athletic departments. The concern is with those programs that function, according to Dr. Linda Bense-Meyers—former tenured English professor at the University of Tennessee—as “academic evasion centers” instead of academic support centers. Therefore, are they extensions of paternalism that seek to protect and promote the interests of athletes, or mere illusions distracting from their fundamental nature and business practices? Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 16). Palgrave Macmillan US. Kindle Edition. In the larger scheme of things, sports mirrors patterns of social interaction that prevail in the larger society, and at times it can be viewed as a barometer of racial progress. In the larger scheme of things, sports mirrors patterns of social interaction that prevail in the larger society, and at times it can be viewed as a barometer of racial progress.

**Intercollegiate athletics is a subculture of the sports industry that similarly reflects and reinforces race, class, and gender ideologies that are dominant at the macro level of society.** Therefore, the challenges Blacks encounter at the societal level (discriminatory practices, racial profiling, exploitation, etc.) are often similar to the encounters they face within other social institutions. Furthermore, the triumphs and progress we have achieved through sports has transcended into other social institutions. Fortunately, many Blacks daily prevailed against the contradictions in institutional arrangements and have had varying levels of success. Similarly, many Black athletes have transformed their negative experiences in predominantly White campuses into productive careers in the following occupations: professors, lawyers, doctors, political leaders, managers, accountants, professional athletes, and other occupations. It is unfortunate that these success stories are not highlighted more in the media as much as the cases of academic and athletic deviance. Regardless, this terrain must continually be contested and manipulated to increase the success rate of Black athletes so that they can go on to be productive citizens. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 16). Palgrave Macmillan US. Kindle Edition. This book will provide a perspective into the interworking of intercollegiate athletics and race. The focus is on **the revenue generating generating sports of football and men's basketball. It is proposed in this book that many of these institutions function like plantation systems that internally colonize and exploit the athletic resources of Black athletes, and too often they return to their communities either injured (physically or psychologically) or poorly educated, despite the athletic expenditures they have given to these institutions; they then become a burden on the communities that bore the burden of nurturing that athletic talent.**

Because of the interworking of this system, the concept of amateurism will be challenged in the chapters that follow; as mentioned previously, amateurism is more of an ideology than a legitimate practice. These programs operate more on a professional or semiprofessional level, and they are more commercial in nature, than they are amateuristic. As professional or semiprofessional leagues, we will explore how the behavior of Black athletes resembles the labor patterns of oscillating migrant laborers. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 17).

Palgrave Macmillan US. Kindle Edition. **Similar to the military industrial complex and the prison industrial complex that consist of a network of organizations/universities, businesses, corporate vendors, and so on, who collaborate and are driven by a profit motive, NCAA Division I intercollegiate athletics form an athletic industrial complex<sup>19</sup> that functions similarly.**

In the following pages, this study intends to describe this athletic industrial complex using a plantation model (internal colonial model)<sup>20</sup> to draw similarities between the structures of these institutions (intercollegiate athletics and internal colonialism) and highlight some of the deficiencies of PWIs because, like a plantation system, they are driven by economic motives. Because internal colonialism has not been a conceptual framework used to analyze the experiences of Black athletes, a variety of historical sources will be used to construct this model. The reason this model was chosen to apply to NCAA Division I intercollegiate athletics is because according to Robert Staples: The main concern of the internal colonial model is the structural inequality between racial groups and the dynamics of social institutions and practices that maintain racial differentials in access to social values and participation in society. It focuses on structural variables instead of exploring individual motivations. . . .<sup>21</sup> Staples also suggests that, “It [internal colonial model] has managed to shift the foci of study from the victims of racial oppression to the oppressor and his exploitative system.”<sup>22</sup> The goal of using this model is to illustrate the structural variables and inequalities of predominantly White institutions—examine the “crisis of institutional arrangements.” This model can also be instructive in understanding the institutionalization of social and cultural racism and the political and economic exploitation inherent in PWIs relationships with Black athletes. This will include a look at the ideology of Blacks' purported physical superiority and intellectual inferiority, and also the pattern of oscillating migrant laborers to see how they contribute to these inequalities. The question may arise as to why White athletes are not included in this study. Although White athletes share some of the same experiences as Black athletes, it is because they have benefited the most from this relationship. For example, they graduate at higher rates and they have more avenues of

employment to explore upon graduating. For example, **in 2010, the NCAA reported that four-year graduation rates for Black male athletes participating in football and men’s basketball were 50 percent and 41 percent, respectively. These rates are considerably lower than the rates of their White teammates.** This is important when we examine the racial demographics of the teams and starters, where Black athletes make up the majority of the basketball teams and the majority of starters on football teams at several NCAA universities. **Another reason they have been able to benefit from this arrangement is because of White skin privilege.<sup>23</sup> White skin privilege allows White athletes to blend more into the predominantly White school setting, thus allowing them to have more positive experiences than Black athletes.** According to Robert Sellers, **“Black athletes are more likely to report experiencing racial isolation than are white athletes.”<sup>24</sup>** Their ability to assimilate into the campus setting reduces the stress and negative experiences Black athletes are subjected to because of their skin color. I have noticed in my experiences that the lives of Black athletes on predominantly White campuses are more complex than their counterparts. The simple act of walking across campus, sitting in classrooms where there are very few (if any) Black students, or being vocal in class discussions can be challenging and uncomfortable for some Black athletes. These simple acts, in and of themselves, are stressful for many White students, but race adds another layer within this predominantly White environment. For several Black athletes I have worked with, this has been a contributing factor in their low class attendance and social interaction on campus. White athletes do not have to contend with this level of stress that evolves from racial ignorance; therefore, their experiences are different. Furthermore, although Black and White athletes are members of the same working class or athletic labor force, Black athletes occupy a different structural position because of their race and other sociocultural factors. Thus, within this working class or labor force group, there exist lines of division based on racial categorization (mainly phenotypic characteristics) and sociocultural factors. This line of division denotes what is known as a class fraction.<sup>25</sup> Therefore, Black athletes are a class fraction within this larger working class. According to Phizacklea and Miles, a class fraction is “an objective position within a class boundary, which is in turn determined by both economic and politico-ideological relations.”<sup>26</sup> Phizacklea and Miles explain that: Class boundaries mark the objectively different structural positions in economic, political and ideological relations but these relations also have independent effects within these boundaries.<sup>27</sup> Therefore, Black athletes and White athletes exist in the same labor class (working class) and share similar experiences regarding economic exploitation. However, Black athletes are considered a class fraction because they make up a different structural position based on different economic relations (socioeconomic status of family upon entering college) and politico-ideological relations (race, the sports they participate in, and possibly their position on the team, and the low percentage of Blacks that make up the student body). **Studies that have highlighted the different structural positions Black athletes occupy in relation to their White counterparts include the stereotypical belief regarding Blacks’ intellectual inferiority and athletic superiority, the differences in their demographic and academic backgrounds, overall college life experiences, mental health issues, and social support.<sup>28</sup> Furthermore, there are several studies that illustrate how the academic performance of Black athletes is lower than that of White athletes once they are on campus.<sup>29</sup>** Because of the different backgrounds and experiences of Black and White athletes and despite the common experience of labor exploitation they share, in this analysis Black athletes will be viewed as class fractions. Consequently, it is important to note that within the class boundary of Black athletes, this concept of a class fraction extends even further because each Black athlete brings different experiences to the university. Therefore, within the labor class and within the class fraction of Black athletes there is stratification among Black athletes where they are layered based on social class, popularity or celebrity status, academic class, and so on. This stratifying was made known to me in a discussion with a couple of Black athletes about an internal conflict several team members were experiencing. I made the assumption that there was a certain level of unity and collective consciousness among the Black athletes on the football team, therefore, I suggested they take the issue to the captain of the team, who was Black, to voice their concerns. They corrected my incorrect supposition by informing me that they did not talk to this individual, and that this person had very limited interactions with other Blacks on the team. This not only alerted me to the stratification that existed between Black athletes, but it also informed me of the fragmentation that often prevents the development of a collective voice needed in addressing conflicts of interest. Historically, this has been a strategic practice implemented to divide and rule in the colonization process and documented as a process used on plantations to suppress insurrections and maintain control over slave labor. The co-opting of Black leadership in the United States by the White power structure has been documented in the literature and is another example of this as a practice that creates stratification and stifles efforts of organizing around a common goal. Besides the overt practice that created varying structural positions within a class fraction, there are covert schemes, such as levels of assimilation, geographic regions, socioeconomic status, and so on, that can stratify Black athletes within their class boundary. Therefore, it is hard to make generalizations about the experiences of all Black athletes on predominantly White campuses, even those on the same team. Although they are all subject to have a “Black experience” involving racist verbal attacks or ill-treatment based on racist stereotypes, a small percentage are shielded and have more positive experiences, despite their skin color. Chapter 1 provides a historical overview of the Black athlete in intercollegiate athletics: This chapter will provide a historical context of the

experiences of Black athletes in intercollegiate athletics. It will provide a brief overview of the Black migration from Historically Black Colleges and Universities (HBCUs) to predominantly White colleges and universities. Chapter 2 outlines the internal colonial model—the New Plantation Model. This chapter will outline the various components that will be used to address the experiences of Black athletes. Chapter 3 addresses some of the ideological issues that have provided a lens for labeling Black athletes intellectually inferior and examines how academic clustering reproduces the myth of the intellectually inferior but athletically superior Black athlete. It will examine how academic clustering disproportionately affects Black athletes. Chapter 4 engages the economic burden of the Black body. Because economics is the key reason this relationship has emerged, this chapter will look at the burden placed on the Black athletic body. It will attempt to answer the question put forth by Sidney Willhelm, *Who Needs the Negro?* This chapter will address how Title IX sports that are occupied mainly by White women are benefiting from the Black male athletic labor. Chapter 5 looks at the Black athlete’s racialized experiences at predominantly White NCAA institutions. Chapter will look at how racism continues to plague Black athletes covertly and overtly—whether it is the negative assumptions made by faculty members and peers as they walk into classrooms, or the blatant racist verbal attacks endured by many Black athletes. Chapter 6 addresses the environmental factors. This chapter will focus on the sociocultural settings Black athletes are recruited into at predominantly White NCAA institutions. **The concept of oscillating migrant laborers will be used to explain the migration process from communities of color with diverse cultural expression to predominantly White communities with a predominantly monocultural environment.** Chapter 7 takes into consideration the political component and how Black athletes are oppressed politically because they lack a voice in the political process that governs their lives and the lack of Black athletic administrators and coaches denying them adequate representation at the leadership level. Chapter 8 engages the subject of interscholastic athletics and how it has become a breeding ground for the internal colonial setting. Finally, chapter 9 will address the topic of decolonization and reformation: This chapter will address the concept of how academic reformation must begin with the decolonization of the mind and the ideological processes that are in place to maintain and insulate a system of exploitation. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 21). Palgrave Macmillan US. Kindle Edition.

## **It was built on a plantation system**

Nathan Kalman-Lamb, Derek Silva and Johanna Mellis, September 7, 2021, *The Guardian*, Race, money and exploitation: why college sport is still the ‘new plantation’, <https://www.theguardian.com/sport/2021/sep/07/race-money-and-exploitation-why-college-sport-is-still-the-new-plantation>

NCAA sport was built upon the foundational racial inequalities of American society and higher education. White colonizers and later Americans established the first universities in the US on land stolen from Indigenous peoples, and built and paid for these institutions using the exploited labor of, and profits extracted from, enslaved people. American racial capitalism permeated the structure of higher education from the 1600s on. Though historically Black universities and colleges (HBCUs) served as the predominant places of university instruction and athletic success for Black people due to racial segregation, white-dominated state legislatures sought ways to reform and maintain their racial control over higher education when racial segregation was outlawed in the postwar era.

Generous state funding for PWIs and their athletic departments (in contrast to HBCUs) became an avenue to legally reshape the plantation system. Seeking to boost their athletic success and prestige, PWIs lured Black athletes away from HBCUs with scholarships and better facilities than HBCUs could offer. Hawkins shows how the racialized organizations of the NCAA created a system of internal colonization, where the dominant group of PWIs became the colonizers who ‘bought’ Black athletes for their exploitative plantation system. The big colleges wielded the disciplinary cudgel of amateurism to prevent Black and Brown athletes from monetizing their labor through the specious goal of “protecting them from exploitation.”

The plantation dynamics of college sport today are most readily apparent in the elite power five conferences (the ACC, SEC, Big Ten, Pac 12, and Big 12) and the sports that bring in the big money: football and basketball. In the 2018-2019 season, the 65 power five universities generated \$8.3bn in revenue between them. Yes, 8.3 billion. As Watson succinctly puts it, “There’s still a lot of revenue going out there.” Yet, that money does not find its way into the pockets of the disproportionately Black athletes responsible for generating it. While only 5.7% of the students at the PWIs that make up the power five are Black, that number surges to 55.9% for men’s basketball, 55.7% for football, and 48.1% for women’s basketball. These athletes receive only cost of attendance scholarships in exchange for their labor. In many cases, they do not even receive health insurance.

So, where do those billions go? Well, the primary beneficiaries are the coaches, athletic department officials, and university presidents who oversee their work. White people disproportionately rule the campus athletic work in the power five conferences, whether at the level of chancellors and presidents (84%), athletic directors (75%), or head coaches (81% of men’s basketball coaches, 82% of women’s basketball coaches, and 80% of football coaches). The denial of compensation to the Black athletes who drive revenue is the single most damning dimension of the plantation dynamics of college sport.

Darius, a current SEC football player, told us: “It’s frustrating for me because NIL doesn’t change the fact that I show up every Saturday and play in front of thousands of screaming fans and everyone else gets paid.”

David West, a former NBA all-star who now helps run the Professional Collegiate League, an alternative to NCAA competition, says: “Even with [NIL], the same mechanisms of control are still in place, meaning the system is still set up to benefit the players last, not first.”

Connecticut senator Chris Murphy, co-sponsor of the pro-unionization College Athlete Right to Organize Act, agrees: “Majority-white executives have long exploited the talents and labor of majority Black college athletes, but America is finally waking up to the injustices that are inherent in college athletics. Giving athletes the ability to make money off their name, image, likeness should be considered the floor and not the ceiling. We must still ensure athletes receive fair compensation for their labor as well as health, safety and academic protections along with real power in their industry. This is a civil rights issue.”



Grappling with the plantation dynamics of big-time college sport also requires confronting the insidious myth legitimizing them: that players consent to participate. What the insipid platitude that ‘they signed up for it’ conveniently leaves out is the coercion at the heart of college athletics, even in the NIL era. This coercion comes in two forms.

First, the very decision to accept a scholarship and participate in big-time college sports is grounded in a form of racialized structural coercion. Borrowing from Jill Fisher, structural coercion refers to the social and economic conditions that shape the choices available to a person. The massive gap in social, economic, and cultural conditions produced by racial capitalism in US history, and the accompanying chasm in access to higher education and high-paying jobs, is exactly what structural coercion looks like. Today, Black families have less than 15% of the wealth of white families both on average and at the median. Moreover, while 45% of white 25-29 year olds have attained a bachelor’s degree and 56% have attained an associate’s degree, only 28% and 36% of Black Americans have. Given these disparities, a scholarship to participate in college sport becomes less a choice than a necessity.

College sports attract huge crowds, generating billions of dollars in revenue

[View image in fullscreen](#)

College sports attract huge crowds, generating billions of dollars in revenue. Photograph: Gary A Vasquez/USA Today Sports

Kaiya McCullough, a former UCLA and pro soccer player and co-founder of the United College Athlete Association says: “Educational compensation is a far cry from full compensation for the amount of labor done and revenue generated by college athletes, and any substantial change in plantation dynamics within college sport would have to address this issue.”

Likewise, once on campus, athletes are confronted by a second form of coercion referred to by sociologist Erin Hatton as status coercion. Status coercion shows the myriad ways in which athletic departments exercise power over athletes by controlling chances to showcase their abilities in the hope of turning professional. The fact that coaches control whether an athlete plays means that they can also regulate what they are allowed to say and do via discipline and surveillance, fundamentally curtailing their freedom.

NIL rights do not resolve either structural or status coercion because college athletes must still remain in the good graces of their programs. For example if a football star isn’t playing every week, he’s unlikely to win a sponsorship from the local car dealer.

Ryan, a current Pac 12 player, says: “I don’t think NIL has fundamentally changed the plantation dynamics of college sports. There isn’t actually any pay for play. All that’s guaranteed is some money that you can possibly make off your own name.”

NIL also ushers a new era of gig-work into the lives of athletes – a labor environment literally subsidizing athletic departments by forcing players to seek out income from private companies. As Darius puts it: “It’s like I’m a fuckin’ Uber driver delivering tacos except I’m out there hawking some BBQ joint for money I’ve already earned.”

He continues, “no matter what they do, until we get paid for our work it’s still going to be a bunch of white guys getting paid on the back of Black folk like me.” Coaches and athletic department personnel reap the rewards of athletic labor whilst not paying the workers themselves. “In my eyes it’s fucked,” says Darius. “I gotta do even more work and everybody else is getting money that me and my brothers earn out there on the field.” These are plantation dynamics, rearranged.

McCullough is also unsure about who benefits from NIL. “I think some of the same racial dynamics are replicated in [NIL]. Black athletes have the potential to generate large amounts of personal profit with their NIL, however, in most cases these athletes have little to no help on how to properly market themselves ... individuals with resources and access will be able to fully reap the benefits of NIL, while those who come from lower socioeconomic backgrounds with less professional connections may not.”

Current WNBA player and WNBPA executive Elizabeth Williams sees NIL changes as “a step in the right direction,” particularly for “women to profit in a way they could not in the past,” but adds, “there are still certain players with access to resources like marketing and PR firms that Black players may not have access to.”

There is another important dimension to the equation. According to the current logic of big-time college sport, universities pay their players in the form of a subsidized education. But, if education is compensation, any way in which that education is compromised amounts to wage theft. This is particularly problematic for Black players at PWIs often made to feel they don’t belong, including by professors. For Darius, “Some profs don’t give a shit about us, they see us as a nuisance or trouble or not worth their time ... like we ain’t even real students. I have had profs help me figure shit out and really pay attention to my needs as someone who basically works a full time job for the university and I had profs who basically tell me I’m not a real student and I shouldn’t be there.”

The problem for racialized players, like all players, is, in part, the structural conditions of that education, which make learning almost impossible – athletes are commonly up before dawn, well before other students, for gym sessions and are often discouraged from taking classes that clash with training. Darius notes, “I want to further my education and all that, but sometimes that’s hard when I can barely stay awake [because I’m] tired as fuck from practice. I don’t even blame people for thinking I don’t care about school ... how can I after a three-hour practice, film session, and team meetings?”

So, has NIL revolutionized the plantation dynamics of college sport?

West says that “NIL hasn’t fundamentally changed anything in college sports.” For Darius, in the end, “This whole thing is built on sand and NIL won’t change that.” Ryan concludes: “Racial injustice is an ongoing issue that getting a cut of the revenue can help but not erase from revenue sport. NIL certainly doesn’t do that.” And for Watson, “They’re still bringing in this fresh meat every year to build up the school’s name and that’s just going to continue until kids stop going the college route.”

That’s also how McCullough sees it: “Ultimately, until we address the fact that coaches are signing multimillion dollar contracts to control a largely Black labor force while that same labor force is denied adequate compensation, prohibited from unionizing, and literally killed from a lack of safety guarantees, plantation dynamics are here to stay, regardless of how much an individual athlete can make from their NIL.”

### **Revenue from sports played by black athletes are used to fund sports played by wealthy white kids that dojn’t generate revenue**

Kellogg Insight, February 4, 2021, <https://insight.kellogg.northwestern.edu/article/college-athletes-dont-get-paid-racial-inequities>, Big-Time College Athletes Don’t Get Paid. Here’s How This Amplifies Racial Inequities.

**That’s the question Craig Garthwaite, a Kellogg School professor of strategy, tackled along with Nicole Ozminkowski, a graduate student in economics at Northwestern University,** Matthew Notowidigdo, previously at Kellogg and now at the University of Chicago, and Jordan Keener at the University of Michigan. They were intrigued by a combination of factors: the steep rise in revenue for college sports, the low percentage of revenue used to compensate players—only 7 percent, by their estimation—and the prevailing argument by universities that it isn’t feasible to pay players. **“They say compensation for players would destroy the nature of amateur athletics because people want to believe players are just like other students,” says Garthwaite, who calls himself a “pretty big college football fan.” He points out that no one makes the same argument for coaches, who are paid massive amounts by the highest-profile programs, even when their teams struggle. He cites the example of the 10-year, \$75 million contract for Texas A&M football coach Jimbo Fisher, one** of the largest in history. But still, **even generous coaching salaries can’t account for all that revenue.** So, if it’s not going to the players, where is it going? The researchers studied the

flow of money from the high-revenue-generating sports of football and men’s basketball to answer that question. They found a large amount of the revenue generated by these sports was used to fund investments in other sports at the same schools. Importantly, there are stark differences between the players generating this money and those who are the beneficiaries of it. **“We find that the prevailing model rests on taking the money generated by athletes who are more likely to be Black and come from low-income neighborhoods and transferring it to sports played by athletes who are more likely to be white and from higher-income neighborhoods,”** the researchers write in a recent Brookings Institution article. This dynamic raises questions of equity. **“We’ve got kids who are playing sports that are known as more dangerous in general and still playing in the time of COVID—when we don’t know how the disease is going to progress—and they can only be compensated for the cost of attendance,”** Garthwaite says. **“But the money made from their sports goes to support other, non-revenue sports typically played by kids from wealthier backgrounds.”** CONTINUES They found that students who played the high-revenue sports of men’s football and basketball tended to come from high schools with higher percentages of Black students and with lower average household incomes. (The racial breakdown is not surprising given that half of all players in these two college sports are Black, versus only 11 percent of athletes in other sports.) **There are large implications from these findings in terms of equity, the researchers say. For instance, consider Title IX, the federal mandate that money coming from a general university fund be spent in an equitable manner across gender lines. This requirement, which is generally well accepted, often encourages a transfer of revenue from men’s sports to women’s sports. But in promoting gender equity, the researchers note, it may actually be exacerbating other inequities. “Gender isn’t the only kind of equity we care about,”** Garthwaite says. **“We should also care about a situation where revenue created disproportionately by athletes of one race and of lower income is spent to support those from typically wealthier backgrounds.”**

### **Black athletes are exploited and are forced to make millions for primarily white coaches and subsidize white sports**

Donald Yee, Lawyer and partner with Yee & Dubin Sports College sports exploits unpaid black athletes. But they could force a Change, Washington Post, January 1, 2016, [https://www.washingtonpost.com/posteverything/wp/2016/01/08/college-sports-exploits-unpaid-black-athletes-but-they-could-force-a-change/?utm\\_term=.6f9d1cf8c27e](https://www.washingtonpost.com/posteverything/wp/2016/01/08/college-sports-exploits-unpaid-black-athletes-but-they-could-force-a-change/?utm_term=.6f9d1cf8c27e)

ADVERTISEMENT The NCAA, though, insists that all of its players are student-athletes motivated only by love of the game and of their alma maters. So on Monday, they’ll be working for free. Most fans of college football and basketball go along with the pretense, looking past the fact that **the NCAA makes nearly \$1 billion a year from unpaid labor.** But after a year when Black Lives Matter protests spread across the country, and at the end of a season when the football team at the University of Missouri helped force the resignation of the school’s top two administrators over how the campus handled race-related incidents, **we need to stop ignoring the racial implications of the NCAA’s hypocrisy.** After all, **who is actually earning the billions of dollars flooding universities, athletic conferences, TV networks and their sponsors? To a large extent, it’s young black men, who are heavily overrepresented in football and men’s basketball, the two sports that bring in virtually all the revenue in college athletics.** A 2013 study by the University of Pennsylvania’s Center for the Study of Race and Equity in Education found that 57 percent of the football players **and 64 percent of the men’s basketball players in the six biggest conferences were black; at the same schools, black men made up less than 3**

**percent of the overall student population.** (In recent NFL drafts, five times as many black players were taken in the first two rounds, where the perceived best players are picked, as white players.) Athletics administrators and coaches, meanwhile, are overwhelmingly white. **So by refusing to pay athletes, the NCAA isn't just perpetuating a financial injustice. It's also committing a racial one.** \* \* \* The bargain the NCAA makes with football and basketball players is fairly simple: You play games, entertain fans and make us money, and we'll give you a scholarship, experience, training and exposure you need to make it to the pros. For decades, a lot of that money has been earned by black athletes. College basketball was transformed in 1966 when Don Haskins's all-black team from Texas Western College (now the University of Texas at El Paso) defeated Adolph Rupp's all-white University of Kentucky squad in the NCAA championship game. It was a momentous achievement, widely credited for helping desegregate college basketball, particularly in the South. Similarly, a 1970 game between the University of Southern California and Alabama changed college football, after USC's all-black backfield, led by future NFL star Sam "Bam" Cunningham, defeated Bear Bryant's all-white Alabama team in Birmingham. The victory essentially forced Alabama to integrate its football program if it wanted to compete at a high level. It's hard to imagine that football and basketball would be as wildly popular as they are now if they had never integrated. Or, for that matter, as lucrative. The amount of money generated by football and basketball in the "Power Five" conferences (the Pac-12, SEC, ACC, Big Ten and Big 12) has exploded in the past half-dozen years. The College Football Playoff will generate more than \$7 billion from ESPN over a 12-year contract. Basketball's March Madness will bring in nearly \$11 billion from CBS Sports and Turner Broadcasting over a 14-year TV and Web deal. Merchandising and licensing revenue reportedly exceeds \$4 billion a year. **There's so much money up for grabs that individual schools and conferences have created their own sports TV channels.** Fans can watch the Pac-12 Network, the Big Ten Network — even the Longhorn Network, devoted to the University of Texas (which is reportedly guaranteed an average of \$15 million per year from ESPN, even as the cable-sports behemoth loses money on the enterprise). And there's millions more from ticket sales and stadium and facility naming rights. This enormous flow of cash is carefully kept away from football and basketball players, but coaches, administrators and other staff members get to bathe in it, even though many big-time athletic departments still lose money overall. Larry Scott, commissioner of the Pac-12 Conference, reportedly makes more than \$3.5 million a year. Mark Emmert, the NCAA president, makes more than \$1 million. According to USA Today, nine athletic directors make more than \$1 million each, and nearly 50 make more than \$500,000. Football and basketball coaches too numerous to count make well into seven figures — including many still getting paid millions after they've been fired. Even bowl-game directors can make nearly \$1 million, for administering a single game. These are figures for those at the top of the pyramid: **Many schools pay assistant coaches hundreds of thousands of dollars; Louisiana State University's football team just hired a defensive coordinator for \$1.3 million per year. And for the most part, the people getting paid are white.** Since 1951, when its first top executive was appointed, **the head of the NCAA always has been a white man.** Of the Power Five conferences, none — dating back to the 1920s — has ever had a nonwhite commissioner. A 2015 study by the University of Central Florida's Institute for Diversity and Ethics in Sport found that 86.7 percent of all athletic directors in the NCAA were white. [Salaries for Power Five conference bosses have soared] The demographics of head football and basketball coaches are similar. At the start of this college football season, **87.5 percent of head football coaches in the Football Bowl Subdivision were white.** In the 2013-14 season, 76 percent of head basketball coaches in Division I were white. **The money generated by football and men's basketball also goes to subsidize "non-revenue" sports such as soccer, equestrian, field hockey, rowing, swimming, gymnastics and golf. Virtually all of those programs lose money, and most of the men and women playing those sports are white.** But at least the subsidies are allowing other athletes to compete at a high level, not funding lavish salaries for executives. **Why is this business model — unpaid labor, mostly by black athletes, generating riches for white administrators — still tolerated?** Because most football and basketball players haven't acted on the economic power they possess — and no one in the NCAA universe is eager to change that, either. Instead, the NCAA's member schools are moving to distract them. The Post recently reported that Clemson's new football facility will have a miniature-golf course, a sand volleyball pit and laser tag, as well as a barber shop, a movie theater and bowling lanes. The University of Oregon had so much money to spend on its football facility that it resorted to sourcing exotic building materials from all over the world. In some cases, officials have made small concessions to avoid bigger ones. When football players at Northwestern tried to unionize in March 2014, alarm bells went off in athletic directors' offices nationwide. Suddenly, that June, USC committed to giving football players guaranteed four-year scholarships. Before then, scholarships were a year-to-year proposition, renewable at the discretion of the head coach. Some other schools quickly followed suit, lest they be put at a competitive disadvantage. When University of Connecticut basketball player Shabazz Napier complained in April 2014 of often going to bed hungry, the NCAA passed emergency legislation allowing for expanded year-round meals for athletes. The NCAA could have made these changes at any time — it didn't have to wait for players to complain. Only when the free labor threatened to take action did the NCAA respond. Action is still needed, though. For talented football and basketball players, **the NCAA's bargain is increasingly a bad deal: They are making enormous sums of money for everyone but themselves.** Yes, **the scholarships**

**received by football and basketball players provide an economic benefit. However, they come with onerous restrictions and no promise of an education. The 2013 Penn study found that black male student athletes graduated at lower rates than other black men at 72 percent of institutions with big-time football and basketball programs — and lower than other undergraduates overall at 97 percent of them. At many schools, football and basketball players are forced into contrived majors in which they have no interest.** Take a look at the football and basketball rosters of most Power Five schools, and you'll find two or three majors that seem unusually popular among athletes — often interdisciplinary programs that make it easier for academic advisers to pick classes for athletes that fit the team's schedule. Players are also often dissuaded from taking classes they'd prefer. One of my former clients, a fine student, once expressed interest in a class that happened to conflict — in an insignificant way — with a football matter. He was strongly discouraged from taking the class, and since coaches control playing time and scholarships, he didn't want to risk angering them, so he didn't enroll in it. If athletes want to transfer, NCAA rules often punish them by prohibiting their participation in their chosen sport for one year. **The few players who go on to NFL or NBA careers give up years of potential earnings to play for free in college, risking injury in the process.** Most athletes, of course, don't make it to the pros. No other large-scale commercial enterprise in the United States treats its performers and labor this way. Change, however, could come rapidly and fairly easily. If even a small group of players took a stand and refused to participate — imagine if they boycotted or delayed the start of Monday night's championship game — administrators would have to back down. There's too much money on the line, and no one could force the teams to play against their will. The schools and the NCAA would simply have to renegotiate the bargain with football and basketball players. **Paying players would cost money, of course, but with billions in TV revenue coming in, it shouldn't be impossible to find a way to spend some of it on labor instead of on exotic woods for new training facilities. Fans would get over the end of the NCAA's "amateur" status, just as they have accepted pro basketball, hockey and soccer players competing in the Olympics.** Former University of California and NFL linebacker Scott Fujita (whom I represent) recently told me: "The current model will only be 'broken' for as long as the athletes themselves allow it to remain that way. There's no governing body that's going to fix it. It must be the players. And as more players realize the power they can wield, and once they can organize around the common purpose of the change they seek, that's when things will begin to shift."

### **The current system literally strips funds out of black communities, impoverishing them**

Kai Ryssdal, host and senior editor of Marketplace, the most widely heard program on business and the economy — radio or television, commercial or public broadcasting — in the country. In addition, he joins forces with Marketplace Tech's Molly Wood to connect the dots on the economy, tech and culture as co-host of the podcast Make Me Smart with Kai and Molly.]. "NCAA policy hits poor, minority neighborhoods hardest," Marketplace. 7-8-2013, <https://www.marketplace.org/2013/07/08/wealth-poverty/ncaa-policy-hits-poor-minority-neighborhoods-hardest>

Ah, that age old question: Should student-athletes be paid big bucks for their services? The latest flare-up of that issue comes in the form of a pending lawsuit, originally filed by former UCLA basketball player Ed O'Bannon. The lawsuit, now about four years old, is seeking compensation for college athletes -- former, and as of last week, current -- who generated revenue for their schools and the athletic governing body through everything from television broadcasts of tournaments to video games. It could potentially have a huge economic impact on the NCAA and collegiate sports -- so much so that Moody's recently downgraded the governing body's credit outlook to negative. According to its most recent tax filings, the NCAA has about \$614 million in total assets. Most of its 2011 revenue of \$815 million was distributed to member schools, leaving a \$41 million surplus. **While technically a nonprofit organization, the NCAA is earning 40 percent more ad revenue than the NBA playoffs, and 60 percent more than post-season for Major League Baseball.** The main argument in the case comes down to an anti-trust issue -- with the plaintiffs arguing that the NCAA, video-game maker Electronic Arts, and Collegiate Licensing Co. all conspired to fix athlete compensation at \$0 for all of their work. **Dr. Boyce Watkins, a finance professor at Syracuse University, has been an outspoken critic of the current compensation system, which consists entirely of scholarships. Athletes, says Watkins, should be paid for their services the**

**same as any other worker in America -- it's a labor rights issue. "Imagine if we lived in a world where Walmart and Target and Kmart could all conspire and say, 'OK, we're all gonna agree to pay our employees \$10 an hour.' That would be entirely unacceptable," points out Watkins. "But that's what happens when Duke and North Carolina and Kentucky all agree that we're not going to compensate the athletes. It just leads to a system that I would say is inherently unfair."** While many argue that scholarships should be enough for student-athletes, a 2010 study showed that the average NCAA athlete in the big-time sports, like football and basketball, actually ends up paying around \$2,951 per year due to school-related costs. **Watkins also says the system disproportionately hurts players from lower-income areas, and the African-American community. "I think that race does play a role in that at least a billion dollars in economic value is stripped from the black community every year," he argues. He cites the example of Reggie Bush, a former USC football player who lost his Heisman trophy because his mother received money under the table. "When you look at USC -- a school with an endowment that's larger than every historically black college in the country combined -- that this school made over \$100 million from Reggie Bush's play on the field -- it's hard to argue that some people should be outraged about that," he adds. As a college professor, he's encountered many players on campus that have struggled with issues of poverty. As these college athletes play for their schools and make millions, some hear that they're mother is going to get evicted, or that a friend in the old neighborhood was shot. The term "scholar-athlete" makes no sense in a world where students are taken out of class during the week to go play in televised games,** he points out. Meanwhile, the NCAA defends its practices, arguing that by collecting money from big-ticket games like the men's basketball finals, they can help fund other lesser-known or lesser-watched sports like women's volleyball. But Watkins doesn't buy it. **"I think that's kind of an interesting argument," Watkins says, "because when you talk about the coaches, no one ever says, when you pay the basketball coach \$5 million, you've only got \$100,000 to pay the volleyball coach. But for some reason when it comes to the athletes, we expect this subsidization model to apply."** The results of the court case likely won't come for months, but will the NCAA ever change its ways? In some ways, the organization does change, says Watkins, by spending more and more money to defend the system through advertising and marketing. "I think that what's going to probably happen is that at some point some outside entity -- the IRS, or Congress, or the courts -- are going to step in and break the NCAA down," Watkins predicts. **"The toughest thing about dealing with the NCAA is that they operate in a sovereign space. And when you look throughout society -- any institution that regulates itself is usually going to be filled with corruption."**

## The situation is not getting better

Jake New, Writer and journalist for Inside Higher Ed, won the David W. Miller Award for Young Journalists, Racial Gaps in the Power 5, Inside Higher Ed, March, <https://www.insidehighered.com/news/2016/03/16/black-athletes-wealthiest-conferences-continue-graduate-low-rates>

In the past five years, the five wealthiest National Collegiate Athletic Association conferences have undergone some significant changes. Chasing more exposure and money, conferences have realigned and the 65 institutions making up the leagues known as the Power Five successfully fought for a greater level of autonomy, allowing them to vote on several rule changes without involving the other members of Division I. But at least **one thing hasn't changed: racial inequity in academic success among the powerhouse football and men's basketball conferences.** Just over half of black male athletes graduate within six years, compared to 68 percent of athletes overall and 75 percent of undergraduates overall, according to a new report from the University of Pennsylvania's Center for the Study of Race and Equity in Education. The gaps are comparable to when the center conducted a similar study in 2012. "The landscape has changed in those years, **but the trends are the same,"**

**Shaun Harper, the center’s executive director, said. “There’s been a slight increase in graduation rates, about three percentage points, but it’s been across the board, so that doesn’t narrow the racial equity gaps. That increase is perhaps good news for universities, but the racial disparity still remains.”** And the gaps remain even though many a university president or coach talks about athletics as a means of providing an education, not just a chance to play, and even though athletes have access to tutors and various programs to help them academically. The new study compared the federal graduation rates of black male college athletes, all athletes, black male undergraduates and all undergraduates. The study focuses only on the 65 institutions in the five wealthiest leagues: the Atlantic Coast, Big Ten, Big 12, Pac-12 and Southeastern Conferences. **Two-thirds of those institutions graduated black male athletes at rates lower than black men who were not athletes. Just one institution -- Northwestern University -- graduated black male athletes at a rate higher than or equal to undergraduate students overall. At Northwestern, black athletes had a 94 percent graduation rate, compared to 90 percent for all athletes and 88 percent for black men. It’s the same rate as the overall rate for undergraduates. Stanford University had similarly high graduation rates, but black athletes still lagged behind other athletes and undergraduates by six percentage points. The study found that Kansas State University had the lowest graduation rate for black male athletes in all 65 institutions. Only 26 percent of Kansas State’s black athletes graduate in six years, compared to 63 percent of all athletes. The rate, however, is the same as all black men on campus. At Michigan State University, 33 percent of black male athletes graduate in six years, compared to 70 percent of all athletes, 55 percent of all black men and 78 percent of all undergraduates. Neither institution replied to requests for comment. A spokeswoman for the National Collegiate Athletic Association noted that the federal graduation rate used in the study does not account for students who transfer. When the NCAA’s metric, the Graduation Success Rate, is used, graduation rates for all athletes are much higher, though the NCAA’s method also has its critics. Harper said it’s time that black athletes and their families start demanding that colleges take more seriously the academic pursuits of black male athletes. Too many athletes go to college believing it’s a path to playing their sport professionally, Harper said, when less than 2 percent of NCAA basketball and football players go on to play in the NBA or NFL.** “There’s that classic story of the coach going to a single mother’s home and sitting in her living room, telling her how he’s going to take good care of her son,” Harper said. “I think we have to do a better job of equipping parents and families with the kinds of questions they should be asking in that moment. Once on campus, athletes literally control billions of dollars; they could use that power to demand institutions do a better job of getting them resources and support. This is a system that creates billions of dollars, and it’s white men who are profiting most from the backs of these black players.” The study also identifies concerns about racial inequities in leadership positions. **While the majority of revenue-generating athletes are black, only 16 percent of head coaches are black men. About 15 percent of athletics directors are black men. None of the five commissioners are black.** On the other side of the spectrum, though no less troubling, Harper said, is how vastly overrepresented black men are on basketball and football teams compared to the “disgracefully small number of black male students in the undergraduate population.” During the 2014-15 academic year, **black men at these institutions accounted for about 2.5 percent of undergraduates, but 56 percent of football players and more than 60 percent of men’s basketball players were black. At Auburn University, 78 percent of basketball and football players are black, but black men account for just over 3 percent of undergraduates.** “I’m not suggesting that athletics departments should award fewer scholarships to talented black male student athletes,” Harper said. “But these are campuses where admissions officers and others often say that qualified black men cannot be found. Yet they can find these students when they want them to play football or basketball. They go far and wide to find them. Colleges should spend that same level of energy on finding nonathletes.”



## Plantation/Time Control/Racism

### **NCAA controls players' times, and given the racial imbalance, it's a plantation**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

Once promising Division I basketball and football athletes sign scholarship agreements, university officials exercise extensive control over their daily lives (a factor that, as we shall see in Parts II and III, is often relevant in determining "employee" status).<sup>n107</sup> **One independent study concludes that a "conservative estimate of a player's time commitment to football during the week of a home game is approximately fifty-three hours," and is possibly much greater during the week of an away game**<sup>n108</sup> College basketball athletes face a similarly rigorous, and highly regimented, schedule.<sup>n109</sup> **During the off-season, athletes' lives in both sports are highly controlled by their teams, with compulsory early-morning conditioning sessions, weightlifting sessions, team meetings, video review sessions, and other grueling practice sessions**<sup>n110</sup> To an extent far exceeding that of ordinary campus employees, virtually every detail of [basketball and football players'] lives is carefully controlled by coaches and athletic staff, not only during the season but year around.<sup>n111</sup> In his scathing memoir, **former NCAA director Walter Byers attacked "the plantation mentality" embodied in this arrangement**, and indeed, **the politics of race loom heavily over debates about college athletes' labor**<sup>n112</sup> During the 2010-2011 year, **black athletes constituted 59.3% of [\*1024] Division I basketball players and 47.6 percent of Football Championship Series players, more than any other racial group.**<sup>n113</sup> **The comfortable majority of head basketball coaches (72.8%), head football coaches (83.7%), and athletic directors (83.3%), however, were white.**<sup>n114</sup> As **Dale Brown, the longtime Louisiana State University head basketball coach, once candidly complained: "Look at the money we make off predominantly poor black kids. We're the whoremasters."**<sup>n115</sup>

### **Major college athletics is a modern apartheid system that exploits African American men for the enjoyment of wealthy whites**

McCormick & McCormick, 2010, \* Robert A. McCormick, Professor of Law, Michigan State University College of Law, B.A., Michigan State University, 1969; J.D., University of Michigan, 1973, \*\* Amy Christian McCormick, Professor of Law, Michigan State University College of Law, B.S.B.A., Georgetown University, 1988; J.D., Harvard Law School, 199, Texas Review of Entertainment & Sports Law, Major College Sports: A Modern Apartheid, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1408&context=facpubs>

**Major college sports in the United States flourish on the basis of an apartheid system so plain that**<sup>although it may be (and is) ignored,</sup> **it cannot be denied. This system, made up of numerous NCAA rules, effectively sanctions the exploitation of mostly African-American young men 3 for the**

**enormous pecuniary gain of mostly European Americans associated with major universities, athletic organizations, and corporations, as well as for the great entertainment of millions of mostly European Americans.** <sup>4</sup> The central principle upon which this system rests is "amateurism," <sup>5</sup>

and it is upon the amateur ideal that U.S. universities, through the NCAA, seek to justify this regime. **Major college sports, however, are amateur only in the pernicious sense that the very persons who are most responsible for creating this product are denied all but a sliver of the great wealth they create.** <sup>6</sup> In every other way, major college sports have become a

sophisticated, visible, and highly lucrative commercial enterprise. <sup>7</sup> Put differently, **although college football and men's basketball players, who are disproportionately African American, generate fantastic sums of money for a wide array of others, they themselves are forbidden from sharing in those riches.** In <sup>8</sup>stead, while NCAA rules obligate

players to live by a code of amateurism that forecloses any real opportunity to earn compensation for their labor, <sup>9</sup> that precept does not apply to university officers, coaches, athletic directors, conference commissioners, corporations, or NCAA officials, who are predominantly of European descent, <sup>10</sup> and who alone may enjoy the bounteous wealth created in substantial part by the players. <sup>11</sup> **The**

**regime that keeps a young athlete in this modern form of servitude has several legal**

**compon**ents and begins even before he enrolls in college. <sup>12</sup> A football or men's basketball player who has signed a National Letter of Intent and matriculated at an NCAA institution may not transfer to another school except under conditions not imposed upon any other university student. <sup>13</sup> Then, once enrolled, the amount of financial aid he may earn, or even receive by way of gift, <sup>14</sup> is limited to tuition,

room, board and books. <sup>15</sup> At the same time, **he is forbidden from receiving compensation for the only things that**

**could likely bring him real value - his athletic skill and fame.** <sup>16</sup> His scholarship may be granted only on a semester-to-semester or a year-to-year basis, <sup>17</sup> and its renewal may be denied at

the sole discretion of the coach. <sup>18</sup> Indeed, unlike any other person at the university, he may not even hire a lawyer to help him navigate a future career. <sup>19</sup> These rules, like Gulliver's

restraints, <sup>20</sup> **effectively hold these young men in economic servitude to their universities. By**

**restricting athletes' compensation to the cost of attending a university, the NCAA has enabled its members to sharply restrict the cost of this particular, yet essential, labor.** And while the NCAA, its member

universities, and many others reap billions of dollars in revenues from college sports, the average "student-athlete" earns less than the federal minimum wage <sup>21</sup> and many live below the poverty line. <sup>22</sup> Simultaneously, an array of others harvests the fruits of these athletes' labor from a variety of sources including the sale of television rights, ticket and apparel sales, and advertising revenues from corporate

sponsors or "partners." <sup>23</sup> Indeed, **the revenue generated in substantial part by the labor of college football and**

**men's basketball players has grown fantastically, so that NCAA sports has become a \$ 60**

**billion dollar industry.** <sup>24</sup> While it scarcely requires documentation, the facts easily demonstrate that the population of persons to whom these rules apply is overwhelmingly

disproportionately African American <sup>25</sup> and that the universe of persons profiting from their enforcement is vastly disproportionately European American. <sup>26</sup> In short, **a matrix of NCAA**

**rules keeps these mostly African-American young men generating vast sums of money for the benefit of predominantly European Americans thereby enshrining an apartheid system in**

**which racial minorities are held in legal servitude for the profit and entertainment of the racial**

**majority.** <sup>27</sup> These are sharp words, but the facts are indisputable. Our purpose here is to examine the racial implications of certain NCAA rules which, in their application, economically restrain and

burden mostly African-American young men. <sup>28</sup> By these rules, such athletes are treated separately and differently from coaches, administrators, corporations, and all others involved in the college sports

industry. <sup>29</sup> In this way, **like the separation policies of the former South African system, NCAA rules**

**maintain an apartheid regime which applies different rules to different classes of people,**

**thereby allowing a favored race to capture the wealth created by a disfavored one.** <sup>30</sup> We do not allege that

these NCAA rules are facially discriminatory or that they were created for a racist purpose. Instead, while neutral on their face, these rules have been established by U.S. universities through their association - the

NCAA - to advance a facade of amateurism in major college sports, allowing them to retain for themselves the pecuniary rewards of dazzlingly successful commercialization. **These facially**

**neutral rules,** however, **have an overwhelmingly disparate economic impact in their application**

**upon a distinct racial minority.** <sup>31</sup> and under sound principles of U.S. law, neutral rules, even

**among private parties, that disproportionately burden racial minorities in significant economic**

**ways require a legitimizing purpose.** <sup>32</sup> In this instance, the only justification for the rules that forbid these young men from reaping the fruits of their labor is

"amateurism," and as we will show, that justification is illusory and demonstrably false. <sup>33</sup> Neither do we deny that there is much good in college sports nor that college sports enable many African-American, and other young people to receive the benefit of attending a university without financial cost. Moreover, we are well aware that participation in athletics may provide critical lessons in discipline, teamwork, dedication

to purpose, and other virtues for many. <sup>34</sup> At the same time, however, we seek to reveal that **the NCAA system of rules, as a whole, creates a**

**modern apartheid system whereby racial minorities are bound by rules that have them serve**

**and create profits they may not receive themselves, but that are reaped by others.** That being the case, unless

our universities reform this regime by sharing the wealth of this product with its athletes in much more significant ways, they must suffer history's condemnation. Part I of this article will show how **this**

**modern form of apartheid has roots in ancient civilization as well as in colonial and pre-Civil**

**War America 35 and that the "amateurism" distinctions mouthed by the NCAA today grew out of nineteenth century British class distinctions. 36 It will also describe the employment rules of the South African apartheid system and demonstrate how those economic policies reserved the wealth created by black laborers for the benefit of the white population** 37 Part II will describe the rules by which the NCAA and its members ensure that the profits earned by athletes are reserved for those institutional members, while foreclosing any opportunity for the athletes' meaningful economic advancement and simultaneously indenturing athletes to their respective institutions. 38 Part III will describe the remarkable riches that these NCAA rules preserve for the many actors in the college sports enterprise other than the athletes - the NCAA, its member universities, the athletic conferences, coaches, administrators, and the corporations that sponsor NCAA sports. 39 Part III will also illustrate that which is already obvious - **that major college sports flourishes on the shoulders of predominantly African-American young men who provide entertainment and produce vast wealth for the enjoyment and economic betterment of European Americans in a modern form of apartheid. 40** As described in Part IV, settled principles of U.S. law establish that when economic actors and governmental entities enforce facially neutral rules that economically burden racial minorities in grossly disproportionate ways, they must justify those rules as manifestly related to a legitimate purpose. 41 In this instance, the NCAA justifies its rules on the grounds that they promote college sports as amateur activities. Amateurism, however, plainly fails as a legitimizing factor because, of course, major college sports are anything but amateur. **The young men whose labor substantially creates the product are not college students who happen to play football and basketball for pleasure after class. They are highly skilled athletes whose labor creates a fantastically lucrative commercial product for everyone but themselves. And thus, until the members of the NCAA - our U.S. universities - acknowledge the commercial nature of the college sports industry and lift the ban on payment for athletic services for these young men, 42 their shameful legacy will be the knowing maintenance of a modern system of apartheid.**

## **Racism in the exploitation of African American men founded in history and Western civilization**

McCormick & McCormick, 2010, \* Robert A. McCormick, Professor of Law, Michigan State University College of Law, B.A., Michigan State University, 1969; J.D., University of Michigan, 1973, \*\* Amy Christian McCormick, Professor of Law, Michigan State University College of Law, B.S.B.A., Georgetown University, 1988; J.D., Harvard Law School, 199, Texas Review of Entertainment & Sports Law, Major College Sports: A Modern Apartheid, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1408&context=facpubs>

I. Exploitation for Profit and Entertainment: Historical Precursors to Amateurism **The phenomenon we describe - the exploitation of one race or people for the profit and entertainment of another - is hardly new. Indeed, societies have sanctioned such activity for millennia.** A. Ancient Rome [\*19] Ancient Rome was a society in which slaves were exploited for entertainment and profit. Because the Romans "frowned on a citizen making a public spectacle of himself," 43 they required slaves to serve as performers. 44 By approximately 100 B.C., Roman armies had conquered most of the countries of the Mediterranean 45 and enslaved prisoners of war from modern-day Israel, Greece, Italy, France, Spain, Palestine, North Africa and Asia Minor. 46 Slaves conscripted during these campaigns, in turn, provided much Roman entertainment as actors, musicians, artists, and athletes. 47 At the same time, **Roman leaders considered entertainment for the masses to be critical to the maintenance of a cohesive state and accordingly financially supported such events so citizens could attend the arena, theatre, or circus without charge, or for a small fee.** 48 The primary circus event for Romans was chariot racing. 49 Private chariot-racing companies sponsored races throughout the Empire 50 and "owned the horses, the chariots, the stables, other equipment, and even the drivers, most of whom were slaves." 51 All classes of society enjoyed the spectacles, especially their dangerous aspects, and Romans anticipated seeing "crashes and the broken, mangled bodies of drivers and horses." 52 "Chariot racing was a spectator sport ... designed to make a profit for its organizers." 53 **Owners, not drivers, enjoyed a handsome profit if their slaves won a chariot race. 54 Of course, the most dramatic form of Roman entertainment were the gladiatorial contests which began as private events and became publicly sponsored entertainment by 42 B.C. 55 Most gladiators were slaves selected from the ranks of captured military personnel** 56 In these contests, gladiators were rented out by their owners to fight animals or each other in an arena or coliseum before large crowds. 57 Meals were often arranged by wealthy Romans for themselves and their guests to enjoy during the events. 58 The Roman experience was an [\*20] early example of the exploitation of subjugated young men for others' entertainment and profit. B. Early America

In colonial America, so-called "quarter racing" 59 became our nation's "first form of mass entertainment," 60 and the Virginia-North Carolina border, where most jockeys were slaves, became the "Race Horse Region" for this sport. 61 Gambling on these races was common, with owners sometimes wagering tobacco crops on the outcome. 62 Not surprisingly, slaves who helped turn their masters' stables into profitable businesses were favored, 63 while those who failed faced the threat of punishment. 64 Many masters also organized parties for their slaves on Saturday nights, 65 and some used these events "for self-amusement by arranging to have the blacks fight each other in gladiator style." 66 Other owners used slaves for entertainment as musicians and singers, 67 sometimes hiring out their services at exhibitions or fairs. 68 Literature is often a reflection of society, and perhaps the most eloquent depiction of the abuse of African Americans for entertainment in all of American literature may be found in Ralph Ellison's classic, *Invisible Man*. In this book, the narrator, a black high school student, recalls his grandfather who had been a slave and was, "a quiet old man who never made any trouble" 69 declaring on his death bed that "our life is a war, and I have been a traitor all my born days..." 70 Deeply troubled by the old man's last words, and despite his own doubts, he nevertheless delivers his high school graduation address in which "I showed that humility was the secret, indeed, the very essence of progress." 71 His speech "was a great success. Everyone praised me and I was invited to give the speech at a gathering of the town's leading white citizens. It was a triumph for our whole community." 72 The gathering was in the main ballroom of the leading hotel. When I got there I discovered that it was on the occasion of a smoker, and I was told that since I was to be there anyway I might as well take part in the battle royal to be fought by some of my schoolmates as part of the entertainment. The battle royal came first. 73 Each of the nine boys was issued a pair of boxing gloves. "It was foggy with cigar smoke. And already the whiskey was taking effect. I was shocked to see some of the most important men of the town quite tipsy. They were all there - bankers, lawyers, judges, doctors, fire chiefs, teachers, merchants. Even one of the more fashionable pastors." 74 Soon, a nude blonde woman appeared and danced sensually. Some men "threatened us if we looked and others if we did not." 75 Mayhem swiftly ensued, the men grabbing and tossing her "as college boys are tossed at a hazing, and above her red, fixed-smiling lips I saw the terror and disgust in her eyes, almost like my own terror and that which I saw in some of the other boys." 76 The boys were then blindfolded and forced to fight one another. 77 In elegant and excruciating detail, the narrator describes the chaotic, horrifying battle. "Everyone fought hysterically. It was complete anarchy" 78 while the men berated them. "Slug him, black boy! Knock his guts out!" 79 When the fight ended, the boys were told to "come on up ... and get your money" 80 and were led to a rug "covered with coins of all dimensions and a few crumpled bills." 81 "Boys, it's all yours," 82 the master of ceremonies said. "You get all you grab." 83 But when he touched a coin, the narrator recalls, "[a] hot, violent force tore through my body, shaking me like a wet rat. The rug was electrified." 84 "The men roared above us as we struggled. 'Pick it up, goddamnit, pick it up!' someone called like a bass-voiced parrot. 'Go on, get it!'" 85 When the men were finally sated and the festivities drew nigh, he was directed to repeat his speech praising assimilation - to the catcalls and derision of the besotted audience. 86 At its conclusion, the master of ceremonies announced, "Gentlemen, you see that I did not overpraise this boy. He makes a good speech and some day he'll lead his people in the proper paths." 87 whereupon he was handed a briefcase containing "an official-looking document" 88 - "a scholarship to the state college for Negroes." 89 **This painful passage depicts a social dynamic hauntingly echoed today - where the prize awarded for the violent physical use of young black men for entertainment is a college scholarship. [\*22] Organized societies have long sanctioned the exploitation of racial minorities through rules that place them in physical, often dangerous, contests for the entertainment and profit of the majority.** So it is in America today, where mostly European-American university officials arrange for mostly African-American young men to provide dangerous and highly lucrative entertainment. **In major U.S. college sports, the justification offered for the rules that tether young athletes to their institutions to labor while their compensation is limited to a form of scrip 90 is the amateur ideal. Put differently, U.S. universities, through the NCAA, defend the numerous rules that keep these college athletes in this modern form of servitude on the ground that they preserve "amateurism."** 91 C. Great Britain and Amateurism **The roots of amateurism in modern American sports may be traced to nineteenth century Great Britain where the idea served that society's rigid class divisions.** 92 **Amateurism requirements limited participation in athletic events to members of the upper classes** - those who could afford to compete for enjoyment only, rather than to earn a living. 93 This amateur requirement precluded the working classes from competing in athletic contests, reserving that privilege for the wealthy and thereby reinforcing the British system of segregation and separation of the classes. 94 [\*23] **Amateurism requirements continue to reinforce class and race differences in America,** not by excluding working class athletes as in Great Britain, but **by applying only to the players and not to any of the many other participants in the lucrative college sports enterprise.** 95 **Thus, the ideal of "amateurism" prevents athletes from sharing in the profits they help create, and reserves those profits for universities and their officials. In this way, amateurism requirements separate players from the managers of college athletics, forming a separation, or apartheid, system.** 96 **As we have noted, by these rules, major universities, corporate sponsors, television networks, coaches, conference**

**commissioners, and others reap a surfeit of riches, without bearing the cost of the players' labor, while the athletes themselves, many of whom come from impoverished backgrounds, work for substandard compensation, 97 and with extremely little likelihood of ever playing professionally.** <sup>98</sup> In this vein, the same principle of amateurism that reinforced class distinctions in Great Britain for generations continues to do so today through the systematic differentiation between NCAA athletes and all other parties in the

college sports enterprise, exacting labor from the former and reserving economic benefit for the latter. D. South Africa and Apartheid In South Africa, **the term "apartheid" meant segregation, apartness, or separation of the races.** <sup>99</sup> It was accomplished as social policy through the physical separation of races into distinct, geographically defined areas <sup>100</sup> and was made effective in the late 1940's and the [\*24] 1950's through a "complex of statutes ... developed to ensure - and increase - the separation of the "races." <sup>101</sup> These rules had the effect, among other things, of requiring blacks to labor for little economic benefit, thereby reserving the wealth created from their efforts for whites. <sup>102</sup> A variety of South African laws reduced or eliminated any bargaining power black workers might otherwise have enjoyed, consequently reducing their earning potential. By law, for example, it was a crime for a black employee to strike, <sup>103</sup> and while unions composed of white employees enjoyed legal protection, those for black employees did not. <sup>104</sup> Of course, these and other laws created conditions under which black South Africans would earn significantly less than their white counterparts. Moreover, another class of apartheid-era laws explicitly mandated lower wages for blacks than for whites, just

as the NCAA's amateurism rules now explicitly limit compensation for players but not for athletic managers and administrators. <sup>105</sup> First, **under the Wage Act of 1957, white South African government officials set the wages and hours for many blacks, 106 while whites' wages were determined by market forces.** <sup>107</sup> **Of course, this model is strikingly parallel to ours, where predominantly white university administrators enact NCAA legislation limiting the compensation of predominantly African-American players to the level of the athletic scholarship, while leaving athletic administrators free to reap the benefits of the unfettered marketplace.** <sup>108</sup> Second, under a variety of South African social welfare acts, financial benefits were often reduced or eliminated altogether for black workers. <sup>108</sup>

Third, South Africa enacted a formal system of job reservation whereby certain desirable high-paying jobs were reserved for white workers while other low-paying or dangerous jobs were reserved only for black workers. <sup>109</sup> [\*25] Not surprisingly, the financial results of apartheid economic legislation left the average black worker impoverished in contrast to the whites of that society. "The average earnings of Non-Europeans in most occupations ... [were] insufficient to support a family and [fell] ... below the Poverty Datum Line." <sup>110</sup> White industrial workers were paid about five times the amount that black industrial workers earned. <sup>111</sup> Similarly, white domestic servants on farms earned about five times the wage of the average black domestic farm servant, <sup>112</sup> but white farm workers working in the fields were paid twelve to fifteen times the amount that black farm workers were paid. <sup>113</sup> **In general, "the ratio of whites' earnings to nonwhites' earnings remained 4**

**to 1 over a long period."** <sup>114</sup> **By applying solely to athletes, the NCAA's amateurism rules function like the economic regime of South African apartheid. Through their labor, mostly African-American players generate great economic value, but the NCAA rules of amateurism deny them the fruits of that labor, reserving that bounty instead for the largely European-American managers of college sports.** <sup>115</sup> The NCAA seeks to preserve amateurism today through numerous rules created to distinguish those who use their athletic skill for pecuniary gain from those who do so for educational or other benefit.

**116 As we will show, however, these rules also serve to press predominantly African-American young men into contractual and economic relationships [\*26] with their universities in which their arduous and often dangerous, 117 but richly valuable, labor is essentially given away.**

**Whites dominate the industries and university positions that benefit from the free black student-athlete labor**

McCormick & McCormick, 2010, \* Robert A. McCormick, Professor of Law, Michigan State University College of Law, B.A., Michigan State University, 1969; J.D., University of Michigan, 1973, \*\* Amy Christian McCormick, Professor of Law, Michigan State University College of Law, B.S.B.A., Georgetown University, 1988; J.D., Harvard Law School, 199, Texas Review of Entertainment & Sports Law, Major College Sports: A Modern Apartheid, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1408&context=facpubs>

The economic and other wealth generated by major college sports is the subject of daily news reports, and its magnitude is immense. <sup>140</sup> Indeed, the sums of money created in the college sports industry are so fantastic as to have become mind-boggling. And while athletes' remuneration is limited in

both amount and character 141 by NCAA rule, every other actor in the enterprise enjoys huge financial benefit. 142 **Unfortunately, European Americans "still dominate key positions" 143 in the industry and hold the vast majority of all NCAA university presidencies, athletics and associate athletics directorships, head coaching positions, faculty athletics representative positions, and sports information directorships.** 144 More startlingly, European Americans hold one hundred percent of the conference

commissioner positions in Division I. 145 **In sharp contrast, [\*30] as we will show, the young men whose labor creates the product are vastly disproportionately African American.** 146

The product they create - major college sports - is fantastically popular and generates billions of dollars annually, virtually all of which go to the other actors in the game, including the NCAA, athletic conferences, universities, coaches, and administrators. A. The NCAA and the Athletic Conferences The NCAA receives enormous income annually from intercollegiate athletics, as a cursory review of its annual report reveals. It most recently reported revenues of \$ 636 million, up from \$ 622 million in 2007, and \$ 558 million in 2006, 147 notwithstanding the sharpest economic downturn in recent U.S. history. More than eighty-five percent of NCAA income - nearly \$ 550 million - was derived from selling rights to television games, especially its annual NCAA men's basketball tournament, 148 and most of that income was allocated among NCAA member institutions. 149 In 2007-08, the NCAA distributed nearly \$ 360 million to Division I universities. 150 The NCAA, however, also pays its own officers and staff handsomely. Myles Brand, the late-President of the NCAA, was paid more than \$ 1.7 million in salary and benefits in 2007-08, 151 and the other principal officers of the association were each paid between \$ 450,000 and \$ 587,000. 152 In addition, the five highest paid employees other than officers earned between \$ 313,000 and \$ 423,000, 153 numerous independent contractors were paid between \$ 980,000 and \$ 4.3 million, 154 and more than five hundred other employees and independent contractors were paid more than \$ 50,000 each. 155 At the same time, in 2008 eighty-three percent of officers at the senior levels of the

NCAA were European American while only seventeen percent were African American. 156 **Of the sixty-eight NCAA Chief Aides and Directors, seventy-six percent were white and [only sixteen percent were African American. 157 Of the 195 administrators, seventy-seven percent were**

**European American and some nineteen percent were African American.** 158 Even among NCAA support staff, a full eighty percent were European American and, once again, just sixteen percent were African American. 159 The conferences into which universities group themselves, originally representing regional ties and historic rivalries, also profit greatly from college sports. Like the NCAA, conferences also sell rights to broadcast their members' football and basketball games, thereby harvesting significant wealth. 160 For example, in the year ending August 31, 2008, the Southeastern Conference (SEC) received \$ 161.5 million and distributed more than \$ 135 million to its twelve member universities, an average of \$ 11.25 million per member. 161 Salaries for SEC employees, including pension and benefit contributions, exceeded \$ 2.6 million, with the Commissioner alone earning \$ 650,000. 162 The Big Ten Conference received almost \$ 218 million in income that year and distributed nearly \$ 207 million to its eleven members, about \$ 18.8 million each. 163 Salaries for those conference employees exceeded \$ 1.9 million including pension and other benefits, and the Commissioner alone earned \$ 1.2 million in salary and benefits. 164 The Atlantic Coast Conference (ACC), for its part, enjoyed revenues of nearly \$ 163 million and distributed \$ 141 million to its twelve member schools, for an average of almost \$ 11.8 million each. 165 Like the others, the Atlantic Coast Conference also compensated its employees well, paying them more than \$ 3.6 million in salaries and benefits and \$ 888,000 to the Commissioner alone. 166 The Big Twelve Conference, in turn, received revenues of nearly \$ 130 million, distributed \$ 103 million to its twelve member universities, and paid its Commissioner more than \$ 713,000 in salary and benefits as well as salaries and benefits for other employees totaling \$ 2.2 million. 167 As these figures show, the major athletic conferences are powerful commercial entities that receive and distribute hundreds of millions of dollars annually and, like the NCAA, are important economic actors in the college sports business. Astonishingly, however, not one of the thirty conference commissioners in Division I was African American in 2008. 168 Put differently, "100 percent of the 11 Football Bowl Subdivision (FBS) ... conference commissioners were white men," 169 and "in all of Division I, ... all 30 (100 percent) of Division I conference commissioners were white." 170 [\*32] Moreover, 88.3% of the 103 associate conference commissioners were European American and only 8.7% were African American. 171 The NCAA has made public efforts to increase the presence of African Americans at its senior staff levels with some success, 172 but, as these statistics show, NCAA officials remain predominantly European American. The conferences, however, appear to have done little to address the regime over which they preside, in which people of a minority race provide wealth and entertainment for the majority race, while laboring under rules that prevent their own economic advancement. B. University Presidents, Coaches, and Athletic Directors While the compensation of university presidents is only tangentially related to the performance of their universities' athletic teams, that performance is nevertheless of substantial significance to the institutions and to their presidents. 173 Thus, it is noteworthy that more than 92.5% of university presidents at Football Bowl Subdivision institutions were European American in 2007-08 while only 2.5% were African American. 174 The most obvious beneficiaries of the college sports business, of course, are football and men's basketball coaches, many of whose salaries and benefits lead the front pages of the nation's sports sections. 175 Other beneficiaries, however, include assistant coaches, athletic directors, and other athletic department personnel. As regards coaches generally, European

Americans "dominate the head coaching ranks on men's teams," **176 holding nearly ninety percent of all head coaching positions in Division I, while African Americans hold only seven percent.** 177

The representation of African-American head coaches was greatest among the ranks of men's Division I head basketball coaches, where nearly twenty-three percent were African American. 178 Of the head coaches for the current top twenty-five-ranked men's basketball teams, however, only sixteen percent are African American. 179 [\*33] In marked contrast to the record in men's basketball, during 2008, only six of the 120 head football coaches at

FBS universities were African Americans - a mere five percent. 180 **Of the head coaches for the top twenty-five ranked football teams at the end of the 2009 season, only one was African American.**

181 Additionally, some eighty-five percent of offensive and defensive coordinators at all FBS schools were of European-American descent, while only twelve percent were of African-American ancestry. 182 Moreover, European Americans held ninety percent of the athletic director positions in Division I during that period, while African Americans held just seven percent. 183 In fact, these percentages were almost exactly replicated in the associate and assistant athletic director positions at Division I universities as well. 184 Our recent review of current top college football and men's basketball teams permitted an assessment of the racial composition of top administrators at each of the respective universities. 185 We reviewed photographs of the university president or chancellor, the athletic director, and the head football or men's basketball coach for each institution, and determined the racial composition of those individuals. For the top twenty-five football teams, only three of the seventy-five surveyed administrators - four percent - were African American. 186 For the top twenty-five men's basketball teams, only six of the seventy-five surveyed administrators - eight percent - were African

American. 187 To be sure, there are a great many persons, institutions, and corporations that profit from major college sports and we examine only a few, but those we do examine - the NCAA, conferences, and universities - have created and now maintain the college sports industry, an industry of enormous economic power. That power translates to billions of dollars annually which generously benefits the NCAA, conferences, universities, coaches, and other administrators. At the same time, those individuals are predominantly, and sometimes exclusively, European American. C. The Athletes In sharp relief to the racial composition of those who receive compensation for their work in the college sports industry, the laborers most immediately responsible for this important entertainment product - the athletes themselves - are forbidden from benefiting economically from the wealth their efforts create except to a

limited degree. And these athletes are overwhelmingly disproportionately African American. **While African-American males make up sixty percent of men's basketball players and forty-six percent of football players in all of Division I, 188 these statistics only begin to describe the concentration of African Americans producing major college sports revenue.**

Indeed, the data show that African Americans not only populate the class of persons producing college sports revenue at astonishingly high rates, they have been doing so for some time, and will likely continue to do so for the foreseeable future. 189 To determine the racial composition of NCAA football and men's basketball players at the elite levels of the sport - where the revenues generated are the greatest 190 - we first examined the races of the young men

populating the starting lineups of the top twenty-five NCAA football and men's basketball teams in 2004-05. 191 **Using U.S.**

**Department of Education data, we also recorded the racial composition of the undergraduate student bodies at those same institutions to determine whether the racial disparities between the football and men's basketball players and their fellow students mirrored those between the athletes and the managers of the enterprise. If they did, we decided, then a logical conclusion one could draw is that the African-American athletes are on campus for a special purpose - to provide high-level athletic entertainment to the rest of the predominantly European-American university community, and not to further their own intellectual development.**

In 2009-10 we expanded our review to examine the racial composition of the university [\*35] president or chancellor, head coach, and athletic director at each of the top twenty-five schools 192 to compare the racial makeup of those central managerial figures with those of their athletes. To complete our review and to gain a glimpse of the future, we then examined the racial composition of the top high school football and men's basketball athletes 193 - the young men who will become the major college laborers for the next four or five years. Ours is not a longitudinal study. That is, we did not examine precisely the same data over time. 194 In 2004-05, for example, we examined the racial composition of the starting lineups for each of the top twenty-five football and men's basketball teams, 195 while in 2009-10 we reviewed the racial composition of each entire basketball team. For football, we continued to examine only the starting lineup. And as we have noted, in 2009 we also expanded our investigation to include the race of three principal administrators - the head coach, the athletic director, and the university president or chancellor - at each institution. Our purpose in these varied approaches was to review the data in several ways to learn whether it supported our thesis in each of those ways. Here are our findings.

## College administrators getting rich off sports revenue

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement, Cardozo Law Review, <https://goo.gl/FNxGnE>

University of California, Berkeley sociology **professor Dr. Harry Edwards often describes efforts to change the labor dynamics in big-time college sports as "the civil rights movement in sports of our time."**

**n11 Big-time college sports represent a more than \$ 11 billion industry in the United States.** n12

At present, forty-nine college athletic departments earn annual revenues that exceed \$ 70 million. n13 Meanwhile, twenty-four athletic departments earn annual revenues that exceed \$ 100 million. n14 NCAA member colleges use the revenues derived from college sports not only to operate their athletic programs, but also for "windfall payments" to administrators, athletic directors, and coaches. n15 In 2013, NCAA member colleges paid their association president, Mark Emmert, a salary of \$ 1.8 million. n16 Colleges also paid the commissioners of the five largest collegiate athletic conferences salaries ranging between \$ 2.1 million and \$ 3.5 million. n17 By contrast, colleges share little, if any, of their athletic revenue with the athletes. n18

**According to statistics provided by the U.S. Department of Education, eighty-five percent of college athletes live below the poverty line.** n19

Meanwhile, a typical FBS football or Division I men's basketball player amasses several thousand dollars of debt before graduating from college. n20 In the worst cases, this debt has led to revenue-generating athletes lacking enough money to even buy groceries or afford late-night snacks. n21

## College athletics is now a big business

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

College athletics. n1 It was not long ago that these words called to mind a group of hardworking athletes fighting for a victory in order to enhance their student body's school spirit and pride. Now, collegiate athletics paints a much different picture. **College athletics has become a big business. It yields revenues that fund significant portions of university budgets. Indirectly, collegiate athletics encourages the willingness of alumni to donate to their alma mater.** The workers in this business are the athletes whose services have [\*236] been purchased and contracted through athletic scholarships. However, our legal system does not accord the status of employee to these athletes.

## Student athletes are generating millions from the school and getting nothing

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

The NCAA's principle of amateurism seeks to protect student athletes from exploitation by professional and commercial enterprises. n76 Arguably, the NCAA is responsible for exploiting student athletes. "Using records from NCAA Division I universities as well as NFL and NBA draft data from 1995-1998, it was estimated that a draft-quality college football player earns \$ 406,000 in revenue annually for his school and a college basketball player earns \$ 1.194 million." n77 **In the 2011-2012 school year, the average football and basketball student athlete's market value was approximately \$ 137,357 and \$ 289,031 respectively. n78 After deducting \$ 23,204, the average full athletic scholarship's annual value, the average football and basketball player is denied approximately \$ 114,153 and \$ 265,827, respectively, of their fair market value. n79 Over the course of their four-year scholarships, football and basketball student athletes are exploited for approximately \$ 6.2 billion dollars.** n80 Anthony Mosely, a former college football player at the University of Kentucky, said: I don't think that student athletes should be able to be exploited the way they are... **It might not be my name on the back of the jersey, but if it's a number 14 Kentucky football jersey, they are obviously wearing that jersey for me... . That is a little bit of exploitation. You can buy a jersey with my number on it, the school can potentially profit off of it, and the student athlete doesn't.** n81 Clearly, the only group denied the financial benefits of collegiate athletics is the players themselves. "Money surrounds college sports... . And every player knows those millions are floating around only because the 18 to 22 year olds," said Domonique Foxworth, cornerback for the National Football League's (hereinafter "NFL") Baltimore Ravens. n82 **Student athletes put their bodies on the line, subject to career-ending injuries, for the direct benefit of NCAA. Yet, these young men do not see a dime of the millions they are earning for this Association. The student athlete is exploited.**

## Almost all revenue for college sports is provided by unpaid African Americans

Branch, 2011, The Atlantic, The Shame of College Sports, Taylor Branch is the author of, among other works, America in the King Years, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>



**“Ninety percent of the NCAA revenue is produced by 1 percent of the athletes.”** Sonny

Vaccaro says. “Go to the skill positions”—the stars. **“Ninety percent African Americans.” The NCAA made its money off those kids, and so did he**. They were not all bad people, the NCAA officials, but they were blind, Vaccaro believes. “Their organization is a fraud.” Vaccaro retired from Reebok in 2007 to make a clean break for a crusade. “The kids and their parents gave me a good life,” he says in his peppery

staccato. “I want to give something back.” Call it redemption, he told me. Call it education or a good cause. “Here’s what I preach,” said Vaccaro. **“This goes**

**beyond race, to human rights. The least educated are the most exploited**. I’m probably closer to the kids than anyone else, and I’m 71 years old.” Vaccaro is officially an unpaid consultant to the plaintiffs in O’ Bannon v. NCAA. He connected Ed O’ Bannon with the attorneys who now represent him, and he talked to some of the additional co-plaintiffs who have joined the suit, among them Oscar Robertson, a basketball Hall of Famer who was incensed that the NCAA was still selling his image on playing cards 50 years after he left the University of Cincinnati. Jon King, an antitrust lawyer at Hausfeld LLP in San Francisco, told me that Vaccaro “opened our eyes to massive revenue streams hidden in college sports.” King and his colleagues have drawn on Vaccaro’s vast knowledge of athletic-department finances, which include off-budget accounts for shoe contracts. Sonny Vaccaro and his wife, Pam, “had a mountain of documents,” he said. The outcome of the 1984 Regents decision validated an antitrust approach for O’ Bannon, King argues, as well as for Joseph Agnew in his continuing case against the one-year scholarship rule. Lawyers for Sam Keller—a former quarterback for the University of Nebraska who is featured in video games—are pursuing a parallel “right of publicity” track based on the First Amendment. Still other lawyers could revive Rick Johnson’s case against NCAA bylaws on a larger scale, and King thinks claims for the rights of college players may be viable also under laws pertaining to contracts, employment, and civil rights. Vaccaro had sought a law firm for O’ Bannon with pockets deep enough to withstand an expensive war of attrition, fearing that NCAA officials would fight discovery to the end. So far, though, they have been forthcoming. “The numbers are off the wall,” Vaccaro says. “The public will see for the first

time how all the money is distributed.” **Vaccaro has been traveling the after-dinner circuit, proselytizing against what he sees as the NCAA’s exploitation of young athletes**. Late in 2008, someone who heard his stump speech at Howard University mentioned it to Michael Hausfeld, a prominent antitrust and human-rights lawyer, whose firm had won suits against Exxon for Native Alaskans and against Union Bank of Switzerland for Holocaust victims’ families. Someone tracked down Vaccaro on vacation in Athens, Greece, and he flew back directly to meet Hausfeld. The shoe salesman and the white-shoe lawyer made common cause. Hausfeld LLP has offices in San Francisco, Philadelphia, and London. Its headquarters are on K Street in Washington, D.C., about three blocks from the White House. When I talked with Hausfeld there not long ago, he sat in a cavernous conference room, tidy in pinstripes, hands folded on a spotless table that reflected the skyline. He spoke softly, without pause, condensing the complex fugue of antitrust litigation into simple sentences. “Let’s start with the basic question,” he said, noting that the NCAA claims that student-athletes have no property rights in their own athletic accomplishments. Yet, in order to be eligible to play, college athletes have to waive their rights to proceeds from any sales based on their athletic performance. “What right is it that they’re waiving?,” Hausfeld asked. “You can’t waive something you don’t have. So they had a right that they gave up in consideration to the principle of amateurism, if there be such.” (At an April hearing in a U.S. District

Court in California, Gregory Curtner, a representative for the NCAA, stunned O’ Bannon’s lawyers by saying: **“There is no document, there is no substance, that the NCAA ever takes from the student-athletes their rights of publicity or their rights of likeness. They are at all times owned by the student-athlete.”**

Jon King says this is **“like telling someone they have the winning lottery ticket, but by the way, it can only be cashed in on Mars.”** The court denied for a second time an NCAA motion to dismiss the O’ Bannon complaint.) The waiver clause is

nestled among the paragraphs of the “Student-Athlete Statement” that NCAA rules require be collected yearly from every college athlete. **In signing the statement, the athletes attest that they have amateur status, that their stated SAT scores are valid, that they are willing to disclose any educational documents requested, and so forth**. Already, Hausfeld said, the defendants in the Ed O’ Bannon case have said in court filings that college athletes thereby transferred their promotional

rights forever. He paused. “That’s ludicrous,” he said. “Nobody assigns rights like that. Nobody can assert rights like that.” **He said the pattern demonstrated clear abuse by the collective power of the schools and all their conferences under the NCAA umbrella—“a most effective cartel.”**

## College sports is a plantation system where poor blacks are exploited

Branch, 2011, The Atlantic, The Shame of College Sports, Taylor Branch is the author of, among other works, America in the King Years, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

A litany of scandals in recent years have made the corruption of college sports constant front-page news. We profess outrage each time we learn that yet another student-athlete has been taking money under the table. But **the real scandal is the very structure of college sports, wherein student-athletes generate billions of dollars for universities and private companies while earning nothing for themselves**. Here, a leading civil-rights historian makes the case for paying college athletes—and reveals how a spate of lawsuits working their way through the courts could destroy the NCAA. “I’m not hiding,” Sonny Vaccaro told a closed hearing at the Willard Hotel in Washington, D.C., in 2001. “We want to put our materials on the bodies of your athletes, and the best way to do that is buy your school. Or buy your coach.” How to Fix College Sports Vaccaro’s audience, the members of the Knight Commission on Intercollegiate Athletics, bristled. These were eminent reformers—among them the president of the National Collegiate Athletic Association, two former heads of the U.S. Olympic Committee, and several university presidents and chancellors. The Knight Foundation, a nonprofit that takes an interest in college athletics as part of its concern with civic life, had tasked them with saving college sports from runaway commercialism as embodied by the likes of Vaccaro, who, since signing his pioneering shoe

contract with Michael Jordan in 1984, had built sponsorship empires successively at Nike, Adidas, and Reebok. Not all the members could hide their scorn for the “sneaker pimp” of schoolyard hustle, who boasted of writing checks for millions to everybody in higher education. “Why,” asked Bryce Jordan, the president emeritus of Penn State, “should a university be an advertising medium for your industry?” Vaccaro did not blink. “They shouldn’t, sir,” he replied. “You sold your souls, and you’re going to continue selling them. You can be very moral and righteous in asking me that question, sir,” Vaccaro added with irrepressible good cheer, “but there’s not one of you in this room that’s going to turn down any of our money. You’re going to take it. I can only offer it.” William Friday, a former president of North Carolina’s university system, still winces at the memory. “Boy, the silence that fell in that room,” he recalled recently, “I never will forget it.” Friday, who founded and co-chaired two of the three Knight Foundation sports initiatives over the past 20 years, called Vaccaro “the worst of all” the witnesses ever to come before the panel. But what Vaccaro said in 2001 was true then, and it’s true now:

**corporations offer money so they can profit from the glory of college athletes, and the**

**universities grab it.**

In 2010, despite the faltering economy, a single college athletic league, the football-crazed Southeastern Conference (SEC), became the first to crack the billion-dollar barrier in athletic receipts. The Big Ten pursued closely at \$905 million. **That money comes from a combination**

**of ticket sales, concession sales, merchandise, licensing fees, and other sources—but the**

**great bulk of it comes from television contracts.**

Educators are in thrall to their athletic departments because of these television riches and because they respect the political furies that can burst from a locker room. “There’s fear,” Friday told me when I visited him on the University of North Carolina campus in Chapel Hill last fall. As we spoke, two giant construction cranes towered nearby over the university’s Kenan Stadium, working on the latest \$77 million renovation. (The University of Michigan spent almost four times that much to expand its Big House.) Friday insisted that for the networks, paying huge sums to universities was a bargain. “We do every little thing for them,” he said. “We furnish the theater, the actors, the lights, the music, and the audience for a drama measured neatly in time slots. They bring the camera

and turn it on.” **Friday, a weathered idealist at 91, laments the control universities have ceded in**

**pursuit of this money.**

If television wants to broadcast football from here on a Thursday night, he said, “we shut down the university at 3 o’clock to accommodate the crowds.” He longed for a campus identity more centered in an academic mission. The United States is the only country in the world that hosts big-time sports at institutions of higher learning. This should not, in and of itself, be controversial. College athletics are rooted in the classical ideal of *Mens sana in corpore sano*—a sound mind in a sound body—and who would argue with that? College sports are deeply inscribed in the culture of our nation. Half a million young men and women play competitive intercollegiate sports each year. Millions of spectators flock into football stadiums each Saturday in the fall, and tens of millions more watch on television. The March Madness basketball tournament each spring has become a major national event, with upwards of 80 million watching it on television and talking about the games around the office water cooler. ESPN has spawned ESPNU, a channel dedicated to college sports, and Fox Sports and other cable outlets are developing channels exclusively to cover sports from specific

regions or divisions. With so many people paying for tickets and watching on television, **college sports has become Very Big Business.**

**According to various reports, the football teams at Texas, Florida, Georgia, Michigan, and**

**Penn State—to name just a few big-revenue football schools—each earn between \$40**

**million and \$80 million in profits a year, even after paying coaches multimillion-dollar**

**salaries.**

When you combine so much money with such high, almost tribal, stakes—football boosters are famously rabid in their zeal to have their alma mater win—corruption is likely to follow. Scandal after scandal has rocked college sports. In 2010, the NCAA sanctioned the University of Southern California after determining that star running back Reggie Bush and his family had received “improper benefits” while he played for the Trojans. (Among other charges, Bush and members of his family were alleged to have received free airfare and limousine rides, a car, and a rent-free home in San Diego, from sports agents who wanted Bush as a client.) The Bowl Championship Series stripped USC of its 2004 national title, and Bush returned the Heisman Trophy he had won in 2005. Last fall, as Auburn University football stormed its way to an undefeated season and a national championship, the team’s star quarterback, Cam Newton, was dogged by allegations that his father had used a recruiter to solicit up to \$180,000 from Mississippi State in exchange for his son’s matriculation there after junior college in 2010. Jim Tressel, the highly successful head football coach of the Ohio State Buckeyes, resigned last spring after the NCAA alleged he had feigned ignorance of rules violations by players on his team. At least 28 players over the course of the previous nine seasons, according to Sports Illustrated, had traded autographs, jerseys, and other team memorabilia in exchange for tattoos or cash at a tattoo parlor in Columbus, in violation of NCAA rules. Late this summer, Yahoo Sports reported that the NCAA was investigating allegations that a University of Miami booster had given millions of dollars in illicit cash and services to more than 70 Hurricanes football players over eight years. The list of scandals goes on. With each revelation, there is much wringing of hands. Critics scold schools for breaking faith with their educational mission, and for failing to enforce the sanctity of “amateurism.” Sportswriters denounce the NCAA for both tyranny and impotence in its quest to “clean up” college sports. Observers on all sides express jumbled emotions about youth and innocence, venting against professional mores or greedy amateurs. For all the

outrage, **the real scandal is not that** students are getting illegally paid or recruited, it’s that two of the noble principles on which the NCAA justifies its

existence—**“amateurism” and the “student-athlete”—are cynical hoaxes, legalistic confections**

**propagated by the universities so they can exploit the skills and fame of young athletes.** The tragedy at

the heart of college sports is not that some college athletes are getting paid, but that more of them are not. Video **Don Curtis, a UNC trustee, told**

**me that impoverished football players cannot afford movie tickets or bus fare home. Curtis**

**is a rarity among those in higher education today, in that he dares to violate the signal**

**taboo: “I think we should pay these guys something.”**

Fans and educators alike recoil from this proposal as though from original sin. Amateurism is the whole point, they say. Paid athletes would destroy the integrity and appeal of college sports. Many former college athletes object that money would have spoiled the sanctity of the bond they enjoyed with their teammates. I, too, once shuddered instinctively at the notion of paid college athletes. But after an inquiry that took me into

locker rooms and ivory towers across the country, **I have come to believe that sentiment blinds us to what’s before**

**our eyes. Big-time college sports are fully commercialized. Billions of dollars flow through**

**them each year. The NCAA makes money, and enables universities and corporations to**

**make money, from the unpaid labor of young athletes.** Slavery analogies should be used carefully. College athletes are not

slaves. Yet **to survey the scene—corporations and universities enriching themselves on the backs**

**of uncompensated young men, whose status as “student-athletes” deprives them of the right**

**to due process guaranteed by the Constitution—is to catch an unmistakable whiff of the**

**plantation. Perhaps a more apt metaphor is colonialism: college sports, as overseen by the**

**NCAA, is a system imposed by well-meaning paternalists and rationalized with hoary**

**sentiments about caring for the well-being of the colonized. But it is, nonetheless, unjust.**

**The NCAA, in its zealous defense of bogus principles, sometimes destroys the dreams of**

**innocent young athletes. The NCAA today is in many ways a classic cartel.** Efforts to reform it—most notably by the three Knight Commissions over the course of 20 years—have, while making changes around the edges, been largely fruitless. The time has come for a major overhaul. And whether the powers that be like it or not, big changes are coming. Threats loom on multiple fronts: in Congress, the courts, breakaway athletic conferences, student rebellion, and public disgust. Swaddled in gauzy clichés, the NCAA presides over a vast, teetering glory. Founding Myths From the start, amateurism in college sports has been honored more often in principle than in fact; the NCAA was built of a mixture of noble and venal impulses. In the late 19th century, intellectuals believed that the sporting arena simulated an impending age of Darwinian struggle. Because the United States did not hold a global empire like England's, leaders warned of national softness once railroads conquered the last continental frontier. As though heeding this warning, ingenious students turned variations on rugby into a toughening agent. Today a plaque in New Brunswick, New Jersey, commemorates the first college game, on November 6, 1869, when Rutgers beat Princeton 6–4.

## Percentage of Black Males Who Graduate is Low

### **Black male athletes are significantly less likely to graduate than similarly situated peers**

SHAUN R. HARPER , American scholar and racial equity expert, professor a, USC, COLLIN D.

WILLIAMS JR., AND HORATIO W. BLACKMAN []. Black Male Student-Athletes and Racial

Inequities in NCAA Division, U Penn, 2013.

[https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper\\_Williams\\_and\\_Blackman\\_%282013%29.pdf](https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_%282013%29.pdf)

Transparency, not shock value, is the primary aim of this report. In fact, **statistics presented herein concerning the overrepresentation of Black male student-athletes are unlikely to surprise anyone who has watched a college football or men’s basketball game over the past 20 years.** Likewise, **scholars who study race in intercollegiate athletics will probably deem unsurprising our findings on racial inequities in six-year graduation rates. What we find shocking is that these trends are so pervasive, yet institutional leaders, the National Collegiate Athletic Association (NCAA), and athletics conference commissioners have not done more in response to them. Also astonishing to us is that it seems the American public (including former Black student-athletes, sports enthusiasts, journalists, and leaders in Black communities) has accepted as normal the widespread inequities that are cyclically reproduced in most revenue-generating college sports programs.** Perhaps more outrage and calls for accountability would ensue if there were greater awareness of the actual extent to which college sports persistently disadvantage Black male student-athletes. Hence, the purpose of this report is to make transparent racial inequities in the Atlantic Coast Conference (ACC), Big East Conference, Big Ten Conference, Big 12 Conference, Pac 12 Conference, and the Southeastern Conference (SEC). Data from the NCAA and the U.S. Department of Education are presented for the 76 institutional members of these six athletic conferences. Specifically, we offer a four-year analysis of Black men’s representation on football and basketball teams versus their representation in the undergraduate student body on each campus. We also compare Black male student-athletes’ six-year graduation rates (across four cohorts) to student-athletes overall, undergraduate students overall, and Black undergraduate men overall at each institution. Major results of our study include: **Between 2007 and 2010, Black men were 2.8% of full-time, degree-seeking undergraduate students, but 57.1% of football teams and 64.3% of basketball teams.** **Across four cohorts, 50.2% of Black male student-athletes graduated within six years, compared to 66.9% of studentathletes overall, 72.8% of undergraduate students overall, and 55.5% of Black undergraduate men overall.** **6.1% of these NCAA Division I colleges and universities graduated Black male student-athletes at rates lower than student-athletes overall.** **7.4% of institutions graduated Black male student-athletes at rates lower than undergraduate students overall. On no campus were rates exactly comparable for these two comparison groups. At one university, Black male student-athletes graduated at a comparable rate to Black undergraduate men overall. On 72.4% of the other campuses, graduation rates for Black male student-athletes were lower than rates for Black**

**undergraduate men overall.** In the pages that follow, we summarize previously published studies on Black male studentathletes and provide more details about our research methods. We then present lists of high and low-performing institutions. Statistics are also furnished for each individual college/university in the six athletic conferences. The report concludes with implications for college and university presidents, athletics directors, commissioners of the six major sports conferences, the NCAA, journalists, and Black male student - athletes and their families.

### **We should rely on statistics to make decisions**

Kenneth L. Shropshire, J.D. David W. Hauck Professor of Legal Studies and Business Ethics Director, Wharton Sports Business Initiative University of Pennsylvania, Black Male Student-Athletes and Racial Inequities in NCAA Division, U Penn, 2013.

[https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper\\_Williams\\_and\\_Blackman\\_%282013%29.pdf](https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_%282013%29.pdf)

One quandary scholars and policymakers have sought to unravel is the proper role of sports in our society. Intercollegiate athletics is one sector that has received much scrutiny. Policy decisions are often based on belief rather than facts. In the African American community the reference is often to “mother wit,” a feeling that something is right or wrong. People often adhere to long held beliefs when making policy recommendations rather than looking at evidence and cutting-edge research. My old pastor once began a sermon with the query, “which is correct: two heads are better than one, or too many cooks spoil the broth?” He stared into the congregation and asked, “they can’t both be right, can they?” His point was that **we should not rely on lyrical beliefs that have been handed down to us, as they are often contradictory.** He was guiding us to look to the Bible for answers. That was not a bad suggestion. **Another recommendation for social issues and educational inequities is to look to statistics.** That is where Professor Harper and his coauthors

### **NCAA claims about student athlete graduation rates do not apply to black men**

Kenneth L. Shropshire, J.D. David W. Hauck Professor of Legal Studies and Business Ethics Director, Wharton Sports Business Initiative University of Pennsylvania, Black Male Student-Athletes and Racial Inequities in NCAA Division, U Penn, 2013.

[https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper\\_Williams\\_and\\_Blackman\\_%282013%29.pdf](https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_%282013%29.pdf)

The percentage of **Black men** that composes the ranks of student-athletes gives us reason to pause and incentive to look further. **While representing only 2.8% of full-time undergraduate students, they constitute 58.4% of the football and men’s basketball teams at colleges and universities in the six major NCAA Division I sports conferences.** Intercollegiate athletics provide college opportunity to young Black men and take them off the streets, or major sports programs take advantage of these students without serious care for their personal and academic success. They can’t both be right, can they? What can we learn about racial inequities in higher education by examining six-year graduation rates? At all but three institutions in this

study, Black male student-athletes graduated at rates lower than teammates from other racial groups. Are these racial inequities in college completion best explained by Black men's fascination with playing for the NFL and NBA, or is it that coaches only care if these students are academically eligible for athletic competition but are considerably less concerned about rates at which they graduate? Which is right, which is wrong? Do Black men on college sports teams graduate at higher rates than do their same-race male peers who do not participate in athletics? Yes at about one quarter of the institutions in this study, no at the overwhelming majority of others. **The NCAA maintains that student-athletes graduate at higher rates because they are better at maximizing limited study time bounded by hours of practice, travel, and competition. This lyrical belief seems to not apply to Black male student-athletes at institutions in the six championship sports conferences examined in this report.** Is the broth spoiled? This study represents the path we must take to distinguish right from wrong and lyrical beliefs from statistical realities. The authors provide data that are necessary to improve student-athlete success and develop policies that address longstanding racial inequities in college sports. This study provides statistical insights into problems that are in need of accountability and policy response. Mother wit has its place, but data do a better job of making transparent what is actually right and wrong.

### **Only half of Black male athletes graduate**

Kenneth L. Shropshire, J.D. David W. Hauck Professor of Legal Studies and Business Ethics Director, Wharton Sports Business Initiative University of Pennsylvania, Black Male Student-Athletes and Racial Inequities in NCAA Division, U Penn, 2013.  
[https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper\\_Williams\\_and\\_Blackman\\_%282013%29.pdf](https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_%282013%29.pdf)

Every winner of the NCAA Division I football national championship over the past 23 years came from one of the six athletic conferences highlighted in this report; the same is true for each men's basketball national championship team since 1991. Black men comprised 67% of football teams at the four institutions that most recently won championships: University of Alabama, Auburn University, University of Florida, and Louisiana State University. On average, **42% of Black male student-athletes on these campuses graduated within six years. Black men comprised 66% of basketball teams at the four institutions that most recently won championships: University of Kentucky, University of Connecticut, Duke University, and University of North Carolina. On average, 56% of Black male student-athletes on these campuses graduated within six years.** The Institute for Diversity and Ethics in Sport (TIDES) at the University of Central Florida releases an annual report series, Keeping Score When it Counts, that highlights racial differences in academic progress among teams selected for participation in the NCAA Division I Basketball Tournaments (women's and men's) as well as football post-season bowl games (the BCS and others). These reports are available on the TIDES website: [www.tidesport.org](http://www.tidesport.org). The Institute also publishes timely reports that highlight demographic trends in college coaching and administration. More published analyses, such as these, that make racial inequities transparent, are needed across all NCAA divisions.



## **“Education Good” Turns Don’t Apply to Black Athletes**

### **Racism means Blacks don’t excel at White educational institutions**

Billy Hawkins, Professor at the University of Georgia in the department of Kinesiology, 2010 , *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* . Palgrave Macmillan US. Kindle Edition

Regarding Black students in general, several researchers and journalists have addressed the issues of racism,<sup>23</sup> alienation, and racial isolation on college campuses.<sup>24</sup> According to Fleming, the academic functioning or “intellectual growth” of Blacks on predominantly White university and college campuses is greatly impaired by the stress of racial tension. Fleming refers to these university and college campuses as “unaccepting environments,” where the predominantly White college and university environments lack the essential ingredients to provide for the social and academic prosperity of Black students.<sup>25</sup> Therefore, these environments can be considered inadequate social settings that lack the essential support support for Black students’ academic success. These inadequate social settings also involve the inability to identify culturally with the predominantly White campus environment; that is, Black culture is relegated to minute parts of the general education curricula, isolated in Black cultural centers, or only recognized during a cultural diversity event, and/or totally repressed. Both terms, unaccepting environments and inadequate social settings, best capture the institutional setting of PWIs. A further review of literature on the experiences of Black students, in general, at PWIs will help to lay a foundation for the internal colonial model that will be used to explain the relationship these institutions have with Black male athletes, specifically, in revenue-generating sports. Racism will be the first characteristic to be defined and reviewed as a consistent occurrence for Black students at PWIs. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 30). Palgrave Macmillan US. Kindle Edition.

### **Racism widespread in institutions of higher learning**

Billy Hawkins, Professor at the University of Georgia in the department of Kinesiology, 2010 , *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* . Palgrave Macmillan US. Kindle Edition

Unfortunately, within higher education race maintains a level of significance and racism remains an annoying occurrence.<sup>30</sup> A recent example illustrating how race and gender are very much significant was expressed by MSNBC syndicated radio host of *Imus in the Morning*—Don Imus. Mr. Imus’ description of the University of Rutgers’ women basketball players as “Nappy-Headed Hos” speaks to the image the dominant American psyche has ascribed to Black female athletes, specifically, and Black women, in general. These comments demonstrate the significance of race and the persistence of racism naively perpetrated toward Blacks in the United States. Therefore, race and racism, as it relates to Black students, warrants further investigation. Two forms of



racism that are common to our society and adversely affect Black students are institutional racism and cultural racism. These will now be discussed. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 31). Palgrave Macmillan US. Kindle Edition.

### **Higher education supports institutional racism**

Billy Hawkins, Professor at the University of Georgia in the department of Kinesiology, 2010 , *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* . Palgrave Macmillan US. Kindle Edition

Kwame Toure (formerly Stokely Carmichael) and Charles V. Hamilton in *Black Power: The Politics of Liberation in America* suggests that institutional racism originates in the operations of established and respected forces in society.<sup>31</sup> It is a covert form of racism that is subtle and less identifiable in terms of specific individuals committing the acts; unlike overt racism where there are blatant verbal or physical racial attacks. The institutional arrangements and practices of the educational system in this country have maintained, to a significant degree, racist institutional policies when it has “determined what is considered knowledge, how it is to be transmitted to new generations, and who will do the teaching.”<sup>32</sup> Furthermore, higher education is an institution that has policies that fall within the category of institutional racism. These practices are racist, and although they may be unintentional, they are subtle acts that deny opportunity, oppress, and exploit individuals. Examples of this are the various college admission tests (SAT or ACT), which discriminate against Black students because they are designed to test ability in the context of White society, and have been considered insufficient predictors of success in college.<sup>33</sup> A 1994 speech given by Francis L. Lawrence, president of Rutgers University, demonstrates how racism prevails at institutions of higher education. In a faculty senate meeting, he naively stated that The average S.A.T.’s for African-Americans is 750. Do we set standards in the future so we don’t admit anybody? Or do we deal with a disadvantaged population that doesn’t have that genetic, hereditary background to have a higher average? His comments ignited student protests and national exposure and criticism. However, after admitting that his comments were a “verbal slip,” and making a public apology, the governing board of Rutgers University reiterated their support for the continual service of President Lawrence. Regarding cultural racism within the context of higher education, it is also an institutionalized form of racism. In a broad sense, cultural racism occurs when a society’s cultural prescriptions are of a dominant group (in this case Whites of European descent) and are predicated on a set of values and a sense of history that places other groups His comments ignited student protests and national exposure and criticism. However, after admitting that his comments were a “verbal slip,” and making a public apology, the governing board of Rutgers University reiterated their support for the continual service of President Lawrence. Regarding cultural racism within the context of higher education, it is also an institutionalized form of racism. In a broad sense, cultural racism occurs when a society’s cultural prescriptions are of a dominant group (in this case Whites of European descent) and are predicated on a set of values

and a sense of history that places other groups (Black Americans and all people of color in Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 32). Palgrave Macmillan US. Kindle Edition.

### **Multiculturalism fails**

Billy Hawkins, Professor at the University of Georgia in the department of Kinesiology, 2010 , *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* . Palgrave Macmillan US. Kindle Edition

Multiculturalism is an awareness that we live in a culturally diverse society. Multiculturalism in education is an effort toward ameliorating cultural racism by releasing the educational system, and eventually our social system, from its monocultural prison and opening it up to the liberating influences of other cultural perspectives.<sup>36</sup> Despite the objectives of multiculturalism, it has not fully materialized. Thus, the prescriptions of the White culture is the norm at PWIs; it is institutionalized and undoubtedly informs us of what is considered significant and what is to be valued. Within this framework, all other cultures are therefore of minor significance and are of less value in the process of education. Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 33). Palgrave Macmillan US. Kindle Edition.

## Racism Impacts – Health/Death

### **Racism undermines a person's health, causes death**

Douglas Jacobs, 11-17, 2017, New York Times, We're sick of racism, literally, <https://www.nytimes.com/2017/11/11/opinion/sunday/sick-of-racism-literally.html?ribbon-ad-idx=8&rref=homepage&module=Ribbon&version=origin&region=Header&action=click&contentCollection=Home%20Page&pgtype=article>

Estifanos Zerai-Misgun, a black Brookline, Mass., police officer, pulled up in an unmarked car and greeted his superior, a white lieutenant. He wasn't prepared for the response by the lieutenant, who said, as he gestured at the vehicle, "Who would put a black man behind one of these?" "I was shocked," the officer later told a Boston news station about the experience. It was one of several derogatory racial comments he would hear on the job. It got so bad that he and a black colleague walked away from the force in 2015. The statements they'd heard were offensive and at times threatening in the moment, but they also made the men fear for their safety at work in a broader sense: The black officers weren't sure that the white colleagues who were so willing to antagonize them would back them up if they were attacked on patrol. Even if Mr. Zerai-Misgun and his colleague were never directly physically harmed, the experience probably took a toll on their bodies. **Perceptions of discrimination** like those the officers experienced, as well as those that are less direct, may **make us sick. And in the current political environment**, with its high-profile **expressions of racism**, sexism, anti-Semitism, Islamophobia, homophobia and xenophobia, along with widely covered acts of hate and bigotry, countless **Americans are at risk of this type of harm.** Take Mr. Zerai-Misgun as an example. Chances are, **in reaction to each instance of perceived discrimination, he had a stress response. His blood pressure increased, his heart rate went up, and his brain sent a signal to release cortisol.** We know this because in 2008, researchers studied the effects of discrimination on blood pressure. Black and Latino study participants recorded their interactions with perceived racism and were outfitted with blood pressure monitors. The results were striking. **While blood pressure normally dips at night, those who said they'd experienced racism were more likely to have blood pressure that did not — and this has been strongly linked to increased mortality. Over time, this high blood pressure hardens our arteries, increasing the risk of a clot forming in our hearts or brains.** In 2015, researchers examined the effect of discrimination on cortisol, a natural hormone that helps the body deal with stressful situations. They followed black and white children in Maryland, measuring their perceived racial discrimination starting in seventh grade and for 20 years thereafter. **When study participants were in their early 30s, researchers calculated their cortisol levels. Perceptions of discrimination consistently predicted slower declines in cortisol level throughout the day, which is associated with obesity, depression, decreased immune function, cancer and death. More than 700 studies on the link between discrimination and health have been published since 2000. This body of work establishes a connection between discrimination and physical and mental well-being. With all of these effects, it is no wonder that more than 100,000 black people die prematurely each year.** These days, it's nearly impossible to avoid headlines about things like the white nationalists and neo-Nazis who marched in Charlottesville, Va., and the recent spike in expressions of identity-based hate and harassment. Our commander in chief has said he wants to ban transgender people from our military and Muslim people from our nation, and he pardoned the former sheriff Joe Arpaio,

in a sign of approval of Mr. Arpaio's notorious racial profiling of Latinos in Arizona. In this climate, it makes sense that so many people report having personally experienced discrimination. In recent polls, about half of black respondents and a third of Hispanic respondents reported that they'd experienced unfair treatment because of their race in the past month. About half of Muslims reported discrimination in the past year. Even if one denies that these self-reported instances constituted actual discrimination, it is this perception of discrimination, in and of itself, that is linked to poor health. Worse, we know that racism doesn't have to be experienced in person to affect our health — taking it in the form of news coverage is likely to have similar effects. After all, **studies have shown that when television viewers observe scenes depicting racism, their blood pressure remains elevated long after the scenes are over.** That means it's reasonable to believe that every time we see a TV news segment or even get a notification on our phones about an event, statement or policy that we believe represents discrimination, our bodies pay the price. We shouldn't need the specter of disease to denounce hatred in all its forms. Racism, bigotry, sexism, anti-Semitism, Islamophobia, homophobia, xenophobia, should have no place in our society. But **the illness associated with discrimination adds injury to insult and magnifies the suffering of these times.**

## **Racism Impacts -- Consequential**

**Racism necessitates genocide and multiple forms of oppression.**

**Katz 97** - Katheryn Katz, Professor of Law, 1997, "The Clonal Child: Procreative Liberty and Asexual Reproduction," Lexis-Nexis

It is undeniable that **throughout human history dominant and** oppressive **groups have committed unspeakable wrongs against those viewed as inferior. Once a person (or a people) has been characterized as sub-human, there appears to have been no limit to the cruelty that was or will be visited upon him.** For example, in almost all wars, **hatred** towards the enemy **was inspired to justify the killing and wounding by separating the enemy from the human race, by casting them as unworthy of human status. This same rationalization has supported: genocide, chattel slavery, racial segregation, economic exploitation, caste and class systems, coerced sterilization of social misfits and undesirables, unprincipled medical experimentation, the subjugation of women, and the social Darwinists' theory justifying indifference to the poverty and misery of others.**

**Racism causes structural violence, leading to genocide.**

**Vorster 2** - J.M. Vorster 2 (Prof. of Ethics, writer on religious fundamentalism and human rights, Advisor to the U.N. Human Rights Council, "Racism, xenophobia, and Human Rights," The Ecumenical Review

Although these three causes of racism can be logically distinguished, they are mostly inter-related. Ideology can be the basis of fear, and greed can be justified by ideology and even fear. **One of the major manifestations of racism is structural violence. State-organized genocide was a well-known phenomenon** in the centuries of colonialism. Several nations disappeared altogether, or were reduced to tiny minorities, during the 19th century by the United States and by European powers in Africa, Latin America, Australia and New Zealand. (16) Nowadays the international community witnesses state organized "ethnic" cleansing in Central Africa and Eastern Europe. (17) This "ethnic cleansing" includes methods such as deportation, terror and so-called "legal forms" of exclusion from the state concerned. However, structural violence based on racism can have a more subtle form than state-organized terror and genocide. The philosophy of liberation proved in the 1960s that **systems--even democratic systems--can become inherently violent.** (18) **In the maintenance of law and order, and sometimes even under the guise of human rights, a political and economic structure can exert violence to its subjects or a group of them.** This usually happens when the system is one-dimensional, that is, when the system controls all spheres of life. The South African system in the period 1948-94 is a good example of a one-dimensional state. All spheres of life (even morality, sexuality and marital life) were controlled by the state. This provides the authorities with the means to discriminate in a "legitimate" way by introducing social stratification. This concept, and the usual pattern of its development, require further reflection. **Social stratification is a system of legitimated, structured social inequality in which groups receive disproportionate amounts of the society's wealth, power and prestige and are socially ranked accordingly.** (19) Social stratification flows from the supposition that society consists of irreconcilable groups and the premise that a unitary government with a general franchise cannot govern these groups. The

maintenance of division is, according to this view, necessary for good and orderly government. The viewpoint in South Africa since colonization in the 17th century was that whites and blacks should be kept "apart" in order to have peace and prosperity for all. In this case the dividing principle was along racial lines, but it can also, in other cases and regions, be along ethnic, cultural, linguistic or religious lines. This premise denies the fact that pluralism can be maintained in a unitary state (in South Africa a unitary state was seen as a danger for white and indigenous futures), and is based on the conviction that nation-states are the only way to deal with pluralism. **The dialectical principle must lead to the "us-them" social attitude and structure, with** (as has been proven historically) **total division and conflict developing according to a particular pattern.** In the "us-zone" the uniqueness of the own group is idolized, and maintenance of one's own uniqueness is then of absolute importance. To stimulate the "we feeling" and maintain a strong sense of solidarity, a community will start with a reconstruction of its own history. (20)

### **People of Color are the victims of perpetual holocausts.**

**Omolade, 89** - (Barbara, 1989. 'We Speak for the Planet', in Adrienne Harris and Ynestra King (eds.), *Rocking the Ship of State: Toward a Feminist Peace Politics*, pp. 171-89. Boulder, CO: Westview Press)//AK

People of color were and are victims of holocausts-that is, of great and widespread destruction, usually by fire. The world as we knew and created it was destroyed in a continual scorched earth policy of the white man. The experience of Jews and other Europeans under the Nazis can teach us the value of understanding the totality of destructive intent, the extensiveness of torture, and the demonical apparatus of war aimed at the human spirit. A Jewish father pushed his daughter from the lines of certain death at Auschwitz and said, "You will be a remembrance-- You tell the story--You survive." She lived. He died. Many have criticized the Jews for forcing non-Jews to remember the 6 million Jews who died under the Nazis and for etching the names Auschwitz and Buchenwald, Terezin and Warsaw in our minds. Yet as women of color, we, too, are "remembrances" of all the holocausts against the people of the world. We must remember the names of concentration camps such as Jesus, Justice, Brotherhood, and Integrity, ships that carried millions of African men, women, and children chained and brutalized across the ocean to the "New World." We must remember the Arawaks, the Taino, the Chickasaw, the Choctaw, the Narragansett, the Montauk, the Delaware, and the other Native American names of thousands of U.S. towns that stand for tribes of people who are no more. We must remember the holocausts visited against the Hawaiians, the aboriginal peoples of Australia, the Pacific Island peoples, and the women and children of Hiroshima and Nagasaki. We must remember the slaughter of men and women at Sharpeville, the children of Soweto, and the men of Attica. We must never, ever, forget the children disfigured, the men maimed, and the women broken in our holocausts-we must remember the names, the numbers, the faces, and the stories and teach them to our children and our children's children so the world can never forget our suffering and our courage. Whereas the particularity of the Jewish holocaust under the Nazis is over, our holocausts continue. We are the madres locos (crazy mothers) in the Argentinian square silently demanding news of our missing kin from the fascists who rule. We are the children of El Salvador who see our mothers and fathers shot in front of our eyes. We are the Palestinian and Lebanese women and children overrun by Israeli, Lebanese, and U.S. soldiers. We are the

women and children of the bantustans and refugee camps and the prisoners of Robbin Island. We are the starving in the Sahel, the poor in Brazil, the sterilized in Puerto Rico. We are the brothers and sisters of Grenada who carry the seeds of the New Jewel Movement in our hearts, not daring to speak of it with our lips—yet.

### **Peace is not the absence of a nuclear conflict for the comfort of the white middle class—People of Color face the holocaust daily**

**Omolade, 89** - (Barbara, 1989. 'We Speak for the Planet', in Adrienne Harris and Ynestra King (eds.), *Rocking the Ship of State: Toward a Feminist Peace Politics*, pp. 171-89. Boulder, CO: Westview Press)//AK

Pacifists such as Martin Luther King, Jr. and Mahatma Gandhi who have used nonviolent resistance charged that those who used violence to obtain justice were just as evil as their oppressors. Yet all successful revolutionary movements have used organized violence. This is especially true of national liberation movements that have obtained state power and reorganized the institutions of their nations for the benefit of the people. If men and women in South Africa do not use organized violence, they could remain in the permanent violent state of the slave. Could it be that pacifism and nonviolence cannot become a way of life for the oppressed? Are they only tactics with specific and limited use for protecting people from further violence? For most people in the developing communities and the developing world consistent nonviolence is a luxury; it presumes that those who have and use nonviolent weapons will refrain from using them long enough for nonviolent resisters to win political battles. To survive, peoples in developing countries must use a varied repertoire of issues, tactics, and approaches. Sometimes arms are needed to defeat apartheid and defend freedom in South Africa; sometimes nonviolent demonstrations for justice are the appropriate strategy for protesting the shooting of black teenagers by a white man, such as happened in New York City. Peace is not merely an absence of 'conflict that enables white middleclass comfort, nor is it simply resistance to nuclear war and war machinery. The litany of "you will be blown up, too" directed by a white man to a black woman obscures the permanency and institutionalization of war, the violence and holocaust that people of color face daily. Unfortunately, the holocaust does not only refer to the mass murder of Jews, Christians, and atheists during the Nazi regime; it also refers to the permanent institutionalization of war that is part of every fascist and racist regime. The holocaust lives. It is a threat to world peace as pervasive and thorough as nuclear war.

### **Racism make nuclear war inevitable**

**KOVEL 1988** (Joel, Distinguished Professor of Social Studies at Bard University, *White Racism: A Psychohistory*, 1988, p. xxix-xxx)

As people become dehumanized, the states become more powerful and warlike. Metaracism signifies the triumph of technical reasoning in the racial sphere. The same technocracy applies to militarization in general, where it has led to the inexorable drive toward thermonuclear weaponry and the transformation of the state into the nuclear state. There is an indubitable although largely obscure, link between the inner dynamic of a society, including its racism, and the external projection of social violence. Both involve actions taken toward an Other, a term we may define as the negation of the socially affirmed self. Communist, black, Jew—all have been Other to the white West. The Jew has, for a while at least, stepped outside of the role thanks to the integration of Israel within the nations of the West, leaving the black and the Communist to

suffer the respective technocratic violences of metaracism and thermonuclear deterrence. Since the initial writing of WHITE RACISM, these closely linked phenomena have grown enormously. Of course, there is a major, cataclysmic difference between the types of technocratic domination. Metaracism can be played out quite a while longer. Indeed, since it is a racism that proceeds on the basis of anti-racism, it appears capable of a vastly greater degree of integration than either dominative or aversive racism, at least under the firmly entrenched conditions of late capitalist society. Thermonuclear deterrence, on the other hand, has already decayed into the apocalyptic logic of first-strike capability (or counterforce means of pursuing nuclear war), which threatens to put an end to history itself. Thus the nuclear crisis is now the leading item on the global agenda. If it is not resolved civilization will be exterminated while if it is resolved, the terms of society and the state will undoubtedly be greatly altered. This will of course profoundly affect the racial situation. At the same time the disposition of racism will play a key role in the outcome of the nuclear crisis. For one thing, the effectiveness of an antinuclear movement will depend heavily on its ability to involve people of all races—in contrast to its present makeup, which is almost entirely white and middle class. To achieve such mobilization and carry it through, however, the movement will have to be able to make the linkages between militarization and racial oppression very clearly and forcefully. For if the third, and last world war becomes thermonuclear, it will most likely be in a place defined by racial oppositions.



## Racism Impacts -- Moral

**No moral order is possible while racism is tolerated—ethics are meaningless without a prior rejection of it**

**Memmi 2K** (Albert, Professor Emeritus of Sociology @ U of Paris, Naiteire, Racism, Translated by Steve Martinot, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one **must not** even **let the monster in the house, especially not in a mask**. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. **To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence**. It is to accept the persistence of the dark history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?). Racism illustrates, in sum, the inevitable negativity of the condition of the dominated that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animosity to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one's moral conduct only emerges from a choice: one has to want it. **It is a choice** among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. **One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other**, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is 'the truly capital sin. It is not an accident that almost all of humanity's spiritual traditions counsels respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. "Recall," says the Bible, "that you were once a stranger in Egypt," which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal—indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

**There is no value to life in a racist society.**

**Mohan '93** - (Brij, Professor at LSU, Eclipse of Freedom: The World of Oppression, Praeger Publishers p. 3-4)

Metaphors of existence symbolize variegated aspects of the human reality. However, words can be apocalyptic. "There are words," de Beauvoir writes, "as murderous as gas chambers" (1968:

30). Expressions can be unifying and explosive; they portray explicit messages and implicit agendas in human affairs and social configurations. Manifestly the Cold War is over. But the world is not without nuclear terror. Ethnic strife and political instabilities in the New World Order -- following the dissolution of the Soviet Union -- have generated fears of nuclear terrorism and blackmail in view of the widening circle of nuclear powers. Despite encouraging trends in nuclear disarmament, unsettling questions, power, and fear of terrorism continue to characterize the crisis of the new age which is stumbling at the threshold of the twenty-first century. The ordeal of existence transcends the thermonuclear fever because the latter does not directly impact the day-to-day operations of the common people. **The fear of crime, accidents, loss of job, and health care on one hand; and the sources of racism, sexism, and ageism on the other hand have created a counterculture of denial and disbelief that has shattered the façade of civility. Civilization loses its significance when its social institutions become counterproductive.** It is this aspect of the mega-crisis that we are concerned about

## Racism Outweighs Other Impacts

**Racism transcends physical murder, it destroys the spirit.**

**Williams 87** – Associate Professor of Law at City University of New York

[Patricia, “Spirit-murdering the messenger: the discourse of finger-pointing as the law’s response to racism,” *University of Miami Law Review*, Sep, 42 U. Miami L. Rev. 127, <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=2092&context=umlr>

**The second purpose of this article is to examine racism as a crime, an offense so deeply painful and assaultive as to constitute something I call "spirit-murder."** Society is only beginning to recognize that **racism is as devastating, as costly, and as psychically obliterating as robbery or assault; indeed they are often the same.**

Racism resembles other offenses against humanity whose structures are so deeply embedded in culture as to prove extremely resistant to being recognized as forms of oppression. 7 It can be as difficult to prove as [\*130] child abuse or rape, where the victim is forced to convince others that he or she was not at fault, or that the perpetrator was not just "playing around." As in rape cases, victims of racism must prove that they did not distort the circumstances, misunderstand the intent, or even enjoy it. On October 29, 1984, Eleanor Bumpurs, a 270-pound, arthritic, sixty-seven year old woman, was shot to death while resisting eviction from her apartment in the Bronx. She was \$ 98.85, or one month, behind in her rent. 8 New York City Mayor Ed Koch and Police Commissioner Benjamin Ward described the struggle preceding her demise as involving two officers with plastic shields, one officer with a restraining hook, another officer with a shotgun, and at least one supervising officer. All of the officers also carried service revolvers. According to Commissioner Ward, during the course of the attempted eviction Mrs. Bumpurs escaped from the restraining hook [\*131] twice and wielded a knife that Commissioner Ward says was "bent" on one of the plastic shields. At some point, Officer Stephen Sullivan, the officer positioned farthest away from her, aimed and fired his shotgun. It is alleged that the blast removed half of her hand, so that, according to the Bronx District Attorney's Office, "[I]t was anatomically impossible for her to hold the knife." 9 The officer pumped his gun and shot again, making his mark completely the second time around. 10 In the two and one-half year wake of this terrible incident, controversy raged as to whether Mrs. Bumpurs ought to have brandished a knife and whether the officer ought to have fired his gun. In February 1987, a New York Supreme Court justice found Officer Sullivan not guilty of manslaughter. 11 The case centered on a very narrow issue of language pitted against circumstance. District Attorney Mario Merola described the case as follows: "Obviously, one shot would have been justified. But if that shot took off part of her hand and rendered her defenseless, whether there was any need for a second shot, which killed her, that's the whole issue of whether you have reasonable force or excessive force." 12 My intention in the following analysis is to underscore the significant task facing judges and lawyers in undoing institutional descriptions of what is "obvious" and what is not, and in resisting the general predilection of evidence for jury consumption. Shortly after Mr. Merola's statement, Officer Sullivan's attorney, Bruce Smiry, expressed eagerness to try the case before a jury. 13 Following the heavily publicized attack in Howard Beach, however, he favored a bench trial. In explaining his decision to request a nonjury trial, he stated: I think a judge will be much more likely than a jury to understand the defense that the shooting was justified. . . . The average lay person might find it difficult to understand why the police were there in the first place, and why a shotgun was employed. . . . Because of the climate now in the city, I don't want people perceiving this as a racial case. 14 Since 1984, Mayor Koch, Commissioner Ward, and a host of [\*132] other city officials repeatedly have described the shooting of Mrs. Bumpurs as completely legal. 15 At the same time, Commissioner Ward has admitted publicly that Mrs. Bumpurs should not have died. Mayor Koch admitted that her death was the result of "a chain of mistakes and circumstances" that came together in the worst possible way, with the worst possible circumstances. 16 Commissioner Ward admitted that the officers could have waited for Mrs. Bumpurs to calm down, and that they could have used teargas or mace instead of gunfire. According to Commissioner Ward, however, these observations are made with hindsight. As to whether this shooting of a black woman by a white police officer had racial overtones, he stated that he had "no evidence of racism." 17 Commissioner Ward pointed out that he is sworn to uphold the law, which is "inconsistent with treating blacks differently," 18 and that the shooting was legal because it was within the code of police ethics. 19 Finally, city officials have resisted criticism of the police department's handling of the incident by remarking that "outsiders" do not know all of the facts and do not understand the pressure under which officers labor. The root of the word "legal" is the Latin word *lex*, which means law in a fairly concrete sense -- law as we understand it when we refer to written law, codes, and systems of obedience. 20 The word *lex* does not include the more abstract, ethical dimension of law that contemplates the purposes of rules and their effective implementation. This latter meaning is contained in the Latin word *ius*, from which we derive the word "justice." 21 This semantic distinction is not insignificant. The word of law, whether statutory or judicial, is a subcategory of the underlying social motives and beliefs from which it is born. It is the technical embodiment of attempts to order society according to a consensus of ideals. When society loses sight of those ideals and grants obedience to words alone, law becomes sterile and formalistic; *lex* is applied without *ius* and is therefore unjust. The result is compliance [\*133] with the letter of the law, but not the spirit. A sort of punitive literalism ensues that leads to a high degree of thoughtless conformity. This literalism has, as one of its primary underlying values, order -- whose ultimate goal may be justice, but whose immediate end is the ordering of behavior. Living solely by the letter of the law means living without spirit; one can do anything as long as it comports with the law in a technical sense. The cynicism or rebelliousness that infects one's spirit, and the enthusiasm or dissatisfaction with which one conforms is unimportant. Furthermore, this compliance is arbitrary; it is inconsistent with the will of the conformer. The law becomes a battleground of wills. The extent to which technical legalism obfuscates and undermines the human motivations that generate our justice system is the real extent to which we as human beings are disenfranchised. Cultural needs and ideals change with the momentum of time; redefining our laws in keeping with the spirit of cultural flux keeps society alive and humane. In the Bumpurs case, the words of the law called for nonlethal alternatives first, but allowed some officer discretion in determining which situations are so immediately life endangering as to require the use of deadly force. 22 This discretionary area was presumably the basis for the claim that Officer Sullivan acted legally. The law as written permitted shooting in general, and therefore, by extension of the city's interpretation of this law, it would be impossible for a police officer ever to shoot someone in a specifically objectionable way. [\*134] If our laws are thus piano-wired on the exclusive validity of literalism, if they are picked clean of their spirit, then society risks heightened irresponsibility for the consequences of abominable actions. Accordingly, Jonathan Swift's description of lawyers weirdly and ironically comes to life: "[T]here was a Society of Men among us, bred up from their Youth in the Art of proving by words multiplied for the Purpose, that White is Black and Black is White, according as they are paid. To this Society all the rest of the People are Slaves." 23 We also risk subjecting ourselves to such absurdly empty rhetoric as Commissioner Ward's comments to the effect that both Mrs. Bumpurs' death and racism were unfortunate, while stating "but the law says . . ." 24 Commissioner Ward's sentiments might as well read: "The law says . . . and therefore the death was unfortunate but irremediable; the law says . . . and therefore there is little that can be done about racism." The law thus becomes a shield behind which to avoid responsibility for the human repercussions of both governmental and publicly harmful private activity. 25 A related issue is the degree to which much of the criticism of the police department's handling of this case was devalued as "noisy" or excessively emotional. It is as though passionate protest were a separate crime, a rudeness of such dimension as to defeat altogether any legitimacy of content. We as lawyers are taught from the moment we enter law school to temper our emotionalism and quash our idealism. We are taught that heartfelt instincts subvert the law and defeat the security of a well-ordered civilization, whereas faithful adherence to the word of law, to stare decisis and clearly stated authority, would as a matter of course lead to a bright, clear world like the Land of Oz, in which those heartfelt instincts would be preserved. Form is exalted over substance, and cool rationales over heated feelings. But we should not be ruled exclusively by the cool formality of language or by emotions. We must be ruled by our complete selves, by the intellectual and emotional content of our words. Governmental representatives must hear the full range of legitimate concerns, no matter how indelicately expressed or painful they may be to hear. [\*135] But undue literalism is only one type of sleight of tongue in the attainment of meaningless dialogue. Mayor Koch, Commissioner Ward, and Officer Sullivan's defense attorneys have used overgeneralization as an effective rhetorical complement to their avoidance of the issues. For example, allegations that the killing was illegal and unnecessary, and should therefore be prosecuted, were met with responses such as, "The laws permit police officers to shoot people." 26 "As long as police officers have guns, there will be unfortunate deaths." 27 "The conviction rate in cases like this is very low." 28 The observation that teargas would have been an effective alternative to shooting Mrs. Bumpurs drew the dismissive reply that "there were lots of things they could have done." 29 Privatization of response as a justification for public irresponsibility is a version of the same game. Honed to perfection by President Reagan, this version holds up the private self as indistinguishable from the public "duty and power laden" self. Public officials respond to commentary by the public and the media as though it were meant to hurt private, vulnerable feelings. Trying to hold a public official accountable while not hurting his feelings is a skill the acquisition of which would consume time better spent on almost any conceivable task. Thus, when Commissioner Ward was asked if the internal review board planned to discipline Officer Sullivan, many seemed disposed to

accept his response that while he was personally very sorry she had died, he could not understand why the media was focusing on him so much. "How many other police commissioners," he asked repeatedly, "have gotten as much attention as I have?" 30 Finally, a most cruel form of semantic slipperiness infused Mrs. Bumpurs' death from the beginning. It is called victim responsibility. 31 It is the least responsive form of dialogue, yet apparently the [\*136] easiest to accept as legitimate. All these words, from Commissioner Ward, from the Mayor's office, from the media, and from the public generally, have rumbled and resounded with the sounds of discourse. We want to believe that their symmetrical, pleasing structure is the equivalent of discourse. If we are not careful, we will hypnotize ourselves into believing that it is discourse. In the early morning hours of December 20, 1986, three young black men left their stalled car on Cross Bay Parkway, in the New York City borough of Queens, and went to look for help. They walked into the neighborhood of Howard Beach, entered a pizzeria, ordered pizzas, and sat down to eat. An anonymous caller to the police reported their presence as "black troublemakers." A patrol car came, found no trouble, and left. After the young men had eaten, they left the pizzeria and were immediately surrounded by a group of eight to ten white teenagers who taunted them with racial epithets. The white youths chased the black men for about three miles, catching them at several points and beating them severely. One of the black men died as a result of being struck by a car as he tried to flee across a highway. Another suffered permanent blindness in one eye. 32 In the extremely heated public controversy that ensued, as much attention centered on the community of Howard Beach as on the assailants themselves. A veritable Greek chorus formed, comprised of the defendants' lawyers and resident after resident after resident of Howard Beach, all repeating and repeating and repeating that the mere presence of three black men in that part of town at that time of night was reason enough to drive them out. "They had to be starting trouble." 33 "We're a strictly white neighborhood." 34 "What were they doing here in the first place?" 35 [\*137] Although the immensely segregationist instincts behind such statements may be fairly evident, it is worth making explicit some of the presuppositions behind such ululations. Everyone who lives here is white. No black could live here. No one here has a black friend. No white would employ a black here. No black is permitted to shop here. No black is ever up to any good. These presuppositions themselves are premised on lethal philosophies of life. "Are we supposed to stand around and do nothing while these blacks come into our area and rob us?" 36 one woman asked a reporter in the wake of the Howard Beach attack. A twenty year old, who had lived in Howard Beach all of his life, said, "We ain't racial. . . . We just don't want to get robbed." 37 The hidden implication of these statements is that to be safe is not to be sorry, and that to be safe is to be white and to be sorry is to be associated with blacks. Safety and sorrow, which are inherently alterable and random, are linked to inalterable essences. The expectation that uncertain conditions are really immutable is a formula for frustration; it is a belief that feeds a sense of powerlessness. The rigid determinism of placing in the disjunctive things that are not in fact disjunctive is a set up for betrayal by the very nature of reality. The national repetition that white neighborhoods are safe and blacks bring sorrow is an incantation of powerlessness. And, as with the upside-down logic of all irrational incantations, it imports a concept of white safety that almost necessarily endangers the lives as well as the rights of blacks. It is also an incantation of innocence and guilt, much related to incantations that affirmative action programs allow presumably "guilty" blacks to displace "innocent" whites. 38 (Even assuming that "innocent whites" were being displaced by blacks, does that make [\*138] blacks less innocent in the pursuit of education and jobs? If anything, are not blacks more innocent in the scheme of discrimination?) In fact, in the wake of the Howard Beach incident, the police and the press rushed to serve the public's interest in the victims' unsavory "guilty" dispositions. They overlook the fact that racial slurs and attacks "objectif[y] people – the incident could have happened to any black person who was there at that time and place. This is the crucial aspect of the Howard Beach affair that is now being muddied in the media. Bringing up [defendants' past arrest records] is another way of saying, 'He was a criminal who deserved it.'" 39 Thus, the game of victim responsibility described above is itself a slave to society's stereotypes of good and evil. It does no good, however, to turn race issues into contests for some Holy Grail of innocence. In my youth, segregation and antimiscegenation laws were still on the books in many states. During the lifetimes of my parents and grandparents, and for several hundred years before them, laws prohibited blacks from owning property, voting, and learning to read or write. Blacks were, by constitutional mandate, outlawed from the hopeful, loving expectations that being treated as a whole, rather than three-fifths of a human being can bring. When every resource of a wealthy nation is put to such destructive ends, it will take more than a few generations to mop up the mess. 40 [\*139] We have all inherited that legacy, whether new to this world or new to this country. It survives as powerfully and invisibly reinforcing structures of thought, language, and law. Thus, generalized notions of innocence and guilt have little place in the struggle for transcendence; there is no blame among the living for the dimension of this historic crime, this national tragedy. 41 There is, however, responsibility for never forgetting one another's histories, and for making real the psychic obliteration which lives on as a factor in shaping relations, not just between blacks and whites, 42 or blacks and blacks, 43 but also between whites and whites. Whites must consider how much this history has projected onto blacks the blame for all criminality, and for all of society's ills. It has become the means for keeping white criminality invisible. 44 The attempt to split bias from violence has been this society's most enduring and fatal rationalization. Prejudice does hurt, however, just as the absence of prejudice can nourish and shelter. Discrimination can repel and vilify, ostracize and alienate. White people [\*140] who do not believe this should try telling everyone they meet that one of their ancestors was black. I had a friend in college who having lived her life as a blonde, grey eyed white person, discovered that she was one-sixteenth black. She began to externalize all the unconscious baggage that "black" bore for her: the self-hatred that is racism. She did not think of herself as a racist (nor had I) but she literally wanted to jump out of her skin, shed her flesh, and start life over again. She confided in me that she felt "fouled" and "betrayed." She also asked me if I had ever felt this way. Her question dredged from some deep corner of my suppressed memory the recollection of feeling precisely that, when at the age of three or so, some white playmates explained to me that God had mixed mud with the pure clay of life in order to make me. In the Vietnamese language, "the word 'I' (toi) . . . means 'your servant'; there is no 'I' as such. When you talk to someone, you establish a relationship." 45 Such a concept of "self" is a way of experiencing the other, ritually sharing the other's essence, and cherishing it. In our culture, seeing and feeling the dimension of harm that results from separating self from "other" requires more work. 46 Very little in our language or our culture encourages or reinforces any attempt to look at others as part of ourselves. With the imperceptibly divided symmetry of the marketplace, social costs to blacks are simply not seen as costs to whites, 47 just as blacks do not share in the advances whites may enjoy. [\*141] This structure of thought is complicated by the fact that the distancing does not stop with the separation of the white self from the black other. In addition, the cultural domination of blacks by whites means that the black self is placed at a distance even from itself, as in the example of blacks being asked to put themselves in the position of the white shopkeepers who view them. 48 So blacks are conditioned from infancy to see in themselves only what others who despise them see. 49 It is true that conforming to what others see in us is every child's way of becoming socialized. 50 It is what makes children in our society seem so gullible, so impressionable, so "impolitely" honest, so blindly loyal, and so charming to the ones they imitate. 51 Yet this conformity also describes a way of being that relinquishes the power of independent ethical choice. Although such a relinquishment can have quite desirable social consequences, it also presumes a fairly homogeneous social context in which values are shared and enforced collectively. Thus, it is no wonder that western anthropologists and ethnographers, for whom adulthood is manifested by the exercise of independent ethical judgment, so frequently denounce tribal cultures or other collectivist ethics as "childlike." By contrast, our culture constructs some, but not all, selves to be the servants of others. Thus, some "I's" are defined as "your servant," some as "your master." The struggle for the self becomes not a true mirroring of self-in-other, but rather a hierarchically-inspired series of distortions, where some serve without ever being served, some master without ever being mastered, and almost everyone hides from this vernacular domination by clinging to the legally official definition of "I" as meaning "your equal." In such an environment, relinquishing the power of individual ethical judgment to a collective ideal risks psychic violence, an obliteration of the self through domination by an all powerful other. In such an environment, it is essential at some stage that the self be permitted to retreat into itself and make its own decisions with self-love and self-confidence. What links child abuse, the mistreatment of [\*142] women, and racism is the massive external intrusion into psyche that dominating powers impose to keep the self from ever fully seeing itself. 52 Because the self's power resides in another, little faith is placed in the true self, that is, in one's own experiential knowledge. Consequently, the power of children, women and blacks is actually reduced to the "intuitive," rather than the real; social life is necessarily based primarily on the imaginary. 53 Furthermore, because it is difficult to affirm constantly with the other the congruence of the self's imagining what the other is really thinking of the self, and because even that correlative effort is usually kept within very limited family, neighborhood, religious, or racial boundaries, encounters cease to be social and become presumptuous, random, and disconnected. This peculiarly distancing standpoint allows dramas, particularly racial ones like Howard Beach, to unfold in scenarios weirdly unrelated to the incidents that generated them. At one end of the spectrum is a laissez faire response that privatizes the self in order to remain unassailably justified. At the other end is a pattern that generalizes individual or particular others into terrifyingly uncontrollable "domains" of public wilderness, against which proscriptive barriers must be built to protect the eternally innocent self. The prototypical scenario of the privatized response is as follows: Cain: Abel's part of town is tough turf. 54 [\*143] Abel: It upsets me when you say that; you have never been to my part of town. As a matter of fact, my part of town is a leading supplier of milk and honey. 55 Cain: The news that I'm upsetting you is too upsetting for me to handle. You were wrong to tell me of your upset because now I'm terribly upset. 56 Abel: I felt threatened first. Listen to me. Take your distress as a measure of my own and empathize with it. Don't ask me to recant and apologize in order to carry this conversation further. 57 This type of discourse is problematic because Cain's challenge in calling Abel's turf "tough" is transformed into a discussion of the care with which Abel challenges that statement. While there is certainly an obligation to be careful in addressing others the obligation to protect the feelings of those others gets put above the need to protect one's own. The self becomes subservient to the other, with no reciprocity, and the other becomes a whimsical master. Abel's feelings are deflected in deference to Cain's, and Abel bears the double burden of raising his issue properly and of being responsible for its impact on Cain. Cain is rendered unaccountable for as long as this deflection continues because all the fault is assigned to Abel. Morality and responsiveness thus become dichotomized as Abel drowns in responsibility for valuative circus control, while Cain rests on the higher ground of a value neutral zone. Caught in conversations like this, blacks as well as whites will [\*144] feel keenly and pressingly circumscribed. Perhaps most people never intend to be racist, oppressive, or insulting. Nevertheless, by describing zones of vulnerability and by setting up fences of rigidified politeness, the unintentional exile of individuals as well as races may be quietly accomplished. Another scenario of distancing self from the responsibility for racism is the invention of some great public wilderness of others. In the context of Howard Beach, the specter against which the self must barricade itself is violent: seventeen year old, black males wearing running shoes and hooded sweatshirts. It is this fear of the uncontrollable, overwhelming other that animates many of the more vengeful racist comments from Howard Beach, such as, "We're a strictly white neighborhood. . . . They

had to be starting trouble." 58 These statements set up angry, excluding boundaries. They also imply that the failure to protect and avenge is bad policy, bad statesmanship, and an embarrassment. They raise the stakes beyond the unexpressed rage arising from the incident itself. Like the Cain and Abel example, the need to avenge becomes a separate issue of protocol and etiquette – not a loss of a piece of the self, which is the real cost of real tragedies, but a loss of self-regard. By self-regard, I do not mean self-concept as in self-esteem; I mean that view of the self that is attained by the self stepping outside the self to regard and evaluate the self. It is a process in which the self is watched by an imaginary other, a self-projection of the opinions of real others, where "I" means "your master" and where the designated other's refusal to be dominated is felt as personally assaultive. Thus, the failure to avenge is felt as a loss of self-regard. It is a psychological metaphor for whatever trauma or original assault that constitutes the real loss to the self. 59 It is therefore more abstract, more illusory, more constructed, and more invented. Potentially, therefore, it is less powerful than "real" assault, in that with effort it can be unlearned as a source of vulnerability. This is the real message of the attempt to distinguish between prejudice and violence: names, as in the old "sticks and stones" ditty, [\*145] although undeniably and powerfully influential, can be learned or undone as motivation for future destructive action. 60 As long as they are not unlearned, however, the exclusionary power of such free-floating emotions makes its way into the gestalt of prosecutorial and jury decisions and into what the law sees as crime, or as justified, provoked or excusable. 61 Law becomes described and enforced in the spirit of our prejudices. 62 The following passage is a description of the arraignment of three of the white teenagers who were involved in the Howard Beach beatings: The three defense lawyers also tried to case doubt on [the prosecutor's] account of the attack. The lawyers questioned why the victims walked all the way to the pizza parlor if, as they said, their mission was to summon help for their car, which broke down three miles away. . . . At the arraignment, the lawyers said the victims passed two all-night gas stations and several other pizza shops before they reached the one they entered. [\*146] A check yesterday of area restaurants, motels and gas stations listed in the Queens street directory found two eating establishments, a gas station and a motel that all said they were open and had working pay phones on Friday night. A spokesman for the New York Telephone Company, Jim Crosson, said there are six outdoor pay telephones. . . . on the way to the pizzeria. 63 In the first place, lawyers must wonder what relevance this has. Does the answer to any of the issues the defense raised serve to prove that these black men assaulted, robbed, threatened or molested these white men? Does it even prove that the white men reasonably feared such a fate? The investigation into the number of phone booths per mile does not reveal why the white men would fear the black men's presence. Instead, it is relevant to prove that there is no reason a black man should walk or just wander around the community of Howard Beach. This is not semantic detail; it is central to understanding burdensomeness of proof in such cases. It is this unconscious restructuring of burdens of proof into burdens of white over black that permits people who say and who believe that they are not racist to commit and condone crimes of genocidal magnitude. It is easy to rationalize this as linguistically technical, or as society's sorrow. As one of my students said, "I'm so tired of hearing the blacks say that society's done them wrong." Yet these gyrations kill with their razor-toothed presumption. Lawyers are the modern wizards and medicine people who must define this innocent murderousness as crime. Additionally, investigations into "closer" alternatives eclipse the possibility of other explanation. They assume that the young men were not headed for the subway (which was in fact in the same direction as the pizzeria), and further, that black people must have documented reasons for excursioning into white neighborhoods and out of the neighborhoods to which they are supposedly consigned. It is interesting to contrast the implicit requirement of documentation imposed on blacks walking down public streets in Howard Beach with the implicit license of the white officers who burst into the private space of Mrs. Bumpurs' apartment. In the Bumpurs case, lawmakers consistently dismissed the availability of less intrusive options as presumption and idle hindsight. 64 This dismissal ignored the fact that police officers have an actual burden of employing the least harmful alternatives. In the context of Howard Beach, however, such an analysis invents and imposes a burden on nonresidents to stay [\*147] out of strange neighborhoods. It implies harm in the presence of those who do not specifically "own" something there. Both analyses skirt the propriety and necessity of public sector responsibility. Both redefine public accountability in privatized terms. Whether those privatized terms act to restrict or expand accountability is dichotomized according to the race of the actors. Finally, this factualized hypothesizing was part of a news story, not an editorial. "News," in other words, was reduced to hypothesis based on silent premises: they should have used the first phone they encountered; they should have eaten at the first "eating establishment;" they should have gone into a gas station and asked for help; surely they should have had the cash and credit cards to do any of the above or else not travel in strange neighborhoods. In elevating these to relevant issues, however, The New York Times did no more than mirror what was happening in the courtroom. In an ill-fated trip to the neighborhood of Jamaica, in the borough of Queens, Mayor Koch attempted to soothe tensions by asking a congregation of black churchgoers to understand the disgruntlement of Howard Beach residents about the interracial march by 1400 protesters through "their" streets. He asked them how they would feel if 1400 white people took to the streets of the predominantly black neighborhood of Jamaica. 65 This remark, from the chief executive of New York City, accepts and even advocates a remarkable degree of possessiveness about public streets. This possessiveness, moreover, is racially rather than geographically bounded. In effect, Koch was pleading for the acceptance of the privatization of public space. This is the de facto equivalent of segregation. It is exclusion in the guise of deep-coated private property "interests" and "values." In such a characterization, the public nature of the object of discussion, the street, is lost. 66 Mayor Koch's question suggests that 1400 black people took to the streets of Howard Beach. In fact, the crowd was integrated -- blacks, browns, and whites, residents and nonresidents of Howard Beach. Apparently, crowds in New York are subject to the unwritten equivalent of Louisiana's race statutes (which provide that 1/72 black [\*148] ancestry renders a person black) and to the Ku Klux Klan's "contamination by association" standard ("blacks and white-blacks" was how one resident of Forsythe County, Georgia described an interracial crowd of protesters there). On the other hand, if Mayor Koch intended to direct attention to the inconvenience, noise, and pollution of such a crowd in those small streets, then I am sympathetic. My sympathy is insignificant, however, compared to my recognition of the necessity and propriety of the protestors' spontaneous, demonstrative, peaceful outpouring of rage, sorrow, and pain. If, however, Mayor Koch intended to ask blacks to imagine 1400 angry white people descending on a black community, then I agree, I would be frightened. This image would also conjure up visions of 1400 hooded white people burning crosses, 1400 Nazis marching through Skokie, and 1400 cavalry men riding into American Indian lands. These visions would inspire great fear in me, because of the possibility of grave harm to the residents. But there is a difference, and that is why the purpose of the march is so important. That is why it is so important to distinguish mass protests of violence from organized hate groups that openly threaten violence. By failing to make this distinction, Mayor Koch created the manipulative specter of unspecified mobs sweeping through homes in pursuit of vague and diffusely dangerous ends. From this perspective, he appealed to thoughtlessness, to the pseudoconsolation of hunkering down and bunkering up against the approaching hordes, to a glacially overgeneralized view of the unneighborhooded "public" world. Moreover, the Mayor's comments reveal that he is ignorant of the degree to which the black people have welcomed, endured, and suffered white marchers through their streets. White people have always felt free to cruise through black communities and to treat them possessively. Most black neighborhoods have existed only as long as whites have permitted them to exist. Blacks have been this society's perpetual tenants, sharecroppers, and lessees. Blacks went from being owned by others, to having everything around them owned by others. In a civilization that values private property above all else, this effectuates a devaluation of humanity, a removal of blacks not just from the market, but from the pseudospiritual circle of psychic and civic communion. As illustrated in the microcosm of my experience at the store, 67 this limbo of disownment keeps blacks beyond the pale of those who are entitled to receive the survival gifts of commerce, the [\*149] property of life, liberty, and happiness, whose fruits our culture places in the marketplace. In this way, blacks are positioned analogically to the rest of society, exactly as they were during slavery or Jim Crow. 68 There is a subtler level to the enactment of this dispossession. The following story may illustrate more fully what I mean: Not long ago, when I first moved back to New York after some twenty years, I decided to go on a walking tour of Harlem. The tour, which took place on Easter Sunday, was sponsored by the New York Arts Society, and except for myself, was attended exclusively by young, white, urban, professional, real estate speculators. They were pleasant looking, with babies strapped to their backs and balloons in their hands. They all seemed like very nice people. Halfway through the tour, the guide asked the group if they wanted to "go inside some churches." The guide added, "It'll make the tour a little longer, but we'll probably get to see some services going on. . . . Easter Sunday in Harlem is quite a show." A casual discussion ensued about the time that this excursion might take. What astonished me was that no one had asked the people in the churches if they minded being stared at like living museums. I wondered what would happen if a group of blue-jeaned blacks were to walk uninvited into a synagogue on Passover or St. Anthony's of Padua in the middle of High Mass. Just to peer, not pray. My overwhelming instinct is that such activity would be seen as disrespectful. Apparently, the disrespect was invisible to this well-educated, affable group of people. They deflected my observations with comments such as, "We just want to look"; "No one will mind"; "There's no harm intended." As well intentioned as they were, I was left with the impression that no one existed for them whom their intentions could not govern. 69 Despite the lack of apparent malice in their demeanor, 70 it seemed to me that to live so noninteractively is a liability [\*150] as much as a luxury. To live imperviously to one's impact on others is a fragile privilege, which depends ultimately on the inability of others to make their displeasure known. Reflecting on Howard Beach brought to mind a news story from my fragmentary grammar school recollections of the 1960's: a white man acting out of racial motives killed a black man who was working for some civil rights organization or cause. The man was stabbed thirty-nine times, a number which prompted a radio commentator to observe that the point was not just murder, but something beyond. What indeed was the point, if not murder? I wondered what it was that would not die, which could not be killed by the fourth, fifth, or even tenth knife blow; what sort of thing that would not die with the body but lived on in the mind of the murderer. Perhaps, as psychologists have argued, what the murderer was trying to kill was a part of his own mind's image, a part of himself and not a real other. After all, statistically and corporeally, blacks as a group are poor, powerless, and a minority. It is in the minds of whites that blacks become large, threatening, powerful, uncontrollable, ubiquitous, and supernatural.

There are certain societies that define the limits of life and death very differently than our own. For example, **death may occur long before the**

**body ceases to function**, and under the proper circumstances, life may continue for some time after the body is carried to its grave. 71 These non-body-bound, uncompartmentalized ideas recognize the power of spirit, or what we in our secularized society might describe as the dynamism of self as reinterpreted by the

perceptions of [\*151] other. 72 These ideas comprehend the fact that a **part of ourselves is beyond the control of pure physical**

**will and resides in the sanctuary of those around us. A fundamental part of ourselves and of our dignity is dependent upon the uncontrollable, powerful, external observers who constitute society.**

<sup>73</sup> Surely a part of socialization ought to include a sense of caring responsibility for the images of others that are repositied within us. <sup>74</sup> Taking the example of the man who was stabbed thirty-nine times out of the context of our compartmentalized legal system, and considering it in the hypothetical framework of a legal system that encompasses and recognizes morality, religion, and psychology, I am moved to see this act as not merely body murder but spirit-murder as well. I see it as spirit-murder, only one of whose manifestations is racism -- cultural obliteration, prostitution, abandonment of the elderly and the homeless, and genocide are some of its other guises. **I see spirit-murder as no less than the equivalent of body murder.**

One of the reasons that I fear what I call spirit-murder, or disregard for others whose lives qualitatively depend on our regard, is that **its product is a system of formalized distortions of thought. It produces social structures centered around fear and hate; it provides a tumorous outlet for feelings elsewhere unexpressed.**

<sup>75</sup> For example, when Bernhard Goetz shot four black teenagers in a New York City subway, an acquaintance of mine said that she could understand his fear because it is a "fact" that blacks commit most crimes. What impressed me, beyond the factual inaccuracy of this statement, <sup>76</sup> was the reduction of Goetz' crime to "his fear," which I translate to mean her fear. The four teenage victims became all blacks everywhere, and "most crimes" clearly meant that most blacks commit crimes.

## Racism Impacts -- Discrimination

### **Everyday White privilege oppressing Blacks, preventing an equal play field.**

**Bonilla-Silva 01** (Eduardo, PhD, professor of sociology at Duke University. "White Supremacy and Racism in the Post-Civil Rights era" Page 195 Lynne Rienner Publisher 2001

The theory and analyses advanced here are an anathema to many whites (and to color-blind minorities as well as honorary whites). Agreeing with my theory and substantive claims implies recognizing that all whites receive unearned benefits by virtue of being white and thus develop "defensive beliefs." Naysayers will rebuke my claims by arguing that they are not "racist," by stating that I am making a fictitious category- that of race- "real," or by marshaling survey work showing whites' tolerant racial attitudes or data comparing the status of blacks in the past with their status today. Some may even suggest that blacks are "racist" too: or that the racial gap in the United States is fundamentally shaped by blacks' own cultural practices. Lastly, a group of commentators will point out that my analysis is "divisive," arguing, "Wouldn't it make more sense to develop an argument based on class as the unifying factor?" Although political disputes are never settled with data or rational arguments, I will attempt to answer each of the counterarguments. First, from a structural point of view, race relations are not rooted in the balance between "good" (non-racist) and "bad" (racist) whites or even in the struggle between "racist" actors (conscious of their racial interest) and "race militants" (conscious of the need to oppose the racial status quo). The reproduction of racial inequality transpires every day through the normal operation of society. Like capitalists and men, whites have been able to crystalize their victories in institutions and social practices. This implies that they do not need to be individually active in the maintenance of racial domination. Instead by merely following the everyday rituals of the postmodern, white-supremacist United States-living in a segregated neighborhood, sending their children to segregated schools, interacting fundamentally with their racial peers, working in a mostly segregated job or if in an integrated setting, maintaining superficial relation with the nonwhites etc.- they help reproduce the racial status quo. Of course, this does not mean that some actors in any racialized social system are significantly more prejudiced than others. My point is that the reproduction of white supremacy does not depend on individual racist behavior. Second, although all social categories are "constructed," after they emerge they become real in their consequences. The fact that race, as with all social categories, is fluid does not mean that it does not become a social fact. Crying that you are not white, or male, or black, or female does not change the fact of your social reality as white, male, black, or female. Even those who claim to be "race traitors" receive advantages (many of which are invisible to them) just because of the racial uniform they wear every day. The mean streets of the social world have a way of letting you know rather quickly what you are rather than what you think or theorize you are. Hence, Tiger Woods may insist that he is not black by Fuzzy Zeller's joke when he won the Augusta Open was based on the stereotypes about blacks and not on "Cablasians." Third, as I pointed out in Chapters 3 and 5, survey data on whites' attitudes may be conveying false sense of racial tolerance and harmony. The combination of socially acceptable speech and old questions that no longer tackle our contemporary racial dilemmas has produced an artificial increase in racially tolerant responses among whites. Nonetheless, the same whites who state in surveys they have no problems with blacks and do not care if blacks move in their neighborhoods and that it is great to have children from all racial backgrounds interacting in schools have very limited and superficial relationships with blacks, live in white neighborhoods and more when blacks move in, and they have objected for over 40 years to almost all the government plans to facilitate school integration. Fourth, as far as the issue of black progress, I pointed out in Chapter 1 and in Chapter 4 that it is undeniable that blacks are better off today than during the slavery or Jim Crow period of race relations. Nevertheless, by solely focusing on blacks' gains in the post-World War II era, analysts miss the boat because the appropriate way to measure the standing of a racial group (or any other group) in any society is to compare the statistics and status of that group with those of the majority group. When analysts do this comparison in the United States they find that blacks have not improved that much over the past 30 years. Therefore, my point is not to deny that blacks have improved their standing in the United States but to draw attention to the fact the new mechanisms that have emerged to maintain white privilege and which account for much of the contemporary black-white gaps. Fifth, those who insist that blacks are poorer than whites because of their cultural practices ought to consider the power dimension in the racial equation. Although blacks can be prejudiced (many are anti-white, anti-Latino, or anti-Asian), since racial inequality is based on systemic power and blacks do not have it in the United States, they are

not “racist” in this systemic sense. There is no theoretical reason why blacks (the socially constructed group of people that has endured 500 years of white supremacy) could not become “racist” in this sense. However, substantively, this is an extremely unlikely event. Given the global nature of white supremacy, it is almost impossible for an anti-white or “black supremacy” order to operate successfully. Even in African countries where whites have lost political power (e.g. South Africa, Namibia, and Congo), the dictates of the global white supremacy (I borrow the term from Charles W. Mills) and the economic might of Western nations limit these regimes and severely constrain their possibilities.



## Racism Impacts – Whites Responsible

**Racism has become disguised to the people who do not directly experience it.**

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(Joseph has been a parish pastor and an antiracism trainer and organizer for thirty years, much of the latter work being done with Crossroads Ministry, Chicago, which he directed for eighteen years; “Understanding and Dismantling Racism: The Twenty-First Century Challenge To White America;” p.42)/

Thus, from the perspective of communities of color, the continuing presence of racism in the twenty-first century is easy to detect. For those who do not directly experience it, however, its presence is not so easily perceived. Whether it is described as “Bigfoot” or as a velvet glove covering an iron fist, racism has become more hidden and disguised, so that it is easy for white people to become convinced that it has gone away, or at least that it is rapidly diminishing and disappearing. In fact, the very effectiveness of the twenty-first century forms of racism is measure by its *not* being seen at work. So, the question is how to expose racism’s new disguises?

The critically important question for this book is how is it possible to see the new forms of the old racism that are operating in ways that still devastate people’s lives? How does a person “see” the velvet glove and detect the old iron fist that is being covered and disguised by a velvet glove? How can a society measure the presence and the effects of racism? In the chapters that follow, the goal is to reveal the ways in which new forms of racism comprise the powerful continuation of racism in the twenty-first century. Only as the eyes of each of us are opened as we begin to understand how racism functions in our society today will we be able to devise new ways to oppose racism and dismantle it.

To put the question another way, How can we really know whether racial conditions are getting “better” or “worse”? How can we know that racism is present, and how will we know when it is truly disappearing? Or, more simply put, how do we measure change from racial injustice to racial justice? Are there common criteria and standards of measurement that will produce agreement on the status of racial equality and inequality in our society? It is important to have effective and consistent means of quantifying the presence, absence, and intensity of racism, as well as its increase or decrease over a period of time. Since some people claim racism is disappearing, and others claim that it is as strong as ever, it is important that we use common methods of measuring.

**Racism confines all of us to participate in its workings**

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Joseph has been a parish pastor and an antiracism trainer and organizer for thirty years, much of the latter work being done with Crossroads Ministry, Chicago, which he directed for eighteen years; “Understanding and Dismantling Racism: The Twenty-First Century Challenge To White America;” pp.81-82)//AK

Racism takes all of us prisoner. Its ultimate design is to control and destroy everyone. Power3 is the third and most powerful expression of racism. This is the most devastating and destructive power of racism, because it subjects all of us to its will, people of color and white people alike.

You cannot cut the body of humanity in half and not have both halves bleed to death. The results of racism are far more devastating and destructive than its hurting of people of color (Power1) and benefiting of white people (Power2). In this, the greatest and worst expression of racism’s power, we can see its ability to make everyone serve its purposes, and to destroy everyone’s humanity in the process. In Power<sup>3</sup> we can see that racism is far more than actions of evil and greedy people; it is an evil and destructive power in itself that has taken on its own self-controlling and self-perpetuating characteristics. At its deepest level, racism is a massive system of intertwining and choking roots that wrap and wind themselves around every person, institution, and manifestation of society. We need to explore how all of us—white people and people of color alike—are imprisoned by this power and cannot easily set ourselves free. We need to see how all of us face destruction as long as this evil power is at work to divide and take life from us.

Racism is able to make all of us—white people and people of color alike—cooperate with it and participate in its workings. Each and every one of us is socialized to become the person that racism wants us to become and to perform the function that racism wants us to perform. Racism actually claims the power to shape our identity, to tell all of us who we are, white people and people of color alike.

This socializing process is part of the identity formation that starts at the very beginning of each of our lives. Every white person is taught to behave according to a racist society's standards for white people, and every person of color is taught to behave according to a racist society's standards for people of color. In our further exploration of Power3 in chapter 4, we will call these identity-shaping processes “the internalization of racist superiority” and “the internalization of racist oppression.” And, in chapter 5 and 6, we will see that this same identity-shaping power of racism has deeply affected the nature of our institutions and our collective culture in society.

As we examine Power<sup>3</sup> more closely we will see the ways in which all of us-people of color and white people-are imprisoned by racism. But we will also be clear that our prisons are very different. Although racism is destroying us all, it is designed to make people of color feel uncomfortable and hurt, and to make white people feel comfortable and good. But ultimately, we are all deceived, dehumanized, and destroyed by racism. To paraphrase Malcolm X, we've all been misled, we've been had, we've all been took, hoodwinked, and bamboozled. We are all defined and controlled in ways that threaten to destroy our very being. We will not fully understand racism until we recognize how all of us, including white people and white society, are destroyed by white racism.

## **Pro – Need to Stop Exploitation**

Chicago Tribune, <http://www.chicagotribune.com/news/opinion/commentary/ct-ncaa-athletes-pay-sports-college-perspec-0203-20160202-story.html>

Recent research shows that a school's success in intercollegiate athletics attracts more donations from alumni, but the amounts are meager. Other studies find that the presence of high-profile athletic programs attracts additional tuition-paying students, but this recruitment effect is modest and fleeting. To control costs, the NCAA limits the remuneration that can be received by an intercollegiate athlete — a scholarship or grant restricted to room, board, tuition, fees, books and a few other expenses. Minimum age requirements in the National Football League and the National Basketball Association restrict employment alternatives available to prospective college athletes, giving the NCAA virtually total control over the labor market for players. The complicit professional leagues benefit, in turn, from foisting the training costs for their future players onto university budgets. Touchdown, NLRB. But the union effort at NU exposes demands on athletes. The NCAA's market power is not only reflected in far-below-market compensation for many of the better players, but also leads to inefficient overuse of this chief input through a steady expansion of regular and postseason games and long training hours for athletes. The issue is not whether college athletes should be paid. Apart from a few walk-ons, most of the players are already compensated via scholarships or grants that cover most of their expenses. "Amateur" should not be defined by whether one is paid but, more sensibly, by the nature of the relationship between the player and his institution. The issue is that through the NCAA our nation's universities collectively cap their players' compensation, which in other businesses would violate Section 1 of the Sherman Antitrust Act, a criminal offense. The compensation ceiling limits benefits that otherwise would accrue to the more talented collegiate football and men's basketball players, many of whom are African-Americans from low-income households. In contrast to the collegiate labor market, labor negotiations in the NFL or NBA consist of team representatives and a battery of lawyers on one side of the table facing players, their union representatives, agents and attorneys on the other side. Perfect competition this is not, but a fair fight it arguably is. In the current collegiate environment, on one side of the virtual table are the athletic director, head coach, the NCAA and legal expertise, while on the other side is a 17-year-old kid with his financially struggling mom. It's easy to predict the outcome of that contest. The bountiful revenues flowing to NCAA members and the relative pittance going to the players, who are the people most responsible for generating those revenues, has created growing unease in the court of public opinion. In an effort to stay one town ahead of the sheriff, the NCAA recently made modest concessions to what is allowable compensation in "power conferences," including unrestricted meal plans, multiyear scholarships and covering other incidental costs for players. But these changes fall well short of competitive labor market compensation. As several lawsuits involving various aspects of NCAA control play out, it seems unlikely that the future landscape of big-time intercollegiate athletics will resemble the current incarnation that transfers massive resources from young, poorly represented minorities to the paychecks of coaches and athletic directors who are paid well above what they likely would make if the athletes were compensated reasonably for their services as players. About a century ago, college sports dispensed with volunteer — "amateur" — head coaches and

welcomed a free market for their team leaders. Forty years ago, professional sports leagues opened up their restricted labor markets, moving from league control of players to a more balanced system as players gained economic power via court decisions and

## Answers to: Not Intentionally Racist

**The system isn't intentionally racist, but it has a racist impact and that must be rejected**

McCormick & McCormick, 2010, \* Robert A. McCormick, Professor of Law, Michigan State University College of Law, B.A., Michigan State University, 1969; J.D., University of Michigan, 1973, \*\* Amy Christian McCormick, Professor of Law, Michigan State University College of Law, B.S.B.A., Georgetown University, 1988; J.D., Harvard Law School, 199, Texas Review of Entertainment & Sports Law, Major College Sports: A Modern Apartheid, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1408&context=facpubs>

IV. The End Game - Adverse Impact Theory The college sports industry has flourished fantastically in recent decades, and the NCAA's amateurism rules have enabled it to grow, in substantial part, from the labor and sacrifice of the athletes whose economic power is sharply limited, and whose lives are otherwise controlled, by NCAA rule. <sup>236</sup> **These amateurism rules prevent athletes from benefitting economically from their skill, effort, or even their reputation, and reserve all but a fraction of that bounty for others.** <sup>237</sup> **Coincidentally, as we have shown, the beneficiaries of this regime are predominantly European American, while the athletes whose work creates the product are vastly disproportionately African American.** <sup>238</sup> **We do not claim that universities, through the NCAA, either created or have fostered this system to burden African Americans purposely, but that has unquestionably become one of its effects, and U.S. justice properly looks skeptically upon rules that, while neutral on their face, systematically burden racial minorities in grossly disproportionate ways.** <sup>239</sup> This skepticism, borne of our nation's catastrophic experiment with slavery and its struggles to deal with the vestiges of that regime, has given rise to the adverse or disparate impact theory of employment discrimination which prohibits an employer from using facially neutral rules that have an unjustified adverse impact upon the members of a protected class. <sup>240</sup> Put [\*46] somewhat differently, the adverse impact theory outlaws the use of employment rules or practices that do not appear on their face to be discriminatory, but are so in their application or effect unless the employer can justify those rules as manifestly related to job duties. <sup>241</sup> **he Supreme Court has crisply described the doctrine as condemning "employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity."** <sup>242</sup> The adverse impact theory was initially articulated by the Supreme Court in its 1971 Griggs v. Duke Power Co. decision. <sup>243</sup> Prior to the passage of the Civil Rights Act of 1964, <sup>244</sup> Title VII of which prohibited discrimination in employment on the basis of race, Duke Power Company had employed African Americans only in the labor department, one of five departments at a North Carolina power generating facility. <sup>245</sup> At the same time, the company required a high school diploma for employment in the other, all-white, departments. <sup>246</sup> After 1965, the company ceased excluding African Americans from the formerly all-white departments, but required all prospective employees in those departments not only to have a high school diploma but also to pass two standardized general intelligence tests. <sup>247</sup> These preconditions - a high school diploma and passage of the two tests - had the effect of excluding African Americans from employment in those departments at significantly higher rates than European Americans. <sup>248</sup> Despite the fact that the standards had not been shown to be substantially related to job performance in those positions, <sup>249</sup> the lower courts found the company's employment criteria to be legitimate business tools adopted to help it hire the best qualified applicants and not for a racially discriminatory purpose. <sup>250</sup> The Supreme Court, however, reversed the lower courts, and gave birth to the adverse impact theory of employment discrimination. <sup>251</sup> In Griggs and similar cases, the Court reasoned, proof of discriminatory motive is not required because Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." <sup>252</sup> As the Court famously put it, the "absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built in headwinds" for minority groups and are unrelated to measuring job capability." <sup>253</sup> To justify such rules, the Court wrote, an employer must show that "any given requirement ... [has] a manifest relationship to the employment in question." <sup>254</sup> "The touchstone is business necessity," <sup>255</sup> the Court announced. "If an [\*47] employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." <sup>256</sup> In Griggs, African Americans had suffered under North Carolina's segregated educational system, leaving them less educated and, therefore, at an obvious disadvantage in educational achievement. <sup>257</sup> The Supreme Court has made it plain, however, that adverse impact theory has broader application and is not limited solely to circumstances in which racial minorities have been victimized by societal discrimination. In Dothard v. Rawlinson, for example, the Court invoked adverse impact doctrine to strike down a state's use of height and weight minima in selecting prison guards when their effect was to create a barrier to employment opportunity for women and where other, less discriminatory, testing mechanisms were available. <sup>258</sup> The Court has also signaled a sharp distrust of testing mechanisms that disproportionately burden minorities, even when an employer's "bottom line" hiring statistics showed minorities had not been disproportionately excluded. <sup>259</sup> Thus, in Connecticut v. Teal the Court struck down Connecticut's multi-tiered employee selection mechanism when only the initial screening stage had an adverse impact on African Americans, and despite the fact that African Americans who passed the initial test were hired at a much higher rate than European Americans who also passed the test. <sup>260</sup> In fact, when the Court has seen fit to limit the adverse impact doctrine, Congress has reacted by restoring its authority in employment discrimination law. In Ward's Cove Packing v. Atonio, for example, the Supreme Court reviewed the business necessity defense and held, inter alia, that although an employer whose employment practices disproportionately burdened racial minorities was required to set forth a legitimate business reason for their use, the plaintiff, nevertheless, continued to bear the burden of establishing that he or she had been denied an employment

opportunity on the basis of race or other protected consideration. 261 As regards the business necessity defense, the Court in *Ward's Cove* rejected the "necessity" requirement, stating "there is no requirement that the challenged practice be 'essential' or 'indispensable' to the employer's business for it to pass muster." 262 On the contrary, the decision required only that the challenged practice serve "in a significant way, the legitimate ... goals of the employer." 263 *Ward's Cove* was roundly criticized as unduly limiting disparate impact theory, 264 and two years later, Congress passed the Civil Rights Act of 1991, 265 which reversed the Court's holding that the burden of persuasion remains with the employee at all times. It also confirmed that once a plaintiff has shown a challenged employment practice to have caused a significant disparate impact upon a protected group, the employer must prove, not merely [\*48] articulate, the validity of its business justification for the practice. 266 The Act also reaffirmed the significance of the availability of less discriminatory alternatives by declaring unlawful an employment practice that disproportionately burdens a protected group when there is an alternative employment practice which produces a less discriminatory impact that the employer has refused to adopt. 267 Early adverse impact cases like *Griggs* frequently scrutinized employer-imposed rules which had the effect of disproportionately excluding minorities from eligibility for employment in particular jobs. Title VII, however, also prohibits illegal employment discrimination in other matters, including wage levels, 268 as we assert is the case in college sports, and the Supreme Court has approved the application of disparate impact analysis in such circumstances. In *Smith v. City of Jackson*, for example, the Court held that a pay plan which operated to discriminate against older workers could be struck down using disparate impact analysis under the Age Discrimination in Employment Act (ADEA) 269 if the plaintiffs identified a "specific test, requirement, or practice within the pay

plan that had an adverse impact on older workers." 270 Significantly, **that Court also made it clear that disparate impact theory should be applied even more broadly under Title VII than under the ADEA.**

**271 Thus, compensation plans, as well as employment eligibility rules, may be challenged using disparate impact theory under Title VII. 272 Here, the NCAA's amateurism rules have an adverse racial impact objectionable under Title VII because they tend to restrict the compensation of African Americans while tending not to limit earnings for European Americans. The adverse impact theory has likewise been adopted in the application of numerous employment statutes other than Title VII.** So, for example, the 1967 ADEA is identical to Title VII in its description of unlawful discrimination, and the Court has held that decisions under one statute are controlling for similar cases under the other. 273 As noted above, the Supreme Court has recently confirmed in *Smith v. City of Jackson* that the adverse impact model announced in *Griggs* applies under the ADEA. 274 In addition, the Rehabilitation Act [\*49] of 1973, 275 passed to "promote and expand employment opportunities ... for handicapped individuals" 276 protects such persons from discrimination in employment because of their handicap. Additionally, in *Alexander v. Choate*, the Supreme Court specifically held adverse impact analysis to be applicable under that act. 277 "Discrimination against the handicapped," the Court wrote, "was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference - of benign neglect." 278 Finally, in the Americans with Disabilities Act of 1990 (ADA), 279 Congress specifically adopted disparate impact theory. Under the ADA, a plaintiff need not demonstrate improper motive and can prevail upon a mere showing that the defendant uses qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria ... is shown to be job related for the position in question and is consistent with business necessity. 280 Under this language, neutral employment practices that result in differing treatment of persons with and without disabilities are unlawful unless justified by business necessity. 281 In this,

Congress specifically adopted the *Griggs* adverse impact model of employment discrimination in the interpretation of the ADA. **Finally, the idea that facially neutral rules that disproportionately burden racial minorities require justification appears not only in employment law, but in other areas where African Americans have been disproportionately burdened by apparently neutral rules.** For example, in *Gaston County v. United States* the Supreme Court rejected the argument that a facially neutral literacy test for voting was valid when *Gaston County* had "systematically deprived its black citizens of the educational opportunities it granted to its white citizens" 282 and declared that "'impartial' administration of the literacy test ... would serve only to perpetuate these inequities in a different form." 283 Lower courts have also used disparate impact analysis to find unlawful discrimination in housing under

Title VIII. 284 [\*50] **Adverse impact theory is an indispensable part of U.S. law because slavery, its aftermath, and other forms of invidious discrimination, have wisely cautioned us to question rules that disproportionately burden African Americans, even when those rules were not created for a racist purpose. As applied to college sports, the fact that NCAA rules were created for other, facially neutral, reasons has no bearing on whether, given their grossly disproportionate impact on African Americans, they may be justified. The fact remains that NCAA amateurism rules operate to burden African Americans in grossly disproportionate ways while reserving the wealth their labor produces for others.**

## College Athletes Making Administrators Rich

**Division I sports require athletes to practice 40 hours per week and to take easy classes**

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement, Cardozo Law Review, <https://goo.gl/FNxGnE>

Beyond these financial inequities of big-time college sports, **many colleges further disadvantage their athletes by monopolizing their time with sports-related activities.** <sup>n22</sup> **Most colleges require their Division I men's basketball and FBS football players to devote upwards of forty hours per week to their sport, notwithstanding academic and personal time commitments.** <sup>n23</sup> Colleges with big-time football and men's basketball programs also may compel their athletes to select academic majors that minimize classroom duties, and encourage athletes to enroll in courses that do not meet during the coach's preferred practice schedules. <sup>n24</sup>

## **Student Poverty**



## High Value Students Living in Poverty

### **Impossible to for athletes to work part-time jobs while in college**

Earl Scott, Master's Candidate, Wake Forest University, IMPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA, May 2015.

[https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Llewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

**The number of hours required on sports also prevents today's athlete from being able to work a legitimate job outside of their sport.** The Huffington Post reports that four out of five college students are working part-time jobs (Kingkade). Non-athletes have the opportunity to work part-time jobs while in college that help to earn money to cover personal needs. Athletes are not allowed this same opportunity. During the semester it is common for a college student to earn money working somewhere on campus through the university, wait tables at restaurants in the area, or even bartending at a popular bar in 10 town. **When these students go home for summer vacation it is common for them to find a job in their hometown as well. Since athletes are spending so much time with their teams it is basically impossible for them to have enough time in the day to work a legitimate job during the semester. Since athletes are required by coaches to spend majority of their summer vacation on campus taking classes and working out, it makes it difficult for athletes to work jobs in the summer also, even though some players still manage to do it. Due to this lack of opportunity this busy schedule creates, college athletes are at a financial disadvantage compared to the non-athletes who attend the same university.**

### **Most of the athlete's families cannot provide financial support**

Earl Scott, Master's Candidate, Wake Forest University, IMPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA," May 2015.

[https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Llewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

Student athletes receiving a free education, state-of-the-art training facilities and permitted entry to cafeterias around campus, gives people the impression that athletes have no financial struggles. However, **a majority of athletes on campus who are unable to make money from working legitimate jobs come from backgrounds where their families are unable to afford college. A large portion of today's Division I college football and basketball players would not be able to attend college without their full scholarship. This makes them unlike most of their peers, whose families can afford to pay their full tuition each year. Due to the limited amount of cash student athletes receive from their scholarships, a lot of times student-athletes do not**

**have the money for basic living expenses.** The University of Connecticut's former point guard Shabazz Napier stated last year in a CNN interview, "I don't feel student-athletes should get hundreds of thousands of dollars, but like I said, there are hungry nights that I go to bed and I'm starving" (Ganim, "UConn Guard on Unions"). This lack of money is an example of some of the financial realities today's student-athletes face as a result of NCAA rule. According to ESPN, NCAA president Mark Emmert attempted to justify the claims of players not having enough money by stating, "The countervailing voices of this notion that student-athletes are being taken advantage of has been the dominant theme and had played out pretty loudly in a variety of outlets," Emmert said. "The reality is schools are spending in between \$100,000 and \$250,000 on each student-athlete" (Rovell). In this example he was referring to how much each player's scholarship is worth. The problem lies in the fact that even though the full scholarships that Emmert is referring to are very valuable and worth a lot of money, players barely get to see any of that money in cash because all of it goes to covering their tuition. **Therefore, athletes experience times when they do not have money for simple necessities like food.** The scholarships' value is the first thing that comes to most people's minds, but they fail to realize that a lot of college athletes are forced to survive on a college campus with very little money.

## **Answers to Common Arguments**

## Answers to: Students First

### **The term “student athlete” is a rhetorical ploy used to exploit students**

Branch, 2011, *The Atlantic*, *The Shame of College Sports*, Taylor Branch is the author of, among other works, *America in the King Years*, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

Today, **much of the NCAA’s moral authority—indeed much of the justification for its existence—is vested in its claim to protect what it calls the “student-athlete.”** The term is meant to conjure the nobility of amateurism, and the precedence of scholarship over athletic endeavor. But **the origins of the “student-athlete” lie not in a disinterested ideal but in a sophistic formulation designed, as the sports economist Andrew Zimbalist has written, to help the NCAA in its “fight against workmen’s compensation insurance claims for injured football players.” “We crafted the term student-athlete,” Walter Byers himself wrote, “and soon it was embedded in all NCAA rules and interpretations.”** The term came into play in the 1950s, when the widow of Ray Dennison, who had died from a head injury received while playing football in Colorado for the Fort Lewis A&M Aggies, filed for workmen’s-compensation death benefits. Did his football scholarship make the fatal collision a “work-related” accident? Was he a school employee, like his peers who worked part-time as teaching assistants and bookstore cashiers? Or was he a fluke victim of extracurricular pursuits? Given the hundreds of incapacitating injuries to college athletes each year, the answers to these questions had enormous consequences. The Colorado Supreme Court ultimately agreed with the school’s contention that he was not eligible for benefits, since the college was “not in the football business.” The term student-athlete was deliberately ambiguous. **College players were not students at play (which might understate their athletic obligations), nor were they just athletes in college (which might imply they were professionals). That they were high-performance athletes meant they could be forgiven for not meeting the academic standards of their peers;** that they were students meant they did not have to be compensated, ever, for anything more than the cost of their studies. Student-athlete became the NCAA’s signature term, repeated constantly in and out of courtrooms. Using the “student-athlete” defense, colleges have compiled a string of victories in liability cases. On the afternoon of October 26, 1974, the Texas Christian University Horned Frogs were playing the Alabama Crimson Tide in Birmingham, Alabama. Kent Waldrep, a TCU running back, carried the ball on a “Red Right 28” sweep toward the Crimson Tide’s sideline, where he was met by a swarm of tacklers. When Waldrep regained consciousness, Bear Bryant, the storied Crimson Tide coach, was standing over his hospital bed. “It was like talking to God, if you’re a young football player,” Waldrep recalled. **Waldrep was paralyzed: he had lost all movement and feeling below his neck. After nine months of paying his medical bills, Texas Christian refused to pay any more, so the Waldrep family coped for years on dwindling charity.** Through the 1990s, from his wheelchair, **Waldrep pressed a lawsuit for workers’ compensation.** (He also, through heroic rehabilitation efforts, recovered feeling in his arms, and eventually learned to drive a specially rigged van. “I can brush my teeth,” he told me last year, “but I still need help to bathe and dress.”) His attorneys haggled with TCU and the state worker-compensation fund over what constituted employment. Clearly, **TCU had provided football players with equipment for the job, as a typical employer would—but did the university pay wages, withhold income taxes on his financial aid, or control work conditions and performance? The appeals court finally rejected Waldrep’s claim in June of 2000, ruling that he was not an employee because he had not paid taxes on financial aid that he could have kept even if he quit football.** (Waldrep told me school officials “said they recruited me as a student, not an athlete,” which he says was absurd.) The long saga vindicated the power of the NCAA’s “student-athlete” formulation as a shield, and the organization continues to invoke it as both a legalistic defense and a noble ideal. Indeed, such is the term’s rhetorical power that it is increasingly used as a sort of reflexive mantra against charges of rabid hypocrisy.

### **The “academics” are organized to facilitate the university needs**

**Fram & Frampton, August 2012, *Buffalo Law Review*, *A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics*, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk**

to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

The practical demands placed on "student-athletes" all but dictate that they become athletes first, and students second. **In order to maintain their eligibility to compete, players must pursue a "full-time [12 credit-hour] program of studies,"** n116 **but many of the NCAA's academic standards are "formulated to serve universities' commercial interests rather than bona fide academic values."** n117 **Low academic expectations are, in fact, embedded in the NCAA's eligibility requirements: high school seniors who score a 400 on the SAT (reflecting no correct answers) may nevertheless be eligible to compete during their first year.** n118 College athletes must select course schedules consistent with team practices, and athletic responsibilities regularly require them to miss [\*1025] classes. n119 **Studies have found that college athletes generally enter college with considerable optimism, carrying high aspirations and "idealistic expectations about their impending academic experience."** n120 **As the practical realities of athletic obligations set in, however, they become "increasingly cynical about and uninterested in academics."** n121 Low graduation rates predictably reflect this sense of detachment. While the NCAA boasts that "student-athletes," as a whole, academically outperform non-athletes, n122 **football and men's basketball players' graduation rates are 17.7 percent and 34.3 percent lower, respectively, than other full-time male students at their schools.** n123

## Student athletes are not students first

**Jake Simpson, 2014**, August, 7, The Atlantic, Of course student athletes are university employees, <https://www.theatlantic.com/entertainment/archive/2014/04/of-course-student-athletes-are-university-employees/360065/>

But whether the players at Northwestern form a union or not, **the notion that most student-athletes are students first and athletes second simply doesn't hold up.** As Ohr meticulously spells out in his ruling, **the Northwestern players spend roughly 50-60 hours a week on "football and football-related activities" during the preseason (July to August), 40 to 50 hours a week during the season and postseason (September to January), and 20 to 30 hours a week during the offseason** (February to April, though most college programs will have informal but quasi-mandatory offseason workouts led by the team captains). **Simply put, the players spend more time on football—what the NCAA has said is the ancillary portion of their education—than your neighbors spend at their nine-to-five jobs. And your neighbors are most likely considered employees.**

## The students' academic performance is ignored by the universities

Branch, 2011, The Atlantic, The Shame of College Sports, Taylor Branch is the author of, among other works, *America in the King Years*, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

“They Want to Crush These Kids” Academic performance has always been difficult for the NCAA to address. Any detailed regulation would intrude upon the free choice of widely varying schools, and any academic standard broad enough to fit both MIT and Ole Miss would have little force. From time to time, a scandal will expose extreme lapses. In 1989, Dexter Manley, by then the famous “Secretary of Defense” for the NFL’s Washington Redskins, teared up before the U.S. Senate Subcommittee on Education, Arts, and Humanities, when admitting that he had been functionally illiterate in college.

**Within big-time college athletic departments, the financial pressure to disregard obvious academic shortcomings and shortcuts is just too strong. In the 1980s, Jan Kemp, an English instructor at the University of Georgia, publicly alleged that university officials had demoted and then fired her because she refused to inflate grades in her remedial English courses.**

Documents showed that administrators replaced the grades she’d given athletes with higher ones, providing fake passing grades on one notable occasion to nine Bulldog football players who otherwise would have been ineligible to compete in the 1982 Sugar Bowl. (Georgia lost anyway, 24–20, to a University of Pittsburgh team led by the future Hall of Fame quarterback Dan Marino.) **When Kemp filed a lawsuit against the university, she was publicly vilified as a troublemaker, but she persisted bravely in her testimony. Once, Kemp said, a supervisor demanding that she fix a grade had bellowed, “Who do you think is more important to this university, you or Dominique Wilkins?”** (Wilkins was a star on the basketball team.) Traumatized, Kemp twice attempted suicide. In trying to defend themselves, Georgia officials portrayed Kemp as naive about sports. “We have to compete on a level playing field,” said Fred Davison, the university president. During the Kemp civil trial, in 1986, Hale Almand, Georgia’s defense lawyer, explained the university’s patronizing aspirations for its typical less-than-scholarly athlete. **“We may not make a university student out of him,” Almand told the court, “but if we can teach him to read and write, maybe he can work at the post office rather than as a garbage man when he gets through with his athletic career.” This argument backfired with the jurors: finding in favor of Kemp, they rejected her polite request for \$100,000, and awarded her \$2.6 million in damages instead. (This was later reduced to \$1.08 million.)**

Jan Kemp embodied what is ostensibly the NCAA’s reason for being—to enforce standards fairly and put studies above sports—but no one from the organization ever spoke up on her behalf. The NCAA body charged with identifying violations of any of the Division I league rules, the Committee on Infractions, operates in the shadows. Josephine Potuto, a professor of law at the University of Nebraska and a longtime committee member who was then serving as its vice chair, told Congress in 2004 that one reason her group worked in secret was that it hoped to avoid a “media circus.” The committee preferred to deliberate in private, she said, guiding member schools to punish themselves. “The enforcement process is cooperative, not adversarial,” Potuto testified. The committee consisted of an elite coterie of judges, athletic directors, and authors of legal treatises. “The committee also is savvy about intercollegiate athletics,” she added. “They cannot be conned.” In 2009, a series of unlikely circumstances peeled back the veil of secrecy to reveal NCAA procedures so contorted that even victims marveled at their comical wonder. The saga began in March of 2007, shortly after the Florida State Seminoles basketball team was knocked out of the NIT basketball tournament, which each spring invites the best teams not selected for the March Madness tournament. At an athletic-department study hall, Al Thornton, a star forward for the team, completed a sports-psychology quiz but then abandoned it without posting his written answers electronically by computer. Brenda Monk, an academic tutor for the Seminoles, says she noticed the error and asked a teammate to finish entering Thornton’s answers onscreen and hit “submit,” as required for credit. The teammate complied, steaming silently, and then complained at the athletic office about getting stuck with clean-up chores for the superstar Thornton (who was soon to be selected by the Los Angeles Clippers in the first round of the NBA draft). Monk promptly resigned when questioned by FSU officials, saying her fatigue at the time could not excuse her asking the teammate to submit the answers to another student’s completed test. Monk’s act of guileless responsibility set off a chain reaction. First, FSU had to give the NCAA preliminary notice of a confessed academic fraud. Second, because this would be its seventh major infraction case since 1968, FSU mounted a vigorous self-investigation to demonstrate compliance with NCAA academic rules. Third, interviews with 129 Seminoles athletes unleashed a nightmare of matter-of-fact replies about absentee professors who allowed group consultations and unlimited retakes of open-computer assignments and tests. Fourth, FSU suspended 61 of its athletes in 10 sports. Fifth, the infractions committee applied the byzantine NCAA bylaws to FSU’s violations. Sixth, one of the penalties announced in March of 2009 caused a howl of protest across the sports universe. Twenty-seven news organizations filed a lawsuit in hopes of finding out how and why the NCAA proposed to invalidate 14 prior victories in FSU football. Such a penalty, if upheld, would doom coach Bobby Bowden’s chance of overtaking Joe Paterno of Penn State for the most football wins in Division I history. This was sacrosanct territory. Sports reporters followed the litigation for six months, reporting that 25 of the 61 suspended FSU athletes were football players, some of whom were ruled ineligible retroactively from the time they had heard or yelled out answers to online test questions in, of all things, a music-appreciation course. When reporters sought access to the transcript of the infractions committee’s hearing in Indianapolis, NCAA lawyers said the 695-page document was private. (The NCAA claimed it was entitled to keep all such records secret because of a landmark Supreme Court ruling that it had won in 1988, in *NCAA v. Tarkanian*, which exempted the organization from any due-process obligations because it was not a government organization.) Media outlets pressed the judge to let Florida State share its own copy of the hearing transcript, whereupon NCAA lawyers objected that the school had never actually “possessed” the document; it had only seen the transcript via a defendant’s guest access to the carefully restricted NCAA Web site. This claim, in turn, prompted intercession on the side of the media by Florida’s attorney general, arguing that letting the NCAA use a technical loophole like this would undermine the state’s sunshine law mandating open public records. After tumultuous appeals, the Florida courts agreed and ordered the NCAA transcript released in October of 2009. News interest quickly evaporated when the sports media found nothing in the record about Coach Bowden or the canceled football victories. But the transcript revealed plenty about the NCAA. On page 37, T. K. Wetherell, the bewildered Florida State president, lamented that his university had hurt itself by cooperating with the investigation. “We self-reported this case,” he said during the hearing, and he later complained that the most ingenuous athletes—those who asked “What’s the big deal, this happens all the time?”—received the harshest suspensions, while those who clammed up on the advice of lawyers went free. The music-appreciation professor was apparently never questioned. Brenda Monk, the only instructor who consistently cooperated with the investigation, appeared voluntarily to explain her work with learning-disabled athletes, only to be grilled about her credentials by Potuto in a pettifogging inquisition of remarkable stamina. In January of last year, the NCAA’s Infractions Appeals Committee sustained all the sanctions imposed on FSU except the number of vacated football victories, which it dropped, ex cathedra, from 14 to 12. The final penalty locked Bobby Bowden’s official win total on retirement at 377 instead of 389, behind Joe Paterno’s 401 (and counting). This carried stinging symbolism for fans, without bringing down on the NCAA the harsh repercussions it would have risked if it had issued a television ban or substantial fine. Cruelly, but typically, the NCAA concentrated public censure on powerless scapegoats. A dreaded “show cause” order rendered Brenda Monk, the tutor, effectively unhirable at any college in the United States. Cloaking

an old-fashioned blackball in the stately language of law, the order gave notice that any school hiring Monk before a specified date in 2013 “shall, pursuant to the provisions of Bylaw 19.5.2.2(l), show cause why it should not be penalized if it does not restrict the former learning specialist [Monk] from having any contact with student-athletes.” Today she works as an education supervisor at a prison in Florida. The Florida State verdict hardly surprised Rick Johnson, the lawyer who had represented the college pitchers Andrew Oliver and James Paxton. “All the NCAA’s enforcements are random and selective,” he told me, calling the organization’s appeals process a travesty. (Johnson says the NCAA has never admitted to having wrongly suspended an athlete.) Johnson’s scalding experience prompted him to undertake a law-review article on the subject, which in turn sent him trawling through NCAA archives. From the summary tax forms required of nonprofits, he found out that the NCAA had spent nearly \$1 million chartering private jets in 2006. “What kind of nonprofit organization leases private jets?,” Johnson asks. It’s hard to determine from tax returns what money goes where, but it looks as if the NCAA spent less than 1 percent of its budget on enforcement that year. Even after its plump cut for its own overhead, the NCAA dispersed huge sums to its 1,200 member schools, in the manner of a professional sports league. These annual payments are universal—every college gets something—but widely uneven. They keep the disparate shareholders (barely) united and speaking for all of college sports. The payments coerce unity within the structure of a private association that is unincorporated and unregulated, exercising amorphous powers not delegated by any government. Searching through the archives, Johnson came across a 1973 memo from the NCAA general counsel recommending the adoption of a due-process procedure for athletes in disciplinary cases. Without it, warned the organization’s lawyer, the association risked big liability claims for deprivation of rights. His proposal went nowhere. Instead, apparently to limit costs to the universities, Walter Byers had implemented the year-by-year scholarship rule that Joseph Agnew would challenge in court 37 years later. Moreover, the NCAA’s 1975 convention adopted a second recommendation “to discourage legal actions against the NCAA,” according to the minutes. The members voted to create Bylaw 19.7, Restitution, to intimidate college athletes in disputes with the NCAA. Johnson recognized this provision all too well, having won the temporary court judgment that the rule was illegal if not downright despotic. It made him nearly apoplectic to learn that the NCAA had deliberately drawn up the restitution rule as an obstacle to due process, contrary to the recommendation of its own lawyer. “They want to crush these kids,” he says. The NCAA, of course, has never expressed such a desire, and its public comments on due process tend to be anodyne. At a congressional hearing in 2004, the infractions-committee vice chair, Josephine Potuto, repeatedly argued that although the NCAA is “not bound by any judicial due process standards,” its enforcement, infractions, and hearing procedures meet and “very likely exceed” those of other public institutions. Yet when pressed, Potuto declared that athletes would have no standing for due process even if the Supreme Court had not exempted the NCAA in the 1988 Tarkanian decision. “In order to reach due-process issues as a legal Constitutional principle, the individual challenging has to have a substantive property or liberty interest,” she testified. “The opportunity to play intercollegiate athletics does not rise to that level.” To translate this from the legal jargon, Potuto used a circular argument to confine college athletes beneath any right to freedom or property in their own athletic effort. They have no stake to seek their rights, she claimed, because they have no rights at stake. Potuto’s assertion might be judged preposterous, an heir of the Dred Scott dictum that slaves possessed no rights a white person was bound to respect. But she was merely being honest, articulating assumptions almost everyone shares without question. Whether motivated by hostility for students (as critics like Johnson allege), or by noble and paternalistic tough love (as the NCAA professes), the denial of fundamental due process for college athletes has stood unchallenged in public discourse. Like other NCAA rules, it emanates naturally from the premise that college athletes own no interest in sports beyond exercise, character-building, and good fun. Who represents these young men and women? No one asks.

## Answers to: It's Amateur Athletics

### **No, universities don't treat their sports programs like amateur athletics**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

Today's college sports industry is the inevitable result of a long-standing paradox: throughout the past century, **the NCAA has never recognized any inconsistency between its defense of the amateur ideal and its promotion of college athletics as a revenue-generating business.** n124 Even in its early decades, when the NCAA adhered to a far stricter understanding of amateurism, the organization actively cultivated college athletics as a burgeoning commercial spectacle. n125 Today, with the economic stakes dramatically [\*1026] higher, the NCAA continues to defend the compatibility of amateurism and commercialism. While the NCAA acknowledges that "some fans believe institutional relationships with corporate entities somehow tarnish the amateur status of those who play the games," the organization nevertheless insists that "'amateur' describes intercollegiate athletics participants, not the enterprise." n126 But **with billions of dollars now generated by the labor of "those who play the games,"** and many of these young athletes living in poverty, **the myth of the "student-athlete" has become harder to maintain. The NCAA's emphasis on amateur competition, once a quixotic effort to maintain the "purity" of an already commercialized game, has become a cynical justification for maintaining a lucrative status quo.**

### **Universities have become commercial enterprises**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf), p. 1028-9

- A. The NLRA and the Ivory Tower Just as the NCAA now claims that the special characteristics of the academic setting militates against recognizing college athletes as "employees" under relevant labor law, universities maintained for several decades that they were not "employers" covered by § 2(2) of the NLRA. n128 Although NLRB-sanctioned collective bargaining in the academic context is now commonplace, the NLRB accepted this argument for the first thirty-five years of the Act's existence. **The Board recognized in 1951 that educational institutions were undeniably "employers" in the most basic sense contemplated by the Act, but still considered it unwise to interfere with relationships that were "noncommercial" and "intimately connected with the . . . educational activities of the institution.** n129 Thus, even where "a group of employees performed tasks functionally identical to those performed by employees in private industry"-clerical [\*1028] workers, maintenance personnel, laboratory technicians, dining hall workers, etc.-"the employer's educational purpose[]" was sufficient grounds to deny employees collective bargaining rights. n130 **In the early 1970s, in a landmark case brought by maintenance personnel at Syracuse University and librarians at Cornell University, a unanimous NLRB changed course. n131 Higher education was changing rapidly, the Board noted, and "to carry out its educative functions, the university has become involved in a host of activities which are commercial in character." n132 Education was "still the primary goal of such institutions," the Board explained, but nonprofit universities'**



**educational purpose was no longer sufficient to justify treating them any differently than other "employers" under the Act.** <sup>n133</sup> The burgeoning college athletics industry helped influence this shift. When the NLRB declined to assert jurisdiction over a petition filed by librarians at Columbia University in 1951, the university's involvement in non-academic commercial ventures was relatively modest. The school made "\$ 4,890 from the sale of photostats, microfilms, and the Germanic and Romanic Reviews," the Board observed, and "\$ 21,150 from the sale of radio and television rights to its football games." <sup>n134</sup> **When the Board began asserting jurisdiction over universities two decades later, it highlighted that Syracuse University "realized \$ 500,000 annually from the sale of tickets for football games, and \$ 250,000 from the sale of television and radio rights."** <sup>n135</sup> **Such commercial profits-still relatively humble compared to today's figures-helped dismantle the rationale for treating educational institutions differently from other private employers. Also significant, these early Board cases identified the emergent big-time college sports industry for what it was: a commercial enterprise, largely unconnected to the pedagogical mission of the university.**

### **"Amaturism" is a loaded concept used to keep all the money**

Earl Scott, Master's Candidate, Wake Forest University, IMPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA," May 2015.

[https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Llewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

**As a result of this "amateur" title placed on student-athletes, players are forced to abide by a strict set of rules.** Merriam-Webster defines an amateur as "a person who does something (such as a sport or hobby) for pleasure and not as a job." **Based on the number of hours per week players spend on their sport and the high expectations they are held to in order to keep their scholarship, it is clear that big-time college athletics is far from an extracurricular pleasure. In reality, it is more comparable to working a full-time job or being a professional.** This graph from the Economist, titled "All Teamwork and no Pay," compares the revenue and player salaries of the NCAA, NFL, and NBA. This shows that based on the numbers, the NCAA is similar to today's professional leagues (Table II). This shows that the model the NCAA bases its rules on something that is different from today's realities. It is evident that the NCAA holds on to this amateurism model as a way to keep restrictions on its athletes. That prevents them from earning money for their performance, and also allows the NCAA to keep more money for itself by not having to distribute a percentage of revenue. The biggest and most controversial "amateurism rules **This list of restrictions shows exactly how serious the NCAA is about denying athletes the chance to profit from their performance.** Eitzen says, "These rules reek with injustice. **Athletes can make money for others, but not for themselves**" (Eitzen 174). Eitzen discusses how all of the rules listed above are biased because **universities and coaches are allowed to benefit from all the things that athletes are not.** He points out that **college coaches are allowed to have agents when athletes cannot, schools can use athletes' photographs in commercials and advertisements when players cannot themselves. Plus, memorabilia with an athlete's likeness on it gets sold each year and players still cannot sell memorabilia of their own. It is wrong for universities to make money from an athlete's image, when players are banned from making money using their own. The same authorities, who enforce these rules, are the ones who are benefitting from doing the very same things they forbid their players from doing**

## Paying College athletes helps to promote the value of amateurism

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram<sup>+</sup> and T. Ward Frampton<sup>++</sup> + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

But the issue of unionization is distinct from the issue of professionalization, and to illustrate this, we offer a counterintuitive suggestion: **legal recognition of college athletes as "employees" might actually serve to promote the values of amateurism.** The conceptual difficulty in reconciling unionization with amateurism stems, in part, from dueling understandings of what it is that unions ultimately do. <sup>n342</sup> **On one view, unions' raison d'etre is to win monopoly wage gains for their members—a purpose that is oddly out of place in the context of "amateur" competition.** <sup>n343</sup> An alternative approach, however, recasts the debate in political, rather than strictly economic, terms. <sup>n344</sup> Per this [<sup>\*1072</sup>] "industrial democracy" understanding of collective bargaining, the role of the union "is to democratize the employment relationship by balancing power, providing employees a voice in the determination of the terms and conditions of employment, and insuring that due process of law is followed in [the workplace context]." <sup>n345</sup> These values of democratic participation, voice, and fair play are not just consistent with the traditional view of amateurism, they lie at its very core. **The NCAA itself acknowledges as much, professing its commitment to the basic principles that college athletes should be "involved . . . in matters that affect their lives," and that athletic competition should remain "an avocation" for students.** <sup>n346</sup> **Such "player-centered" values are at "the heart of the amateur ideal," which traditionally contemplated athletic competition "organized by and for the recreation of the players themselves."** <sup>n347</sup> **Yet in practice, the NCAA's governance structure almost entirely divests athletes of the ability to participate in decisions, both large and small, <sup>n348</sup> that dictate their existence.** <sup>n349</sup> **Unionization presents a vehicle for challenging this fundamental power imbalance. What might an NCAA with an institutionalized college-athlete "voice" at the bargaining table look like? Aside from strictly economic demands, players could seek reductions in workload, like limits on the number of games played during [<sup>\*1073</sup>] the season (particularly during exam periods), <sup>n350</sup> additional time off during the holidays, <sup>n351</sup> or stricter enforcement of the NCAA's "20-hour limit" rule.** <sup>n352</sup> Collective bargaining agreements today generally contain "just cause" discipline provisions, and a union of college-athletes could negotiate stronger procedural safeguards for students navigating the NCAA's byzantine justice system. <sup>n353</sup> Or a union might press for the mandatory use of four-year scholarship offers, which would give students greater security in planning their academic futures. <sup>n354</sup> Each of these reforms would further college athletes' interests as amateurs—helping insulate students from the pressures wrought by NCAA-driven commercialization—but are unlikely to be secured absent the sort of concerted pressure a union could bring to bear. **A recognized union of college athletes could also promote the health and safety interests of its members—again without offending NCAA regulations—a particularly salient issue given the recent attention on the effects of head injuries in competitive sports.** <sup>n355</sup> In the past decade, [<sup>\*1074</sup>] twenty-one student-athletes have suffered sports-related deaths, and many more have been seriously injured. <sup>n356</sup> **Under NCAA rules, universities have no obligation to provide medical coverage for such injuries. Individuals incurring catastrophic injuries during practices or games are sometimes left shouldering the long-term economic burden of their injuries on their own.** <sup>n357</sup> **Unionization would provide players with a greater voice to advocate for health and safety reforms, including comprehensive medical coverage, and could allow students a participatory role in ensuring compliance with negotiated standards.** Of course, a union built around an "industrial democracy" model might still bargain for additional economic benefits, but a negotiated compensation scheme could still preserve some version of amateur values. For example, a player's union could demand that a percentage of television revenues be set aside for college-athletes payable upon graduation. Students struggling with their academic responsibilities would be permitted to withdraw from competition for a year, receive a partial early disbursement to replace their athletic scholarship, and apply that money toward tuition. **The graduation award would constitute a form of payment, of course, but it would create strong incentives for college athletes to re-prioritize academics, and would delay placing unrestricted cash in students' hands.** Alternatively, a union might drop salary demands, but negotiate for the

right of players to sign their own commercial endorsement deals, either individually or collectively (as teams).<sup>n358</sup> College athletes are already subject to such agreements, but only coaches and universities presently receive the profits.<sup>n359</sup> **Just as olympic athletes are now permitted to sign individual endorsement [\*1075] deals, college athletes could negotiate for the right to benefit from their celebrity without unduly tarnishing their status as amateurs.**<sup>n360</sup> Finally, collective bargaining would endow universities with an ancillary benefit: potential insulation from antitrust litigation. In recent years, several lawsuits have claimed that NCAA practices—including the rule capping grants-in-aid at the cost of attendance—constitute unlawful restraints on commercial activity.<sup>n361</sup> **If such litigation proves successful—a prospect made more plausible now that schools are considering paying athletes limited cash stipends—universities could be legally obligated to compete with one another on an open market to lure promising talent.**<sup>n362</sup> By agreeing to such stipend restrictions in the context of collective bargaining, however, universities would be shielded under the non-statutory labor exemption from antitrust laws.<sup>n363</sup> Such an exemption could allow universities to maintain relatively modest stipend levels and thereby preserve the non-professional character of college sports. Ironically, recognizing college athletes as “employees” may be the best (or only) way for universities to avoid paying the exorbitant market salaries the NCAA fears most.

## Disproportionate relationship leads to under the table practices for athletes to maintain eligibility

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

iv. NLRB Statutory Test The NLRA bestowed labor rights upon “employees.”<sup>n146</sup> These rights include “the right to earn a minimum wage, the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other concerted activities for the purpose of collective bargaining...”<sup>n147</sup> Because the NLRA gave these federal rights only to employees, the issue of whether a particular person was an employee was monumental in administering the statute. Student athletes are not primarily students Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf> p. 257-8 B. Student Athletes are Not Primarily Students The Brown Board recognized that graduate assistants who primarily students would not qualify as statutory employees.<sup>n153</sup> However, the Board stated that students who perform services unrelated to their educational programs may be classified as employees.<sup>n154</sup> The athletic services that scholarship athletes offer to universities cannot possibly be related to their educational program. Inconceivably, scholarship athletes are athletes first and students second. The Board looked beyond the literal meaning and into the substance to determine whether someone was a student. Brown considered and balanced the total hours one person committed to their duties and the amount of time allotted for academic related work.<sup>n155</sup> Although archaic, scholarship athletes are still classified as student-athletes of their university. However, this label blindfolds the true relationship between the athlete and university. The NCAA continues to advertise collegiate sports as educational activities in which the participants are full-time college students who are also amateur athletes. The NCAA’s Manual sets out the Association’s [\*258] principle of amateurism.<sup>n156</sup> It states “student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived.”<sup>n157</sup> Their basic purpose remains to maintain intercollegiate athletics as

an integral part of the educational program and the athlete as an integral part of the student body.<sup>n158</sup> Ideally, **student-athletes, as the name suggests, should be students first and athletes second.** Not long ago, student-athletes went to school in order to receive

an education and participated in athletic competitions in their spare time. **However, this is no longer the case. It remains a misnomer to describe collegiate athletics as an integral part of the educational system as an education has taken a back seat on universities' agendas.** In an attempt to give student athletes the opportunity to balance academics and athletics, the NCAA bylaws place a cap on the amount of hours a student athlete may participate in athletically related activities.<sup>n159</sup> The NCAA governs playing and practice seasons as follows: “The time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize

interference with their opportunities for acquiring a quality education in a manner consistent with that afforded the general student body.”<sup>n160</sup> **Although the NCAA requires universities to limit countable athletic activities to twenty hours per week, n161 student athletes participate in a number of non-countable athletically related activities in order to bypass the NCAA bylaws.** The student athlete spends countless hours in voluntary workouts and trainings, watching film, and traveling to and from games.<sup>n162</sup> Paul Bryant, a hall of fame football coach, described the football player’s priorities to the university and to their participation in athletics as follows: [\*259] I used to go along with the idea that football players on scholarship were ‘student-athletes,’ which is what the NCAA calls them. Meaning, a student first, an athlete second. We were kidding ourselves, trying to make it more palatable to the academicians. We don’t have to say that and we shouldn’t. At the level we play, the boy

is really an athlete first and a student second.<sup>n163</sup> Universities continue to treat student athletes as more than just typical students. **To enable student-athletes to devote the maximum time to their respective sports, schools have created specialized academic curricula for them, consisting of undemanding courses and sometimes of questionable practicable value.**<sup>n164</sup> Kevin Ross, a former Creighton basketball player, complained on national television talk shows that he never learned to read in four years at Creighton University.<sup>n165</sup> People magazine was quoted saying that Ross was the unfortunate victim “of victory[-]minded coaches, teachers, and school officials who prized rebounding over reading.”<sup>n166</sup> Football players at Ohio State University were able to retake head coach Jim Tressel’s “Varsity Football 101” class up to five times for a total of ten credits.<sup>n167</sup> Diluting the student athlete’s academic curriculum allows universities to maintain and protect their athlete’s eligibility for competition under the NCAA bylaws.<sup>n168</sup> In 2012, the University of North Carolina (hereinafter “UNC”), amidst a massive academic scandal, reportedly tolerated cheating by their student athletes.<sup>n169</sup> Mary Willingham, a UNC reading specialist, [\*260] who worked closely with the university’s student athletes said: “There are serious literacy deficits and they cannot do the work here. And if you cannot do the work here, how do you stay eligible? You stay eligible by some department, some

professor, somebody who gives you a break. That’s everywhere across the country.”<sup>n170</sup> **Willingham recalls issues with cheating and plagiarism and a basic inability of athletes to function as college students, even in classes specifically designed to make it impossible for athletes to fail;** all of this, she claims, was enabled by the

administration and academic and athletic departments at the University of North Carolina. n171 Unlike typical students, student athletes are given academic assistance, sporting event tickets, clothing, equipment, and medical treatment. n172 The University of Las Vegas Nevada's (hereinafter "UNLV") head basketball coach Jerry Tarkanian's philosophy about academic achievement was widely publicized throughout the eighties and early nineties. n173 **Tarkanian noted that some of the athletic departments' academic advisors enroll in the same classes as the student athletes, as for-credit students, in order to assist them in passing the class.** n174 **The rigorous and demanding athletic commitments imposed on scholarship athletes, combined with their undemanding academic curriculum, supports the fact that their primary focus is athletic, not academic.** Unmistakably, the student athlete is far more athlete than student.

## Student athletes have an economic relationship with their universities

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

p. 260-1 Student Athletes' Economic Relationship with their Universities Having shown above that scholarship athletes meet the common law definition of employee and are not primarily students, there is one last hurdle before concluding that these athletes are employees under the NLRA. **The second prong of Brown is designed to analyze whether the circumstances surrounding scholarship athletes and their university delineates an economic relationship.** n175 The connection between scholarship athletes and their university is motivated, almost exclusively, by the university's economic or commercial interests. **Collegiate athletics has become a booming business with one ulterior goal: profits. Collegiate athletics has been estimated to be a \$ 60 billion industry.** n176 Top-tier collegiate athletic programs see portions of an annual return of \$ 478 million in the form of revenue distribution. n177 **Billion dollar television contracts have become second nature to collegiate athletics.** For instance, on April 22, 2010, a \$ 10.8 billion agreement was reached with Turner Broadcasting to receive joint broadcasting rights along with CBS for the NCAA's March Madness college basketball tournament for the next fourteen years. n178 This contract alone generates over \$ 700 million annually in media rights payable. n179 The collegiate athletic teams composed of the players and coaches have been viewed as the entertainment product. n180 Paramount media corporations, such as Fox, CBS and ESPN, have devoted network channels for the sole purpose of broadcasting college sports. Corporations that sponsor and underwrite collegiate athletic events gain unparalleled exposure for their products and services. n181 **Duke University basketball coach Mike Krzyzewski reportedly agreed with Nike to receive nearly \$ 1.5 million dollars** and company stock options in exchange for having his players wear Nike sneakers. n182 **While Nike and Coach Krzyzewski benefited monetarily from the transaction, the Duke basketball players received nothing other than a free pair of basketball sneakers. These financial figures point to one conclusion: the modern commercialization of collegiate athletics.** Even those figures fail to account for the indirect revenues collegiate athletic programs attain as a result of these scholarship athletes. Popular and talented student athletes may generate millions of dollars for their schools during the course of their collegiate years in the form of [\*262] shoe and apparel contracts, merchandise sales, substantial alumni donations, and increased student enrollment. n183 In addition to the skyrocketing rise in revenues, coaches' and administrative salaries have increased substantially. **In 2012 Rick Pitino, a future hall of fame coach and the current head coach of the University of Louisville, agreed to a five-year contract extension through 2022 paying him a \$ 3.9 million base salary with potential annual bonuses in excess of \$ 1 million.** n184 Louisville, like other universities, must keep up with the norm and provide lavish contracts for their coaches to recruit and train a winning team. These economic changes have placed an additional importance on universities to have top-tier collegiate athletic teams by recruiting the best scholarship athletes. Universities across the nation must continue to recruit student athletes for the purpose of helping their athletic programs achieve perennial success on the playing field. **However, the best scholarship athletes often do not meet the requisite academic requirements to be admitted to top universities across the country.** To keep up with the norm, universities that screen applications based on academic qualifications will necessarily exclude many talented athletes from the ordinary admissions process. n185 NCAA Executive Director Walter Byers once said: "The big timers - building a national entertainment business - wanted the great players on the field, whether or not they met customary academic requirements. In the new open-door era, victory-minded coaches sensed a potential recruiting paradise." n186 **Today, virtually all high school seniors are academically eligible for college athletics because of the disappearance of academic entrance requirements.** n187 In waiving the once stringent academic requirements for athletes that possess exceptional athletic abilities, universities have shown that they prefer commercial success. **Universities' commercial interests have seemingly prevailed over the academic interests of the student**

**athlete, further clouding the relationship** [\*263] of the athlete to the university. n188 Scholarship athletes, in addition to being common law employees, are employees under the NLRA because their relationship with the university is not primarily academic and is motivated entirely by economic considerations.

## Strict definitions of amateurism prevent basic sense solutions to poverty

Nicholas Kitko, JD, University of Cincinnati Law Review, The Law May Cave, But Economics Will Not: The Road to Paying Student Athletes is Longer Than We Think, March 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr85&div=14&id=&page=>

Perhaps the prohibitions of amateurism seem less than daunting, but the NCAA's interpretation and enforcement of those prohibitions tell a different story. Consider the story of **Silas Nacita, a walk-on football player at Baylor University who had previously been homeless.** n37 **Nacita accepted food and shelter from an acquaintance while he attended class and played football at Baylor.** n38 **Upon learning about his aid, the NCAA and Baylor determined that Nacita was permanently ineligible from participating in NCAA athletics.** n39 **While a stringent interpretation of amateurism rules may help to maintain the NCAA's posture, this decision "turns Maslow's hierarchy of needs on its head."**

## Amateurism is non-existent, it's a plantation

Branch, 2011, The Atlantic, The Shame of College Sports, Taylor Branch is the author of, among other works, America in the King Years, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

**The faux ideal of amateurism is "the elephant in the room,"** Hausfeld said, sending for a book. "You can't get to the bottom of our case without exposing the hypocrisy of amateurism, and Walter Byers says it eloquently." An assistant brought in Byers's memoir. It looked garish on the shiny table because dozens of pink Post-its protruded from the text. Hausfeld read to me from page 390: **The college player cannot sell his own feet (the coach does that) nor can he sell his own name (the college will do that). This is the plantation mentality resurrected and blessed by today's campus executives.** He looked up. "That wasn't me," he said. "That was the NCAA's architect." He found a key recommendation on page 388:

## The Olympics became professional and the world did not end

Branch, 2011, The Atlantic, The Shame of College Sports, Taylor Branch is the author of, among other works, America in the King Years, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

For all our queasiness about what would happen if some athletes were to get paid, there is a successful precedent for the professionalization of an amateur sports system: the Olympics. For years, Walter Byers waged war with the NCAA's older and more powerful nemesis, the Amateur Athletic Union, which since 1894 had overseen U.S. Olympic athletes. Run in high-handed fashion, the AAU had infamously banned Jesse Owens for life in 1936—weeks after his four heroic gold medals punctured the Nazi claim of Aryan supremacy—because instead of using his sudden fame to tour and make money for the AAU at track meets across Europe, he came home early. In the early 1960s, the fights between the NCAA and the AAU over who should manage Olympic athletes become so bitter that President Kennedy called in General Douglas MacArthur to try to mediate a truce before the Tokyo Olympic Games. Ultimately, Byers prevailed and effectively neutered the AAU. **In November 1978, President Jimmy**

**Carter signed the bipartisan Amateur Sports Act. Amateurism in the Olympics soon dissolved—and the world did not end. Athletes, granted a 20 percent voting stake on every Olympic sport’s governing body, tipped balances in the United States and then inexorably around the world.**

First in marathon races, then in tennis tournaments, players soon were allowed to accept prize money and keep their Olympic eligibility. Athletes profited from sponsorships and endorsements. The International Olympic Committee expunged the word amateur from its charter in 1986. Olympic officials, who had once disdained the NCAA for offering scholarships in exchange for athletic performance, came to welcome millionaire athletes from every quarter, while the NCAA still refused to let the pro Olympian Michael Phelps swim for his college team at Michigan. This sweeping shift left the Olympic reputation intact, and perhaps improved. Only hardened romantics mourned the amateur code. “Hey, come on,” said Anne Audain, a track-and-field star who once held the world record for the 5,000 meters. “It’s like losing your virginity. You’re a little misty for awhile, but then you realize, Wow, there’s a whole new world out there!”

**The size of the scholarships is not consistent with amateurism**

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,  
<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

Throughout the years, the NCAA has made crucial changes to its amateurism rules. n103 Initially, amateurism began with participation in sports solely for pleasure and prohibited student--athlete recruitment using illicit payments. n104 However, many schools ignored these rules, leading to the development of the Sanity Code, which provided enforcement in awarding financial aid without considering athletic ability. n105 Just a few years after implementing the Sanity Code, **the NCAA again changed its rules, allowing schools to award athletic scholarships.** n106 **The court stated that with the current restrictions on student--athlete compensation, it is difficult for the NCAA to use amateurism as a legal justification because the cap that is placed on athletic-based financial aid does not support a focus toward higher education for student--athletes.** n107 **Rather, the cap on athletic-based §=P273 financial aid is more likely to entice men’s basketball and football student--athletes, who have the opportunity, to focus more on their athletic endeavors because of the possibility of becoming professional athletes.**

## **Answers to: First Amendment Right to Describe Players as You Wish**

### **You can't use your language in a way that deprives someone of their rights**

David Grenardo, 2023, Professor of Law & Associate Director of the Holloran Center for Ethical Leadership in the Professions, University of St. Thomas School of Law, Preparing for the Inevitable— Compensating College Athletes for Playing—by Comparing Two Payfor-Play Methods: The Duke Model Versus the Free Market

Justice Kavanaugh then went on to question whether, **under the Rule of Reason analysis applicable to college athlete compensation rules, the NCAA can plausibly assert a procompetitive justification required under antitrust law to defend its compensation rules against payfor-play and NIL.**<sup>50</sup> He pointed out the NCAA argues that the “defining feature of college sports . . . is that the student athletes are not paid.”<sup>51</sup> In other words, the product of college football is different than professional sports because college athletes are not paid, and, if they were, consumer demand would decrease (meaning consumers would watch the product, which are the games, less).<sup>52</sup> Kavanaugh called the NCAA practice of limiting college athlete compensation classic price-fixing labor “that would be flatly illegal in almost any other industry in America.”<sup>53</sup> The justice specifically attacked the NCAA’s business model, which “us[es] unpaid student athletes to generate billions of dollars in revenue for the colleges.”<sup>54</sup> Failing to pay college athletes their “fair share of the revenues on the circular theory that the defining characteristic of college sports is that the colleges do not pay student athletes” is extremely questionable and potentially unjustifiable.<sup>55</sup> **Justice Kavanaugh summed up his position on college athlete compensation and the NCAA’s dubious practices in light of antitrust law: Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. And under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law.**<sup>56</sup>





## **Answers to: Some Colleges Don't Make Money on Sports**

### **Even if a business doesn't make money, it still has to pay its employees**

Steve Berkowitz, February 5, 2024,

<https://www.usatoday.com/story/sports/ncaab/ivy/2024/02/05/dartmouth-mens-basketball-nlrp-employees-union-vote/72486223007/>, USA Today, NLRB official rules Dartmouth men's basketball team are employees, orders union vote

In Monday's ruling, regional director Sacks, wrote that the players "perform work which benefits Dartmouth. **While there is some factual dispute as to how much revenue is generated by the men's basketball program, and whether that program is profitable, the profitability of any given business does not affect the employee status of the individuals who perform work for that business.**" She also wrote that Dartmouth "exercises significant control over the **basketball players' work.**" She said that Dartmouth's student-athlete handbook "in many ways functions as an employee handbook." She cited several examples of the manner in which the university, its officials and its coaches make determinations of what the players can do and when. Many of the examples she cited are part of the routine for most college sports teams, although she noted that for Dartmouth players "special permission is required for a player to even get a haircut during a trip."

## **Answers to: All Student Athletes Not Paid**

### **All student athletes are not paid, but they do receive compensation in recruiting**

Steve Berkowitz, February 5, 2024,

<https://www.usatoday.com/story/sports/ncaab/ivy/2024/02/05/dartmouth-mens-basketball-nlr-employees-union-vote/72486223007/>, USA Today, NLRB official rules Dartmouth men's basketball team are employees, orders union vote

According to the ruling, **Dartmouth had argued that these types of regulations were necessary for players safety and “no different from the regulations placed on the student body at large.”** “However,” Sacks wrote, “the record reveals no evidence that other members of the student body (the vast majority of whom, like the basketball players at issue here, are presumably legal adults) are so strictly supervised when they leave the confines of Dartmouth’s campus.” **Sacks found that even though Dartmouth’s players do not receive athletic scholarships, they receive “compensation,” including special treatment in their quest for “highly coveted” acceptance to the prestigious school. “The coaching staff is allotted a certain number of ... admission spots for players they scout based upon their basketball skills,” she wrote, “and encourages players to matriculate at Dartmouth rather than at a school which might offer them an athletic scholarship because of the lifelong benefits that accrue to an alumnus of an Ivy League institution.”** Sacks also rejected Dartmouth’s arguments that the school provides a wide range of support to all students, and that a finding that men’s basketball players are school employees could result in students participating in a variety of other extracurricular activities also being considered school employees.

## **Answers to: Students in Other Extra-Curriculars Have Similar Demands on them and They are Not Employees**

### **Students in other extra-curriculars do not have the same demands on them**

Steve Berkowitz, February 5, 2024,

<https://www.usatoday.com/story/sports/ncaab/ivy/2024/02/05/dartmouth-mens-basketball-nlr-employees-union-vote/72486223007/>, USA Today, NLRB official rules Dartmouth men's basketball team are employees, orders union vote

**She noted that students' involvement in other activities does not "dominate" their schedules "to the extent that students are encouraged to take classes at particular times and then miss those dutifully scheduled classes due to the activity's travel requirements."** Sacks cited testimony in the case concerning the scale of support athletics department personnel connected to the men's basketball team, and she wrote: "No evidence in the record suggests that other students receive the extent of individual support and special consideration received by those individuals who participate in high-profile Division I collegiate athletics. ... **"The record also does not suggest that the hypothetical student journalists, actors, and musicians described by the Employer in its brief are recruited and admitted through a special process because of their investigatory and artistic skills. Nor does the record indicate that these students' journalistic and artistic endeavors require Dartmouth to employ multiple specialized individuals to monitor funds and brand management."**

## **Answers to: They Can Go Pro and Make a Lot of Money**

### **Only 1-2% of college athletes go pro, and many do not have economically productive careers**

Branch, 2011, The Atlantic, The Shame of College Sports, Taylor Branch is the author of, among other works, America in the King Years, a three-volume history of the civil-rights movement, for which he won the Pulitzer Prize and the National Book Critics Circle Award., <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?%20single%20page=true>

**“Money surrounds college sports,”** says Domonique Foxworth, who is a cornerback for the NFL’s Baltimore Ravens and an executive-committee member for the NFL Players Association, and played for the University of Maryland. **“And every player knows those millions are floating around only because of the 18-to-22-year-olds.”** Yes, he told me, even the second-string punter believes a miracle might lift him into the NFL, and why not? In all the many pages of the three voluminous Knight Commission reports, there is but one paragraph that addresses the real-life choices for college athletes. **“Approximately 1 percent of NCAA men’s basketball players and 2 percent of NCAA football players are drafted by NBA or NFL teams,”** stated the 2001 report, **basing its figures on a review of the previous 10 years, “and just being drafted is no assurance of a successful professional career.”** **Warning that the odds against professional athletic success are “astronomically high,”** the Knight Commission counsels college athletes to avoid a “rude surprise” and to stick to regular studies. This is sound advice as far as it goes, but it’s a bromide that pinches off discussion. Nothing in the typical college curriculum teaches a sweat-stained guard at Clemson or Purdue what his monetary value to the university is. Nothing prods students to think independently about amateurism—because the universities themselves have too much invested in its preservation. Stifling thought, the universities, in league with the NCAA, have failed their own primary mission by providing an empty, cynical education on college sports.

## Answers to: NIL Deals Solve

### Only a few players make money on NIL deals

Terrence Moore, February 7, 2021,

<https://www.forbes.com/sites/terencemoore/2021/07/06/the-ncaa-hadnt-a-choice-but-nil-rule-will-damage-college-football-and-basketball/?sh=7d7ead3e2c0d>, Forbes, NCAA Had No Choice, But NIL Rule Will Damage College Football And Basketball

Nothing sinks a college football or basketball team faster than dissension in the ranks, which means we're about to see a bunch of programs filled with water at the bottom of the NCAA ocean.

Contrary to popular belief, only a handful of players will get paid through these NIL deals, and even fewer than that will get paid. Chet Holmgren will rank among the latter. He's taking his 7-foot skills as the nation's No. 1 recruit in college basketball to Gonzaga, where Holmgren said he won't dance on TikTok for clicks, but similar to many of his high-profile peers, he will stimulate the social media masses just by breathing inside of his uniform.

That will leave a whole bunch of athletes rolling their eyes in the corner of locker rooms over the quarterback (or the point guard) pocketing something to their nothing.

### NIL deals are exploitative

Tim Shaw, October 6, 2022, <https://tax.thomsonreuters.com/news/the-long-read-tax-implications-of-college-collectives-nil-deals/>, The Long Read: Tax Implications of College Collectives, NIL Deals

There is only so much the NCAA can do outside of federal intervention, as argued by its own top official. NCAA President Mark Emmert **testified** in September 2021 before a House of Representatives Energy and Commerce subcommittee that states have engaged in a "race to the bottom" to create competitive advantages over each other to entice recruits.

Calling the various state NIL policies a legal patchwork, Emmert said the line between college and professional sports has become so thin, inequities have emerged among NIL earnings. He agreed that many student-athletes "are likely not aware of the potential tax implications of these arrangements and may find themselves saddled with unanticipated tax bills they may be unable to pay."

"Other students who receive Pell Grants or other student aid tied to need could unknowingly lose their eligibility for financial assistance because of the income they now receive from NIL," Emmert testified, calling on Congress to partner with the NCAA in creating a single federal NIL framework.

Lawmakers have also corresponded with college athletic organizations outside the NCAA in support of corralling NIL rules. In August, former college football coach and current Republican

Alabama Senator Tommy Tuberville, along with Senator Joe Manchin, a Democrat from West Virginia, **solicited input** from Amy Perko, CEO of the Knight Commission on Intercollegiate Athletics. The senators wrote that there has been a “lack of meaningful leadership and a lack of clarity” regarding NILs as a result of *Alston*.

Perko responded in an **August 29 email** outlining the Knight Commission’s guiding NIL principles. Among these is the need for independent oversight outside of NCAA staff or the association’s member schools, ideally led by current and former college athletes. Further, there should be uniformity in federal law to correct inconsistent state rules, according to Perko.

Student-athletes should be required to be educated on their NIL rights and given access to information, she wrote. “College athletes, most of whom will not be represented by counsel when they enter NIL deals, are vulnerable to abuse, exploitation or incompetence by third parties that could have significant impact on their financial aid, immigration status, taxes, and intellectual property rights.”

### **NIL deals are not a level playing field**

Noa Saxton, 6-16, 23, <https://fanarch.com/blogs/fan-arch/why-is-nil-bad-for-college-sports>, Why is NIL bad for college sports?

As college athletes gain the ability to profit off their Name, Image, and Likeness (NIL), there has been a growing concern about the impact of these changes on college sports. While some argue that NIL rights are necessary to provide student-athletes with fair compensation, others warn of potential negative consequences. In this article, we will explore the reasons why NIL may be bad for college sports.

One of the main concerns about NIL is that it may create an uneven playing field for college athletics. While some states have passed legislation to allow college athletes to profit from their NIL, other states have not. This means that some schools may have more financial resources to offer potential recruits, giving them an unfair advantage over schools in states without NIL laws. The Southeastern Conference and other college officials have been lobbying for federal regulations on NIL to create a more level playing field.

### **NIL jobs create uneven financial deals**

Moreover, there is a worry that NIL could lead to exploitation of student-athletes. While some athletes may be able to secure profitable deals, others may not have the same opportunities. This could result in an uneven distribution of wealth among student-athletes. Additionally, there is a risk that athletes may be taken advantage of by unscrupulous agents or sponsors who may not have their best interests at heart.

## **NIL deals are ad hoc**

Holden, 2022, John T. Holden Oklahoma State University, Marc Edelman, City University of New York - Baruch College, Zicklin School of Business; Fordham University School of Law, Michael McCan Harvard University - Harvard Law School; University of New Hampshire Franklin Pierce School of Law, A Short Treatise on College-Athlete Name, Image, and Likeness Rights: How America Regulates College Sports's New Economic Frontier, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4055530](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4055530)

For the past seventy years, intellectual property law's right of publicity has allowed for celebrities to monetize their names, images and likenesses for commercial gain. However, until recently, college athletes remained excluded from the endorsement marketplace based on the National Collegiate Athletic Association's internal Principle of Amateurism, which has kept the wealth of college sports in the hands of a select few administrators, athletic directors and coaches.

Following years of mounting pressure from the college-athletes' rights movement, a number of states recently announced new laws to ensure college athletes the right to endorse products free from NCAA interference. As such, the NCAA begrudgingly relented on June 30, 2021 and deregulated certain aspects of its Principle of Amateurism—for the first time allowing individual schools and conferences, rather than the association itself, to dictate what name, image, and likeness ("NIL") deals their athletes may enter.

What has followed has been a great deal of confusion and ad hoc development of policies by people who have never before been responsible for policing these types of activities. In an ironic twist, many states that passed and implemented NIL laws have been placed in a position where they have more restrictions in place than schools in states that never passed NIL laws. This Article, or perhaps more accurately Short Treatise, provides a comprehensive overview of the history of the right of publicity and discusses the legal risks facing the NCAA, collegiate conferences, schools, and athletes in this new world of college sports.

## Answers to: No Jurisdiction

**Just because the NLRB doesn't have jurisdiction to claim it doesn't mean they are not**

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

**In sum, existing Board precedent does not foreclose (and, indeed, may actually favor) the claim that college [\*1038] athletes are "employees" under the NLRA.** Whether the NLRB remains with the primary purpose test or returns to the more relaxed common law standard, analogies to previous student-employee cases support the argument that college athletes are entitled to statutory protection. But previous scholarly work overemphasizes the likelihood of college athletes successfully unionizing through the NLRB. As a threshold matter, such treatments ignore the fact that the NLRB lacks jurisdiction over public universities, and is therefore powerless to recognize as "employees" the majority of college athletes. More generally, though, focusing on favorable language in Board rulings, particularly Brown University, may miss the forest for the trees. Both prior to Boston Medical Center and in its most recent opinion, the Board has evinced considerable hostility toward recognizing that individuals can have dual relationships with academic institutions as both students and workers. This basic analytical move is critical to any claim brought by college athletes. State labor boards, in contrast, have recognized for decades that the services provided by student-employees can constitute a form of "work." n187



## **Answers to: Too Had to Provide Insurance**

Insurance programs exist, they just need expanded

Savannah Putnam, June 23, 2022, Campbell Law Observer, Protection for Play: Student-Athletes and the Renewed Fight for Workers' Compensation Benefits,  
<http://campbelllawobserver.com/protection-for-play-student-athletes-and-the-renewed-fight-for-workers-compensation-benefits/>

Additionally, it is important to note that some injury insurance policies already exist within the NCAA. However, this injury insurance is a luxury, only afforded to larger-than-life college athletic figures. Super-star athletes have a choice to choose between two different types of disability insurance: Exceptional Student Disability Insurance and Loss-of-Value insurance. Because the insurance market already exists, and the infrastructure is already present within college sports, expanding the market of injury insurance for student-athletes is an enticing idea for business entities that deal with these forms of insurance. Moreover, only allowing a handful of student-athletes to be covered with this specific type of insurance seems to demonstrate that the NCAA only values those athletes that bring in money. Thus, workers' compensation insurance should be extended to those student-athletes that will not be pursuing a professional career as a form of protection from the very institution they are a part of.

## Answers to: Unions Bad

### No link – states still block unions

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

n331 See The Haves and the Have-Nots: How American Labor Law Denies a Quarter of the Workforce Collective Bargaining Rights, AMERICAN RIGHTS AT WORK, 11, <http://www.americanrightsatwork.org>, (citing Alabama, Arizona, Arkansas, Colorado, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas, Virginia, and Utah). Wisconsin also recently enacted legislation that technically still permits public-sector unions, but sharply limits the scope of collective bargaining. See Monica Davey, Wisconsin Senate Limits Bargaining by Public Workers, N.Y. TIMES, Mar. 9, 2011, at A1.

### Labor Unions are good because they fight income inequality

Era Dabla-Norris, Kalpana Kochhar, Nujin Suphaphiphat, Frantisek Ricka, Evridiki Tsounta **IMF “Causes and Consequences of Income Inequality: A Global Perspective” June 2015 DOA March 27th** <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf> (NP)

Easing of labor market regulations is associated with higher market inequality and income share of the top 10 percent. In particular, **a decline in organized labor institutions** and the resultant easing of labor markets

measured by an increase in labor market flexibilities index **by 8 1/2 percent—from the median to 60th percentile—is**

**associated with rising market inequality by 1.1 percent.** The relationship between the top 10th percentile income share and easing of labor market regulations is also positive and statistically significant (Column 3) for our sample of countries, likely reflecting the fact that labor market flexibility benefits the rich and reduces the bargaining power of lower-income workers. This result confirms Jaumotte and Osorio-Buitron (2015) and forthcoming IMF work which find that **weakening of unions is associated with a higher top 10 percent income share for a smaller**

**sample of advanced economies.**<sup>14</sup> Indeed, empirical estimations using more detailed data for OECD countries (not reported here, but available upon request) suggest that, in line with Jaumotte and Osorio-Buitron (2015) and forthcoming IMF work, more lax hiring and firing regulations, lower minimum wages relative to the median wage, and less prevalent collective bargaining and trade unions are associated with higher market inequality. The impact of labor market institutions on inequality, however, is somewhat blunted by government actions as shown by the statistically insignificant coefficient in the net Gini regression (Table 2, Column 2).

### Unionization of college athletes promotes a litany of benefits through collective bargaining

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

But the issue of unionization is distinct from the issue of professionalization, and to illustrate this, we offer a counterintuitive suggestion: legal recognition of college athletes as "employees" might actually serve to promote the values of amateurism. The conceptual difficulty in reconciling unionization with amateurism stems, in part, from dueling understandings of what it is that unions ultimately do. n342 On one view, unions' raison d'être is to win monopoly wage gains for their members—a purpose that is oddly out of place in the context of "amateur" competition. n343 An alternative approach, however, recasts the debate in political, rather than strictly economic, terms. n344 Per this [\*1072] "industrial democracy" understanding of collective bargaining, the role of the union "is to democratize the employment relationship by balancing power, providing employees a voice in the determination of the terms and conditions of employment, and insuring that due process of law is followed in [the workplace context]." n345 These values of democratic participation, voice, and fair play are not just consistent with the traditional view of amateurism, they lie at its very core. The NCAA itself acknowledges as much, professing its commitment to the basic principles that college athletes should be "involved . . . in matters that affect their lives," and that athletic competition should remain "an avocation" for students. n346 Such "player-centered" values are at "the heart of the amateur ideal," which traditionally contemplated athletic competition "organized by and for the

recreation of the players themselves." n347 Yet in practice, the NCAA's governance structure almost entirely divests athletes of the ability to participate in decisions, both large and small, n348 that dictate their existence. n349 **Unionization**

**presents a vehicle for challenging this fundamental power imbalance. What might an NCAA with an institutionalized college-athlete "voice" at the bargaining table look like? Aside from strictly economic demands, players could seek reductions in workload, like limits on the number of games played during [\*1073] the season (particularly during exam periods), n350 additional time off during the holidays, n351 or stricter enforcement of the NCAA's "20-hour limit" rule.** n352 Collective bargaining agreements today generally contain "just cause" discipline provisions, and a union of college-athletes could negotiate stronger procedural safeguards for students navigating the NCAA's byzantine justice system. n353 Or a union might press for the mandatory use of four-year scholarship offers, which would give students greater security in planning their academic futures. n354 Each of these reforms would further college athletes' interests as amateurs—helping insulate

students from the pressures wrought by NCAA-driven commercialization—but are unlikely to be secured absent the sort of concerted pressure a union could bring to bear. **A recognized union of college athletes could also promote the health and safety interests of its members—again without offending NCAA regulations—a particularly salient issue given the recent attention on the effects of head injuries in competitive sports n355 In the past decade, [\*1074] twenty-one student-athletes have suffered sports-related deaths, and many more have been seriously injured. n356 Under NCAA rules, universities have no obligation to provide medical coverage for such injuries. Individuals incurring catastrophic injuries during practices or games are sometimes left shouldering the long-term economic burden of their injuries on their own. n357** **Unionization would provide players with a greater voice to advocate for health and safety reforms, including comprehensive medical coverage, and could allow students a participatory role in ensuring compliance with negotiated standards.** Of course, a union built around an "industrial democracy" model might still bargain for additional economic benefits, but a negotiated compensation scheme could still preserve some version of amateur values. For example, a player's union could demand that a percentage of television revenues be set aside for college-athletes payable upon graduation. Students struggling with their academic

responsibilities would be permitted to withdraw from competition for a year, receive a partial early disbursement to replace their athletic scholarship, and apply that money toward tuition. **The graduation award would constitute a form of payment, of course, but it would create strong incentives for college athletes to re-prioritize academics, and would delay placing unrestricted cash in students' hands** Alternatively, a union might drop salary demands, but negotiate for the right of players to sign their own commercial endorsement deals, either individually or collectively (as teams). n358 College athletes are already subject to such agreements, but

only coaches and universities presently receive the profits. n359 **Just as olympic athletes are now permitted to sign individual endorsement [\*1075] deals, college athletes could negotiate for the right to benefit from their celebrity without unduly tarnishing their status as amateurs** n360 Finally, collective bargaining would endow universities with an ancillary benefit: potential

insulation from antitrust litigation. In recent years, several lawsuits have claimed that NCAA practices—including the rule capping grants-in-aid at the cost of attendance—constitute unlawful restraints on commercial activity. n361 **If such litigation proves successful—a prospect made more plausible now that schools are considering paying athletes limited cash stipends—universities could be legally obligated to compete with one another on an open market to lure promising talent** n362 By agreeing to such stipend restrictions in the context of collective bargaining, however, universities would be shielded under the non-statutory labor exemption from antitrust laws. n363 Such an exemption could allow universities to maintain relatively modest stipend levels and thereby preserve the non-professional character of college sports. Ironically, recognizing college athletes as "employees" may be the best (or only) way for universities to avoid paying the exorbitant market salaries the NCAA fears most.

## Unions needed to reduce football injuries

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement, Cardozo Law Review, <https://goo.gl/FNxGnE>

Among the more analytical critiques of the NLRB's Northwestern University decision, Cesar Rosado Marzan, an Associate Professor at IIT Chicago-Kent College of Law, suggested in a 2015 law review article that "the **NLRA aims to provide employees, weaker parties in employment relationships, with bargaining rights in order to preserve industrial peace**" - the exact antithesis of the outcome of the Northwestern University case. n79 To Marzan, the NLRB's decision in Northwestern University was so troubling because CAPA's unionizing efforts were not just about salary, but more broadly about bargaining equity. **n80 According to Marzan, "one of the driving forces behind the college athletes demanding a union ... [was] protection from football-related injuries that are not felt until later in life, such as concussions"** - an issue that is currently an important topic in collective bargaining within the unionized world of U.S. professional football. n81

## Collective Bargaining Advantage

### Players will unionize

Parker Purifoy, October 25, 2023, <https://news.bloomberglaw.com/daily-labor-report/ncaa-student-athletes-as-employees-case-to-open-pandoras-box>, Bloomberg Law, NCAA Student Athletes as Employees Case Is ‘Pandora’s Box’ (1)

Getting classified as employees will likely lead many student athletes to seek to unionize, said Jenny Lee, an associate representing higher education institutions at Franczek PC.

Organizing on college campuses already has reached a fever pitch this year, driven by major wins for organized labor among graduate students and medical residents.

“I’m not surprised, given the general landscape of unionization across the country in the last few years that these student athletes are seeing these signs and believe it’s their time to make their push,” Lee said. “Having that legal employee designation would make it all the easier.”

Increased unionization, however, begs the question of who must bargain with the athletes and how to define the bargaining unit.

### Recognizing student athletes as employees enables collective bargaining and protection of rights

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

p. 262-3 IV. Public Policy Considerations The recognition of these young men as employees would carry extreme implications for the NCAA, its member institutions, and the future of collegiate athletics. **Classifying the student athlete as an employee, student athletes would be entitled to collectively bargain for their wages, unionize, receive tax benefits, and would have the right to collect worker's compensation benefits.** Public policy would be best served by confronting these complexities in order to balance the inequities that student athletes face today. **If classified as employees, student athletes would be entitled to collectively bargain for their wages with their employers through representatives of their choosing.** If the athletes select a collective bargaining representative, universities will be left with no choice but to negotiate in good faith with the athletes' representative. n189 Student athletes may seek to demand an alteration to their educational requirements. However the NLRA Board has the authority to exclude all educational issues from negotiations. n190 **Negotiable topics could be limited to the student athletes' rights regarding wages, hours, working conditions, medical insurance, commercial endorsements, and licensing agreements.** n191 Ed O'Bannon led a group of athletes, including former college stars Bill Russell and Oscar Robertson, through a class action antitrust lawsuit against the NCAA regarding the use of their likeness in promotional materials. n192 The lawsuit stems from Form 08-3a, which, among other conditions, authorizes the NCAA's exclusive use of the student [\*264] athlete's likeness. n193

Once student athletes sign Form 08-3a they relinquish, in perpetuity, any future rights in the NCAA's licensing of their images and likeness. In dismissing the NCAA's motion to prevent student athletes from seeking a stake in television revenue, District Judge Claudia Wilken opened an avenue for student athletes to claim money above their ordinary scholarship. n194 **Consequently, through a collective bargaining representative, the NCAA may be forced to enter negotiations with student athletes about licensing rights and commercial endorsements.** The current, or lack thereof, alternatives to worker's compensation claims available to student athletes suffering athletic related injuries are insufficient. **The NCAA and their member institutions do nothing to protect student athletes' health beyond the duration of their scholarship.** Most universities will offer to pay for rehabilitation and physical therapy expenses. n195 The NCAA offers a catastrophic injury insurance plan but this does not cover all of the potential injuries of a student athlete. n196 Additionally, the NCAA permits universities to finance a student athlete's permanent disability expenses that preclude further athletic participation, however this is only offered to special or exceptional individuals. n197 Lastly, the NCAA allows a student athlete to apply for a medical hardship. n198 **Despite helping the athlete finish his education, the medical hardship does nothing to protect or reimburse the student athlete for the significant loss of future earning power as a result of the injury.** Even with the millions of dollars student athletes bring to universities each year, the student athlete is left without remuneration if injured. [\*265] Nerlens Noel, an elite freshmen at the University of Kentucky, was projected by many to be this year's number one overall selection in the National Basketball Association (hereinafter "NBA") draft. However those expectations are much less clear after a magnetic resonance imaging test confirmed that Noel had severed his anterior cruciate ligament while playing in a University of Kentucky basketball game in 2013. Despite securing a \$ 10 million permanent total disability policy, Noel most likely is not going to be able to collect any of this policy because his injury will likely not be career ending. n199 In theory, Noel may have sought a loan to pay for loss-of-value insurance. n200 Potentially costing athletes millions of dollars, Noel would have violated NCAA bylaws if he had accepted extra benefits to pay for the insurance premiums. n201 Also, Noel could have signed up for the NCAA's student athlete Disability Insurance program, which provides coverage of up to five million dollars for a projected first round selection in the NFL or NBA draft. n202 Even this coverage fails to compensate Noel because his knee injury would not fall under injuries covered under the policy. The injury occurred under the direction of the university and has the potential to cost Nerlens Noel millions in future earnings potential while leaving him without a viable course. In order to protect Noel and the student athlete body across the country, **public policy demands that the athlete be given employee status to provide the protection they need and deserve.** The President of the United States, Barack Obama, seemingly agrees. Obama noted that it is time for the NCAA to consider a reform that will offer greater protection for collegiate athletes. n203 **It is unfair to subject student athletes to the dangers and consequences of collegiate sports without granting [\*266] them the protections and benefits of an employee.** Public policy demands that student athletes be considered employees just as student athletes are employees under common and federal law.

### **“Employee” status makes it possible to unionize**

Theodore Ross is a features director at The New Republic, New Republic, Don't Pay College Athletes, September 1, 2015, <https://newrepublic.com/article/122686/dont-pay-college-athletes>

More than a year later, the NLRB's national body unanimously declined to grant the players the right to unionize, determining, at least for now, that the players are students, not employees. (The NLRB noted that Northwestern was a single school engaged in such an effort and left room to change its ruling if a broader movement toward unionization arose.) “The problem from the athlete’s standpoint is their legal definition as amateur athletes and not employees,” Towson University’s Howard Nixon said. “You open that door, and then you get the possibility of all different forms of compensation. That scares the NCAA. They won’t even use the word ‘compensation.’”

### **Preventing students from being employees prevents collective bargaining**

Nicholas Kitko, JD, University of Cincinnati Law Review, The Law May Cave, But Economics Will Not: The Road to Paying Student Athletes is Longer Than We Think, March 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr85&div=14&id=&page=>

The NCAA claims that its primary purpose for demanding amateur status is to "ensure the students' priority remains on obtaining a quality educational experience and that all of the student athletes are competing equitably." n41 While this may be true, maintaining this amateur-student status precludes athletes from asserting other rights like collective bargaining and publicity rights. n42 For example, in Northwestern University & College Athletes Players Ass'n (CAPA), n43 **the National Labor Relations Board (NLRB) determined that a group of student athletes could be employees, which may permit them to unionize and collectively bargain**, but failed to effectuate such a decision and instead [\*324] denied jurisdiction. n44 The NLRB suggested that asserting jurisdiction over the claim would not promote labor stability given the nature and structure of the NCAA. n45 NCAA athletes with collective bargaining power could lobby for better nutrition services, improved medical services, increased scholarships, and increased stipends for players. n46

## We need to revitalize labor law to stop economic inequality

Henry H. Drummonds, 2009, law professor, Lewis & DClark, Reforming Labor Law by Reforming Labor Law Preemption Doctrine to Allow the States to Make More Labor Relations Policy, 70 LA. L. REV. 97, 97 (2009), <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=6305&context=alrev>

B. The Potential of Labor Law Revitalization to Help to Create More Structural Balance in the Relationships Among Employees, Managers, and Investors 1. The Failure of Unfettered Free Markets The Great Recession of 2008-2009 exposed the limits of unfettered free markets as a guiding ideology in economic arrangements. 132 Americans at every social level struggle with the collapse of real estate markets, financial firms, lending, demand for the goods and services that small and other businesses provide, and the curtailment of job opportunities and work. Bailouts of the financial industry by the federal government show that mechanisms for increasing rewards to investment bankers and hedge fund managers 133 failed to appropriately balance risks. Much of this risk now falls on taxpayers. A system that provides great benefits to decision-makers while transferring the risks of the activities involved to others falls far short of the free market capitalism espoused by neoclassical scholars. **134 This failed**

**system benefited not only financial institutions and fund managers but the executive suite as well. During the past decades the compensation of CEOs, CFOs, and other top-level corporate managers increased dramatically in proportion to the average earnings of employees in those same corporations.** 135 [\*129] **American executives in Fortune 500 companies now earn 300-400 times the compensation of average employees;**

this stands in sharp contrast to the ratios prevailing in Japan and the European Union. 136 Moreover, the now prevalent swollen packages of today's executive officers dwarf the ratios common in the United States only a generation ago. 137 Many of the companies managed by these executive officers have fallen on hard times: bankruptcy, major restructurings involving the loss of many thousands of jobs, reductions in wages, salaries, and hours, and disruption of local communities and smaller businesses--to name a few of the effects. 138 The executive suite took high compensation but rarely shared in the direct human costs of flawed decision-making. [\*130] At the same time, many distinguished economists believe that middle class wages and salaries (adjusted for inflation) have stagnated; while incomes rose, this resulted from the widespread growth of the "two earner" family and longer hours at work. 139 Middle managers, engineering and other professionals, and rank and file employees command less of the wealth generated by American business, and income disparities grow. 140 **For the lowest half of the American workforce, real income**

**(adjusted for inflation) has stagnated or decreased. 141 This works not only as an increasing perception of inequity, but it also erodes purchasing power in the world's largest economy.** 142 2. The Need for Structural Balancing of Economic Forces and the Contribution That a Revitalized Union Movement and Labor Law Can Make The problems lie not in markets but in their imperfections. Human greed, 143 excessive optimism, information disparities, transaction costs, and "bounded rationality" 144 (often ignored or dismissed as unimportant by neoclassical scholars) require nuanced regulation in order for free markets to deliver their bounty to all sectors and social levels. The measure of any economic system lies not in an abstract theoretical purity but in its ability to broadly deliver an improved life for its citizens. Free

**markets work best to increase the wealth and well-being in a society when they are constrained by appropriate mechanisms for allocating reward and risk. The problem arises not from "evil" actors but in flawed structural arrangements.** During the Second Gilded Age, 145 through [\*132] which we have passed in recent years, these lessons were forgotten. What do these observations have to do with labor law reform?

**Labor unions provide a countervailing force--wielded on behalf and with the participation of middle and working class employees--to the swollen power of executives and investment managers. 146 They provide more structural balance in the economy, and they do so without direct governmental regulation of the terms**

**and conditions of employment. 147** Imagine the effect if a union bargaining on behalf of clerical workers (or production workers or software engineers) routinely cast compensation proposals for the represented employees as a percentage of CEO compensation for the three years past, or some similar measure. Or as recently demonstrated by the United Auto Workers, what if employees and unions played a greater role in corporate planning about restructuring of industries to adapt to new conditions? Or, if, under a reformed labor law, employees could routinely participate in corporate governance through work councils at the local, divisional, and company level?

148 More concretely, studies consistently show that employees represented by unions receive a premium wage for their work. 149 [\*133] **The unions provide one means of reversing the growing income inequality in the United States. 150 Equally important, collective bargaining and other institutional frameworks for employee "voice" offer a mechanism for more shared power in America.** 151 Corporations involve managers, investors, and employees working together to create wealth. Economic structures should reflect this fact of life. A prosperous middle class generates demand for goods and services, stimulates investment and opportunities for businesses providing goods and services, and helps the overall economy. 152 Unions can help restore this prosperity. III. LABOR LAW REFORM THROUGH A LESS TRAVELED STATE ROAD If public policy favors labor law reform, the scope of change needed will more likely originate from citizen action in the state Capitols—in Albany, Boston, Harrisburg, Columbus, Springfield, Madison, Lansing, Sacramento, Olympia, Denver, Baton Rouge, Tallahassee, and Austin—than from Washington D.C. History teaches that flexibility for state level experimentation and innovation consistently leads to federal level reform in the law of the American workplace. 153 This remains true today. What applies in the larger field of employment law applies to labor relations policy as well. This Part contains three subparts: (A) a review of past efforts at labor law reform; (B) a review of EFCA proposals and discussion of how those proposals fail to address many fundamental issues ripe for labor law reform and innovation; and (C) a review of the leading role state law generally plays in the vast field of employment law.

## Collective labor action effective

**Benjamin Sachs, 2007**, Harvard Law & Policy Review, Labor Law Renewal, Joseph Goldstein Fellow and Visiting Lecturer in Law, Yale Law School

<https://dash.harvard.edu/bitstream/handle/1/10488716/sachslaborlawrenwal.pdf?sequence=1>

There have been numerous calls to reimagine labor law, but we have yet to recognize that the raw materials for reinventing the field are available to us already. The three trends outlined in this Essay provide a rich and underutilized source of material for this project. In a series of forthcoming articles, I intend to explore more fully each of these trends along with the structural and theoretical issues they raise about the future of labor law. I will also propose an experimental model of labor law reform that provides a way to involve federal, state, and local governments and private actors in a cooperative venture to improve the regime. In anticipating this broader project, it **is** important to observe here that although many commentators—and even some labor law scholars—have given up on workers' collective action, a pragmatic assessment of the state of the field reveals that the desire for organization and collective interaction is alive and well. Certainly, the particular forms employee organization takes, the ways in which workers interact with their employers, and the legal channels through which organizing and labor-management negotiation occur, must all undergo continuing reinvention. But the trends outlined in this Essay reveal that even a deeply dysfunctional labor law has not suppressed the demand for organization. It **is my view, moreover, that workers' collective action, broadly defined, has multiple virtues that legitimate reinvigorated legal protection.** 1 Although nothing approaching a full discussion is possible here, when workers bargain collectively with their employers, they can achieve wage and benefit gains that have critical redistributive effects. 130 In certain settings, organization and collective bargaining also can correct market failures that inhere in individual employment contracting. 131 Developed forms of worker organization also have important implications for democracy: **Successful unions can serve as schools for democratic participation, and can give electoral voice to segments of the citizenry that might otherwise remain silent. 132 For these reasons, among others, it would be a profound mistake for labor law and labor law scholarship to abandon collective action.** To the contrary, workers' collective action, in its highly variable incarnations, is labor law's central project and one that merits the work of reinvention proposed herein.

## Federal labor law undermining unions now

**Henry H. Drummonds, 2009**, law professor, Lewis & Clark, Reforming Labor Law by Reforming Labor Law Preemption Doctrine to Allow the States to Make More Labor Relations Policy, 70 LA. L. REV. 97, 97 (2009),

<https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=6305&context=lalrev>

A. The Many Deficiencies in Federal Labor Law Have Helped Drive Unions to the Vanishing Point as Collective Bargaining Representatives, and They Fail to Serve the Interests of Today's Changing Workforce. Many scholars argue that private sector labor law itself contributes to union decline. 33 Prominent labor leaders concur. 34 Far from protecting the right to organize, federal labor law—heralded by the New Deal generation as the labor relations' Magna Carta of its day—bit by bit, decision by decision, morphed in changed

circumstances to impede collective bargaining. Its champions became not working people, union leaders, and their supporters, but lawyers, corporate executives, and lobbying groups representing American business. **In Professor Estlund's apt terminology, federal labor law became ossified, unable to adjust to [\*108] changing circumstances; the brightest in a generation of scholars despaired** 35



Labor leaders declared their desire to return to the unregulated labor relations regime pre-dating the NLRA.<sup>36</sup> For the mass of employees, labor law simply shrank into irrelevance. 1. The Paradoxical Decline of Private Sector Unions **While Public**

**Sector Unions Flourish** Scholars often note the decline of private sector unionism, from a high of approximately forty percent in the non-agricultural workforce in the mid-1950s to only seven point six percent today. 37 Yet during the same period public sector unionism grew from virtually zero to more than thirty-five percent of public employees today. 38 Public employees are now five times more likely to be unionized than private sector employees. 39 Public employees, of course, are excluded from the LMRA. They organize, instead, largely under state and local enactments.

<sup>40</sup> Why do teachers, firefighters, police officers, highway department workers, social agency workers, and courthouse employees flock to the public sector unions while their private sector counterparts do not? Scholars debate the causes of the decline in private sector unionism and offer many explanations: [\*109] 1. the shift from blue-collar manufacturing to white and pink-collar service (including information technology) jobs; 41 2. increased competition from abroad in the globalized labor markets; 42 3. increased bureaucratization in unions; 43 4. persistent private sector managerial opposition to unions; 44 and 5. the rise of individual rights guaranteed in the evolving common law and many statutorily mandated terms and conditions of employment; 45 in this view, employees simply no longer need the collective bargaining protections afforded by unions, which fall victim to their own success in seeking such socially conferred protections for all employees. [\*110] It is suggested that, together these factors result in declining demand for unions among private sector employees. Yet **the success of the public sector unions**

**suggests that some of these factors at least cannot alone explain the paradox between public and private sector unions. For example, many white and pink-collar public employees perform service jobs; teachers' unions now represent the largest union group. 46 Furthermore, public sector unions such as the NEA and AFSCME are not notably less bureaucratic than private sector unions like the UFCW or the Teamsters. Similarly, the individual rights regime embodied in protections like the status discrimination and family leave statutes, and common law torts like wrongful discharge, most often apply equally to private and public sector employees**

Globalization does seldom directly affect public employees, but neither does it directly affect many private sector employees—such as those in the construction, hospitality and restaurant industries, nursing home industry, domestic service, personal appearance and cosmetic service industries, and janitorial industries. 47 As former U.S. Secretary of Labor Robert Reich explained in 1991, global labor markets affect many employees, including both manufacturing employees and “symbolic analysts” (like computer software designers, financial services providers, and even lawyers). 48 But some services cannot be provided abroad, and the global labor markets affect such sectors only via immigration. 49 And, even if globalization affects a sector by introducing labor market competition from abroad, that logically increases, not decreases, the need for mechanisms for an employee voice in restructurings and the change that must inevitably come. Unlike their private sector counterparts, public employees carry a powerful weapon with which to fight anti-union discrimination. When governmental employees obtain public employment they bring their rights to free speech and free association with them. 50 Union activity, advocacy, and membership fall within these protections, and 42 U.S.C. § 1983 provides a powerful remedy for violation of these rights, as a review of thousands of cases in the federal reporters will reveal. [\*111] Let us briefly evaluate the ways Section 1983 confers advantages that deter anti-union retaliation and discrimination in the public sector. First, under Section 1983 individual managers who discriminate on the basis of union activity or affiliation in violation of the First Amendment face personal liability 51—in sharp contrast to the NLRA, under which only employers can be held responsible for unfair labor practices. 52 Second, Section 1983 allows plaintiffs to resort to courts without any requirement for exhaustion of administrative remedies—let alone exclusive reliance on administrative remedies as required under the NLRA. 53 Third, as a consequence—again in sharp contrast to the unfair labor practice process prescribed by the NLRA—plaintiffs and their attorneys control the decision of whether to pursue allegations of union discrimination; they are not relegated to an unreviewable discretionary judgment of NLRB officials about whether an allegation will be pursued to hearing. 54 Fourth, as a further consequence of initial access to the courts, Section 1983 provides plaintiffs' attorneys with the ability to engage in discovery and to subpoena witnesses and documents—again important process rights usually not available to persons filing an NLRB charge unless and until the NLRB Regional Director or General Counsel orders issuance of a formal complaint. Fifth, Section 1983 grants public employees damages remedies, including compensatory, emotional distress, and punitive damages 55—once again in sharp contrast to the NLRA, which limits remedies to back pay (minus required mitigation earnings), “cease and desist” orders, and other similar equitable relief. 56 Sixth, under Section 1983, juries, rather than career NLRB administrative law judges, determine disputed issues of fact fairly. Besides the existence of the powerful remedy for anti-union discrimination provided by Section 1983, other provisions in state law aid public sector unions. For example,

in states making public [\*112] employee strikes legal. 57 civil service laws and political constraints impede the use of permanent replacements. 58 **When public employees cannot lawfully strike, some states offer interest arbitration of bargaining disputes; these provisions are common for police, firefighter, and correctional officer unions. 59 Finally, state procedures sometimes give public employees advantages over their private sector counterparts. For example, in Oregon, unions and employees charging employers with unfair labor practices prosecute their own cases, enjoy access to the subpoena power, cross-examine managers under oath, and have a right to a hearing for any issue of law or fact.**

<sup>60</sup> Non-legal factors also contribute to the widely divergent experience of unions in the public and private sectors over the last half-century. Public sector managers face political as well as legal accountability when they retaliate for union activity. School boards, city and county councilors and commissioners, mayors, and governors not only sit atop public bureaucracies, but they often face election campaigns in which public employee unions and their supporters may wield substantial influence. Additionally, many public managers simply do not resist unions to the degree prevalent in the private sector where “American Exceptionalism” finds expression in deeply imbedded cultural norms of resistance to unionization within private sector managerial and investment elites.

## **Unions Good Advantage -- Uniqueness**

### **Unions dying off now**

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After all, unions are suffering high-profile defeats everywhere, including recently in Tennessee where workers at a Volkswagen plant rejected the United Autoworkers unionization bid in a secret-ballot election. Nationwide, 11.3% of American workers are part of unions, the lowest rate of unionization since 1916, according to The New York Times and the Bureau of Labor Statistics. Unionization rates have been dropping steadily for decades.

## Answers to: Title IX Blocks Solvency

### Providing performance based scholarships for all sports solves the Title IX problem

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,

<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

Title IX is an obstacle that all colleges and universities will need to comply with even though *O'Bannon* only requires paying Division I men's basketball and FBS football student--athletes. n202 Although women's college sports programs typically do not generate as much revenue as their male counterparts, **it is essential that women's athletics receive an equal amount of funding to prevent**

**discrimination scrutiny under Title IX.** n203 While some may argue that paying both male and female student--athletes limits the amount of funds that are available because the funds will be split in half, **it is the only way for schools to avoid a potential lawsuit from any female college athlete.** n204 The solution to this problem is not only providing performance-based scholarships

to women's basketball and softball players, who are usually the most popular among women's college athletics, but also providing merit scholarships to all student--athletes. n205 Even **though FBS football and Division I men's basketball are the bread winners**

**in collegiate athletics, nonrevenue-generating sports programs should also be entitled to the opportunity to receive performance-based scholarships.** n206 Since it is likely that only revenue-generating athletes

will be allowed to receive athletic scholarships up to the full cost of attendance, providing merit-based scholarships to nonrevenue-generating athletes as well creates a balance among collegiate athletics. n207 **In terms of public policy, creating a balance among the**

**various college sports is essential to promoting fairness, which would help prevent lawsuits**

**against the NCAA for only accommodating FBS football and Division I men's basketball player**s.

n208 The rebuttal to any solution involving paying student--athletes is the question of where the money will come from. n209 **However, the excess money from the years of limited grant-in-aid to student--athletes may be used to**

**distribute funds throughout college athletics. n210 Moreover, another source of funding would**

**be the portion of revenue, generated from licensing student--athletes' names, images, and**

**likenesses, that was \$=P285 previously used to consistently update training facilities and overpay coaches and training staff.** n211 Because the NCAA was concerned that money would separate student--athletes from the

rest of the college student body, one would believe that the NCAA wants to maintain equality throughout collegiate athletics. n212 Therefore, this solution to compensate both male and female student--athletes in all sports through performance-based scholarships would coincide with the NCAA's vision of promoting fairness and equality.

### Title IX won't block payments

Ramogi Huma, National College Player's Association president, Let's Compensate College Athletes By Making Sure They Graduate, Business Insider, April 9, 2012,

<http://www.businessinsider.com/lets-compensate-college-athletes-by-ensuring-that-they-graduate-2012-4>

Others argue that Title IX would prevent schools from providing salaries to football and men's basketball players. However, Title IX author and former Ivy League President Jeff Orleans has gone on record saying Title IX would not apply to football and men's basketball programs that

paid their players a salary because these programs would be considered unrelated business activities over which Title IX does not have jurisdiction. But even if Title IX did apply, then the payment increase could be split between football and men's basketball players and female athletes without sacrificing other scholarship players' opportunities. Title IX is a consideration but by no means would it prevent paying football and men's basketball players a salary.

### **Title IX argument is false**

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, EXCUSES, NOT REASONS: 13 MYTHS ABOUT (NOT) PAYING COLLEGE ATHLETE. Sportsgeekconomics<https://drive.google.com/file/d/0BxM4wdtZ5uI-OWFhNGE1ZTItZTIIS00YmVILt0YmItYTM4ZDUyY2MwNTE2/view>

In the analysis above, I focused my examples on men's sports because there is an important government program with the laudable goal of ensuring proper funding for women's sports. Title IX has been one of the great success stories of government-driven social change. So it's a great program, and yet a lot of sports people want to blame Title IX for why America can't do right by the men who play college football and basketball. It's not just a myth, it's a frame-up! We need to stop blaming women for what colleges, through collusion, are doing to male athletes. The popular misconception is that that Title IX mandates equal funding for men's and women's sports programs, with some believing that Title IX requires that each man and each woman get an identical scholarship. It does not do these things, though in theory Title IX does require a rough equivalence in spending on scholarships. In practice this requirement is more commonly violated than met. Title IX actually aims for gender equity in participation and the regulations offer three ways to comply, none of which speak directly to equal funding. One is meeting the needs of all of the under-represented gender, the second is a subjective concept of progress towards equity, and the third and most common is actual equity in participation.[1] The regulations on participation test whether the number of women playing sports, relative to the number of men, is about on par with the gender splits of the undergraduate population: "Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;"[2] The regulations then explain what this participation requirement means for spending: "This section does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value. It does mean that the total amount of scholarship aid made available to men and women must be substantially proportionate to their participation rates." [3] So, in theory, if there are more women than men on campus (which is the norm[4]), the participation prong of Title IX requires that more women than men participate in intercollegiate sports. It does not require that the women's programs as a whole spend as much or more as men's programs, nor does it require that any individual female athlete get the same level of aid as any individual male athlete. However, it does require, at least in theory, that the proportion of spending on women's scholarships be "substantially proportional" to women's rate of participation, which has been interpreted to mean that the ratio of spending on women athletes' financial aid be within one percentage point of the ratio of women's participation. [5] So, how does this hold out in practice? In 2009-2010, twenty-two of the seventy-three BCS AQ

programs had more women participants than men, but all seventy-three of the BCS AQ conference schools spent more in total on men's sports than on women's sports.[6] All but three of those with FBS football spent more on men's scholarships than women's.[7] Using the "one percent" test, of the fifty-one schools with more male than female athletes, only seven kept the ratio of spending on women's scholarships within one percent of their participation ratio.[8] And of the twenty-two schools in which women comprise the majority of participation, seventeen of those schools nevertheless spent more on men's scholarships (all outside the one-percent threshold). So, sixty-one of the seventy-three major sports programs are in violation of the (theoretical) requirements of Title IX. From this, I conclude that in practice, Title IX does not actually mean that colleges spend the same on men's and women's sports – not at the program level, not at the individual athlete level, not at the aggregate scholarship level, and not even with a one-percent cushion relative to participation ratios. Title IX is also not being applied as a strict rule on equal compensation with respect to coaches. The regulations state that the requirement that schools "provide equal athletic opportunities for members of both sexes" extends to "...compensation of coaches ...." Despite this, all seventy-three of the BCS AQ programs spend more on head coaches for their men's teams than for their women's teams.[9] All seventy-three also spend more on assistant coaches for men's teams than for women's teams.[10] For example, in 2009-2010, Rick Barnes, the men's basketball head coach at Texas, earned \$1.7 million more than Gail Goestenkors, his counterpart with Texas's women's basketball team.[11] Yet, rarely is it claimed that Title IX prevents schools from paying their men's teams' coaches – either at all or more than they pay women's coaches. But if you insist on misreading Title IX to say you can't pay players, that same misreading would mean you can't pay men's teams' coaches more than you pay women's coaches. And we know this just isn't what Title IX means in practice. Thus, if colleges were to implement a market-based compensation system for athletes along the lines of the market-based compensation for coaches, it is not at all clear that they would have to pay women athletes any more equally to men athletes than they currently do with coaches. Despite all of this empirical evidence, let's assume that with a market-based compensation system for athletes, enforcement of the letter of Title IX would suddenly emerge to force a stricter standard on schools than currently exists, so that every dollar spent paying male athletes would require an equal new dollar to be spent on women's sports. Or instead, assume that some enlightened schools would choose to undertake this burden voluntarily and would simply commit on their own that spending money to pay male athletes a market rate would also result in equal increases in women's funding, dollar for dollar, even though they currently do not have this intense commitment to spending equity. Wonderful! Indeed, this might be the greatest boon to women's sports since Title IX itself. If each new dollar of spending went equally to men and women, the system would function like a 100% payroll tax on male college athlete's pay. If a star quarterback is worth \$50,000 to a school, and they knew that for every dollar they spent on him, they would also need to allocate a dollar to women's sports, then the most they could afford to offer him would be \$25,000, knowing the other \$25,000 had to go to meet their (theoretical) Title IX pay-equity burden. As every school would have this same tax burden, competition for those athletes would be fair, but muted. Economics teaches us that a high payroll tax will keep salaries down, but not eliminate them.[12] In this extreme interpretation of Title IX's mandate, the system would take advantage of the high demand for male athletes to funnel a lot more money into women's

sports (which is the point of Title IX, after all). Title IX doesn't stop male athletes from getting receiving market-based compensation any more than cigarette taxes have eradicated smoking in this country. And so, regardless of whether Title IX mandates that every new dollar of spending must be spent equally on men's and women's sports, nothing about Title IX makes paying male athletes impossible. The idea that we can blame women for the collusive injustice colleges impose on male basketball and football players is a myth that needs to go the way of Bobby Riggs.

## **Answers to: It's Not Fair, Can't Pay Everyone**

### **So, life isn't fair, we should pay the people who are worth it**

Michael Wilbon is a featured columnist for ESPN.com and ESPNChicago.com. He is the longtime co-host of "Pardon the Interruption" on ESPN and appears on the "NBA Sunday Countdown" pregame show on ABC in addition to ESPN. Wilbon joined ESPN.com after three decades with The Washington Post, where he earned a reputation as one of the nation's most respected sports journalists. "College athletes deserve to be paid," ESPN, July 18, 2011, [http://www.espn.com/college-sports/story/\\_/id/6778847/college-athletes-deserve-paid](http://www.espn.com/college-sports/story/_/id/6778847/college-athletes-deserve-paid)

Let me declare up front I wouldn't be the slightest bit interested in distributing the funds equitably or even paying every college athlete. I'm interested in seeing the people who produce the revenue share a teeny, tiny slice of it. That's right, football and men's basketball players get paid; lacrosse, field hockey, softball, baseball, soccer players get nothing. You know what that's called? Capitalism. Not everything is equal, not everything is fair. The most distinguished professor at the University of Alabama won't make \$5.9 million in his entire tenure in Tuscaloosa; Nick Saban will make that this year. So I don't want to hear that it's "unfair" to pay the quarterback of Alabama more than all the sociology students in the undergraduate college.

Using the inability to distribute the funds equally as an impediment is an excuse, a rather intellectually lazy one at that. Nothing about the way hundreds of millions of dollars is distributed is equitable or even fair. The BCS' new deal with ESPN was based, in part, on paying more money to schools/conferences with regard to what has been called "population centers." Of the \$174 million distributed from five bowl games, 83.4 percent went to six conferences in 2011. In question right now is whether the BCS even conducts its business dealings in a manner consistent with principles expressed in federal anti-trust laws. So, the equitable-application excuse for not paying athletes doesn't hold water; at the very least there's a level of hypocrisy here that ought to make the opponents of paying athletes uncomfortable.

## **Disadvantage Answers**



## **Answers to: Need Equality of Opportunity Amongst Schools/Rich Schools Would Pay More**

**Rich schools have enormous recruiting advantages now**

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,  
<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

*b. Maintaining Competition Among Universities* The NCAA introduced the idea of competitive balance as a reason for its compensation restraints. n109 The NCAA's view was that maintaining a certain level of competitive balance is necessary to create and sustain consumer demand for Division I men's basketball and FBS football. n110 However, the court stated that the restrictions have not shown any impact on competition. n111 **Rather than compensating student--athletes, schools merely spend more money on coaches and personnel, recruiting trips, and training facilities.** n112 **The current situation would be no different than a scenario where student--athletes were compensated because the schools with the largest budgets would always attract the cream of the crop.**

## **Answers to: Revenue Benefits Universities Academic Programs**

### **The revenue doesn't go back into universities**

Marc Edelman is an Associate Professor of Law at the City University of New York's Baruch College, Zicklin School of Business, where he has published more than 25 law review "articles on sports law matters, including "A Short Treatise on Amateurism and Antitrust Law" and "The Future of Amateurism after Antitrust Scrutiny.", January 30, 2014, Forbes, 21 reasons why student-athletes are employees and should be allowed to unionize, <https://www.forbes.com/sites/marcedelman/2014/01/30/21-reasons-why-student-athletes-are-employees-and-should-be-allowed-to-unionize/2/#106f682c2dff>

8. This year, the University of Alabama reported \$143.3 Million in athletic revenues -- more than all 30 NHL teams and 25 of the 30 NBA teams.

9. **Much of the huge revenues collected from college athletics do not go directly back into the classroom.**

### **The coaches get a lot of the money**

Marc Edelman is an Associate Professor of Law at the City University of New York's Baruch College, Zicklin School of Business, where he has published more than 25 law review "articles on sports law matters, including "A Short Treatise on Amateurism and Antitrust Law" and "The Future of Amateurism after Antitrust Scrutiny.", January 30, 2014, Forbes, 21 reasons why student-athletes are employees and should be allowed to unionize, <https://www.forbes.com/sites/marcedelman/2014/01/30/21-reasons-why-student-athletes-are-employees-and-should-be-allowed-to-unionize/2/#106f682c2dff>

13. **The average salary for a premier NCAA Division I men's basketball coach also exceeded \$1 Million.** 14. **In 40 of the 50 U.S. states, the highest paid public official is currently the head coach of a state university's football or men's basketball team.** 15. Meanwhile, Forbes reported in December that **University of Alabama football coach Nick Saban's new contract will pay him over \$7 million per year from his university.**

## Answers to: Action at the State Level is Better

No link – The resolution doesn't say what body of government should recognize student athletes as being employees. The state could also do this.

### **No significant momentum at the state level, and some states are reversing protections**

Jenny Wilson, February 7, 2017, Hartford Courant, College Athletes As Employees? That raises questions in Connecticut, <http://www.courant.com/sports/uconn-huskies/hc-ncaa-paying-athletes-union-0208-20150207-story.html>

Attitudes toward unions in other states could affect this debate, as the NLRB only has jurisdiction over a handful of schools with big-revenue sports programs. For public institutions, the student unionization issue will play out on the local level. **A 2012 Buffalo Law Review article listed Connecticut as one of seven states "where flagship public universities presently recognize faculty unions, and state laws contain no exemptions limiting the rights of student-employees."** Authors Nicholas Fram and T. Ward **Frampton described those seven states as places in which the student athlete union cause could be advanced.** The other six states listed in the article were Alaska, Delaware, Maine, New Hampshire, South Dakota and Vermont, none of which is known for its football or basketball programs. **Devlin said the General Assembly is generally "proactive" in putting out legislation related to employees, so the student athlete union bill is not entirely surprising, even if its chances of passage are viewed as slim. Legislation has been introduced in past sessions to expand protections for student athletes. Meanwhile, other states have gone in the other direction. Last month, Michigan Gov. Rick Snyder signed a law that expressly prohibits student athletes from forming a union.**

Need to focus progressive politics at the national level in order to solve

**Guastella 17** Dustin Guastella is a member of the Democratic Socialists of America and a graduate student in sociology at Rutgers University, "We Need a Medicare for All March on Washington," July 3, 2017, Jacobin, <https://www.jacobinmag.com/2017/07/medicare-for-all-single-payer-health-care-march-nurses-unions>

One of the more popular alternative approaches to a national march has been to argue for a campaign built around locally organized and nationally coordinated "days of action." This is an approach to which Kinnucan seems more sympathetic: A serious DSA organizing campaign would push socialists to build alliances with their local working-class bases. It would engage in the small but real battles on which movements thrive while building mass support for the bigger confrontations ahead. It would be national in scale but local in focus since socialists are not yet powerful enough to push federal legislation. Kinnucan's focus on small-but-winnable battles doesn't necessarily "build mass support" for some larger future confrontations. How exactly does this alternative strategy alter "the national political landscape" if our focus is tied largely to disparate local victories? If we want a nationwide coalition for

Medicare for All we need to build such a coalition at the national level. The **federalized** nature of the **US state system presents major barriers to progressive politics**. **Local organizing is often obstructed by federal law** and what's more, I think Kinnucan overestimates DSA's local capacity. While DSA has strong locals in a minority of major cities, most **locals are not in positions to** win city-council races or even **succeed** in passing local ordinances. Further, our own recent history should show us that **working on national campaigns alongside mass working-class organizations** (i.e., the Bernie Sanders campaign) **is how we best grow our organization, our capacity, and develop a national presence**. **As a nationwide organization focused on a federal-level demand we can become more than the sum of our parts — as a loose group of local, relatively autonomous, organizations** we are at best akin to Action United and at worst a social club. While **locally organized campaigns** are attractive, because **they** allow members to pursue their most immediate goals, they unfortunately **contribute to** the segregation and **balkanization of any nationwide movement**. **Most socialist demands are national** and international in character and **we should rise to fight for them on the level at which they are pitched**. **Medicare for All is a great example. As a national demand, single payer is a viable program: politically smart and economically feasible. But at the state level, single payer is less sound economically and more politically vulnerable to sabotage**. **Consider** that the movement for **single payer** has been organizing for local- and state-level legislation **for nearly thirty years** and **yet no state has succeeded** in implementing the system. Beyond this, strictly local tactics have their own challenges. **When not tied to a larger national action**, local "days of **action**" are not exactly stellar examples of "**organizing**" over "mobilizing." **Instead they are just watered down, smaller and locally focused mobilizations**. They are, of course, more achievable and easier to pull off because the only "national coordination" around such events is that they might be planned on the same day. However, **the distributed nature of such actions presents major obstacles** to success. For one thing, there is no good reason why major mass organizations would participate in our "day of action." We are much smaller and poorer than almost every other national organization on the progressive left. Any "day of action" we organize could be easily ignored or overshadowed by better funded and larger organizations. The organizing costs of these events are so low that any major organization can take the lead. And because **displaying a mass show of force is not the goal of such actions**, **opting out is much easier**. For instance, the AFL-CIO rarely participated in the locally oriented campaigns of the Southern Civil Rights movement but to ignore the March on Washington would have been a national embarrassment — then-AFL-CIO president George Meany had no choice but to help build the mobilization. Worse still, **it is much harder to craft a uniform and coherent political narrative across hundreds of nationwide events with no central locus of activity** or unified organizing committee. To be sure, these sorts of mobilizations in no way contradict or replace the value of a march. They are perfectly compatible in the build up to a national mobilization or even as satellite events on the same day. Yet such tactics do not substitute the strength of a mass demonstration for a number of reasons. Chiefly, they fail to actually test our organization's organizing skills on a national level; **they fail to provide a unifying tactical benchmark for a broad coalition to work toward**; and they fail to provide socialists with a national platform addressing thousands of attendees and potentially millions of onlooker

## **Answers to: Students Will Have to Pay Taxes**

**Students will not have to pay taxes on scholarships if they are determined to be employees because *the law explicitly defines them as non-taxable***

Stephanie Lo, April 1, 2014, San Diego Union Tribune, College Athlete Unions raise myriad of issues, Giving college football players employee status also raises questions about how they will be treated for tax purposes, and how this will work with minimum wage and pension laws. <http://www.sandiegouniontribune.com/sports/aztecs/sdut-college-athletes-union-issues-kain-colter-cap-a-2014apr01-story.html>

Giving college football players employee status also raises questions about how they will be treated for tax purposes, and how this will work with minimum wage and pension laws. **However, Dostart the tax attorney, takes the stance that the NLRB's ruling should have no bearing on the tax-exempt status of a student-athlete's scholarship. He said the taxability of a scholarship is set forth in federal tax laws, while the NLRB establishes its own classifications for purposes of federal labor laws. Under tax law, scholarships are exempt from an individual's taxable income and scholarships are deemed tax free as long as they conform to certain standards.** Whether the person receiving the scholarship is an employee under labor law definition isn't the pertinent issue, Dostart said. The terms of the scholarship determine whether it qualifies as non-taxable income under the conditions laid out in the federal tax laws **"Even if student-athletes are found to be employees, the tax laws might still treat the compensation received as not taxable," Dostart said. "The U.S. Department of Labor is not the U.S. Department of the Treasury. I don't think that finding by the NLRB controls tax code interpretation of whether scholarships are included as taxable income."**

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## **Answers to: Causes Competitive Inequity**

### **There is no competitive equity now**

Ramogi Huma, National College Player's Association president, Let's Compensate College Athletes By Making Sure They Graduate, Business Insider, April 9, 2012, <http://www.businessinsider.com/lets-compensate-college-athletes-by-ensuring-that-they-graduate-2012-4>

Some proclaim that paying college football and basketball players would be a disadvantage for colleges with less money. The truth is that those colleges are already at chronic and severe disadvantages. Data compiled by sports economist Andy Schwarz shows that since 1985, over 90 percent of Final Four basketball teams and top 25 football teams have come from the six "have" conferences. The Southeastern Conference commissioner Mike Silve called competitive equity an "illusion" and NCAA President Mark Emmert echoed similar sentiments. Therefore, it is irrational to use competitive equity as a reason not to pay football and basketball players.

## **Answers to: Corruption**

### **There is corruption now**

CNBC, April 12 2014. at: <https://www.cnbc.com/2014/04/12/whats-a-college-athlete-worth-in-pay-on-the-open-market.html>

But fears remain over turning college athletes into employees. Would a company like Nike or Adidas dangle millions in front of a high school senior to wear their sneakers? Will agents throw hundreds of thousands of dollars in front of 17-year-old kids in order to represent them? "There's always the potential for corruption when it comes to money," said Drexel's Staurowsky. "However, the corruption in college sports is here already. And this is not just about the money," she said. "There's health and safety issues for players. If done right, paying college players can work."

## Answers to: Will Cause Tuition to Rise

### Tuition will rise anyhow for other reasons

John Schoen, CNBC economic reporter, Why does a college degree cost so much?, CNBC, June 16 2015. <https://www.cnbc.com/2015/06/16/why-collegecosts-are-so-high-and-rising.html>

But every year, researchers at the Delta Cost Project, which is run by the American Institutes for Research, attempt to make sense of higher education spending by explaining in detailed reports where the money to pay for college comes from and where it's spent. Its latest report was released this month. **Here are two key reasons its researchers said colleges costs continue to rise even in an era of low inflation: 1. Students demand more services outside the classroom and colleges are providing more amenities to attract applicants.** In the past decade, spending on student services, which includes everything from mental health services to career counseling to staffing student recreation centers with climbing walls and lazy rivers, grew by more than 20 percent at private colleges and the top public universities. ADVERTISEMENT Spending on classroom instruction pales in comparison to what is spent outside the classroom when the cost of student services is combined with academic and institution support, which includes things such as libraries and technology. At some private colleges, for instance, 58 percent of the dollars go to student and institutional support services, compared with just 42 percent that is spent on actual instruction. On many campuses, this expansion of student services is what has driven a 28 percent expansion of the higher education workforce since 2000, according to a separate report from the American Institutes for Research. In many cases, however, that is probably money well spent if a college is trying to stay in business. In 2013, a group of researchers from the University of Michigan found that while top-ranked schools have an incentive to spend money on academics to attract smart students, everyone else is better off focusing on what they called "college as a country club." The study said country club amenities differentiate less-selective campuses for prospective students who care more about the "resort" experience of college. 2. **Students are shouldering much more of the cost of their degree at public colleges and universities. As late as 2001, when I covered North Carolina higher education as a reporter, a state resident could go attend classes on the flagship campus at Chapel Hill for around \$2,000 a year in tuition and fees. Today, tuition and fees are approximately \$8,500. That's largely because states like North Carolina have been getting out of the business of higher education.** According to the Delta Cost Project, student tuition dollars at public research universities covered around 50 percent of educational costs in 2008. Today, they cover nearly 63 percent. Meanwhile, when measured per student, state spending on instruction at public colleges is at its lowest point since 1980. Sure, in actual dollars, spending on higher education by the states is up, but it hasn't kept pace with the rise in enrollment during the last decade, especially as more students go to public colleges. If the current trends continue, beginning in 2022 spending on higher education will reach zero in states such as Colorado and Alaska, and by the 2030s in South Carolina and Massachusetts. Grade Point newsletter News and issues affecting higher education. Sign up It's popular political rhetoric right now to suggest college tuition be free, even at Harvard University, where a group of candidates for the Board of Overseers wants to end tuition for undergraduates. But all those proposals do is shift the costs to the federal or state government, or in the case of Harvard to its massive \$38 billion endowment (which might not be a bad idea). By essentially capping tuition at zero and saying students have no skin in the game for their education, states in particular will carry most of the responsibility in paying for higher education. If recent history is any indication, states can't be always trusted to do the right thing. Just look at California in recent years, where public universities turned away tens of thousands of qualified students for a lack of state funds. Another suggestion to cut costs for students has been for higher education to follow the playbook of the airlines and now the cable companies and unbundle their services. Right now, students pay for the complexity of a university campus whether or not they use all the services. One concern about unbundling higher education is that colleges and universities really don't know which individual pieces of the overall experience actually provide the most value for their students. The individual parts could end up not equaling the value of today's whole. And for financially needy students, the services they need the most—such as academic advising or tutoring—might end up costing the most if wealthier students forgo those services. Finding solutions to reducing college prices seems just as difficult as figuring out why they are rising in the first place. But with family incomes lagging as college prices continue to rise, the time for finding workable solutions is running out for an increasing number of students.





## **Answers to: Paying Students Undermines the Unique Value of College Athletics**

### **NIL deals prove paying players doesn't reduce public support for college athletics**

David Grenardo, 2023, Professor of Law & Associate Director of the Holloran Center for Ethical Leadership in the Professions, University of St. Thomas School of Law, Preparing for the Inevitable— Compensating College Athletes for Playing—by Comparing Two Payfor-Play Methods: The Duke Model Versus the Free Market Model, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4323937](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4323937)

Nevertheless, no one knew for certain what would happen when college athletes earned compensation based on their NIL. The public's response to the advent of NIL confirmed one thing: consumers do not care if college athletes are paid, including if those payments consist of large sums of money. Although NIL deals on average are relatively small, several college athletes earn substantial amounts. According to Opendorse, which relies on data from its network of 90,000 athletes (making it one of the largest NIL marketplaces in the country),<sup>62</sup> the average deal for Division I athletes is just \$2,963 per athlete.<sup>63</sup> On the other hand, Bryce Young, quarterback of the University of Alabama football team, earned approximately \$800,000 in NIL deals before the start of the 2021 season.<sup>64</sup> The timing was significant because Young had not played a single down as the starting quarterback for Alabama before he received nearly one million dollars in endorsements.<sup>65</sup> Did consumers revolt and decide not to attend Alabama football games because of the quarterback's extravagant NIL payments? Of course not. In fact, Alabama boasted the third highest in-person attendance numbers for the 2021 season averaging 98,720 home fans per game.<sup>66</sup> Did Bryce Young's large earnings create a distraction for the team or jealousy that caused his teammates to inhibit his success or the team's success? Absolutely not. Alabama reached the National Championship game<sup>67</sup> during that season while Bryce Young went on to win the Heisman trophy as the top college football player in the country.<sup>68</sup> Bryce Young is now part of major marketing campaigns as he appears on national television in Nissan and Dr. Pepper commercials.<sup>69</sup> The reaction by some consumers, namely donors, boosters, and alumni of schools, entailed creating collectives to pay college athletes themselves in the form of NIL deals.<sup>70</sup> Collectives are technically third parties not structurally connected to a university, but they are often founded and comprised by alumni, donors, and boosters of a university.<sup>71</sup> These "school-specific collectives pool funds from a wide swath of donors to help create NIL opportunities for student-athletes through an array of activities . . . Most often, they pool funds from boosters and businesses, help facilitate NIL deals for athletes and also create their own ways for athletes to monetize their brands."<sup>72</sup> Over 120 collectives exist or are in the process of being created, and over 90% of the Power Five schools "have at least one collective or are in the process of forming one. All 14 schools in the SEC have at least one organization."<sup>73</sup> Nick Saban, head coach of the University of Alabama football team, which plays in the SEC, stated this his players earned over three (3) million dollars in the first year of

NIL.<sup>74</sup> Collectives come in different shapes and sizes and operate in different manners. Some collectives serve as marketing agencies that simply “connect[] athletes with opportunities.”<sup>75</sup> Other collectives seek “broad-based donor funding to leverage more and higher value opportunities for athletes.”<sup>76</sup> Still other collectives pay athletes directly.<sup>77</sup> The University of Texas in Austin boasts “Horns with Heart,” which is a collective that pays every offensive lineman \$50,000.<sup>78</sup> Each Texas offensive lineman will “make charitable appearances and bring awareness to worthy causes that impact their local communities” in exchange for \$50,000 of NIL money.<sup>79</sup> Six Texas alumni and supporters created Horns with Heart to benefit communities and college football players.<sup>80</sup> It may be hard to estimate the actual worth each offensive lineman brings to Horns with Heart, but it is unlikely \$50,000. This arrangement verges on pay-for-play as linemen receive a large payment of money, most of it arguably for playing college football at Texas and perhaps a small fraction of it for the charitable work they complete. Similarly, an Oklahoma non-profit created a NIL deal for college athletes at the University of Oklahoma in which its football, men’s basketball, and softball players can earn up to \$40,000 to \$50,000 a year for serving other non-profits throughout Oklahoma. <sup>81</sup> More blatantly, Texas Tech set up a collective that pays every football player \$25,000 a year.<sup>82</sup> One of the founding members of the collective, Texas Tech booster Cody Campbell, explicitly stated, “This is kind of a base salary for the guys. They’re not going to be restricted from doing any other NIL stuff with anybody else. In fact, we’re going to encourage and help them to do that.”<sup>83</sup> Shortly after the football team’s deal was announced, the Texas Tech women’s basketball team also received a NIL deal from a local agency that pays each player \$25,000 a year.<sup>84</sup> Ninety-five (95) University of Georgia football players, according to its head coach Kirby Smart, had NIL deals at the start of the 2022 season, which is impressive given that only 85 of them are scholarship players, meaning even walk-ons (i.e., players without scholarships who make the team) are receiving NIL deals at Georgia.<sup>85</sup> Even the NCAA acknowledges the new prominence of collectives in college athletics. In its latest guidelines for NIL, the NCAA provides guidance on how schools and collectives can operate together. For example, the NCAA explicitly allows schools to “request donors provide funds to collectives and other NIL entities, provided the schools do not request that those funds be directed to a specific sport or student-athlete.”<sup>86</sup> The NCAA even enables schools to “provide tickets or suites to NIL entities through sponsorship agreements, provided the terms of those agreements are the same as for other sponsors.”<sup>87</sup> Both men and women are making NIL deals, and some women are making a million or more dollars in NIL deals.<sup>88</sup> These deals include athletes in more than the revenue-generating sports of football and men’s college basketball and in conferences outside of the Power Five.<sup>89</sup> For example, Rayquan Smith, who is a two-sport athlete (football and track) at Norfolk State University, a historically black university and college (HBCU), garnered 70 endorsement deals.<sup>90</sup> Known as the “King of NIL,” he contacted 100 companies before he acquired his first NIL deal, and now he maintains deals with Champs’ Sports, Arby’s, and Body Armour.<sup>91</sup> What is clear is that people are no longer buying the NCAA’s argument that the NCAA is protecting college athletes from making money, sometimes a million dollars, for the athletes’ own good. People are still tuning in to college games, and broadcasting companies and networks continue to pay conferences millions of dollars to televise those games because people are watching in droves, including on every day of the week in the regular season for football.



## Answers to: Paying Students Means they Don't Focus on School

### They don't focus on school now

Earl Scott, Master's Candidate, Wake Forest University, IMPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA," May 2015.  
[https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Llewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

A mechanism of defense that is commonly used to justify the reason college athletes do not get paid is the idea that athletes are students first and their main focus should be to do well in school, and not to focus on their sport. **Many believe that if universities or the NCAA decide to pay their athletes there will be a shift in the athlete's focus that will make them start prioritizing their athletics instead over their academics. Even though the NCAA claims to make students-athletes education their top priority, their actions prove that they operate a system that forces student-athletes to prioritize their athletics over their academics anyway.** Stanley Eitzen starts his 9th chapter of Fair and Foul, with a quotation from sportswriter Bob Kravitz. "The NCAA and its member schools have to quit running from the fact that they're running a billion-dollar business and not some high-minded enterprise that's part of the larger academic mission" (Eitzen 151). Kravitz points out that universities and the NCAA claim that they make their athletes' education the main priority, but **in reality their biggest focus is having their teams perform at a high level in order to generate revenue....** Many people have discussed their issues with this false representation that the NCAA and universities across the country take part in. Stanley Eitzen discusses it in his book Fair and Foul, and Trevor Martin shows how this "student first, athlete second" model is misleading, throughout his Schooled: The Price of College Sports documentary. Both men point out the red flags that are involved with high school recruiting. Eitzen believes, **"College athletes in big-time programs are recruited to be part of a commercial entertainment organization that has nothing to do with the educational mission of schools"** (Eitzen 156). Martin makes a similar reference in his documentary when he explains how you will never see a professor attend an in-home visit for a recruit, like coaches do (Schooled). Each year every big time Division I head coach flies across the country to the homes of his top recruits to have dinner with the player's family. This recruiting process is a great example that helps illustrate the truth and reality in the college sports..... Coaches across the country have pressure from their Athletic Directors each year to assemble a group of talented athletes who will commit and sign Letters of Intent to their school. There is a lot of pressure from not only athletic directors, but by fans, alumni, and boosters that want to see their team assemble a better signing class than other rival teams in their conferences. During this recruiting process **players are graded solely on their athletic talents rather than academic intelligence, which proves that the model the NCAA attempts to portray is untrue.... There are even coaches who have recruiting incentives listed in their contracts that allow big bonuses for getting star athletes to commit. However, at the same time these coaches are liable not to have their contract renewed if their signing class continues to fall below university standards.**

According to ESPN, University of Maryland offensive coordinator, Mike Locksley is an example of a coach who has specific recruiting incentives listed in his contract: “Locksley will receive \$25,000 if Maryland is in the top 40 of the Rivals.com or Scout.com rankings on signing day. He also will receive \$20,000 if the Terps rank among the top four teams in the ACC on signing day” (Dinich). These incentives are ways **athletic directors put pressure on coaches to bring in players with exceptional athletic ability, while disregarding anything that pertains to their academics.** No coaches receive bonuses in their contracts for any type of educational achievement made by a recruit coming out of high school. **There are no discussions about players’ GPA, SAT, or ACT scores when Rivals.com and Scout.com rank a signing class.** Providing an assistant coach who already has a \$500,000 annual salary with these types... of bonuses for a good recruiting class proves that universities prioritize athletics over academics when it comes to their revenue sports (Dinich). The only requirement prospective student athletes have to fulfill is passing the “NCAA Clearinghouse” requests. According to the “NCAA Eligibility Minimum Graduation Requirements,” the NCAA uses a sliding scale that compares a student’s GPA with their SAT score from the verbal and math section only or their complete ACT score to determine whether they will be eligible. Based on a student’s GPA their test score must meet a certain requirement, the higher a person’s GPA is, the lower their standardized test score is allowed to be. For example, if a student has a 2.9 core GPA, all he needs is a combined score of 660 or better on the SAT’s math & verbal sections to be eligible to play. This test score will allow him to compete at any school across the country that chooses to offer him a scholarship. **It is not uncommon for an athlete with a test score well below the nation’s average to get accepted into one of the most prestigious universities in the country.** Eitzen states, “The education of inadequately prepared athletes is a daunting task. As we have seen, many athletes are admitted to their schools even though they are below the minimum standards. As a result, **athletes in big-time programs are more than two hundred points behind the average student on the SAT**” (Eitzen 156). The fact that universities around the country make major exceptions for under-qualified student-athletes applying to their school shows that academics do not have priority over their sports. It proves that in reality, student-athlete’s athletics has priority over their academics, because of the money their performances generated for their athletic departments and universities. Aside from the admissions aspect, **the current process in the way student athletes are required to choose their majors and classes points at a system that prioritizes athletic obligations over academic desires as well. Each semester college coaches plan and set their practice and meeting times. They coordinate with the academic advisors to make certain that no players schedule any classes during this reserved block of time each day for the whole semester.** This is in place to make sure athletes will be able to participate in practices and meetings. Basketball is a winter sport so its in-season practice schedule is divided between both semesters of the year. Football takes place in the fall, but because of spring practice students have restrictions in both semesters of the year as well. **These time constraints set by authorities make it hard for players to pick the schedules they desire. For example, a football coach may reserve the time between 2:00 p.m. - 6:00 p.m. every day to have practice and meetings. If a player was interested in a class that meets three days a week at 2:00 p.m., he would not be allowed to enroll in that class because of this time restriction.** A lot of times student athletes are not allowed to pursue their desired majors, because of these rules put in place. If a qualified student wants to enroll in the business school,

he usually cannot because it is rare that the business school class times correspond with the coach's practice and meeting times. Former Northwestern University quarterback Kain Colter, who has recently appeared in the media because of the union movement he started in order to push for changes in the NCAA model, discussed this same dilemma in court. CNN reported, "Colter said he had to give up his major related to pre-med studies because he couldn't fit the classes into his schedule" (Ganim). This claim is supported by a survey that was prepared by the NCAA in 2012 that revealed, "**About 15% of men's football, baseball and basketball players said they would have had different majors had they not been athletes. Twelve percent of Division I football players said athletics prevented them from majoring in what they wanted**" (Ganim). Even though the students in the survey do not represent the majority, if universities lived up to their mission statements that prioritize academics, these students would have been allowed to pursue the majors of their choice. **Taking this notion a step further, if a player was not okay with their coach's time restraints and wanted to pursue his academic aspirations by signing up for a class or declaring a major that interfered with their sport. The student-athlete would be putting his scholarship at risk.** The NCAA gives each coach the power to revoke any player's scholarship at the end of the year if they break team rules or do not meet the athletic requirements set by the coach. Being at practice is a requirement, and if a student misses practice regularly due to his class schedule, it is likely that his scholarship will not get renewed the following year. This could result in a student having to drop out school if his family could not afford the price of tuition. This NCAA model allows a coach to pull the scholarship of a 4.0 student-athlete if he failed to meet athletic standards on the field. A situation like this does not seem fair and it also goes against the NCAA model that suggest players are "students first, athletes second." **The examples pointed out in the recruiting process, scheduling process, and scholarship renewal process all show that the NCAA system is flawed by the way it goes against the values it preaches.** Along with the fact that the rules it has in place give coaches and universities the authority to commit acts that go against its values. In reality, all of this reveals that the NCAA tries to use "student first, athlete second" model to portray an image that does not exist in actuality. This false image is put in place as a way to defend the idea of athletes getting paid. Since the NCAA operates a system that forces athletes to prioritize their athletics over their academics, students across the country currently put more time into their sport than their academic studies. Therefore, there will be no shift in a student's attention if a "pay-for-play" model is introduced because college sports already consume a large majority of an athlete's time. In all, this shows that using academics as a counter argument not to pay athletes is unjustifiable due to the current operation of the NCAA's system.

### **Paying student athletes does not mean they will cease to be students**

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, EXCUSES, NOT REASONS: 13 MYTHS ABOUT (NOT) PAYING COLLEGE ATHLETE. Sportsgeekconomics<https://drive.google.com/file/d/0BxM4wdtZ5ul-OWFhNGE1ZTItZTIIS00YmVLTk0YmItYTM4ZDUyY2MwNTE2/view>

As part of the NCAA's claim that it sells amateurism, it's often heard that if college athletes were to be paid, they would stop being students. Mark Emmert, the new NCAA President advanced this argument on an ESPN story in March.[1] But regular students earn money all the time. Ask your Bursars office if having a paying job disqualifies you for being a full-time student. It doesn't. James Franco was a paid actor while majoring in English at UCLA, other English majors were paid to work at the library, and still others got money from their families and didn't have to work at all. They were all students. Northeastern is known for its co-op education program, where undergraduates alternate between the classroom and paying jobs, while remaining full-time students. Northeastern has not lost its accreditation, and no student has been stripped of a bachelor's degree because news leaked that a "Northeastern student in a co-op position works full-time (five-days a week) for a period of six-months and is usually paid" and yet "Students on co-op are still considered full-time students." [2] Forgoing pay is not what turns football players into real college students. Attending college is what does that. Being a college student means being enrolled in real courses at a real school. College athletes are students for all of the non-sports things they do: going to class, joining a study group, and falling asleep in the library. Getting paid when they play football would not change their student status at all, just as a computer science major who creates a successful iPhone app and earns \$100,000 from downloads doesn't have to leave the university in shame for having "gone pro." I guarantee you there is no amateurism test for students who are not athletes. So why do we allow one for students who are athletes in the name of making them more like other students? If done right, a system where college athletes get paid could easily be crafted to enhance, not diminish their "studentness." It's easy to imagine athlete's pay packages containing sizable bonuses for graduation instead of (or in addition to) for reaching bowl games.[3] For students with real financial need, a paying job as a football or basketball player could mean passing on a summer job and taking classes instead, allowing them to graduate before they run out of eligibility and the school loses interest in them. On the other hand, schools with a real interest in their athlete will be able to offer a compensation package that includes guaranteed tuition until the student graduates, unlike the current system in which the NCAA limits scholarships to renewable one-year deals so schools cannot guarantee they will pay an athlete's way until he graduates. And of course, well-paid college athletes might be in a much better position to pay for an extra year if they need it out of their earnings from their four or five years of college athletics.

### **Paying them does not make them into mercenaries**

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The opposite of "college" is not "professional." As discussed above, there is nothing about paying a college student that causes him to lose his status as a full-time student. Convincing us all that college and amateur are synonyms is one of the NCAA's greatest sleights of hand. Thus paying students doesn't immediately turn them into faithless mercenaries with no connection to



their college or university. We could have that system if we wanted, but it's not required, and if we went in that direction, the popularity of the sport likely would suffer. College Sports is great for both reasons, College and Sports. I can utter those words without mentioning whether the college students playing sports were paid or not. We are not limited to a choice between the current system (students paid collusive, in-kind wages) and a system based on pure mercenaries playing for any school regardless of their educational status. We can have a debate over whether college sports could also be professional (i.e., paid a market level of compensation) or if, by their very essence, college sports must always maintain the NCAA's approximation of amateur (i.e., a collusively-decided maximum level of cash and in-kind compensation"[1]) without assuming that a change in pay will also require a change to the other dimension, college vs. no college. We have four choices, not two: There are good, economically pro-competitive reasons why college sports should involve college students, and not just college-aged players who work for, but do not study at, the school for which they play. While NCAA argues that it sells amateurism, I think what the NCAA sells is high-quality sports played by college kids. A special, demand-enhancing connection develops between alumni and college athletes when those athletes walk onto campus and put on the uniform. Sports fans from that school and the region feel a bond – I went there too, I lived in those dorms, I took those classes or I've been there and seen them in the library, etc. There really is a special quality to college sports because of the link between college and athlete. The rules designed to keep college sports from being filled with non-collegiate ringers are in a completely different realm than the rules designed to help colleges save money by not paying players. Requiring that athletes also be students is pro-competitive because it strengthens demand for the product (as opposed to the cap on payment, which merely saves costs). Similarly, rules against transfers that prevent students from being traded or from becoming weekly free agents also serve to reinforce that these are real college students[2] and thus also serve a procompetitive role. The reasonableness and necessity of the collective agreement on ensuring that college athletes really go to college is an excellent contrast with the lack of reason for or necessity of the NCAA's collective agreement on athlete compensation. When the NCAA argues that if the college sport became just a normal minor league, it would be less popular, they are entirely correct. But that would happen only if the athletes lose their true connection to the university, not because they would get paid. What makes college sports so popular is the unique combination of high-quality athletics combined with the notion that the athletes attend school and truly represent the school in competitions. This makes the NCAA rule that college athletes be college students procompetitive, in the same way that the lack of necessity for the rule on pay leaves that rule unjustified and anti-competitive.[3] The 1984 Supreme Court Board of Regents[4] decision may be the worst thing that ever happened to college athletes, because, despite the NCAA's arguments to the contrary,[5] it enshrined (in dicta) the disastrous idea that for the NCAA to sell a product connected with college also required that "athletes must not be paid." [6] But the dicta got the main story correct: "the NCAA seeks to market a particular brand of football – college football. The identification of this 'product' with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable, such as, for example, minor league baseball." [7] The NBA's Development League (the "D-League") also pits young, talented, not-quite-ready-for-the-NBA athletes against each other in high-quality basketball. Its lack of popularity might stem from the fact that those

athletes are paid. But it's hard to imagine that if you stopped paying D-League players, that fans would suddenly flock to see those games and networks would clamor to broadcast them throughout the season. It's easier to imagine those same players being more popular than now if they were on a college team, but still paid. With that in mind, can it really be amateurism that drives interest in sports played by college age kids just below the NBA or NFL's level of talent? If not, why do we allow schools to collude to enforce it? The D-League isn't popular because no one is an alumnus or alumna of the Rio Grande Valley Vipers and because those Vipers aren't college students. Students and alumni who are fans of a team connect with the team because the players represent them directly. When I asked whether Florida fans could switch allegiance to UCF over the issue of pay, it seemed ridiculous, because who could abandon a beloved alma mater for someplace else? Do Stanford students living in Berkeley suddenly bleed blue and gold? How can we imagine them abandoning the Farm simply because Stanford's college athletes started getting paid? We could get rid of the college in college athlete,[8] but it would not help the athletes and it would not help the fans.[9]

## **Answers to: Economic Gap Creates a Competitive Imbalance**

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There are two problems with this argument. The first is that it assumes that currently the “Have Not” schools somehow grab an equal share of talent. They do not. “Haves” recruit great players and consistently win. Have-Nots get the leftovers and occasionally luck into hidden gems who gel as seniors and win. Kentucky started its 2010-2011 men’s basketball season against Eastern Tennessee State University (“ETSU”). I would like to see evidence that Eastern Tennessee State has ever successfully recruited an athlete who was also offered a scholarship by Kentucky. Alabama started its 2010 football season against San Jose State and will start the 2011 season against Kent State, but what top recruit would spurn an offer from Alabama to attend San Jose or Kent? The current collusive cap on wages has not in any way created a level playing field with respect to the distribution of talent. We don’t need to speculate; the proof is in the numbers. Over the last ten years, more than 99% of the Top 100 high school prospects chose BCS AQs. [1] The myth then points to the successes of Cinderellas and asks “What about Butler and VCU?” How could that happen if we let Duke and UConn buy up all the talent? But again, we already do let Duke and UConn, and their brethren, buy up all the talent. The amazing and wonderful thing about college sports (basketball in particular) is that despite this massive imbalance in who gets the most talented players, sometimes a bunch of athletes who were overlooked or underrated in high school can find a home at a less prestigious athletic program and turn it into a Cinderella, like the great George Mason Final Four team of 2005-06 or the back-to-back Butler Bulldog teams of 2009-10 and 2010-11.[2] But those schools achieved greatness despite having second choice of talent. If a player is looking at a school primarily as a place to play very high level college sports, Duke doesn’t need to offer cash to win a recruiting war with George Mason, it just has to make a scholarship offer. It doesn’t take money for a “Have” to steal talent from a “Have Not” – it just takes interest. On the other hand, if George Mason wants to win a recruiting war with Duke, it’s probably doomed under the current system. Letting Have-Nots use cash is actually the best way to overcome the current unlevel playing field. If we allowed schools to choose how much to offer a player, a current “Have Not” college could use money to steal a player or two from the “Haves” and help begin the climb to the ranks of the elite. If the alumni of ETSU want to fund a powerhouse basketball program, currently they have no dimension on which they can outshine Kentucky. But if they could offer Kentucky recruits \$50,000 a year to come to ETSU, they might start winning those recruiting battles frequently enough to become more, not less, competitive with Kentucky. Finally, it’s important to note that the comparative parity of men’s basketball is achieved despite the current compensation system, not because of it. The reason we see men’s Final Fours with VCUs and Butlers is because the U.S. produces an amazing amount of high school boys with basketball talent, so that even after all of the big schools get the all the stars they can handle, there are still plenty of almost-stars to go around.

Contrast this with women's basketball where there is a greater disparity between the talent among the top tier of recruits and the rest, such that once UConn, then Tennessee, and then Stanford are done, and then once their big conference companions like Notre Dame and Texas A&M finish, there are basically no great women's players left for Butler. For the last ten years, no school from outside the BCS AQ conferences has made the Women's Final Four. Since women's basketball also involves the same national collusion on athlete compensation, but does not achieve even the slightest level of nationwide competitive balance, it can't possibly be the agreement itself that is generating men's parity. And let's remember that even in men's basketball, the parity in outcomes is somewhat illusory. Over the period 1985-2006, 91% of the final AP Top 25[3] in football consisted of schools in the six power conferences. 83% of the teams in the men's basketball Sweet Sixteen from 1985-2006 and 92% of the teams in the Final Four were from those same six conferences.[4] It seems we are not getting very much competitive balance from our nationwide collusion and not much bang for the athletes' sacrificed buck.

### **Other sports will not be canceled**

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This may only be a half myth, in the sense that in a market system, as the costs of putting on football and basketball rise, such that the profits from those programs decline from astronomical to merely sky-high, it may be the case that some schools, in their budgeting priority, choose to drop some (most likely men's) non-revenue sports. It is true that currently, those football and basketball profits are being spent, in part, on subsidizing all of the other sports on campus. And so if those programs are of so little value to the campus community as a whole, that with the reduction of the subsidy from football and basketball, no one values them enough to pay for them if the subsidy is reduced, they will probably go away. When the cost of one essential input (e.g., football players) increases without a change in the total money available, the college has less money to spend on other things. It has less money to spend on coaches' and administrators' salaries[1] and on weight rooms and practice facilities,[2] but it also has less money to spend on the drama club, on professors and graduate students, on parking enforcement, trash collection, painting campus buildings, and on all of the other things it takes to run a university. When it's time to cut the budget to adjust to lower football profits, schools will have to prioritize spending from most important to least, and then cut from the bottom up. If men's lacrosse is the absolutely lowest priority, that's what we should cut. But if it is the case that men's lacrosse is already the least-wanted activity on campus, then giving money to those least-wanted lacrosse athletes is a horrible justification for diverting money from the athletes whom we do want on campus, whom people are eager to see. If lacrosse and other sports are valuable, let's fund them ourselves without using it as a justification to deny the football and basketball players a chance to earn what they are worth. If lacrosse and other sports are not valued enough to be funded without a massive subsidy, let's not ask the football

players to give up a market wage to finance these apparently unwanted activities. Better still, if the campus doesn't value the lacrosse team enough to pay for it, we could ask the lacrosse players and parents to pay their own tuition costs, rather than forcing the students who play football and basketball to pay it via collusion. And we could ask the lacrosse fans and interested alums to pay the expenses of lacrosse coaches and travel, rather than colluding to force the students who play football and basketball to cover those costs as well. Of course, I think the campus as a whole does want lacrosse. Schools want it enough that if we didn't have football revenues to subsidize it, we'd still keep it, much like schools that have lacrosse in Division III,[3] where there are no football profits to spread around.[4] If profits were needed to have men's sports, the entirety of Division III would have vanished long ago. Instead in Division I, what we have now is a subsidy by young African-American men (who comprise a disproportionate number of scholarship athletes in FBS football and the majority of scholarship athletes in basketball throughout Division I[5]) going to support the country-club sports of middle-class whites, all the more shameful if it's done to support activities that are at the absolute bottom of our list of priorities. The current system imposes an involuntary subsidy on students coming from the poorest elements of our society to pay for the activities of the broad middle and upper-classes. NCAA President Mark Emmert calls this "a terrible argument" as if somehow his derision can erase these economic facts.[6] But as Nobel-prize winning economist, Gary Becker put it: "A large fraction of the Division I players in basketball and football, the two big money sports, are recruited from poor families; many of them are African-Americans from inner cities and rural areas. Every restriction on the size of scholarships that can be given to athletes in these sports usually takes money away from poor athletes and their families, and in effect transfers these resources to richer students in the form of lower tuition and cheaper tickets for games." [7] So we really might, in a few cases, decide some of the non-revenue sports we have on campus really are unwanted given all of the other priorities on campus, and as a result, some schools might cancel some programs. But again, recognize that if we did allow football and basketball players to earn a market-level of compensation, other inputs would probably become less expensive. This is a very important concept that people often ignore. When economic competition is restricted on a given dimension, it flows into other, less-efficient avenues. By allowing the NCAA cartel to dictate the maximum amount each school can pay for talent while allowing that talent to generate excessive profits, we create incentives for schools to find other (expensive) ways to attract that talent. For example, the University of Oregon build the Jaqua Academic Center for Student Athletes, which is a glass palace, combining a Duck Hall of Fame with an exclusive tutoring facility for student athletes and a fancy eatery, all aimed at attracting the best players to Oregon. Millions are spent on lavish facilities like this because the efficient method to attract talent, simply offering a higher compensation package, is not allowed.[8] The so-called "arms-race" in college sports to build bigger and better facilities would be dampened by allowing schools to compete by directly paying those whom the race is trying to influence. If the money is going to be spent anyway, let's direct it to the people generating the revenue, not large construction firms. If schools could sweeten their offers with cash, they might also be able to spend a little less on the female escorts they currently use as enticements.[9] The ban on paying players also creates a tremendous windfall for coaches and athletic directors. Recruiting is the life blood of a college sports program. If money were an available recruiting tool, it would go to the players. Instead, the money flows to those who are most responsible for getting star

players to enroll and play at that school. As discussed above, Mack Brown earned over \$6 million in 2009 (after bonuses) because Texas knows he can bring in talent better than other coaches.[10] In the market-compensation world, Texas would not need to pay as much for Brown's ability to charm athletes and their parents; they could show interest in athletes by offering a large annual grant in excess of the cost of attendance. Mack Brown would still be worth millions in this new world, just not six of them per year. And then some of those millions would be there if we decide we still want a lacrosse team. Or we could spend it on more science courses, or however the university wants to allocate its money, but now we would not be imposing an involuntary subsidy on the eighty-five football and thirteen men's basketball players, asking them to support the rest of the Athletic Department on their backs.

## Answers to: Reduces Popularity of the Sport

### **The popularity of college sports will not decline if athletes are paid**

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This is an oft-heard assertion for which I think there is no evidence and where we can see a lot of counter-evidence. From 1953 until 1973, in addition to all of the in-kind payments players receive today, college athletes also got “laundry money” which when adjusted for inflation would be over \$100 a month today. No one boycotted college sports over laundry money. Major sports like Tennis, Golf, and the Olympics all used to be scrupulously amateur for fear of losing viewers. The tide has shifted so much that the PGA tour now uses money earnings to rank golfers, Wimbledon pays out a £1 million to its champions, and the idea of an amateur-only tennis or golf tournament is quaint.[1] The idea that no one would watch professional Olympians was shattered when the (professional) Dream Team, led by Michael Jordan, Michael Johnson, and Larry Bird, captivated the world; all are now part of the U.S. Olympic Hall of Fame.[2] Other sports around the world have also gained revenue after abandoning amateurism.[3] I have to question the dire predictions that college sports will die if true students at real colleges also get paid for their athletics, all while continuing to go to class and to play great sports. There just isn’t a lot of evidence that says sports are more popular when the athletes are unpaid or under-paid.[4] If it is amateurism that drives the popularity of college sports, why are Division III[5] stadiums so small? If you had two fifty-yardline tickets for next year’s BCS championship game, and you found out the players for both teams were being paid, would you give away your tickets? Would you sell them for less than face value? Would you swap them even-up for the Division III Championship? Or would you go and watch a great football game played by the (paid) college superstars? What matters isn’t the pay scale; it’s the quality of the football and the loyalty to the school. If the University of Florida (“Florida”) pays its players, will Gator fans switch their allegiance to the University of Central Florida (“UCF”) Knights? Can anyone credibly make this claim? And yet the NCAA’s theory argues that collusive amateurism is a reasonable and necessary practice without which the product could not exist. This theory says that Florida fans would choose UCF, because the NCAA sells amateurism and that’s what fans want. Of course, I disagree, and in fact I have trouble believing that anyone other than those paid by the NCAA could argue with a straight face that what makes the product popular is the unpaid status of the players. But we don’t need to trust my intuition; we can just end the collusion and let each school decide on its own what its fans want. If it’s amateurism that drives demand, the few schools that try paying athletes will quickly lose popularity and have to revert to the old scholarship system. The rule against pay will have been proven unnecessary, but the sport will continue on in the current amateur form. If those schools don’t lose popularity, or if they gain popularity as they start to attract more talent, then the claim that amateurism was needed to protect fan interest will be proven false. Look deep inside yourself

and ask which scenario you think will hold say in Tuscaloosa, Alabama, Austin, Texas, or Columbus, Ohio. Instead, if we let each school choose its own appropriate level of compensation, fans of college sports would have more choice, not less. Most college athletes (at approximately one thousand schools across Divisions I, II, and III) would continue to receive the same level of scholarship support as they do (or do not) receive now, and would continue to play sports with just as little fanfare while generating virtually no revenue. And for the small percentage of athletes who drive the billions of dollars, fan interest would remain high, even as the players started getting a market level of compensation for their popular product: big-time college football.

### **Current scholarships are not that valuable**

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, EXCUSES, NOT REASONS: 13 MYTHS ABOUT (NOT) PAYING COLLEGE ATHLETE. Sportsgeekconomics<https://drive.google.com/file/d/0BxM4wdtZ5ul-OWFhNGE1ZTItZTIiYS00YmVlTk0YmItYTM4ZDUyY2MwNTE2/view>

A commonly cited NCAA canard is that because the average college graduate earns \$1 million more over the course of the average lifetime, that a GIA is worth \$1 million. Of course that's ridiculous. The right way to value an asset that is sold in a marketplace is to look at the price at which that asset is sold. If a year at Louisiana State University ("LSU") is worth \$250,000, why is out-of-state tuition set at \$13,800. That said, a GIA is in fact, very valuable and of course any parent would love to have the school pick up the tab for one of the most expensive investments they will ever make in their child. Plus, to the extent a student gets into a school that their grades and test scores might not otherwise merit, it's hard to place a specific dollar value on that entrée.[1] But that misses the point entirely. The point is not that college athletes get no value in exchange for playing sports for their schools, since they clearly are getting compensated with a valuable scholarship.[2] If the NCAA did not collude to limit how much each school can offer to incoming high school football and basketball players, those athletes destined for the major conferences would get everything that they currently get and far, far more. The idea is not that the GIA isn't valuable (although the million dollar claim is laughable), but rather that it is far less than the value of what the schools would gladly pay in a free market, if the NCAA didn't cap compensation. In 1929, legend has it that Babe Ruth was asked why he deserved to earn more than then-President Herbert Hoover. His answer? "I had a better year." [3] The reason that athletes get better scholarships than your kid is that they generally are going to have a much better year, financially, for the school they represent. Sure, I'd like my brainy but non-athletic kid (who will bring no revenue to his college despite having won on Jeopardy! before he turned thirteen) to get free tuition, room and board, and required books. Who wouldn't? A few schools give their most desired academic recruits a (true) full ride that is even better than their full athletic scholarship,[4] but generally speaking college athletes get the best deals a college offers because they are the most valuable. And if the schools were operating in a market system



where they could give more, they would, because even at the current “full ride” price, college athletes are cheap relative to the profits they bring in, and competition would force schools to pay more to get the most-prized recruits. The critical difference between your high schooler and the incoming athlete is that schools do not (and legally cannot) collude on how much they offer to your kid or mine. In the past when some schools tried to do this, the Department of Justice made them stop.[5] So if your kid didn’t get a sweet offer, it’s not because of collusion; instead, it’s probably because he or she just isn’t going to generate millions. And that’s the difference – your kid gets what he or she earns, college athletes get only what a cartel allows them to get, even though without that collusion, they would get everything they get now and much more.

## Answers to: Students Can't Manage the Money

### **The money management argument is terrible**

Andy Schwarz, 2011, Antitrust economist and partner at OSKR, an economic consulting , firm specializing in expert witness testimony, EXCUSES, NOT REASONS: 13 MYTHS ABOUT (NOT) PAYING COLLEGE ATHLETE. Sportsgeekconomics<https://drive.google.com/file/d/0BxM4wdtZ5ul-OWFhNGE1ZTItZTIIYS00YmVILtYmItYTM4ZDUyY2MwNTE2/view>

The previous myth was deeply illogical, and it's embarrassing that the NCAA, a group of highly educated people, puts it forward as fact. But I am more ashamed by this myth, which I believe this myth is deeply rooted in racism. If our concern were really with college kids having too much money on campus, we would pass a law prohibiting the children of the wealthy from coming to college unless their parents agreed not to provide them with any money. We would have stopped Natalie Portman from going to Harvard with her Star Wars riches. Face it. What the proponents of this argument are really saying is that they are uncomfortable with poor African-American adult men, suddenly earning more money than they've ever had before, and facing tough decisions about how to spend or save that money. The images of concern people raise are not of someone blowing the money on trips to Paris to see art in the Louvre. It's Cadillac Escalades, jewelry and tattoos, or guns and drugs that are conjured up as the perils of pay for play.[1] And while sometimes the examples given are white,[2] that's not the stereotype most likely put on display when this argument is trotted out. We need to stop saying that we do not trust young adults of any race with money and that we're colluding on pay for their own good. We especially need to stop almost-saying that we feel that way because we do not like how young African-American males decide to spend their money. If we are really worried about the financial wisdom of the college athletes who would suddenly find themselves much better off than they are now, then by all means, let's offer financial education classes for all scholarship athletes.[3] Let's end the NCAA rules that prohibit college athletes from having paid financial advisors, agents, or lawyers to guide them with their careers and their money. Instead, the NCAA could provide free financial advisory services and could run an agent clearinghouse to prevent scam artists from exploiting college athletes. Rather than deny athletes a fair market wage because they might waste the money, let's help them invest it wisely. It's not anti-capitalist, anti-American This myth is often phrased as something like "No one is putting a gun to these guys' heads." "It's a free country, so if they don't like what the NCAA is offering, get a job elsewhere." "Go to Europe." "Pump gas." "Just stop whining if you don't like the offered wage." [1] Antitrust laws exist for a reason, as do labor laws. A capitalist society should recognize that collusion is damaging to a free-market economy. Indeed, the irony of this myth is that it is designed to prop up the current collusion in the name of capitalism, but the current collusion is basically socialist. The cartel's argument for this collusion is that because some schools may not survive in a competitive market (a questionable premise), that all schools should agree to spend the same (artificially low) amount. And like the Soviets, the NCAA creates the legend of students who play football and basketball living together as comrades in a workers' paradise of low- or no-pay equality. The NCAA maximum allowable athletic scholarship is not a free market offer. It is a take-it-or-leave it offer by a monopsonist.[2] The smattering of high schoolers who can do

better outside the NCAA does not mean the NCAA can escape from the fact that it is the sole option for the vast majority of college aged athletes. The Hobson's choice they offer (my scholarship or no scholarship) is no choice at all.

## **Answers to: Value of an Education**

### **Athletes put no effort into classes**

Anthony DiMaggio, Assistant Professor of Political Science at Lehigh University. He holds a PhD in political communication, and is the author of the newly released: *Selling War, Selling Hope: Presidential Rhetoric, the News Media, and U.S. Foreign Policy After 9/11* (Paperback: 2015)]. *Why Higher Education Should Rid Itself of College Athletics*, Counterpunch.org. APRIL 22, 2014, <https://www.counterpunch.org/2014/04/22/why-higher-education-should-rid-itself-of-college-athletics/>

The largest problem I have with college sports is not instrumental, but pedagogical. As a teacher at a major state university in Illinois for years, I had many experiences with student athletes. These experiences were typical, by what I've heard from other professors. Student athletes were almost never the highest achieving in my classes. Most did just enough to "get by." They often registered for the earliest classes possible (8 AM being very common), seldom contributed anything of interest or relevance to class discussions, and received mediocre to poor grades compared to their classmates. The reason why was obvious – as a student on a partial or full scholarship, they felt obligated (usually pressured by coaches and teammates) to put all their time into their "real" occupation – sports. They usually walled themselves off in special sports-related student housing, spent much (if not most of their day) on sports-related activities, and did little to develop critical thought by participating in student groups or by excelling in coursework. In other words, most of them were students in name only. The problems are much worse at more elite schools. In those settings, student athletes often do not even attend class, and benefit from an army of tutors hired to assist them in passing their classes. Professors are often intimidated or pressured into giving them decent enough grades to pass without going on academic probation. I think most directly of my experiences with an immediate family member and former student athlete (on a sports scholarship). He excelled at skipping class, only to plead with professors at semester's end for a passing grade that he didn't deserve. As a soccer player, he thought sports was his life, but like the vast majority of college athletes, never made it into professional sports and was forced to enter the job market like other college graduates. Without having developed much by way of professional skills (he majored in "communication" as a default), his occupational prospects were limited.

### **Most athletes would be better off at community colleges, not getting degrees**

Anthony DiMaggio, Assistant Professor of Political Science at Lehigh University. He holds a PhD in political communication, and is the author of the newly released: *Selling War, Selling Hope: Presidential Rhetoric, the News Media, and U.S. Foreign Policy After 9/11* (Paperback: 2015)]. *Why Higher Education Should Rid Itself of College Athletics*, Counterpunch.org. APRIL 22, 2014, <https://www.counterpunch.org/2014/04/22/why-higher-education-should-rid-itself-of-college-athletics/>

The fixation on sports among so many students is quite sad in light of the likely outcome. Most all student athletes will never become professionals, but instead will have to fall back on their college degrees to find employment once they graduate. With little time spent on developing critical thinking and occupational skillsets, these students are in a poor position to succeed once they leave higher ed. Consider some of the recent statistics: just 1.7 percent of college football players play professionally (and those that do play only average of a couple years professionally playing time, typically earning league minimum salaries that will require them to find a new career once they wash out). Only 11.6 percent of college baseball athletes enter Major League Baseball; just 1.3 percent of hockey players make it into the NHL; and only 1.2 percent of basketball players enter the NBA. Rather than skating through on partial or full scholarships, many of students would be far better off earning a vocational degree at a low-cost community college, or using that community college as a spring-board into a more affordable four-year degree, to be paid for with a combination of student loans and (ideally) parental tuition assistance.

### **College sports drain academic resources**

Anthony DiMaggio, Assistant Professor of Political Science at Lehigh University. He holds a PhD in political communication, and is the author of the newly released: *Selling War, Selling Hope: Presidential Rhetoric, the News Media, and U.S. Foreign Policy After 9/11* (Paperback: 2015)]. Why Higher Education Should Rid Itself of College Athletics, Counterpunch.org. APRIL 22, 2014, <https://www.counterpunch.org/2014/04/22/why-higher-education-should-rid-itself-of-college-athletics/>

College sports are also a tremendous drain on financial resources. A large majority of college sports programs – 90 percent – lose money for their schools and require additional funds beyond what is earned through ticket, apparel, and other revenues. The cost of such sports only increased in recent years, by 25 percent on average from 2008 to 2012. A recent USA Today study found that just 23 of 228 NCAA athletic departments earned enough revenues to pay for their expenses in 2012. Recent research from the Delta Cost Project found that college sports cost \$6 billion annually and that schools on average spent three to six times more on student athletes than non-athletes. A recent report from the American Association of University Professors highlights that nationally professors' salaries grew quite meagerly in recent years, while administrative and athletic coach salaries and spending skyrocketed. In the modern era, sports appear to be more and more important to collegiate priorities, while pedagogy and teaching are receding into the background. In light of the significant and growing cost of these athletic programs – often millions for a single school per year – and the meager academic returns, such funds would be better spent elsewhere.

## **Answers to: Other Students Oppose Spending Money on Student Athletes**

### **Majority of students support increased spending on athletics and funding student athletes**

Raymond Schneider, "Students' Perceptions on the Payment of Intercollegiate Student-Athletes." *College Student Journal*. (June 2001): Vol.35 Issue 2, p232, 9p, 3 charts., <https://faculty1.coloradocollege.edu/~afenn/web/EC%20389/Sportsecon%2006/Collegiate%20Sports/website/college%20students%20perceptions.pdf>

The NCAA has seen a new increase in revenue inflows, what Hart-Nibbrig & Cottingham (1986) described as "corporate athleticism". Television contracts, sponsorship agreements, high coaches' salaries, and new extravagant stadiums are among the indications that the NCAA now has a corporate face. This has led to the debate of whether or not college student-athletes should be paid for their services. This study uses a survey method to determine the attitudes of college students towards this issue. 458 students were surveyed. The survey included four types of questions: Whether studentathletes should be allowed to receive payment, proponents' arguments, opponents' arguments, and the revenue source that should provide the funding for payment of athletes if they were to be paid. The results show that 54% of respondents believe that student-athletes should be paid. Although 60% of the respondents were male, males and females were equally likely to support the payment of athletes. The most common reasons for support of payment were that the level of illegal payments would decline if student-athletes were paid, and that student-athletes deserve to be paid because of the revenue they generate. In regards to where the funding should come from, 56% said it should come from the athletic department, and 24% thought that the money should come from increases in tuition. This result shows that the athletics program of a school is very important to many students' college experience.

## Bad Term

### **Student-athletes is a bad term that should be replaced**

Daily Tarheel Staff, August 9, 2020, The Daily Tar Heel will no longer use the term 'student athlete', <https://www.dailytarheel.com/article/2020/08/student-athlete-term-editorial>

CORRECTION: A previous version of this story misspelled the name Kain Colter. The article has been updated to reflect the appropriate spelling. The Daily Tar Heel apologizes for this error

The term student athlete was an invention. It's been well documented that the origins of the phrase trace directly back to Walter Byers, the first executive director of the National Collegiate Athletics Association. It was a nifty trick, promoting athletes above the rank of simple students to explain why they should be judged by a lower academic standard while simultaneously keeping them below the status of employees.

The term entered wide use in 1955 when Ray Dennison, an Army veteran and football player for Fort Lewis A&M, was killed on the opening play of a game against Trinidad Junior College. Going for a tackle, Dennison was struck in the head by an opposing player's knee, shattering the base of his skull. He died 30 hours later, leaving behind three children and his wife, Billie. When she sued for workers' compensation benefits, she was denied.

Ray Dennison was not an employee; he was a "student athlete." The court decided Fort Lewis A&M was "not in the football business." That argument may have been valid in 1955, but it is a far cry from the reality of 2020, when UNC athletics was projected to make \$110 million in 2020-2021 before the pandemic.

The NCAA has used the term ever since to place "student athletes" in a no man's land between student and employee, yet detached from the realities of both. The DTH recognizes that this identification doesn't truthfully describe an athlete's role on campus. That is why moving forward, the DTH will no longer use the phrase "student athlete" and instead will opt for "college athlete," "athlete" or "student" as the context requires.

The NCAA used the phrase "student athlete" and the reasoning behind it to avoid paying athletes, to control their name, image and likeness rights and to deny them the ability to unionize. During that same time, these athletes didn't really get to be students, either. Schools have skirted around providing a proper education for these athletes. Our own university failed

to educate hundreds of "student athletes" for nearly 20 years, pushing them through fake "paper classes" that required little to no work and which kept their grades just high enough to retain academic eligibility.

At The Daily Tar Heel, we value accuracy. Language is part of that accuracy, and the way we use it shapes the way we as a society think and interact with the world. We feel the phrases "college athlete," "athlete", "player" and "student" portray more accurately that these athletes are students while simultaneously being professionals.

To make it clear, we are not alone in recognizing the cognitive dissonance that is having "student athletes" in an industry that brings in billions of dollars every year. Jay Bilas, a former college player at Duke and longtime critic of the amateurism model says it plainly: college athletics are professional, the players are not. Even the great hall of fame coach Bear Bryant acknowledged in his autobiography that his players were athletes first, students second. Or just ask Kain Colter, the former Northwestern quarterback who tried to establish a union for his fellow players: being a college athlete is a job, plain and simple.

To accept the term "student athlete" is to accept the NCAA and the nation's college athletic departments' agenda that these athletes are not employees and to silence the voices of these athletes. We think we should frame coverage using our own words instead.

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As higher education embraces social justice and abandons oppressive language and symbols, universities should banish one more offensive term.

After Mississippi State University's best returning football player took to Twitter to announce that he would not play football if the state continued to display the Confederate emblem on its flag, the Mississippi legislature voted to remove the icon.

Athletes at the University of Texas advocated for reforms, too, such as changing the school's racially undertoned spirit song and renaming part of Royal-Memorial Stadium to honor a Black athlete. The song remained, but the school renamed the football field after a pair of Black Heisman-winning running backs. A small, yet positive step.



Finally, the University of Virginia changed and re-changed its V-saber athletics logo, removing the curved handles that represented the school's serpentine walls, which were originally designed to hide enslaved laborers from the view of faculty and students.

Molly HarryMolly Harry

On many campuses, athletes have paved the way to right social injustices that have received increased attention since the murder of George Floyd. However, little conversation has been dedicated to discussing the oppressive, unjust history of the term student-athlete.

In 1955, while competing as an offensive lineman for Fort Lewis A&M, Ray Dennison suffered a knee to the head, which shattered his skull and eventually killed him. Dennison's widow filed for death benefits since her husband's death was the result of his work while serving as an employee of the institution.

The NCAA and Fort Lewis A&M took her to court in what is arguably one of the most important cases in intercollegiate athletics history. Here, the NCAA introduced member institutions and the public to a new term: student-athlete.

The NCAA's argument went like this: Dennison was a student-athlete, and therefore could not be an employee. Thus, as a student, and not an employee, the widow was not eligible for benefits of any kind. The court agreed with the NCAA and ruled against Dennison's widow, solidifying the trinity of student-athlete, amateurism, and intercollegiate sport for decades to come.

Years later, in his memoir, *Unsportsmanlike Conduct: Exploiting College Athletes*, Walter Byers, NCAA president at the time of the Dennison case, denounced the oppressive nature of the term student-athlete. Byers noted that he and the legal team coined the term to prevent not only paying the Dennison family, but also future generations of college athletes looking for worker's compensation or for pay-for-play.

Student-athlete keeps college athletes in their place.

Today, the majority of revenue-producing athletes in the sports of football and men's basketball are Black. They are coached mostly by white men. The man who coined the term student-

athlete, was also a white man. Using the term student-athlete perpetuates the ideals of amateurism, while further preventing a pay-for-play model.

These actions largely favor one group: white men. These actions largely disadvantage one group: Black men. We can no longer deny the prejudicial, arguably racial, undertones associated with calling this higher education population student-athletes.

In spite of this history and the fact that the man who created the term came to condemn it, scholars, practitioners, members of the media, faculty, coaches, and athletes themselves continue to use it.

However, research demonstrates that priming, or subconsciously cueing, athletes with the term student-athlete, results in a decreased academic performance. This may be due to a cognitive imbalance, the perception that these two identities are in conflict.

Priming an athlete can result in lower academic performance, which may make some athletes engage even less in their education, continuing the cycle and unfairly supporting the dumb jock stereotype. So why do we continue to use this term?

In my course, Athletics in the University, I introduce students to the history and tradition associated with student-athlete. Some students are unfazed by the term and its origination, just as some students don't consider the racist names of the buildings they enter.

Others, however, take exception to their new understanding of what it means to be a student-athlete. Some students, particularly athletes of color in revenue-generating sports, are enraged, knowing that this term prevents them from receiving compensation they feel they are owed.

Student-athlete is more offensive to some than others, but both reactions above demonstrate that students, and athletes, are influenced, arguably negatively, by the term student-athlete.

If we can work to rid higher education of racist athletics building names, mascots, and logos, we can abolish this demeaning and degrading term designed to subdue this unique student population.

As we recognize and come to terms with our country's oppressive and racialized history and that history's nexus with higher education, it is important to continue to understand the role of athletics in this relationship.

Rather than calling college athletes student-athletes, we could opt to call them just students or just athletes, or simply by their first name.

**Con**



## “Student Athlete” is a Good Term

Liz Clarke, A member of the Sports Department's enterprise team, October 26, 2021, Washington Post, the NCAA coined the term 'student-athlete' in the 1950s. Its time might be up., <https://www.washingtonpost.com/sports/2021/10/27/ncaa-student-athlete-1950s/>

“We never thought twice about using this term student-athlete,” Knapp said. “Also, part of why we wrote this letter is to preserve the college model. We’re not advocating for pay-for-play out of this. We want to preserve this model that reinforces ‘student-athlete.’ To that end, using the term student-athlete was not necessary but rightly fit into what we were advocating in that regard.”

On a personal level, Knapp said, she embraces the term because she feels she and her Miami teammates, who train 20 hours per week most of the year, have distinguished themselves as more than a “college athlete.”

“We have girls on the team who have 8 a.m. classes. We train from 6 to 8 every morning, so these girls will get out of the pool soaking wet in the middle of a set at 7:52 to run across campus while trying to not miss a single moment of practice to get to class, sit there for an hour and a half, only to go home, eat quickly and come back to another practice in the afternoon for two more hours,” Knapp said. “I would say that they pretty firmly believe they are student-athletes.”

After earning her bachelor’s degree in 3½ years, Knapp completed a master’s degree in international administration and is pursuing a second master’s in liberal studies while competing and serving as a student leader and athlete advocate

“I would say that a majority of people who play a competitive sport under the NCAA in college do ascribe to the student-athlete model, even in the realm of football and men’s basketball,” Knapp said.

Feldman, the Tulane law professor, said he feels the term remains an apt descriptor for college athletes who compete in Olympic sports and at Division II and III schools, which are not commercial enterprises on the scale of Football Bowl Subdivision and Division I basketball players. Nonetheless, he has dropped the term in favor of “college athlete,” which he deems more neutral.

**You shouldn’t be able to not pay your employees by defining them as not employees**

Harvard Law Review, November 2021, NCAA vs. Alston, <https://harvardlawreview.org/print/vol-135/ncaa-v-alston/#footnote-49>,

Justice Kavanaugh concurred to note that the NCAA's remaining rules restricting non-education-related compensation, challenged in the district court but not appealed in the Supreme Court, raised serious antitrust questions as well.<sup>47</sup> Justice Kavanaugh emphasized three points: that the Supreme Court's decision did not consider the legality of the non-education-related compensation rules, that the Court's decision established that these rules would be analyzed under the rule of reason test, and that the Court's decision raised serious questions about the legality of the remaining restraints under the rule of reason test.<sup>48</sup> In challenging the NCAA's argument that maintaining compensation restrictions is necessary to distinguish college athletics from professional athletics, Justice Kavanaugh stated: "Businesses like the NCAA cannot avoid the consequences of price-fixing labor by incorporating price-fixed labor into the definition of the product."<sup>49</sup> Although Justice Kavanaugh did suggest that the NCAA could protect itself from future judicial scrutiny by engaging in collective bargaining with student athletes,<sup>50</sup> he also flatly concluded that "[n]owhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. . . . The NCAA is not above the law."<sup>51</sup>

## **Solvency Answers**



## Not Employees

### Every court agrees they are not employees

**National Law Review 2017, 11-6-17, Repeat after me: College Athletes are not employees under FLSA, <https://www.natlawreview.com/article/repeat-after-me-college-athletes-are-not-school-employees-under-flsa2>**

“Close some doors today. Not because of pride, incapacity or arrogance, but simply because they lead you nowhere.” This quote (attributed to Brazilian author Paulo Coelho) comes to mind with last month’s filing of yet another lawsuit, *Livers v. NCAA*, by a college athlete who alleges that playing a college sport is work such that he or she qualifies as an employee of the school, and is thus entitled to wages, under the Fair Labor Standards Act (FLSA). In two prior cases, **Berger v. NCAA and Dawson v. NCAA, similar FLSA claims brought by student athletes were dismissed by federal district courts in Indiana and California, respectively.** In *Berger*, the U.S. Court of Appeals for the Seventh Circuit affirmed the dismissal. Apparently undeterred by these unfavorable results, the plaintiff in *Livers* and his counsel (who also represented the plaintiffs in *Berger*) seem to believe that the third time will be the charm. **They have brought this new FLSA collective action in a Pennsylvania federal court against 20 different Pennsylvania schools and the NCAA (as a joint employer); once again the claim is that the student athlete is an employee under the FLSA and is entitled to wages for the time spent participating in a college sport.** There is more folly than charm here, and the case seems a classic example of argumentum ad nauseum. As debate has raged over big-money college sports and whether participating student athletes should in some way share in the profits, various avenues of potential legal recourse have surfaced, with significant focus given to antitrust and labor law. At first blush, labor and employment law seems like the right legal vehicle to deliver compensation to student athletes. And why shouldn’t student athletes be paid? They spend a significant amount of time practicing and playing sports, which in turn generates significant revenues for their school, particularly in basketball and **football.** **Ultimately, however, the sports-as-work analogy just does not translate for college athletes in the labor and employment law context.** Recent efforts to cast student athletes as workers or employees accelerated with the Northwestern University football team’s well-reported attempt to unionize under federal labor law and thereby force the school to negotiate with them over the terms and conditions of their “work” as college football players. With the regional director of the National Labor Relations Board concluding that the Northwestern players were in fact employees of the school under the National Labor Relations Act (although the Board ultimately would not formally adopt that determination), it did not take long for student athletes to try to stretch the employee argument to other employment-related laws like the FLSA. Indeed, **the Berger case — brought by two former track athletes from the University of Pennsylvania — was quickly born but ultimately died.** Also as reported here, **the plaintiff in Dawson then tried to distinguish his FLSA case from Berger by bringing claims only on behalf of student athletes who participated in the revenue-generating sports of basketball and football.** This distinction proved meaningless. Now, the plaintiff in *Livers* offers up yet another distinction by bringing **his FLSA claims only on behalf of scholarship athletes who are required to play their respective sport, and excluding walk-on athletes who do not play under the same compulsion that comes with a scholarship.** These attempts to concoct FLSA claims based on the type of student athlete at issue are fruitless. As the *Berger* and *Dawson* courts soundly reasoned, student athlete play is not work and the extracurricular endeavors of student athletes do not render them employees under the FLSA. **Even the U.S. Department of Labor – the federal agency charged with the enforcing the FLSA – agrees, as its field operations handbook expressly states that students do not become employees of their school based solely on their participation in interscholastic sports.** For these reasons, the plaintiff in *Livers*, like the plaintiffs in *Berger* and *Dawson* before him, will likely fail. It is time for student athletes to close the FLSA door.

### Activities conducted primarily to the benefit of the students are not work

Allen Smith, Society for Human Resource Management Manager and Workplace Law Content writer. J.D. from the University of North Carolina School of Law, Student Athletes Aren’t Employees, Society for

Human Resource Management, March 11, 2016, <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/student-athletes-aren%E2%80%99t-employees.aspx>

They may break a sweat more often than many workers, but **student-athletes are not employees for purposes of the Fair Labor Standards Act (FLSA)**, the U.S. District Court for the Southern District of Indiana has ruled. Three members of the women's track team at the University of Pennsylvania sued the National Collegiate Athletic Association (NCAA), alleging that they are employees of the university and seeking at least minimum wage for the work they perform as student-athletes. But the court rejected their argument on Feb. 16. Randi Kochman, an attorney with Cole Schotz in Hackensack, N.J., summed up the court's ruling: **"Tradition of amateurism in college sports—without student thought of compensation—and the fact that thousands of amateur athletes have been around college campuses for years and the DOL [Department of Labor] has not taken any steps to apply the FLSA to them." "To the contrary," the court stated, "the DOL has expressly taken the position that 'as part of their overall educational program, public or private schools and institutions of higher learning may permit or require students to engage in activities in connection with dramatics, student publications, glee clubs, bands, choirs, debating teams, radio stations, intramural and interscholastic athletics and other similar endeavors. Activities of students in such programs, conducted primarily for the benefit of the participants as part of the educational opportunities provided to the students by the school or institution, are not 'work' under the FLSA and do not result in an employee-employer relationship between the student and the school or institution.' " The determination of whether someone is an "employee" for FLSA purposes involves the flexible application of a broad standard, according to Gary Lieber, an attorney with FordHarrison in Washington, D.C. But student-athletes voluntarily participate in sports deemed to be for their own benefit.**

## Not employees

**Jon Solomon 2017, 2-2-2017, "NLRB counsel: Football players at private FBS schools are employees," CBSSports, <https://www.cbssports.com/college-football/news/nlr-counsel-football-players-at-private-fbs-schools-are-employees/>**

"Scholarship football players should be protected [by the NLRA] when they act concertedly to speak out about aspects of their terms and conditions of employment," Griffin wrote. "This includes, for example, any actions to: advocate for greater protections against concussive head trauma and unsafe practice methods, reform NCAA rules so that football players can share in the profit derived from their talents, or self-organize, regardless of whether the Board ultimately certifies the bargaining unit." **The NCAA pushed back on the relevance of the general counsel's memo, which was first reported by Inside Higher Education.** "The general counsel's memo and personal opinion do not reflect a binding position of the NLRB," NCAA chief legal officer Donald Remy said in a statement. **"As we have stated before and he was obligated to acknowledge, the NLRB previously decided that it would not exercise jurisdiction regarding the employment context of student-athletes and their schools.** The general counsel's memo does not change that decision and does not allow student-athletes to unionize. **Students who participate in college athletics are students, not employees. "Recently, a United States Court of Appeals confirmed that fact. Any distinction by sport or division misunderstands the student-athlete experience.** We, along with our member schools, will continue to provide the best support possible for all college athletes." Federal courts have shied away from identifying NCAA athletes as employees. **In January, the Seventh Circuit Court of Appeals**

affirmed an Indiana federal court's dismissal of a case by University of Pennsylvania track and field athletes, who claimed they were entitled to compensation as employees under the Fair Labor Standards Act. **The majority opinion concluded that college athletes have no more right to ask whether they might be employees than inmates who are in prisons.** Griffin acknowledged his memo can't and shouldn't resolve "divisive" questions about whether football players should be treated differently than "equally committed" athletes in non-revenue sports. Griffin said he wants the NLRB's prosecutorial position known so private universities comply with their obligations. Without a full investigation of future complaints, "we cannot conclusively determine the employee status of other kinds of student athletes in cases that may arise in the future," Griffin wrote.

## Cases where it has been determined that athletes are not employees

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

Rensing v. Indiana State University Bd. of Trustees n45 **involved a workmen's compensation claim for injuries incurred by a student athlete who, while playing varsity football at Indiana State University, suffered an injury during spring practice that left the student a quadriplegic.** n46 The court held that a student was not an employee of the university for the purpose of the state's workers' compensation act. n47 The court noted that the agreements between the student and the university did not disclose the requisite intent of either party to enter into an employee-employer relationship. n48 **In Coleman v. Western Michigan University** n49 **the court upheld a prior determination that a former student athlete was not an employee of the university when he suffered an injury during college football practice.** n50 [\*242] **The Michigan Court of Appeals applied the "economic reality" test** to determine whether an employment relationship existed. n51 The court considered (1) the employer's right to control or dictate the activities of the employee; (2) the employer's right to discipline or fire the employee; (3) the payment of wages and particularly the extent to which the employee was dependent on the payment of the wages and other benefits for daily living expenses; and (4) whether the task performed by the employee was an integral part of the employer's business. **Despite agreeing with the plaintiff that Coleman's scholarship amounted to wages for his services as a football player, the court concluded that the primary function of the university was to provide academic education, rather than function solely as an athletic department.** n52

## Fact sheet is not the best test – they are NOT employees

**Dan Kan 2016**, sports employment attorney, February 9, 2016, The National Law Review, Are student-athletes employees and owed wages under FLSA?, <https://www.natlawreview.com/article/are-student-athletes-employees-and-owed-wages-under-flsa>

Background Three former track and field student-athletes from the University of Pennsylvania (Penn) sued their alma mater, the NCAA and all other Division I universities, claiming they were entitled to a minimum wage salary for performing "work" related to their duties as student-athletes under the FLSA. The complaint, filed in the United States District Court for the Southern District of Indiana, asked for unpaid wages and other liquidated damages pursuant to the FLSA. The plaintiffs amended their lawsuit to include just the private universities who are members of Division I, Penn and the NCAA. At the heart of their complaint lies a 2010 intern fact sheet produced by the Department of Labor (DOL), which sets forth a test intended to determine whether certain internships qualify as employment under the FLSA. The plaintiffs claimed the court should use the DOL intern fact sheet to conclude that student-athletes for Division I private universities are in fact subject to minimum wage and overtime payments. Key Issues In granting the defendants' motion to dismiss, Judge William T. Lawrence tackled three key issues: 1. Who are the appropriate defendants? While the plaintiffs name the NCAA and other private Division I institutions as defendants in their lawsuit, the court held that the plaintiffs did not have standing to sue any entity other than Penn. The former student-athletes failed to allege that the NCAA or institutions they did not attend were their

employer under the FLSA. As a result, Judge Lawrence dismissed the non-Penn defendants due to a lack of subject matter jurisdiction. 2. What standard should be applied to determine whether the student-athletes are employees of Penn? The plaintiffs aimed to paint the picture that summer two-a-days and weight lifting sessions are the same in effect as selling programs, working concessions and other jobs that students often perform on campus. Judge Lawrence concluded that even if student-athletes deserved to be categorized as workers, the FLSA is not intended to protect them as such. As mentioned above, the plaintiffs argued that the court should apply the criteria in the DOL intern fact sheet from 2010 to determine that the student-athletes are in fact employees entitled to wages under the FLSA. The Court, however, disagreed and instead relied on a more flexible test favored by the Seventh Circuit in reaching its determination that student-athletes are not employees under the FLSA. In rejecting the plaintiff's argument that the DOL fact sheet should be used to make this determination, the Court pointed out that the fact sheet addresses internships for private companies only, while the plaintiffs rested their argument on relating student-athlete participation to student-worker employment. Judge Lawrence noted that courts in multiple circuits have rejected both the DOL's intern fact sheet test and the DOL trainee handbook test before it in favor of more flexible tests. As a result, the Court settled on evaluating the "economic relationship" between the student-athletes and Penn to answer the question of whether the plaintiffs should be considered employees of Penn under the FLSA. 3. Are the former Penn student-athletes "employees" for FLSA purposes? According to the Court, student-athletes are not employees under the FLSA because the NCAA's model of amateurism clearly defines the economic relationship (or lack thereof) between student-athletes and their schools. Recruits, according to the Court, understand that they will be attending Penn as a student-athlete with no pay before signing their National Letters of Intent, and they have no expectation that employment results from their participation in varsity sports.

## Graduate students and teaching assistants are not employees

**Jake Simpson, 2014, August 7, The Atlantic, Of course student athletes are university employees, <https://www.theatlantic.com/entertainment/archive/2014/04/of-course-student-athletes-are-university-employees/360065/>**

"If the board adheres to the laws that presently exist and analyzes the facts in a deserving manner, it is quite likely that this decision will be set aside," agreed Marshall Babson, a counsel at Seyfarth Shaw LLP and a former NLRB member. Babson added that Ohr erred in not relying on a 2004 NLRB decision in which the board ruled that Brown University graduate students, though they were required to work as teaching assistants while completing their studies, were not employees. (Ohr ruled that the Brown decision did not apply because, among other things, the players' football-related duties were unrelated to their academic studies, while the graduate assistants' TA and research duties were inextricably linked to their graduate degree requirements.)

## **Spending Disadvantage**

## Reasons Costs Increase for Schools

### Fair market value salaries would be really high

Richard Borghesi, February 4, 2017, College of Business Administration, University of South Florida, Pay for play: the financial value of NCAA football players, <https://www.tandfonline.com/doi/full/10.1080/00036846.2017.1287865>

We explore the financial value of National Collegiate Athletic Association (NCAA) football recruits and establish a wage schedule based on the star ratings assigned to high school athletes by an independent talent evaluation agency. Evidence suggests that the contribution of higher-ranking recruits to team wins significantly increases revenues. While the NCAA currently prohibits universities from paying student-athletes, we estimate that if amateurism rules were rescinded and college football players were compensated according to their revenue-generating abilities then five-, four-, three-, and low-star players would be entitled to annual salaries of \$799,000, \$361,000, \$29,000, and \$21,000, respectively, in addition to athletic scholarships covering tuition, books, and room and board.

### Even partial payment means the full value of the scholarship is now taxed and schools would have to increase the value even more to cover the tax costs

Anderson Tax Associates, September 2014, Student-Athlete/Athlete-Employee: Tax Consequences, For Sure,” [http://www.andersentax.com/uploads/newsletter-pdfs/AndersenTax\\_FortheRecord\\_September2014.pdf](http://www.andersentax.com/uploads/newsletter-pdfs/AndersenTax_FortheRecord_September2014.pdf)

First, if the courts ultimately grant the team their wish to be treated as employees, the student-athletes of the Northwestern football team could one day find themselves in the unfortunate situation of having to declare the annual value of their scholarships as taxable income. Section 117 of the Internal Revenue Code governs all scholarships — **academic or athletic. Students do not typically need to declare scholarships as income provided that the school grants the scholarships with “no strings attached.”** The school cannot expect quid pro quo from the students in return for the scholarship. **Unfortunately for studentathletes everywhere, the tax code leaves no room for interpretation on this issue. Any form of compensation that the student-athletes may receive in return for playing would invalidate the taxexempt nature of their scholarships.** Because many Division I athletes receive scholarships for full tuition and housing, the additional **income they would need to report to IRS as employees could be \$50,000 or more each year. Even at the lowest 2014 taxes rates, the tax on that income would be over \$10,000 annually, or \$40,000 for a fouryear degree. The financial burden of that tax could be more than many of the athletes could afford. In this scenario, schools could find themselves obliged to increase the size of the scholarships such that the recipients would have enough cash left over after tuition and housing to pay the tax bills. Given the annual volume of athletic scholarships around the country (over \$1.4 billion according to US News and World Report), schools could have to spend hundreds of millions just to cover the new taxes.**

## **Schools would also have to pay tax on athletic department profits, they would have to pay tax on donations, contributions over \$4,000 would be subject to the gift tax**

Anderson Tax Associates, September 2014, Student-Athlete/Athlete-Employee: Tax Consequences, For Sure,” [http://www.andersentax.com/uploads/newsletter-pdfs/AndersenTax\\_FortheRecord\\_September2014.pdf](http://www.andersentax.com/uploads/newsletter-pdfs/AndersenTax_FortheRecord_September2014.pdf)

A second potential consequence of granting student-athletes the status of employee could have grave repercussions for the school’s athletic department. **Athletic departments enjoy a tax-exempt status because of their close relationship to the central educational mission of the school. The decision to treat student-athletes as employees could fundamentally invalidate that relationship.** If the NLRB and other courts ultimately grant student-athletes employee status, a key factor in that decision will likely involve the fact that those activities have more to do with the entertainment industry than with education. **Therefore, it is also likely that IRS will cease to acknowledge the tax-exempt status of athletic departments. The subsequent tax hit from Unrelated Business Income Tax (“UBIT”) could be substantial—15-35% at the federal level alone But paying UBIT is only the tip of the iceberg. The most severe consequence for athletic departments would stem from the elimination of tax-deductible contributions.**

Contributions are by the far the largest source of income for athletic departments. Without their tax-deductible status, those donations would not be tax-exempt by the donor. This may not deter most small donations, but it could make the larger donors think twice before making a substantial commitment. **Furthermore, any gift over \$14,000 would be subject to the gift tax. Not only would substantial donors no longer be able to deduct their donations, they would also have to pay IRS up to 45% of the value of any gift over the \$14,000 threshold. It is not a stretch to think that this might effectively end large contributions to athletic departments. If this were the case, athletic departments would likely need to restructure the way they receive funding. The drain on schools’ resources in that situation could be enormous, perhaps too much to handle. Last, but not least, issuance of tax-exempt bonds may no longer be possible.**

Tax-exempt bonds in the past have helped to support the construction of major facilities, fields, and stadiums. Issuing bonds at commercial loan rates In short, granting student-athletes employee status could be bad for students but catastrophic for athletic departments.

## **Rising costs cause other sports to be cut**

Montgomery & Karcken, November 10, 2023, <https://www.mmwr.com/student-athletes-as-employees-a-potential-game-changer-for-college-athletics/>, STUDENT-ATHLETES AS EMPLOYEES? A POTENTIAL GAME-CHANGER FOR COLLEGE ATHLETICS

Ultimately, a ruling in the plaintiffs’ favor would require colleges and universities to pay student-athletes minimum wage and overtime pay.

This raises the question of how pay would be distributed to the athletes as well as how resources would be allocated to different programs. Many have signaled that increased payroll costs would result in the reduction in rosters for many sports teams or the cutting of certain sports programs entirely and, consequently, would lead to further inequalities that already exist in college athletics.

Requiring student athletes to be paid would eliminate Division II and Division III sports

<https://www.mmwr.com/student-athletes-as-employees-a-potential-game-changer-for-college-athletics/>

Baker cautioned that athletic programs at Division II and III schools may cease to exist without congressional action. He added that athlete representatives from all three divisions in the NCAA have signaled that they do not want to be classified as employees.

Small college athletics will be lost

Parker Purifoy, October 25, 2023, <https://news.bloomberglaw.com/daily-labor-report/ncaa-student-athletes-as-employees-case-to-open-pandoras-box>, NCAA Student Athletes as Employees Case Is ‘Pandora’s Box’ (1)

Matt Cowan, a partner at employer-side firm O’Melveny & Myers, said considering athletes to be employees would cause a “fundamental change to the landscape of college sports”.

“College athletes can now profit from their name, image, and likeness and also receive scholarships, but paying them is likely a bridge too far for some universities,” Cowan said in an emailed statement.

NCAA “super conferences” with high-spending programs likely could bear the weight of paying athlete salaries and benefits, but smaller schools might struggle, said Michael Elkins, an employment attorney and founder of MLE Law.

“If athletes end up with employment status, that’s really going to accelerate this pattern of conference consolidation and we might see some of the smaller schools going by the wayside,” he said.

### **Colleges will have to pay women’s sports teams equally, driving up the costs. It would also reduce donations**

Stephanie Lo, April 1, 2014, San Diego Union Tribune, College Athlete Unions raise myriad of issues, Giving college football players employee status also raises questions about how they will be treated for tax purposes, and how this will work with minimum wage and pension laws.



<http://www.sandiegouniontribune.com/sports/aztecs/sdut-college-athletes-union-issues-kain-colter-cap-a-2014apr01-story.html>

At the moment the NLRB ruling only pertains to Northwestern football players on scholarship, and only men's basketball and football players in the NCAA's highest division of competition are eligible to join CAPA. **Since federal Title IX rules mandate that schools have to provide equal treatment for male and female athletes, "if a school would like to keep under the umbrella of a non-profit university status, it would need to treat male and female athletes the same,"** said Nancy Hogshead-Makar, senior director of advocacy at the Women's Sports Foundation. San Francisco-based labor law expert David Murphy concurs. **"It doesn't matter how much money the women's sports are making,"** Murphy said. **"If the Northwestern football players are employees, the women's lacrosse players are employees too."** Still, the issue is not black-and-white. "What happens to the women's basketball team if the men's basketball team unionizes, gets a \$2,500 per month stipend and medical insurance? Does that mean the women's team gets it automatically too?" Murphy said. "I tend to think 'no,' because that's a unique, collectively bargained result for the men's basketball team. But I guarantee the Title IX people will say it does." **Hogshead-Makar even projects that universities could jeopardize their nonprofit status if the move toward student-athlete unions spiraled into a situation where athletes accept full employee status, and college sports morphs into a professional model in which schools vie for recruits with competing price tags. If that were to happen, Hogshead-Makar theorizes athletic departments would lose the donations, institutional support and student fees that currently keep most of them afloat.**

### **If athletes are paid, viewership will drop, reducing revenues**

Jake Novak, Paying college players will ruin the game, CNBC News. April 6th, 2015, <https://www.cnbc.com/2015/04/06/ege-athletes-shattered-illusions.html>

But the logical and fair argument that these athletes should be paid even while they remain in college in return for the revenues they generate for their schools has one fatal/paradoxical flaw: **it will shatter the priceless illusion of the student-athlete and destroy a great deal of those revenues for good. It's the metaphorical killing of the goose that lays the golden egg.** The latest CNBC All-America Economic Survey proves it. **The poll shows that in the crucial demographic of wealthier males aged 50 and over, a whopping 32% would be less likely to watch college sports if the players were paid. And I actually think the real number is much higher and will grow more and more over time. The reason is because loyalty to Alma Mater and the personal connection fans have with their school's sports teams is still the prime source of support for major college athletics. Without that, college sports will probably survive, but they will suffer a major drop to the level of support, interest and publicity that minor league sports leagues deal with right now. And there's the paradox. As a strong proponent of the free market, there's no doubt in my mind that the athletes who do the work that makes the big money for schools from Wisconsin to UNLV deserve to be paid in some way other than a scholarship for an education they're clearly not getting. But I also know that doing so would kill off a significant amount of those revenues.** I know this is the case, because I've been living the life of a college

sports fan with no illusions for more than 25 years. That's because my favorite college sports teams play in the Ivy League, a conference that doesn't hand out athletic scholarships and thus grabs almost none of the spoils of the big money making college sports of football and men's basketball. I still love going to and watching those games in the Ivies, and I like that I'm watching real students play who are also taking the same rigorous courses I did three decades ago. But I know that I am in the minority. Because I also don't deny that the quality of the contests usually pales in comparison to what you're going to see in the Big 10 or the ACC. The games are still competitive and fun, but attendance at Ivy football and basketball games is a small fraction of what you see in the big time conferences. And even though eliminating bogus athletic scholarships and recruiting only true student athletes would solve the problem for schools like Northwestern who are currently being sued by a group of football players trying to unionize, I know that's just not going to happen. Even if Northwestern loses its battle against the union, it will simply settle for the reduced revenues that result from the shattered illusion of the amateur college athlete and reassess the situation down the road. Not even elite academic schools like Northwestern and Duke will consider the Ivy model anytime soon. And so we're stuck with two bad options. Northwestern and the NCAA could somehow stave off what seems like an inevitable push to pay college athletes, leaving those athletes unfairly compensated and fans in fantasy land... or we can see the players get paid, and watch college sports and its revenues take a serious hit.

### **Schools would have to spend millions just to cover the tax consequences. Even partial payment means the full value of the scholarship is now taxed**

Anderson Tax Associates, September 2014, Student-Athlete/Athlete-Employee: Tax Consequences, For Sure, [http://www.andersentax.com/uploads/newsletter-pdfs/AndersenTax\\_FortheRecord\\_September2014.pdf](http://www.andersentax.com/uploads/newsletter-pdfs/AndersenTax_FortheRecord_September2014.pdf)

First, if the courts ultimately grant the team their wish to be treated as employees, the student-athletes of the Northwestern football team could one day find themselves in the unfortunate situation of having to declare the annual value of their scholarships as taxable income. Section 117 of the Internal Revenue Code governs all scholarships — **academic or athletic. Students do not typically need to declare scholarships as income provided that the school grants the scholarships with “no strings attached.”** The school cannot expect quid pro quo from the students in return for the scholarship. **Unfortunately for studentathletes everywhere, the tax code leaves no room for interpretation on this issue. Any form of compensation that the student-athletes may receive in return for playing would invalidate the taxexempt nature of their scholarships.** Because many Division I athletes receive scholarships for full tuition and housing, the additional **income they would need to report to IRS as employees could be \$50,000 or more each year. Even at the lowest 2014 taxes rates, the tax on that income would be over \$10,000 annually, or \$40,000 for a fouryear degree. The financial burden of that tax could be more than many of the athletes could afford. In this scenario, schools could find themselves obliged to increase the size of the scholarships such that the recipients would have enough cash left over after tuition and housing to pay the tax bills. Given the annual volume of athletic scholarships around the country (over \$1.4 billion according to US News and World Report), schools could have to spend hundreds of millions just to cover the new taxes.**

## Advocates agree that non FBS bowl schools can't afford to pay players

Ramogi Huma, National College Player's Association president, Let's Compensate College Athletes By Making Sure They Graduate, Business Insider, April 9, 2012, <http://www.businessinsider.com/lets-compensate-college-athletes-by-ensuring-that-they-graduate-2012-4>

Still, some will argue that schools can't possibly afford to give traditional salaries to players because most programs lose money. This is generally true among non-FBS schools.

## Costs of single athletes would be in the millions, forcing program cuts

CNBC, April 12 2014 What a College Athlete is Worth on the Open Market, <https://www.cnbc.com/2014/04/12/whats-a-college-athlete-worth-in-pay-on-the-open-market.html>

With the attempt to unionize football players at Northwestern University, and antitrust lawsuits being fought against the governing board of college athletics—the NCAA—experts say the day when student athletes are classified as workers and get paid may not be far off. **But how much money could a player get on the open market? According to one report, it would likely mean salaries in the hundreds of thousands of dollars, if not more. "The bidding war for athletes would likely be in the millions,"** said Ellen Staurowsky, a professor of sports management at Drexel University and co-author of the report. "However, I think it all depends on whether or not a players' association ends up representing the teams and players," Staurowsky told CNBC by phone. "The salaries could be effectively bargained to have some sort of minimum guaranteed salary for all." The March survey, from the National College Players Association and Drexel University, said that **the projected fair market value of the average college football player is \$178,000 per year from 2011 to 2015, while the projected market value for the average college basketball player for the same time is \$375,000.** Read MoreCollege athletes or unpaid workers? A debate rages The report also said that football players with the top 10 highest estimated fair market values, like Texas A&M quarterback Johnny Manziel, might be worth as much as \$547,000, during the year 2011 to 2012. Basketball players with the top 10 highest estimated fair market values, such as Kansas Jayhawk forward Andrew Wiggins, for instance, might be worth more than \$1.6 million for the same year. The report states that the fair market value was calculated using the revenue sharing percentages defined in the NFL and NBA collective bargaining agreements and team revenues as reported by each school to the federal government. The NCPA is headed by Romagi Huma, who is leading the effort to unionize the Northwestern football players. Hurdles to a payday Getting to a college athletes' payday, while seemingly inevitable to some, won't be easy. There are numerous hurdles, such as legal challenges to the Northwestern union effort. The NCAA has vowed to fight any effort to change the status of college athletes to employees, and allow any kind of direct salary—as has Northwestern. Northwestern's football team is expected to vote on whether to unionize on April 25. **And critics claim the likely bidding war for high school athletes would force many schools to throw in the towel when it comes to fielding sports teams—saying the cost of paying would be too much. And there's always the argument that athletes do get paid, through scholarships.**

## Consequences of Increased Costs – Shutting Down Athletic Programs

**If universities had to pay athletes, most programs could not compete economically and many would shut-down, particularly women’s sports**

Warren, Nicholas, graduating student in economics, May 2017, “The Economic Feasibility of Paying College Athletes,” Department of Finance, Texas Christian University. May 8, 2017, [https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren\\_\\_Nicholas-Honors\\_Project.pdf?sequence=1](https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren__Nicholas-Honors_Project.pdf?sequence=1) Thesis overseen by Supervising Professor: Steven Mann, Ph.D. Department of Finance Barbara Wood, Ph.D. Department of Finance Chad Proell, Ph.D. Department of Accounting

Furthermore, when comparing this data to some of the “free market” rhetoric that is wished for by many who have an understanding of this topic, it becomes apparent **that my original thought of the “rich get richer” would be increasingly more relevant as the powerhouse programs would surely thrive.** While there was little correlation between championships and revenues, a free market approach could definitely increase the chances of that correlation becoming a relevant factor in the college sports world. **With the majority of the top earners in terms of both revenues and profits already coming from schools that historically enjoy success, this could eliminate the possibility of schools from lower tiers or even smaller schools in the larger conferences from being able to compete for championships. Since the year 2000, fourteen of the national championships for college football have been won by teams that are in the top fifteen most profitable schools (NCAA Trends, 2016). Under a free market system, this trend would surely continue to increase, as teams that produce the most profit would be able to offer the most lucrative contracts to the nation’s top players, allowing these programs to see continued success.** The other major implication of a free market system would be the complications that would arise from Title IX and the payment of female athletes. **With no female programs being profitable, there would be no payment for the women who make up those teams. If schools paid their players based off of the profits produced, the lack of profits in women’s sports would equate to no salary, much like that of a company that makes no money. This produces a complication with Title IX, which dictates that there be as many female scholarships awarded to women as there are to men, and would definitely argue for equal pay. Even outside of Title IX, it would be very challenging to tell a program like the UConn Women’s basketball team, who has won six of the last ten national championships and won a record 111 straight games, that they will either make no money or very little money. That hardly seems like a system that would foster growth for women’s athletics or the development of opportunities for female athletes to attend college, especially when compared to a hypothetical men’s football team that has produced few wins but is slightly profitable due to donations that have been shored up since the team’s glory days twenty years ago.** This argument has already begun on a professional level with the underpayment of the US Women’s National Soccer team, which is widely known as one of the top teams in the

world, winning numerous championships. The women on the team make a sizeable amount less than the players on the men's national team, which has never attained the success of its counterpart. That argument has begun to catch on in recent years, and only concerns the salaries of less than thirty women. One can only imagine the discussion that would occur if that argument were to take place on the magnified scale that college athletics would provide.

### **Costs of paying student athletes as employees would cause many colleges to cut sports**

Patrick T. Harker is the president of the University of Delaware and a member of the board of directors of the National Collegiate Athletic Association, Division I, , New York Times, Student Athletes Shouldn't Unionize, The New York Times, April 1, 2014, <https://www.si.com/college-football/2015/08/17/northwestern-football-players-union-nlrb-ruling-analysis>

NEWARK, Del. — LAST week's ruling by a regional director of the National Labor Relations Board that players on Northwestern University's football team were school employees, and thus eligible to unionize, has been celebrated by those who believe that it will benefit student athletes everywhere. It won't. **Player unions would be a disaster for universities, for college sports fans and, most important, for student athletes themselves. The prospect of college football players bargaining to exchange scholarships for salaries is still remote, but if it comes about, even the most valuable athletes would be worse off. Turning student athletes into salaried employees would endanger the existence of varsity sports on many college campuses. Only about 10 percent of Division I college sports programs turn a profit, and most of them, like our \$28 million athletic program at the University of Delaware, lose money. Changing scholarship dollars into salary would almost certainly increase the amount schools have to spend on sports, since earnings are taxed and scholarships are not. In order just to match the value of a scholarship, the university would have to spend more. We are among the many schools that have already had to trim varsity sports in recent years. Should costs increase, we and many other schools would face pressure to cut back further.**

## Undermines College Academics

### **Increasing the costs of college sports will cause both tuition hikes and academic program cuts**

Cathaleen Chen, Are college athletic programs responsible for tuition hikes?, Christian Science Monitor, October 13 2015, <https://www.csmonitor.com/USA/USA-Update/2015/1013/Are-college-athletic-programs-responsible-for-tuition-hikes>

**College sports may be a culprit for the student debt crisis. A new documentary short is highlighting the exorbitant amount of money colleges and universities are spending on athletics while tuition continuously grows for students and faculty positions slowly diminish.** Titled “The Big Game: College Football Stealing Your Education,” the 2-minute video cites that contrary to popular conception, 82 percent of college football programs lose an average of \$11 million per year, and that universities spend nearly seven times as much on athletes as on educating students. Meanwhile, the average cost for tuition and fees has almost doubled since 2000. Take Action: Seeking progress and innovation in education **“There’s this common consensus that athletics bring money to the school, and its manifestation in the public keeps us from actually doing the math,”** Vanessa Baden Kelly, a spokeswoman for Brave New Films, tells The Christian Science Monitor. For instance, the documentary researchers found that **Utah State University spent \$25 million on sports last year, but only earned \$11 million from its own athletic departments. The rest of the \$14 million, the narrator says, came from tuition and tax subsidies. Likewise for Kent State University, where 54 percent of the school's athletic budget comes from students.** The top schools do have profitable sports programs, Ms. Baden Kelly says, but after the top 20 or 30, people forget about the thousands of schools with football teams that aren’t making money. Especially compared to the dismal work climate for adjunct professors, the money poured into sports can seem egregious. **In an opinion piece for the Huffington Post, Brave New Foundation filmmaker Robert Greenwald explains that in order to fund expensive athletic programs, schools must rebudget elsewhere. “At many universities, this means cutting faculty and entire degree programs,”** Greenwald writes. “University of Akron recently cut 215 jobs and \$40 million dollars from their budget. But their tuition did not go down. Instead, they signed Terry Bowden, head coach of their football program, to a \$2 million dollar contract.” Take Action: Seeking progress and innovation in education **The conditions for adjunct faculty is precisely why Brave New Films was inspired to make its film, Kelly says, as part of a series on the student debt crisis.** “The most important finding [in the film] is the fact that this huge debt crisis that’s coming out of institutions of higher learning can be curbed in many ways that we don’t realize,” Kelly says. And college sports is only one of them.

## Increasing sports costs causes cuts in academics

USA Today, January 15, 2013, Division I schools spend more on athletes than education, <https://www.usatoday.com/story/sports/ncaaf/2013/01/15/divisioni-colleges-spend-more-on-athletes-than-education/1837721/>

Public universities competing in NCAA Division I sports spend as much as six times more per athlete than they spend to educate students, and likely for the first time per-athlete spending at schools in each of the six highest-profile football conferences topped \$100,000 in 2010, an analysis of federal and school data finds. Between 2005 and 2010, spending by athletic departments rose more than twice as fast as academic spending on a per-student basis. Median per-athlete spending by 97 public institutions that compete in the top-tier Football Bowl Subdivision increased the most: 51%, to \$92,000, between 2005 and 2010, while median spending on education increased 23%, to just under \$14,000 per full-time student. Meanwhile, tuition at four-year public universities increased an average of 38% and state and local funding rose just 2%, research shows. At schools where athletic budgets top \$70 million, ticket sales are the largest source of revenue, followed by contributions and payments for television agreements and participation in bowl games and tournaments, the report shows. But **fewer than one in eight of the 202 Division I schools in the report generated more money than they spent in any given year between 2005 and 2010.** collegespending1 Spending in 2010 was higher on athletics than on academics at Division I NCAA schools. (Photo: Jamie Martin, AP file) **Most athletic departments are subsidized in part with student fees and state and institutional funds because they do not generate enough revenue to cover all of their costs. That subsidy is the largest and fastest-growing source of revenue for the lower-tier schools,** the study shows. College spending database: Athletics spending by school in Division I "Participation in intercollegiate athletics in the United States comes with a hefty price tag, one that is usually paid in part by state and institutional funds," says Donna Desrochers, author of the report released Wednesday by the Delta Cost Project at the non-profit American Institutes for Research. The group's analysis was based on data from the Education Department and data collected by USA TODAY Sports for its College Athletics Finances Database. A 2012 USA TODAY analysis of 227 Division I public schools found that athletics revenue had increased 54% between 2005 and 2011; the portion of revenue that comes from student fees and the university increased 57%. Compensation and benefits represent the largest athletic expense across all subdivisions, with about half of budgets going toward coaching. Lower-tier schools spent more of their budget on student aid. John Nichols, a retired journalism professor at Pennsylvania State University and co-founder of the Coalition on Intercollegiate Athletics, a faculty-led alliance that seeks changes, says **the growing reliance by sports departments on university funds "can mean in many circumstances one more assistant coach and one less English professor teaching Shakespeare."**

## Bankrupts Schools

### **If schools had to pay, they would go bankrupt**

Max Herrera, Student-athletes are students, not professionals, The Aragon Outlook. April 24, 2014, <http://aragonoutlook.org/2014/04/student-athletes-students-professionals/>

I had the chance to speak with Miami Dolphins safety and former Stanford University football player Michael Thomas. “I feel that there is enough revenue being brought in by college institutions to pay athletes” says Thomas. “From TV deals, merchandise, and ticket sales, there is enough of the pie to split with players.” And he’s right; ESPN is set to pay approximately \$5.63 billion dollars for the rights to air the college football playoffs for the next 12 years. Yes, billion. Texas A&M quarterback Johnny Manziel piled up \$37 million in media exposure for Texas A&M during his Heisman-winning year according to a study by the school. At the same time, however, **there are many costs to be covered. Even with revenue produced from football and basketball, only 12 percent of sports programs are profitable and the average Football Bowl Subdivision (FBS) school ran a \$9.44 million operating deficit two years ago** according to a study by the National Collegiate Athletic Association (NCAA). **Many universities have come to rely on donations to support their athletic programs. By promoting “amateur sports,” these donation make the donors eligible for a tax deduction. Often coming from alumni looking for a tax deduction, donations account for roughly 27 percent of revenue, more than ticket sales. If a school were to pay its players, they would lose the eligibility of a tax deduction for donations and in effect lose what one Chief Financial Officer at a FBS school estimated to be half of their donations. And don’t forget the mountain of taxes that would come out of a player’s salary. Paying athletes would inevitably squander money. Harvard Business School professor Clayton Christensen predicts “wholesale bankruptcies” over the next decade if a school were to compensate their athletes. Thomas suggests that schools only compensate those who generate money, stating, “If push came to shove, a resolution would come to fruition regarding finding a system that paid college athletes accordingly.” However, schools would have to comply with Title IX, which requires equality between men’s and women’s sports.** With revenue-generating sports often being men’s teams, schools might have to pay the equal amount to a likely non-revenue-generating women’s team. NCAA athletes are paid in education. It may be the simple, unoriginal answer, but it proves true. As a graduating senior attending college next fall, I am fully aware of the cost of education. I am paying to attend college when athletes want to be paid for going to college? For most athletes, the opportunity to play on a scholarship can save up to \$250,000 in tuition costs. The money saved is money earned. “I am being paid in that I am on scholarship. I’m getting paid in that I don’t have to pay as much for my college education,” says Stanford University rower Simone Jacobs, who graduated from Aragon in 2012.



## Turns Case – Scholarship Cuts

### **Those whose scholarships and sports are funded by the revenue sports would be hurt**

Nicholas Kraft, Assistant Professor at the School of Communication at Ohio State University, August 21, 2017, Should College Athletes be Paid? <http://u.osu.edu/sportsandsociety/2017/08/21/should-college-athletes-be-paid/>

What about the 99%? FBS football and basketball programs certainly provide the bulk of the revenue which supports all of the athletic programs at those universities. At OSU that's two sports out of 36 and roughly 120 athletes out of almost 1000. **If the money from the revenue sports was used to support only those sports (including player compensation) where does the money come from to support the other 34 sports and almost 900 athletes.** Some non-revenue athletes are quite recognizable – for example OSU's Olympic Gold Medal winning wrestler Kyle Snyder. The representatives of the women's programs and nonrevenue sports on the panel definitely raised this. In addition, issues involving Title IX certainly arise. What about the 90%? This question stems from the fact that only about 10% of the FBS programs operate at a surplus (OSU does) and virtually none of the other NCAA programs do. While we can't solve the problem of how to fund college sports here, diverting revenue from programs that already run at a loss is hardly the solution. Further, **unregulated compensation would unfairly benefit the 10% and penalize the rest. Leveling the recruiting playing field is already a challenge.**

### **Revenue from college sports is used to fund widespread scholarships now, depriving thousands of an education**

*Ben Sutton, President, IMG College, A case for amateurism in college sports, Sports, Business Daily, April 21 2014.*

<http://www.sportsbusinessdaily.com/Journal/Issues/2014/04/21/Opinion/Ben-Sutton.aspx>

Discarding this amateurism model will trigger a powerful chain reaction, unintended consequences sure to affect schools' Olympic and non-revenue-producing sports and roll back Title IX gains, *depriving thousands of young people a college education. (Revenue from college sports is our country's single greatest source of college scholarships next to the federal government).* If the amateur model is blown up, other vexing questions come into play, including the virtual impossibility of determining who gets paid what. Is it by performance? Position? Recruit versus walk-on? How does women's field hockey compare to football? And where does it stop? Do we start paying kids playing in the televised Little League World Series? What about increased exposure for high school sports? The fact is, the vast majority of NCAA Division I football and basketball programs operate in the red, subsidized by funds from outside athletics. *It would be a travesty to see non-revenue programs, which support the dreams and ambitions of thousands of student athletes, denied funding and shut down.*

## Rising costs turns their exploitation/poverty argument, as higher costs make college unaffordable for those of more limited means

Albert Crenshaw, Colleges Out of Reach for Low-Income Students, Washington Post, June 30, 2002, [https://www.washingtonpost.com/archive/business/2002/06/30/collegesout-of-reach-for-low-income-students/f6c62974-ec43-4330-8067-07c590ec5faa/?utm\\_term=.e0ec2ae1aa20](https://www.washingtonpost.com/archive/business/2002/06/30/collegesout-of-reach-for-low-income-students/f6c62974-ec43-4330-8067-07c590ec5faa/?utm_term=.e0ec2ae1aa20)

While the middle class struggles with college costs, an increasing number of lower-income parents are defeated by them, a congressionally appointed panel has found. **Children from families that are primarily immigrants and minorities will be shut out of college by a combination of rising tuition and stagnant aid programs, the panel found. About 170,000 college-qualified high school graduates won't be able to afford even a two-year college this year**, according to the Advisory Committee on Student Financial Assistance. Economy & Business Alerts Breaking news about economic and business issues. About 4.4 million qualified students will be unable to attend a four-year college in the next 10 years, the panel said. **The students are willing and able to work, and they are willing and able to borrow, to a point. But soaring costs have made such supplements inadequate. The report explodes the popular assumption that if low-income students are willing to work hard enough they can make it, said Juliet V. Garcia**, who chaired the committee. "People understand that low-income students are at a disadvantage," but they think there is adequate aid available for these students to get through college "without excessive borrowing or excessive work," Garcia said. That's not true, she said. The committee's purpose, as the name suggests, is to advise policymakers on students' financial needs and possible ways to meet them. In the past, simple but helpful ideas from the panel, such as providing a free federal form that students can use to apply for financial aid, have made their way into government programs. But Garcia, president of the University of Texas at Brownsville, said there is no simple solution for the cost problem. Recent improvements in federal aid, notably boosts in the Pell grant program, have not come close to returning government aid to the levels of 20 years ago. She conceded that the federal government alone cannot be expected to solve the problem. State legislatures are pressing public colleges to raise tuition, and colleges themselves, public and private, are focused on other areas. Thus, Garcia said, cooperation is needed among the federal government, states and colleges. That may be asking a lot. Middle-class students and their families are clawing their way toward the most prestigious institutions because they seem to offer the best economic prospects after graduation. And they are demanding that government help pay for them. Colleges and universities are focused on their own reputations, which they seek to enhance by attracting top scholars -- with light teaching loads as part of the bargain -- and top students, to whom they often offer generous aid packages regardless of need. Politicians at the federal level, recognizing that middle-class families vote, have lavished tax benefits on them: tuition credits, tax-free saving and the like. Middle-class families like these benefits, of course, but tax breaks help only those who pay income tax, and nearly half of Americans don't -- not because they cheat, but because they don't make enough money. Politicians at the state level, squeezed by plunging tax revenue, are quick to see higher education as an expense that can be held down, leaving schools to cut costs or raise tuition and fees. Even though there remain some blue-collar jobs that offer steady employment and good wages -- know any skilled carpenters who are out of work? -- **higher education remains a ticket to a better life. Denying it to poor people who have done what society has asked -- stayed in school, studied hard, gotten good grades and scores -- will not only stifle their ambition, but it also will undermine the moral authority of the majority.** The committee urged policymakers to strengthen "long-term intervention" programs, meaning improve education at the elementary level, and couple those improvements with a promise that playing by the rules will lead poor students to college. That means more direct aid, but also a commitment to expand colleges to accommodate the "echo boom" and the rising tide of immigrant children. California will need something like a million new college "seats" in the coming years and Texas 500,000, according to several estimates. The Higher Education Act of 1965 expires next year, and the coming debate over its renewal could provide a focus for addressing these problems. It's also a chance for families at all economic levels to make their views known to their legislators. It's a debate all families should follow. We all have a stake in it. The Internal Revenue Service's tax-collection ability continues to plunge, a study by Congress' General Accounting office finds. "We estimate that at the end of fiscal year 2001, the IRS had deferred collecting taxes from 1.3 million taxpayers who collectively owed about \$16.1 billion. IRS officials said that absent significant operational change, they had little expectation of reopening many deferred collection cases," the report said. The GAO cited overwork and understaffing at the IRS and "increased compliance and collection procedural controls mandated by Congress to better safeguard taxpayer interests." "Unbanked" consumers -- primarily low-income people without bank accounts -- spend at least \$4 billion on check-cashing and bill-payment services annually, according to a study by the Brookings Institution. Households with annual incomes of less than \$25,000 are estimated to have \$175 billion in financial assets, the study found. That adds up to a major opportunity for financial institutions to use new technology to lower transaction costs enough to make those consumers attractive customers, the report said. "Money . . . has gone digital," report

author Robert Weissbourd wrote. Technology has resulted in smart cards, debit cards, ATMs, point-of-service and Internet bill paying, delivery channels that are turning lower-income communities into more attractive markets for financial services institutions, he said.

## **Answers to: Alums Pay**

### **Alum contributions don't cover the full costs of the athletic programs**

Phillip Yeaglem former Interim Chancellor and Dean at Rutgers University, The High Cost of College Athletics and Your Tuition, Huffington Post, June 4, 2015,  
[https://www.huffingtonpost.com/dr-philip-l-yeagle/may-you-get-what-you-pay-\\_b\\_7503068.html](https://www.huffingtonpost.com/dr-philip-l-yeagle/may-you-get-what-you-pay-_b_7503068.html)

Many who give to universities would complain that alumni giving support much of the cost of athletics. While this is partially true in some institutions, most departments are still in deficit. It is also true that the needs of the athletics budgets often drive the development offices of major public colleges and universities. What that means in practice is that athletics often gets the first opportunity to ask donors for money (other causes such as student scholarships then come as a lower priority). And when a winning team stimulates greater giving to the institution, the bulk of that giving goes to athletics (and yet athletics budget are still largely in deficit!), not to programs that directly support students like academic scholarships. Therefore, the effect of alumni giving to athletics is not what is commonly perceived. Athletics still presents a financial burden to the remainder of the institution.

## **Answers to: Lots of Money in College Sports/Rising Revenues**

**Since college teams have access to different revenue bases, it would create competitive inequality in sports**

Michael Tarm, Associated Press, August 17, 2015, Board Dismisses Ruling to Allow College Athletes to Unionize, <http://www.ncaa.com/news/ncaa/article/2015-08-17/board-dismisses-ruling-allow-college-athletes-unionize>

The labor dispute goes to the heart of American college sports, where universities and conferences reap billions of dollars, mostly through broadcast contracts, by relying on amateurs who are not paid. In other countries, college sports are small-time club affairs, while elite youth athletes often turn pro as teens. The unanimous ruling by the five-member National Labor Relations Board concludes **that letting Northwestern football players unionize could lead to different standards at different schools — from the amount of money players receive to the amount of time they can practice. That would, it says, create the competitive imbalances.**

## **Answers to: Schools Can Afford to Pay Athletes**

**Most college athletic programs are not profitable and could not even pay \$25,000/year within existing revenues, and those are just bowl series (FBS) school with lots of revenue! Paying college athletes only \$25,000/year would require either massive subsidization by the schools and/or the cutting of college sports programs**

Nicholas Warren, graduating student in economics, May 2017, “The Economic Feasibility of Paying College Athletes,” Department of Finance, Texas Christian University. May 8, 2017, [https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren\\_Nicholas-Honors\\_Project.pdf?sequence=1](https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren_Nicholas-Honors_Project.pdf?sequence=1) Thesis overseen by Supervising Professor: Steven Mann, Ph.D. Department of Finance Barbara Wood, Ph.D. Department of Finance Chad Proell, Ph.D. Department of Accounting

The purpose of this thesis is to look at the financial ability of Division 1 athletic programs to pay their college athletes an annual salary. It has long been debated whether or not college athletes should be paid for the revenues that they bring in for their schools from ticket and apparel sales, but most of this debate comes in the form of subjective and opinion based articles and sources. This paper will take that highly ethical question and look at it through an objective financial lens in order to determine if athletes could receive salaries based off of the profits of their respective institutions, similar to that of a business. One of my findings is that **most Division 1 programs are not sufficiently profitable, as only 6 of the 106 teams from the sample observed would be able to pay their athletes an annual salary of \$25,000 a year.** The paper will analyze whether or not the universities that have been researched have enough revenue generation and realized profits to pay players. In the instance there are schools that do not generate enough revenue to pay, I will look at what percent can't afford to pay as a result of lack of profits. Due to the size of the NCAA, which is broken up into Division I, Division II, and Division III, based on athletic program size, the research in the thesis will be limited to Division I athletic programs that have a Football Bowl Series (FBS, formerly D1A) football team. This will eliminate the schools that are classified as Division I with a Football Championship Series team (FCS, formerly DIAA), Division II, and Division III schools, leaving 106 public schools to analyze. ... The initial screening of the schools themselves did not support the hypothesis that less than 50% of the schools would be profitable enough to pay their athletes, with a surprising 71 of the 106 school showing profitability, an impressive 67%. **A further look though, showed that of those 71 profitable schools, only 26 of them had a gross profit margin greater than 5%, showing, that while the number of profitable schools was actually greater than expected, a large part of that number was only marginally profitable and would struggle to pay all of their athletes any salary at all, let alone a salary of \$25,000 a year** (Fulks, 2016). In fact, when looking at the top fifteen most profitable schools in terms of the gross profits, if you take their profits and divide by the average 611 student athletes on a college campus, only six schools could pay their athletes a salary greater than \$25,000, and all of those schools came from Power Five conferences. The chart on the next page lists out the top fifteen schools ranked by profitability,

and then shows the maximum potential salary each student athlete could receive, under the assumption that all of the excess profits go to the student athletes in the form of salaries, as all other expenses that need to be covered by the programs are included in the total expenses. Realistically, this number could be on the higher end as it is unlikely that all profits generated would go to the athletes. ... The graph above shows the highest revenue produced by a program in each conference as well as the average revenue produced by all of the schools that compete in the respective conferences. A quick glance at the data shows overwhelmingly that the larger conferences hold all of the revenue generating power in the NCAA. This information, coupled with the chart displaying the top fifteen most profitable schools, shows that there is very little chance that the smaller conferences would be able to pay their college athletes. After collecting and analyzing the data, the results ruled heavily in favor of the original hypothesis that less than 50% of Division 1 schools could pay their athletes a salary of \$25,000 per year. While the number of schools that were profitable at all was surprisingly high at 71 total of the 106 schools surveyed, the actual number of those who could generate enough profit for the given salary, one that is often identified as ideal by those with knowledge on the subject, was abysmally low. **With only 5.5% of schools able to pay their athletes the predetermined salary, it is relatively safe to say that the ability of the athletic programs as a whole to support the payment of student athletes is not going to happen any time soon without substantial help in the form of subsidies.** That being said there were pieces of the information that did differ from both the original hypothesis and the thoughts after performing the literature review. There were two points of data that were off from the original expectations, the first being the disparity between the larger conferences and the smaller conferences and their ability to generate revenues. After reading and digesting the earlier report over the profitability of the WAC, it did not come as a shock that the smaller conferences analyzed in this research such as the Sun Belt and the MAC had lower revenues and profits, but the gap between those conferences and the Power Five was more than expected. The original thought was that while there would be a difference in the two as a result of the endorsement deals, donations and televisions deals, the gap would not be particularly large as the understanding was that no schools, regardless of the size, really generated many revenues due to the fact that only one or two of their sports would actually make money. The difference of around \$50 million in average revenue between the weakest of the Power Five and the strongest of the lower divisions was interesting to say the least and lead to the search for drivers of this disparity. ... As long as college athletics remain a major revenue producer for both their respective schools and the NCAA, the discussion of whether or not the athletes should be paid will continue to be a hot topic. In researching the topic and writing this paper, I analyzed and discussed the profitability of Division 1 athletic programs with an FBS football team to see whether or not this discussion, which is highly debated from an ethical stand point, held any ground in an objective setting. The original thought process for selecting this as a question to research was to see if there was a way to answer the subjective question with hard evidence and data. In order to answer that question, my original hypothesis was that less than 50% of the programs could pay their athletes a relatively moderate annual salary of \$25,000, with the understanding that if the hypothesis was correct and less than half could pay their athletes, then there would be less of a need for any ethical debate. Looking through an initial screening of literature on the topic, I quickly realized that **most discussion on the topic was not academic in nature and contained spotty data used solely to argue a specific side of the aisle, whether or not athletes deserved salaries or if scholarships were enough.** Even with the limited data available from these sources, it was relatively easy to get an idea of what sports were generally accepted as revenue producing, which was the very small selection of only football and

basketball. While revenues do not always mean profits, the sheer number of nonrevenue producing sports in the college athletic realm was reassuring that the overall number of profitable programs would be small regardless of the emergence of new forms of revenue generation such as endorsements. Upon actually collecting and analyzing the data, **I was initially surprised as nearly two thirds of programs in the sample were in fact profitable, but found that when looking at the numbers of schools who produce any significant amount of profits, the number drastically decreased, falling in line with the original expectations. With only six programs profitable enough to actually pay out salaries to all of the athletes on their campus', the data quickly went from surprisingly in opposition of the hypothesis to surprisingly in favor of the hypothesis, alluding to the fact that the 50% mark was actually too high.** In addition to this, further data was collected to see the disparity between men's and women's sports, as well as to really take a deeper dive into what was driving the lack of revenues. This yielded information that supported my original thoughts from the literary review, that only football and basketball were profitable, and only men's programs were profitable. As it stands now, the data analyzed in this study overwhelmingly supports the original hypothesis, proving that the current operations of the NCAA and the colleges in the Division 1 tier of athletics, there is no way to pay athletes from the profits of the athletic programs themselves. Additionally, the data related to the gap between the conference have's and have not's, as well as the difference in men's and women's sports showed the potential for conflict if the NCAA was to move to a system of payment that truly operated like the business world without the subsidies or intervention of the organization as a whole.

### **Women's programs are not profitable**

Nicholas Warren, graduating student in economics, May 2017, "The Economic Feasibility of Paying College Athletes," Department of Finance, Texas Christian University. May 8, 2017, [https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren\\_\\_Nicholas-Honors\\_Project.pdf?sequence=1](https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren__Nicholas-Honors_Project.pdf?sequence=1) Thesis overseen by Supervising Professor: Steven Mann, Ph.D. Department of Finance Barbara Wood, Ph.D. Department of Finance Chad Proell, Ph.D. Department of Accounting

Looking at the data, **it is obvious that not only are women's sports less profitable than men's sports, they are not profitable at all from a holistic standpoint. From 2010-2015, not a single school in Division 1 reported a profit for their women's athletic teams and programs.** In comparison, the same data collection style for men's programs shows that about half of Division 1 schools report their men's programs as profitable. Additionally, while the men's median profit is growing year over year and has done so for all years in the sample, the median profit for women's sports has continually decreased year over year during the same time period. You can see that with generated revenues as the metric as opposed to the total, **the only male sport that is profitable is college football. College basketball is only profitable in total revenue** settings as the sport generates much of its revenues from deals in relation to the March Madness Tournament. This just shows that even when looking at the profitability of men's sports, the only reason that a decent amount of them are able to stay afloat is due to the ability of football to pull more than its share of the weight. When looking at the women's sports, it comes as no surprise that there are no profitable sports, which matches with the data suggesting that no women's program has turned a profit in this decade. Something additional to note though, is the amount of female sports, which is much larger than male sports due to the number of scholarships that need to be provided to female athletes in order to match the scholarships given out to football players. This generally hurts the ability of the female sports programs as a whole to be profitable, as on average, eleven women's sports generate a net loss greater than \$1 million, which is greater than the three men's sports in the same category. This is in line with previous findings that **the average women's athletic program is seeing increased losses year over year, especially when compared to men's athletic programs.** The other major surprise discovered when looking through the data was the difference between male and female sports and their profitability. With the general consensus being that only football and basketball were really profitable, the fact that women's



sports were not profitable was not terribly shocking, but the lack of any profitable women's sports programs at all was not expected. With the success of some major women's programs like UConn in basketball in recent years, I believed that while there wouldn't be many profitable programs, there would be a few scattered over time. The fact that not a single school in D1 athletics has reported a profit for their women's sports in the past five years was surprising. This is compounded by the fact that when analyzing the individual sports broken out by gender, it becomes apparent that not one female sport is profitable. This information really shows just how much money it takes to run women's athletics and just how little money these sports produce, especially when compared to the men's programs. While not all men's sports produce a profit, they do not drag down the overall profitability of a program as severely as their female counterparts do. This fact alone would make the payments hard, due to the fact that in order to pay athletes on campus, you have to pay all athletes, not just men that are on teams that generate profits. This would be increasingly hard to justify for the half of college athletics made up of women's sports that have continually increased losses since 2010 and show no sign of righting the ship in the near future.

### **There is no Pro evidence that it is financially feasible – their evidence just assumes it based on revenues generated**

Warren, Nicholas, graduating student in economics, May 2017, "The Economic Feasibility of Paying College Athletes," Department of Finance, Texas Christian University. May 8, 2017, [https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren\\_\\_Nicholas-Honors\\_Project.pdf?sequence=1](https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren__Nicholas-Honors_Project.pdf?sequence=1) Thesis overseen by Supervising Professor: Steven Mann, Ph.D. Department of Finance Barbara Wood, Ph.D. Department of Finance Chad Proell, Ph.D. Department of Accounting

**With the overall theme of paying college athletes being a highly subjective question, there is not much existing work from a quantitative standpoint as to whether or not the payment could be done. Rather, most research that has been done takes small bits of financial information like the revenues of the NCAA as a whole and applies that information to a qualitative report making a case for or against the payment of players. There is a relatively large hole in terms of research that looks into whether or not payment is financially feasible from the revenue standpoint of the NCAA and the universities.** This information could be very important in answering the more widely looked at ethical side, for if the NCAA and the schools can't even afford to pay all of their student athletes, the question of whether or not athletes should be paid could effectively be eliminated from conversation.

### **Schools don't have the money, budgets are declining**

Michael Mitchell, [Senior Policy Analyst Program Director, State Policy Fellowship Program CBPP, Michael Leachman, Director of State Fiscal Research, CBPP, Kathleen Masterson [Research Associate, CBPP, A Lost Decade in Higher Education Funding, Center for Budget and Policy Priorities, August 23 2017. [https://www.cbpp.org/research/state-budget-and-tax/a-lost-decade-in-highereducation-funding#\\_ftn1](https://www.cbpp.org/research/state-budget-and-tax/a-lost-decade-in-highereducation-funding#_ftn1)

A decade since the Great Recession hit, **state spending on public colleges and universities remains well below historic levels, despite recent increases. Overall state funding for public two- and four-year colleges in the 2017 school year (that is, the school year ending in 2017) was nearly \$9 billion below its 2008 level, after adjusting for inflation.** (See Figure 1.) The funding decline has contributed to higher tuition and reduced quality on campuses as colleges have had to balance budgets by reducing faculty, limiting course

offerings, and in some cases closing campuses. At a time when the benefit of a college education has never been greater, state policymakers have made going to college less affordable and less accessible to the students most in need. State spending on public colleges and universities remains well below historic levels, despite recent increases. As states have slashed higher education funding, the price of attending public colleges has risen significantly faster than what families can afford. For the average student, increases in federal student aid and the availability of tax credits have not kept up, jeopardizing the ability of many to afford the college education that is key to their long-term financial success. With many states facing revenue shortfalls in the current or upcoming fiscal year, state lawmakers must renew their commitment to high-quality, affordable public higher education by increasing the revenue these schools receive.[2] By doing so, they can help build a stronger middle class and develop the entrepreneurs and skilled workers needed for a strong state economy. State Spending on Higher Education Well Below Pre-Recession Levels After adjusting for inflation:[3] **Of the 49 states (all except Wisconsin)[4] analyzed over the full 2008-2017 period, 44 spent less per student in the 2017 school year than in 2008.[5] The only states spending more than in 2008 were Indiana, Montana, Nebraska, North Dakota, and Wyoming. States cut funding deeply after the recession hit. The average state spent \$1,448, or 16 percent**, less per student in 2017 than in 2008. Per-student funding in eight states — Alabama, Arizona, Illinois, Louisiana, New Mexico, Oklahoma, Pennsylvania, and South Carolina — fell by more than 30 percent over this period. In 13 states, per-student funding fell between the 2016 and 2017 school years. In five of these states — Alaska, Kansas, Oklahoma, West Virginia, and Wisconsin — funding also fell the previous year. (The 2016-2017 analysis includes all states except Illinois.)[6] In 36 states, per-student funding rose between the 2016 and 2017 school years. Per-student funding rose \$170, or 2.2 percent, nationally. Deep state funding cuts have had major consequences for public colleges and universities. States (and, to a lesser extent, localities) provide roughly 53 percent of the costs of teaching and instruction at these schools.[7] Schools have made up the difference with tuition increases, cuts to educational or other services, or both. Since the recession took hold, **higher education institutions have: Raised tuition.** Annual published tuition at four-year public colleges has risen by \$2,484, or 35 percent, since the 2008 school year.[8] In Louisiana, published tuition at four-year schools has doubled, while in seven other states — Alabama, Arizona, California, Colorado, Florida, Georgia, and Hawaii — published tuition is up more than 60 percent. **These sharp tuition increases have accelerated longer-term trends of college becoming less affordable and costs shifting from states to students.** Over the last 20 years, the price of attending a four-year public college or university has grown significantly faster than the median income.[9] Although federal student aid has risen, on average it has fallen short of covering the increases in tuition and other college expenses. Reduced academic opportunities and student services. Tuition increases have compensated for only part of the revenue loss resulting from state funding cuts. Over the past several years, public colleges and universities have cut faculty positions, eliminated course offerings, closed campuses, and reduced student services, among other cuts. A large and growing share of future jobs will require college-educated workers.[10] Sufficient public investment in higher education to keep quality high and tuition affordable, and to provide financial aid to students who need it most, would help states develop the skilled and diverse workforce they will need to compete for these jobs. Sufficient public investment can only occur, however, if policymakers make sound tax and budget decisions. State revenues have improved significantly since the depths of the recession, but many states are now experiencing new budget pressures — two-thirds of the states are facing or have addressed revenue shortfalls this fiscal year, next year, or both.[11] To make college more affordable and increase access to higher education, many states need to consider new revenue to fully make up for years of cuts. States Have Only Partially Reversed Funding Cuts State and local tax revenue is a major source of support for public colleges and universities. Unlike private institutions, which rely more heavily on charitable donations and large endowments to help fund instruction, public two- and four-year colleges typically rely heavily on state and local appropriations. In 2016, state and local dollars constituted 53 percent of the funds these institutions used directly for teaching and instruction.[12] While states have been reinvesting in higher education for the past few years, resources are well below 2008 levels — 16 percent lower per student — even as state revenues have returned to pre-recession levels. (See Figures 2 and 3.) Between the 2008 school year (when the recession hit) and the 2017 school year, adjusted for inflation: State spending on higher education nationwide fell \$1,448 per student, or 16 percent, after adjusting for inflation. Per-student funding rose in only five states: Indiana, Montana, Nebraska, North Dakota, and Wyoming. Eighteen states cut funding per student by more than 20 percent, and in eight of those states the cut exceeded 30 percent. Arizona cut per-student funding by more than half.[13]

## **Most universities do not have extra cash and that money supports other sports and athletes**

Allison Schragger, Paying college athletes won't solve the big problem with US college sports, March 21 2016. <https://qz.com/625014/payingcollege-athletes-wont-solve-the-big-problem-with-us-college-sports/>

**Despite the nearly \$1 billion the NCAA pumps back into college sports, university athletic programs aren't flush with cash. In 2013 (pdf) the typical university in the Football Bowl Subdivision (the big money-making division) spent more than it brought in; the median loss was \$11.6 million. Only a few schools, with very successful football teams, turn a profit most years.** And just barely. The most profitable sports program netted just \$200,000 in 2013. Nearly all the revenue comes from two sports, men's football and men's basketball. These do typically make a profit, but again, not a large one. Median men's football profits are about \$3 million a year, and basketball just \$300,000. So what's that \$1 billion revenue paying for? Here's the breakdown on expenses for the median Football Bowl Subdivision school: The largest share of the budget goes to paying employees—mostly the coaches for the high-revenue sports. The median coaching salary budget is \$4.5 million for football (there are normally several coaches) and \$1.8 million for basketball. **The rest of the money subsidizes other men's sports (lacrosse, soccer, fencing) and all women's sports. Paying student athletes in high-revenue sports would therefore mean eliminating some other sports scholarships or programs. And even if those were cut (probably impossible because of title IX, which ensures no gender discrimination) and coaches were paid more like professors, the money still needs to be split among a university's average of 118 football players and 16 basketball players. It doesn't add up to the lavish salaries professional athletes are paid.** Also, it's not clear who would be paid what. A small fraction of players, the ones destined for fame and fortune, win games, are worth more, and bring in more revenue. Right now, by being paid in education—and the exposure necessary to secure a pro contract—they effectively subsidize the weaker players.

## **Answers to: College Sports Revenues Increasing**

### **Costs are also rising**

Warren, Nicholas, graduating student in economics, May 2017, “The Economic Feasibility of Paying College Athletes,” Department of Finance, Texas Christian University. May 8, 2017, [https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren\\_\\_Nicholas-Honors\\_Project.pdf?sequence=1](https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren__Nicholas-Honors_Project.pdf?sequence=1) Thesis overseen by Supervising Professor: Steven Mann, Ph.D. Department of Finance Barbara Wood, Ph.D. Department of Finance Chad Proell, Ph.D. Department of Accounting

One piece of information in the anti-pay camp that was particularly thought provoking was brought up by a University of Kentucky professor named John Thelin. In a piece in Time, Thelin noted that many arguments in the debate failed to capture the fact that **each school operates differently and thus would have different hurdles to meet in order to pay their athletes.** His points on **how different tuition cost per student, the overall costs of some schools compared to others, and the differing tax laws in different states would hinder the ability of some universities to compete with salary style payment.** Thelin also brought up a good defense to arguments that flaunt the fact that the median revenues of athletic programs have been increasing, stating how few look at the rising costs of the programs (Thelin, 2016). This is shown in another paper, “The Case for Paying College Athletes,” by John Siegfried and Allen Sanderson. **Their report touts possibly the strongest financial information in regards to growing revenue in the NCAA, but does little to show any sign of a flat line or a decrease in costs. While they show a revenue trend moving in the right direction for the overall collegiate market, their inability to show costs hurts their case for the growing profitability and strength of the universities, which is what they base their argument for the payment of college athletes on** (Sanderson & Siegfried, 2015).

## Undermines College Sports

### **Many colleges couldn't compete and would go under**

Theodore Ross is a features director at The New Republic, *New Republic*, *Don't Pay College Athletes*, September 1, 2015, <https://newrepublic.com/article/122686/dont-pay-college-athletes>

Not every college would be able to afford to compete on the open market. Think USC versus SDSU again. The Trojans are a national brand as well as a national power; an expensive private school, with wealthy alumni and boosters, and an iconic sports institution that people around the country support by buying T-shirts, caps, foam fingers, and tiny replica football helmets. The Aztecs possess few of these attributes and wouldn't necessarily have the money to stay in the big-time game, although they might opt to do so even without it—a 2013 analysis by USA Today found that only 23 of 228 public school Division I athletic departments ran in the black. (Private schools don't have to disclose their finances.) Duke's Clotfelter dismissed these figures as arbitrary accounting practices. Basically, the schools can choose to appear to lose money if the profit-making football teams are expected to pay for the money-losing tennis squads. "It's a bogus thing to even be talking about losing money," he said. True or no, it doesn't prevent 16 of those 23 departments from taking financial subsidies from their schools, often in the form of student fees.

Some schools might decide not to try. "You'd have teams that fail and go under," said Andrew Zimbalist, an economist at Smith College. A smaller, wealthier core, likely composed of the teams in the so-called Power Five conferences (the ACC, Big Ten, Big 12, Pac-12, and SEC), would emerge. But even within those conferences, some schools might decide competing wasn't worth it, and they'd move down to Division II.

An early version of this fiscal sorting may already have begun. An NCAA vote in August 2014 afforded the Power Five increased autonomy over the rules governing the treatment of players. For example, Alabama, which plays in the SEC, can now offer its athletes better health insurance and scholarships than, say, the College of Charleston, which competes in the Colonial Athletic Association. Last December, in a harbinger of what might happen in an open market, the University of Alabama-Birmingham, which plays in Conference USA, a "mid-major" in the current parlance, announced the termination of its football program, citing insufficient financial resources. "As we look at the evolving landscape of NCAA football, we see expenses only continuing to increase," UAB president Ray Watts said. "Football is simply not sustainable." Six months later, UAB decided to resurrect the football program, possibly as soon as the 2017 season. In an interview in June, Watts said the school's students, alumni, and the city of Birmingham itself had "stepped up," with \$17.2 million to cover the team's operational deficit. The overall dynamic for the smaller schools remains ominous: An open market system would

sustain premium teams that have the ability to compete for premium players on the basis of how much they could pay them. The rest could be forced out of existence altogether.

### **Loss of funds means other sports programs are cut**

Jenny Wilson, February 7, 2017, Hartford Courant, College Athletes As Employees? That raises questions in Connecticut, <http://www.courant.com/sports/uconn-huskies/hc-ncaa-paying-athletes-union-0208-20150207-story.html>

What are some concerns?

University of Hartford President Walter Harrison, who previously served on the NCAA Committee on Academic Performance, voiced concerns about the bill and said that people who are opposed to unionization efforts have fears about "what effect spending more on revenue sports will have on all the nonrevenue sports."

Well-Rounded Walter Harrison Of UHart Honored By NCAA

**"Every university that I've heard of handles the finances of the athletic department by taking the revenue sports and using that to help underwrite other sports," he said, mentioning gymnastics, wrestling, tennis, golf, volleyball, softball, baseball and hockey. "Most of those programs are subsidized by the revenue brought in by football and basketball, and if that revenue is used to provide wages under unionization or if it's being used to provide the full cost of attendance, the worry among many of us is that the nonrevenue sports will not be funded and over time will cease to exist." Harrison described unionization efforts as a "well-meaning attempt to provide more opportunities" for athletes, but said that in reality "it might provide fewer opportunities for athletes in other sports." There are only so many dollars to go around, he said.**

### **If high value payers are paid, scholarships and financial aid for other athletes and sports will be cut**

Jon Solomon, NCAA, conferences: Scholarships would be cut if players are paid, CBS Sports, May 1, 2011, <https://www.cbssports.com/collegefootball/news/ncaa-conferences-scholarships-would-be-cut-if-players-are-paid/>

The NCAA and 11 major conferences say that **if college athletes are allowed to be paid, the development would "likely lead many -- if not most -- Division I institutions" to reduce the number of scholarships for less-renowned football and men's and women's basketball players.**

That's one of several arguments the NCAA and the conferences made in court documents filed late Thursday night opposing a pair of scholarship lawsuits from becoming class actions. The consolidated Shawne Alston and Martin Jenkins lawsuits are challenging the NCAA's cap on compensation at the value of a scholarship. The Jenkins case, led by prominent sports labor attorney Jeffrey Kessler, essentially seeks a free market for football and men's basketball players. The NCAA and conferences' motion opposing certification also shows the tangled web between the Alston and Jenkins cases and the Ed O'Bannon ruling over the use of athletes' names, images and likenesses. U.S. District Judge Claudia Wilken has overseen both cases. In O'Bannon, Wilken ruled that the NCAA can cap the

amount of deferred compensation to players at no less than \$5,000 per year and not below the cost of attendance. The NCAA is appealing the O'Bannon ruling while also citing some of Wilken's previous opinions as a defense in Alston and Jenkins. The NCAA and the conferences argue that the injunction sought in Alston and Jenkins for unlimited compensation is "markedly different" than the O'Bannon plaintiffs when they sought group licensing that would be equal among all plaintiffs. The NCAA and the conferences cited Wilken's opinion that the distinction of equal payments "is important because it renders irrelevant any differences in the value of each class member's individual publicity rights." This represents the attempt by the NCAA and the conference to show that the named Alston and Jenkins plaintiffs don't have the best interests of all football, men's basketball and women's basketball players in the proposed class. For the consolidated lawsuits to become class actions, the plaintiffs must show in part that the complaints are common to the entire class attempting to be represented. The requested injunction in Alston and Jenkins "will cause student-athletes to compete against one another for compensation and, depending on the differences in the value of each class member's individual talent and skill, some putative class members will be harmed by the elimination of the challenged rules," the NCAA and the conferences wrote. **They said the economics of superstar players would "skew competition in a 'free and open' labor marketplace so that only superstar student-athletes would likely earn substantial compensation, while many putative class members would receive little or no financial aid."** The NCAA and the conferences wrote that Jenkins, a former Clemson football player, testified in his deposition that "he was sure that his teammates who left Clemson early to play professional football would have stayed at Clemson longer if they had been paid to play college football." The argument: If this would have happened, some potential class members would be replaced and harmed by other potential class members -- a "substitution effect" that was a discussion point during the certification stage of O'Bannon. In citing testimony from Jenkins, Wisconsin basketball player Nigel Hayes and Wisconsin football player Alec James, the NCAA and conferences argued that since athletes are "prepared and able" to play as walk-ons in FBS football and Division I basketball, allowing players to be paid would result in universities focusing on compensating "superstars" while many players would get paid less than they currently receive in financial aid. That's what you get with the MHP Standard Option Health Plan. Benefits like 100% coverage for preventive care come standard; and rates are down for the fourth year in a row (except Postal Category 1). The NCAA and the conferences said most Division I athletic departments operate with deficits and face serious financial constraints that would result in cutting scholarships if there's unlimited payments to players. As an example, the NCAA and conferences cite UAB dropping football last December, "determining that the program was too expensive to be sustainable." Not mentioned in the filing was the politics associated with the UAB decision and what might happen to UAB's revenue without football assuming it's kicked out of Conference USA. Claims by the Alston and Jenkins plaintiffs that schools could increase the compensation to players by reducing how much head coaches are paid is "economic nonsense," the NCAA and conferences wrote. Rather, they said, college football and basketball head coaches who earn significant salaries are "likely in the same market as the head coaches of professional football and basketball teams, and their salaries are far more directly affected by the level of compensation for coaches of professional teams than by the level of financial aid for student-athletes." The NCAA and conferences wrote that James, the Wisconsin football player, said "student-athletes want coaches who are the caliber of professional league coaches." The American Athletic Conference, Conference USA, MAC, Mountain West, Sun Belt and WAC are named defendants in only the Alston cost-of-attendance lawsuit. The SEC, ACC, Big Ten, Pac-12 and Big 12 are defendants in both cases. SPONSORED BY AETNA That's what you get with the MHP Standard Option Health Plan. Benefits like 100% coverage for preventive care come standard; and rates are down for the fourth year in a row (except Postal Category 1). The NCAA and the conferences noted this distinction as a reason an injunctive relief class can't be certified. Plus, they said, the cost-of-attendance plaintiffs no longer have a proposed representative for the FBS football class since two representatives dropped out during discovery. A class certification hearing on the two cases is scheduled for July 23. The plaintiffs have until May 28 to respond to Thursday's filing.

## Payment expectations will render many sports extinct

Larry Scott, PAC-12 Commissioner, Pac-12 commissioner: Why we won't pay or unionize college athletes, USA Today, September 29, 2017. <https://www.usatoday.com/story/opinion/op-ed/2017/09/29/pac-12-pay-collegeathletes-mistake/704866001/>

**Paying students a salary to play sports or allowing them to join a union would fundamentally change college sports as we know it. It would push many sports that don't generate revenue toward extinction. Paying students who compete in the few programs that do generate money, such as football and basketball, would have dire consequences for the majority of the sports that don't generate revenue. Such a drastic departure from what has been the core**

**principle of college athletics would potentially take away opportunities for thousands of students who play other sports, from tennis and lacrosse to track and soccer.**

## **Reducing programs reduces scholarships**

One unavoidable by-product of the reduction in programs would be a corresponding drop-off in the number of athletic scholarships. “If you introduce an open market, or a quasi-open market,” Zimbalist said, “the coaches would no longer have 85 scholarships.” He estimated that the number might shrink to 45, or about the same as an NFL roster. “If you have to pay, then you become more frugal.” Consider the ramifications: This new, purportedly more just system would provide for the professional-quality players at the expense of the larger pool of merely elite ones. Remember that the people swept away by this capitalist tide would largely be young men from low-income backgrounds, many of whom would not qualify to attend their schools on academic merit. It is an odd remedy for exploitation that takes away access to education for significant numbers of the exploited.

## **Expenses of most college sports programs exceed revenues**

Brian Burnsed, Associate Editor at Sports Illustrated, Athletics departments that make more than they spend still a minority, NCAA, September 18 2015. <http://www.ncaa.org/about/resources/media-center/news/athletics-departmentsmake-more-they-spend-still-minority>

**The expenses generated by operating athletics programs continued to exceed the revenue they produce at the vast majority of Football Bowl Subdivision schools in 2014, continuing a trend seen in recent years, according to a new NCAA Study.** Only 24 FBS schools generated more revenue than they spent in 2014, according to the NCAA Revenues and Expenses of Division I Intercollegiate Athletics Programs Report. That figure jumped from 20 schools in 2013, but it has remained relatively consistent through the past decade. Though the number of athletics departments reporting positive net generated revenues has increased slightly, the average of their net generated revenue has dipped in the past year. Those 24 schools, at the median, generated about \$6 million in net revenue, compared to just over \$8 million in 2013 and a little more than \$2 million a decade ago. But those 24 schools are a minority. Many more schools saw their expenses exceed their revenue, requiring their colleges and universities to cover the shortfall. The median FBS school spent \$14.7 million to help subsidize its athletics department in 2014, up from a little more than \$11 million in 2013. That level of spending isn't unique to FBS schools – median Football Championship Subdivision and non-football schools spent roughly \$11 million to help fund athletics in 2014. **"There is still a misperception that most schools are generating more money than they spend on college athletics,"** said NCAA Chief Financial Officer Kathleen McNeely. "These data show once again that the truth is just the opposite. "The overwhelming majority of colleges and universities in the NCAA across all three



divisions subsidize part or all of athletics. The reason they invest is because sports provide educational value to student-athletes while enhancing overall campus life and building life-long connections with alumni and other supporters. Those are all important outcomes from athletic programs that are worth celebrating, sharing and investing in wisely.” While schools spent more to subsidize athletics programs in 2014, the jump in athletics spending only increased by 2 percent over the median increase in institutional spending from the previous year. This was not the case a decade ago, when athletics subsidies were increasing roughly 5 percent faster per year than overall institutional spending. “If athletics spending increases at a similar pace as overall institutional expenses, this may be sustainable,” said Todd Petr, NCAA managing director of research. “However, when the athletics budget rises more quickly than the institutional budget, institutions will have to take a larger percentage of institutional funds to support the athletics department.” Division II and Division III revenues and expenses were also examined in separate reports. More highlights:

#### Division I

Adjusted for inflation, institutional allocations for athletics to cover any expenses that exceed generated revenue at FBS schools decreased by 0.2 percent from 2013. The figure rose by 1.5 percent at FCS schools and fell 0.9 percent at Division I schools without football.

Twenty percent of median athletics income at FBS schools came from institutional support, while that figure eclipsed 70 percent at FCS institutions and those without football.

Between 2013 and 2014, median revenues generated by athletics increased at a faster pace than expenses across Division I. Athletically generated revenues increased by 6.1 percent, 9.1 percent and 9.8 percent at FBS, FCS and schools without football, respectively. Meanwhile, athletics expenses at those schools increased by only 2.8 percent, 4.6 percent and 2.1 percent.

#### Division II

The study found a significant jump in student aid per athlete at Division II schools over the past decade. The median figure rose from \$2,600 in 2004 to \$5,000 in 2014 at schools with football. A similar jump – \$4,200 to \$7,300 – occurred at schools without football. Cash contributions, sport camps and ticket sales account for almost all revenue generated by Division II athletics programs. Combined, though, they accounted for less than 9 percent of total revenues in 2014. The vast majority of the division’s athletics revenue came from institutional subsidies. Schools with football have seen an uptick in athletics enrollment relative to the rest of the student body. In 2014, athletes accounted for 10.7 percent of the student body at schools with football, up from 8.5 percent in 2004. That figure has remained relatively stable – near 9 percent – for schools without football.

### Division III

In 2014 alone, athletics expenses at schools without football increased by 11.5 percent. The increase is more modest (4.8 percent) at schools with football. The jump in 2014 continues an ongoing trend – expenses have increased by 118 percent at football schools and 157 percent at non-football schools since 2004. Increased athletics expenses have been triggered, in part, by the upturn in the number of student-athletes on Division III campuses. Since 2004, the median number of athletes at Division III schools with football programs has jumped from 448 to 538. Among non-football schools, that figure has risen from 242 to 295. Although total expenses and the number of athletes have increased, budget allocations for three major sports have remained steady. Football, men’s basketball and women’s basketball garnered 13 percent, 5 percent and 4 percent of athletics expenses, respectively, in 2014. Those numbers haven’t strayed far from the figures gathered a decade ago. The figures indicate that resources are poured into a breadth of sports as many Division III schools continue to rely on athletics to maintain enrollment.

## Cutting Other Sports Programs Reduces Diversity

### **Cut sports programs won't return, reducing diversity and threatening US international standing in sports**

Ken Belson covers the N.F.L. for the New York Times, a job that includes writing about teams, stadiums, medical issues, lawsuits and many other elements of the country's biggest and most popular league]. "With Revenue Down, Colleges Cut Teams Along With Budgets," New York Times, May 3, 2009,

<http://www.nytimes.com/2009/05/04/sports/04colleges.html>

"One of the things we have to worry about is competitive equity," said Myles Brand, the president of the N.C.A.A. "If some schools have too small a budget, it could affect their play, and that isn't fair." **Programs that disappear are unlikely to return, particularly in Olympic sports like gymnastics and swimming. That could lead to less diversity on campuses and weaken the country's prowess at international events. It may take a couple of years to shake out,** said Robert Bowsby, the director of athletics at Stanford, which cut \$1.8 million from its athletic budget this year and plans to save \$3 million next year and \$4.5 million in 2011. **Once programs go away, they seldom come back. And if they do, they take many years to start again because all the remaining athletes are off campus and the money gets used for something else.** College sports have grown steadily during the past three decades thanks to Title IX, which provided equal opportunity in men's and women's sports. An increase in television and sponsorship dollars and growing pressure from alumni to spend more on athletics have fueled a surge in sports programs, too. According to N.C.A.A. figures, a record 17,682 college teams competed in the 2007-8 academic year, 60 percent more than in 1981-82. During that time, the number of student-athletes grew 78 percent, to a record 412,768. The number of women's teams has increased drastically, particularly in sports like lacrosse and soccer, thanks partly to growth in the number of youth leagues. The number of men's teams has also risen, though more modestly. Sports like fencing, gymnastics and wrestling have gradually disappeared on campuses, overshadowed by more prominent baseball, basketball and football teams. Yet only twice in the past two decades — in 1988-89 and 1997-98 — has there been a net decline in the number of men's and women's athletic programs nationally. The growth in college athletics has made it harder to cut back during lean times because of resistance from students — especially those with athletic scholarships — their parents, alumni, sponsors and civic boosters. SEE SAMPLE PRIVACY POLICY OPT OUT OR CONTACT US ANYTIME "There's great pressure on schools to win," said John Cheslock, who teaches at the Center for the Study of Higher Education at the University of Arizona. "If I'm an athletic director and I drop a sport, I'm going to have everyone who plays the sport angry at me, as well as parents and former athletes and donors." Though official figures are not yet available, Brand said he expected the number of athletic programs to shrink about 1 percent this year, or by about 130 teams. "We've seen some sports close because of financial reasons in the past, but that was spotty," he said. "This is the worst I've seen it." He said he did not have a forecast for the 2009-10 academic year. There are, to be sure, sacred cows. At many universities, football and basketball bring in more money than they spend, because of strong support from alumni, ticket sales and television and sponsorship revenue. Some programs are so wealthy that they subsidize entire athletic departments. In the 2007-8 season, the Southeastern Conference distributed an average of \$5.3 million in football and basketball television revenue to each of its 12 members. In August, the SEC signed 15-year television contracts with ESPN and CBS that will generate even more money. Last week, the Arkansas athletic department said it would spend \$1 million to help the university avoid increasing tuition. In December, the athletic department at South Carolina agreed to steer \$1 million of its television revenue back to the university. "There's no doubt that **most if not all our institutions are experiencing budget issues with their state legislatures,**" said Mike Slive, the commissioner of the SEC. "To the extent that our athletic departments can assist, they've done that." Because many tickets to SEC football games for the coming season were sold before the downturn, universities may not feel the effect of the recession for another six or eight months, Slive said. The Ohio Valley Conference, which includes 11 universities in Alabama, Illinois, Kentucky, Missouri and Tennessee, is not so fortunate. It reduced the number of teams that play in conference championship tournaments to six, eliminated media days before the football and basketball seasons (instead conducting news conferences online), and stopped printing media guides. "We were doing cost containment before cost containment was cool," said Jon A. Steinbrecher, the conference commissioner until last week, when he took over as the head of the Mid-American Conference. "It's not huge dollars,

but by the time you eliminate two media days and print media guides, you're talking \$25,000 to \$40,000 in savings." Teams in the conference are taking buses on longer trips to avoid flying, and staying overnight less often. At Lehigh, which has 25 varsity sports and competes in the Patriot League, athletes on the volleyball, field hockey and soccer teams will return to campus only a few days before dormitories open, instead of a full week. The change will save the athletic department about \$20,000 in room and board. Joe Sterrett, Lehigh's athletic director, trimmed \$250,000 from his budget. He said he was also concerned about a potential decline in the number of athletes who attend the university's sports camps, which bring in as much as \$900,000 each summer.

## **Answers to: Big Time Sports Benefit Schools**

### **Other ways to benefit the schools**

The animating myth of the pay system is that big-time college sports are good for colleges, a belief best embodied by “The Flutie Factor.” In 1984, Doug Flutie, a Boston College quarterback, threw a last-second touchdown pass for a victory over Miami. A surge in applications the following year was widely attributed to him and also used to correlate athletic triumph and institutional prestige. However, a 2013 report by the Delta Cost Project, a Washington, D.C., think tank, found that The Flutie Factor was “often cited but largely exaggerated” and called the impact of athletic success “typically quite modest.” Sports can improve a school—but so can a new building, better professors, or increased diversity.

## Costs Passed on To Students

### Higher costs for athletics are passed on to students

Will Hobson and Stephen Rich ,reporters, Washington Post, Why students foot the bill for college sports, and how some are fighting back, Washington Post, November, [https://www.washingtonpost.com/sports/why-students-foot-the-bill-for-college-sports-and-how-some-are-fighting-back/2015/11/30/7ca47476-8d3e-11e5-ae1f-af46b7df8483\\_story.html?utm\\_term=.cc6c17fc0fec](https://www.washingtonpost.com/sports/why-students-foot-the-bill-for-college-sports-and-how-some-are-fighting-back/2015/11/30/7ca47476-8d3e-11e5-ae1f-af46b7df8483_story.html?utm_term=.cc6c17fc0fec)

**At Texas A&M University, the president’s proposal to charge all 50,000 students \$72 a year to help pay for a \$450 million football stadium renovation brought protests. At Clemson**

**University, the athletic director’s idea to charge all 17,000 students \$350 a year to help him keep up with competition brought pushback from student government.**

At the University of Kansas, a walk-on golfer’s push to eliminate a \$50 fee all 17,000 students paid the increasingly wealthy athletic department brought a strong — and to some students, vindictive — response from administrators. And at many of America’s largest public universities, athletic departments making millions more every year from surging television contracts, luxury suite sales and endorsements continue to take money from tens of thousands of students who will never set foot in stadiums or arenas. **Mandatory student fees**

**for college athletic departments are common across the country. Often small line items of a couple hundred dollars on long, complex tuition bill**s, these fees make millions for athletic departments at

larger colleges. In 2014, students at 32 schools paid a combined \$125.5 million in athletic fees, according to a Washington Post examination of financial records at 52 public universities in the “Power Five,” the five wealthiest conferences in college sports. [Big-time college sports departments are making more money than ever — and spending it just as fast] To rich athletic departments, these fees represent guaranteed revenue streams that, unlike ticket sales or booster donations, are unaffected by on-field success.

**To less flush departments, increasing student fees is one way to keep up.** Athletic directors defend fees

as well worth what their programs give back to schools. “Athletics is a common good, bringing people together, developing relationships, unifying the institution, bringing fantastic exposure,” said Virginia Athletic Director Craig Littlepage, whose department charges undergraduates \$657 annually. **To advocates fighting to keep college affordable, however,**

**athletic departments that continue to charge mandatory student fees as their income rises are making America’s student debt problem worse. “These students are being forced to pay for**

**something that they may or may not take advantage of, and then they have to bundle this into student loans they’ll be re-paying for 10 or 20 years,”** said Natalia Abrams, executive director of the

nonprofit Student Debt Crisis. “It’s a huge problem in higher education,” said David Catt, the former Kansas golfer. “You think you’re paying for a degree and you wind up as a piggy bank for a semi-professional sports team.” Virginia fans cheer at a basketball game this month; many athletic directors defend charging students fees by citing what sports offer campus life. (Ryan M. Kelly/AP) “They do it because they can’ For the roughly 20 million college students in America, the money they — or their lenders — pay schools every semester covers much more than professor salaries and dorm upkeep. Many colleges tack on fees to tuition bills to fund complementary aspects of college life such as libraries, computer labs and campus buses. For hundreds of thousands of students who attend Power Five schools, one of those departments that can charge a fee is making a lot more money from other sources than it used to: athletics. From 2004 to 2014, the combined income of 48 athletic departments in the Power Five rose from \$2.67 billion to \$4.49 billion. The median department saw earnings rise from \$52.9 million to \$93.1 million. As more money has come in, a few schools have gotten rid of student athletic fees, including both powerhouse Alabama (\$147.2 million in 2014 athletics earnings) and middle-of-the-pack Missouri (\$82.2 million). “We take pride in the fact that we carry our own weight and pay our own way,” said Tim Hickman, Missouri athletics chief financial officer. This fall, Kansas State athletics announced it would phase out its student fee by 2020. In 2014, Kansas State athletics made \$72.4 million and charged \$500,695 in student fees. “If you look at the financial pressure on students, the increased cost of tuition . . . it was time to have those dollars be available for other things,” Kansas State Athletic Director John Currie said. [Sally Jenkins: College athletic departments are paying themselves to lose money] While all Power Five schools are making more from television rights contracts — which are paid primarily to conferences, who then split up the money among member schools — only some athletic departments, usually ones with strong football teams, also have been able to get ticket sales, endorsements and royalties to surge. At Florida State athletics — which made \$96.8 million in 2014 — officials

justify a \$237 fee that generates \$8 million by pointing out students get free admittance to Seminoles football games. This is a benefit for the 16,000 students who snag student seats at Doak Campbell Stadium. There are more than 32,000 undergraduates at Florida State, though. At some departments, athletic directors are increasingly dependent on student fees to help them keep up with big-spending rivals. At the University of Virginia, student fees for athletics generate \$13.2 million per year that Littlepage said he needs to cover his budget. From 2004 to 2014, under Littlepage's watch, Virginia athletics spending rose from \$50.3 million to \$87.4 million, including significant increases in coaches pay (from \$8.6 million to \$18.1 million), and debt and maintenance costs on facilities (from \$2.5 million to \$15.2 million). (All 2004 figures are adjusted for inflation.) Littlepage has been unable to get earnings to rise enough to keep up. In 2014, Virginia athletics made \$70.5 million, \$17 million less than it spent. In a decade, Virginia has increased its student fee from \$388 to \$657. "We're all facing a lot of the same economic pressures, but it's not an entirely level playing field," Littlepage said. For Paige Taul, a 19-year-old Virginia student who earns \$8.25 per hour as a cashier at the campus bookstore, this means she works about 80 hours just to pay off her debt to athletics. "Wow. That doesn't seem fair," said Taul, who expects to graduate with at least \$30,000 of debt. Taul doesn't go to football games, she said. She's usually working. At Rutgers, students pay about \$326 each, generating \$10.3 million. "It's crazy. It's a struggle for me, every semester, to get the money together," said Rutgers sophomore Eric Dillenger, 20, who works summers as a short-order cook at a pizza shop. He expects to graduate with at least \$25,000 in debt. "It should be an option, whether you want to buy tickets or not," Dillenger said. At many schools, fees aren't controversial. At Auburn, administrators raised the student fee more than 400 percent in 2006, from \$36 to \$192 per year, and Athletic Director Jay Jacobs said students never complained. Auburn students also have to pay for football tickets, but an athletics spokeswoman said the fee, which generates \$4.4 million, allows Auburn to discount student tickets. Outside the Power Five, athletic departments lacking annual windfalls from television networks are even more reliant on student fees. **Jeff Smith, a business professor at the University of South Carolina-Upstate who has studied financial records from hundreds of schools, estimates students across the country borrow nearly \$4 billion per year to pay off athletic fees.** Some smaller schools charge more than \$2,000 per year in athletic fees, Smith found. "They do it because they can. Most schools, it goes through the student government . . . and you're always going to have kids who like sports and don't understand the big financial picture," Smith said. "When you have a president or a dean saying 'This is good,' most students will just go along with it." Sometimes, students don't. In the last few years, students in Texas, South Carolina and Kansas have looked at their tuition bills and the surging amount of money flowing into athletics departments and asked administrators variations of the same question: Why do you need my money? Shortly after students at Kansas objected to a mandatory fee to support athletics, officials took 120 basketball seats reserved for students and gave them to donors who contributed at least \$25,000 per year. (Ed Zurga/Getty Images) Normal doesn't apply With a devoted fan base and deep-pocketed donors, Texas A&M athletics had gotten by for years without a student fee. But as A&M planned an ambitious \$450 million stadium renovation — which included a new 7,700-square-foot high-definition video board and a luxury suite section featuring a baby grand piano and crystal chandeliers — former university president R. Bowen Loftin decided it was time to change that. In late 2012, Loftin's administration put together a financing plan that called for \$75 million from students over 30 years, through increased ticket prices and a new \$72 fee. Spread across all students at Texas's largest public college, the fee would generate about \$3.6 million per year. It's difficult to overstate the popularity of football at Texas A&M, where many traditions center around Aggies football, including midnight "yell practice" before games. But when the administration approached students about a fee to support their beloved Aggies, the students balked. A poll found 65 percent of students opposed. Kyle Field's expanded student section would hold 30,000. A&M had 50,000 students. Some conservative students began condemning the fee as a tax. "It's unfair to make people who will never use that stadium pay to make my football game experience better," said Scott Bowen, 25, a former member of A&M's student senate. Cary Cheshire, 23, another former student senator and conservative activist, agreed. "College administrations need to view students as students, rather than walking checkbooks," Cheshire said. When Loftin took the proposal to A&M's board of regents in May 2013, a few students protested, some holding signs that read "STOP WASTING MY MONEY" and "REPEAL LOFTIN'S \$LU\$H FUND." The board approved the fee. But in two years since, A&M has not added it to tuition bills.

## Higher athletic costs are covered with higher student fees

Matt Krupnick, Would Your Tuition Bills Go Up If College Athletes Got Paid?, Time Magazine, November 29 2014.

<http://time.com/money/3605591/college-athletes-sports-costs-students/>

Only a handful of NCAA Division I schools have self-sustaining athletics programs—just 20 of the nearly 130 schools in the top-flight Football Bowl Subdivision, for example—so most universities subsidize those departments, even in a pre-Kessler, pre-O’Bannon world. At public institutions in particular, part of that subsidy is drawn from student fees. According to the Knight Commission, growth in athletics funding at Division I schools outpaced academic spending from 2005 to 2012. Students at some schools pay \$1,000 in athletics fees alone. Changes to how student-athletes are paid could lead some schools, stuck with nowhere else to turn, to raise other students’ fees. Universities and colleges could also scale back their athletics programs to cut costs. That “would be the rational approach,” Kirwan said. “But when it comes to college athletics, rationality doesn’t often prevail,” he said. “There are so many societal pressures.”

### **Athletic program costs paid for with higher tuition**

Phillip Yeaglem former Interim Chancellor and Dean at Rutgers University], The High Cost of College Athletics and Your Tuition, Huffington Post, June 4, 2015, [https://www.huffingtonpost.com/dr-philip-l-yeagle/may-you-get-what-you-pay-\\_b\\_7503068.html](https://www.huffingtonpost.com/dr-philip-l-yeagle/may-you-get-what-you-pay-_b_7503068.html)

The next question is how do most athletics departments fill the gap between revenues and expenses? Students pay the athletics budget directly through special student fees (separate from tuition). Students also pay indirectly through higher tuition. Why? Some form of transfer must occur at most of these institutions from tuition revenues to athletics departments to fund those deficits in the athletics departments. Those particular tuition revenues cannot then be used to hire teachers or support student services or fix classrooms. Or other revenues are used that might otherwise support student services and educational expenses, and thus students end up paying indirectly again. In either case, students support part of the costs of the athletics department budget through their tuition and fees. The greater the deficits of those athletics departments, the higher the tuition and fees must rise.



## High Student Debt Bad

### Heavy student debt undermines life advancement

Allesandra Lanza, Study: Student Loan Borrowers Delaying Other Life Decisions US News and World Report, January 20, 2016, <https://www.usnews.com/education/blogs/student-loan-ranger/articles/2016-01-20/study-student-loan-borrowers-delaying-other-life-decisions>

**Student loan debt is having a profound impact on the daily lives and spending habits of young Americans**, regardless of the type of institution they attended or the level of credential they earned, according to the latest "Life Delayed" report from American Student Assistance, the organization that writes the Student Loan Ranger blog. According to the survey, **62 percent of respondents said their student debt posed a hardship on their personal budget when combined with all other household spending. Specifically, 35 percent said they found it difficult to buy daily necessities because of their student loans; 52 percent said their debt affected their ability to make larger purchases such as a car; and 55 percent indicated that student loan debt affected their decision or ability to purchase a home.** A lot of recent research has pointed to student debt as being a crisis for only certain portions of the student population, such as those who attend for-profit institutions or drop out before completion. However, large swaths of our "Life Delayed" survey respondents from all institution types reported having difficulty with their debt. [See how much you know about student loan repayment.] The study, which gathered information from student loan borrowers who have graduated or left school, analyzes responses not only in the aggregate but also by school type and credential earned. Results are provided for borrowers who attended community college and four-year public and private school for undergraduate study, as well as for graduate borrowers and those with professional degrees like law school and medical school degrees. Community college students faced the biggest challenge, with 49 percent saying it is difficult or very difficult to make student loan payments, while 48 percent of private institution borrowers and 40 percent of public school borrowers said they faced similar challenges, according to the study. Forty-three percent of graduate school borrowers said they find it difficult to pay student loans each month. [Know when it's OK to postpone your student loan payment.] While many student debt studies focus only on borrowers in the direst of circumstances – those in default or severely delinquent with payment – this study examines more broadly how **education debt causes borrowers to sacrifice other aspects of their financial well-being.** For example, **a majority or near-majority of alumni who borrowed for undergraduate study said their student debt has affected their ability to put savings aside for an emergency fund or for retirement. Similarly, 41 percent of graduate borrowers said they do not have any emergency savings, and 61 percent of graduate school borrowers say that student debt has affected their ability to save for retirement.** On a positive note, the study found that 65 percent of borrowers still believe a college education is worth the investment, despite the debt. A majority of borrowers, though, said they were either unsure they would have made the same college choice or definitively would not have made the same choice to attend their alma mater, if they knew then what they know now about loan repayment.

## **Court Clog**

mployee athletes would be able to sue

Montgomery & Karcken, November 10, 2023, <https://www.mmwr.com/student-athletes-as-employees-a-potential-game-changer-for-college-athletics/>, STUDENT-ATHLETES AS EMPLOYEES? A POTENTIAL GAME-CHANGER FOR COLLEGE ATHLETICS

Additionally, if student-athletes are classified as employees, they would be able to bring discrimination claims under various statutes, including Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Equal Pay Act of 1963.

## Rights Bad Link

Saying student-athletes are employees doesn't do anything in itself; the students would have to assert rights claims

Ross Delinger, February 8, 2022, [https://www.si.com/college/2022/02/08/ncaa-student-athletes-vs-employees-debate-big-step#:~:text=%E2%80%9CBy%20definition%2C%20college%20athletes%20are,laws%20like%20every%20other%20American.%E2%80%9D,NCPA Takes Next Step Toward College Athletes Being Classified As Employees](https://www.si.com/college/2022/02/08/ncaa-student-athletes-vs-employees-debate-big-step#:~:text=%E2%80%9CBy%20definition%2C%20college%20athletes%20are,laws%20like%20every%20other%20American.%E2%80%9D,NCPA%20Takes%20Next%20Step%20Toward%20College%20Athletes%20Being%20Classified%20As%20Employees)

“Employee status is not a guarantee of better rights, but it would certainly empower the athletes to negotiate for better rights,” Feldman contends. “Whatever the path is, there are downsides to the path. I don't think any solution is necessarily going to be perfect. For every gain made for one athlete, it may lead to less from another athlete.”

## Amateurism DA/Education Valuable

### Paying athletes destroys the tradition of college sports

Sara Ganim , Paying college athletes would hurt traditions, NCAA chief Emmert testifies, CNN, June 19, 2014, <http://www.cnn.com/2014/06/19/us/ncaaobannon-lawsuit-trial/index.html>

**If college athletes were to start being paid, many schools would leave Division I sports, NCAA President Mark Emmert said Thursday. And the universities that stayed in Division I sports would have to start cutting other, less popular sports to be able to afford the salaries.** There would be less competition and no more national championship games — at least not in their current form, Emmert said. Emmert testified at the landmark federal trial for former UCLA player Ed O'Bannon's lawsuit against the National Collegiate Athletic Association. He and other athletes are suing for the opportunity for future athletes to be paid for the use of their names, images and likenesses when they play sports on television. Emmert said he believes **the customs that most college sports fans hold most dear -- the camaraderie of game day, the tailgating, the atmosphere of a stadium packed**

**with nearly 100,000 fans and the pride of cheering for a university team -- are at stake.** Ex-athletes sue NCAA in antitrust suit Ex-athletes sue NCAA in antitrust suit 01:46 "Traditions and keeping them are very important to universities," Emmert said. **These individuals are not professionals. They are representing their universities as part of a university community.** "People come to watch ... because it's college sports, with college athletes," he said. Those beloved traditions go hand in hand with the model of amateurism, and if amateurism goes away, so will the games as we know them now, he said. Many schools lose money on Division I athletics but keep them for the "social cohesion" and the boost to their profiles, Emmert said. Emmert said officials at several member schools have told him that if athletes were to start getting paid beyond the cost of attendance, institutions would ditch Division I sports and opt for Division II or III, in which coach's salaries, stadiums, hype and scholarships are much smaller. "Do the members want the sports to remain amateur?" an NCAA lawyer asked. "Yes," Emmert replied. "If the rules were changed to permit student athletes to be paid for (names, images and likenesses), would that change what college sports is all about? "Yes, it would." Never before has the NCAA membership — leaders at about 1,100 colleges and universities — proposed changing the rules to allow college athletes to be paid. However, they are currently considering giving athletes a bit more "miscellaneous" money to cover the full cost of attending college. Emmert, a much-anticipated witness at the three-week trial, testified for five hours Thursday and is expected to continue on Friday. On the stand, Emmert embodied the NCAA's no-budge, no-compromise take on the issue of pay-for-play, citing the organization's century-old history. In the five years since the O'Bannon suit was first filed, there have been several controversies and many attempts to reform the NCAA. Emmert acknowledged that public opinion of the organization is low and that part of his directive when he took this job was to fix that. While he made no concessions to the argument of hypocrisy in college sports — the idea that everyone else involved makes money, except the athletes — Emmert did concede that the commercialization of college sports is overwhelming the amateurism. He said the use of athletes' names, images and likenesses is "one of the most debated topics in NCAA history." One of O'Bannon's lawyers, Bill Isaacson, displayed picture after picture of athletes with corporate logos and asked, "Putting athletes in front of logos, that's all fine under NCAA rules?" "It's not something I'm personally comfortable with," Emmert responded. "... It's certainly not where I would prefer the rules be drawn." Responding to questions from U.S. District Judge Claudia Wilken about commercial exploitation, Emmert said the schools have chosen to define it to mean that college athletes should not be acting as "pitchmen" for products. A recent poll conducted by the Saint Leo University Polling Institute showed that 66% of Americans don't think athletes should be paid beyond scholarship money. But complicating the issue are recent academic scandals and consistent court testimony from athletes from several different schools that they were athletes first, not students. Emmert responded by saying that it's hard to get motivated athletes to focus more on schoolwork, but he insisted that they are motivated to play college sports because of the education they receive. But when he was asked about that education, he first mentioned the life experience that athletes earn on the field, then discussed what they learn in class. O'Bannon's lawyers questioned Emmert at length about an e-mail sent to him at the start of his presidency by a senior member of the organization, Wallace Renfro. It said "the notion that athletes are students is the great hypocrisy of intercollegiate athletics" and said the public believes the athletes are exploited in the name of money for higher-caliber coaches and bigger stadiums. Last week, O'Bannon's lawyers said that even if Wilken were to rule in their favor, the conferences and colleges could still decide on their own not to share any of the television revenues with athletes. As long as the NCAA doesn't have a rule against it, it would still be OK for colleges to choose not to pay. Rules, Emmert testified, are necessary. "It's essential there be a body that provides rule-making," he said. "One of the most fundamental principles of fair competition is that

everyone is playing by the same rules. Everyone understands they are governing and conducting the game the same way from one side of the country to another. You couldn't do it nationally without those rules."

### **Paying student athletes means they would focus on their studies *less***

Patrick T. Harker is the president of the University of Delaware and a member of the board of directors of the National Collegiate Athletic Association, Division I, , New York Times, "Student Athletes Shouldn't Unionize," The New York Times, April 1, 2014, <https://www.si.com/college-football/2015/08/17/northwestern-football-players-union-nlrb-ruling-analysis>

Without question, some big schools have lost their way. On some campuses the pursuit of athletic dominance has eroded the ideal of the student athlete. **Players at these schools have every right to complain, particularly when the demands of competition effectively prevent them from being students. But the answer is not to organize and essentially turn pro. This would only further lessen the priority on learning. If scholarship athletes already find it hard to balance schoolwork with team commitments, under arrangements that obligate educational opportunity, think how much harder it would be if they were being paid to play.**

### **Even those who go pro only make it for a few years**

Patrick T. Harker is the president of the University of Delaware and a member of the board of directors of the National Collegiate Athletic Association, Division I, , New York Times, "Student Athletes Shouldn't Unionize," The New York Times, April 1, 2014, <https://www.si.com/college-football/2015/08/17/northwestern-football-players-union-nlrb-ruling-analysis>

Strong athletic departments do two things well. They afford young athletes the chance to reach their full potential, and they prepare them for life when the cheering stops. For the vast majority of student athletes, that life begins at graduation. For the exceptional ones who make it to the pros, post-sport life begins soon enough. The average length of a pro football career is only about three years.



## **Advantage Answers**

## Answers to: Exploited

### Colleges now offer additional stipends

Michael Tarm, Associated Press, August 17, 2015, Board Dismisses Ruling to Allow College Athletes to Unionize, <http://www.ncaa.com/news/ncaa/article/2015-08-17/board-dismisses-ruling-allow-college-athletes-unionize>

**The NCAA recently cleared the way for the five biggest conferences, including the Big Ten, to add player stipends to help athletes defray some of their expenses. Southeastern Conference schools, for example, will give some athletes \$3,000 to \$5,500 each on top of a scholarship that pays for tuition, room, board and books.**

### What students receive in a year exceeds what most Americans make in a year

Ackerman & Scott, CNN, March 30, 2016, College athletes are being educated, not exploited, <http://www.cnn.com/2016/03/30/opinions/college-athletes-not-exploited-ackerman-scott/index.html> Val Ackerman is the commissioner of the Big East Conference and was the founding president of the Women's National Basketball Association and a past president of USA Basketball. Larry Scott is commissioner of the Pac-12 Conference and former chairman and chief executive officer of the WTA Tour.

As former college athletes who now coordinate athletic programs at universities ranging from as many as 40,000 undergraduate students at Arizona State University to as few as 4,000 students at Providence College, we can attest that **hundreds of thousands of students across the country benefit enormously from playing sports. We know that playing a sport in college teaches young people lessons that last a lifetime, such as time management, leadership skills and teamwork, along with how to handle winning and losing. At a time when student debt is a major national issue, the men's and women's basketball players in our conferences don't have to worry about oppressive financial obligations when they leave school. They go to college on full scholarships, and when they graduate, most graduate debt-free. They receive cost of attendance benefits, meaning their day-to-day needs, such as food, housing, clothing, gas, and trips home, are covered. They also get high quality medical care, academic support and quality travel experiences, in some cases globally. By some measures, these students receive more in benefits than the average American makes in a year in income .In fact, the 170,000 athletes who play Division I sports are the beneficiaries of the nation's second largest college financial aid program, second only to the GI Bill. It's privately funded, paid for largely by TV contracts that allow supporters from around the country to follow teams from the schools they love. We refer to the scholarships these students receive when they're accepted to the colleges of their choice. Importantly, many students who play sports are the first in their families to attend college, in large part thanks to the scholarships they receive. And if history is any guide, 67% of all Division I athletes will go on to become college graduates, a slightly higher graduation rate than that of their fellow students who do not play on NCAA sports teams. These athletes also receive something even more important: they're taught how to be successful in college and in life.**



## **No, most are not exploited, they receive valuable educations. Few go Pro**

Ackerman & Scott, CNN, March 30, 2016, College athletes are being educated, not exploited, <http://www.cnn.com/2016/03/30/opinions/college-athletes-not-exploited-ackerman-scott/index.html> Val Ackerman is the commissioner of the Big East Conference and was the founding president of the Women's National Basketball Association and a past president of USA Basketball. Larry Scott is commissioner of the Pac-12 Conference and former chairman and chief executive officer of the WTA Tour.

Our critics see college sports as professional sports. It's true that some men's college basketball players play for only a year or two, and then go pro. Critics want people to think these athletes are the rule, not the exception. But they are the exception, not the rule. **Of the 1,210 students who played Division I men's basketball in 2013** (the latest year data is available), **only 3.9% were drafted into the National Basketball Association. The overwhelming majority of college students who play a sport know that college will be the last time they suit up and play competitively a game they've enjoyed since they were kids. They recognize that college is ultimately about getting a degree and getting ready for life long after their playing days are over. They're not exploited.** They're educated. As executives who ran two different professional women's sports organizations, **we pay special attention to the impact college athletics have on the careers of women today. A recent study by the EY Women Athletes Business Network and espnW showed that the majority (52%) of top C-suite women business executives played a sport at the university level, compared to 39% of women at other management levels.** Further, according to the Harvard Business Review, "Three out of four C-suite women executives said that [job] candidates' involvement in sport influences their hiring decisions, because they believe people who have played sports make good professionals." College is a time for learning, and college sports provide young men and women alike a chance to learn, grow, graduate and achieve great things in life. College graduates make more in earnings than non-graduates, and for countless students, it's athletics that give them the chance to get a degree and become successful.

### **Students get \$25-\$50K/year + fringe benefits**

Zach Dirhlan, March 1, 2013, There's no crying in college: The case against paying college athletes, <http://bleacherreport.com/articles/1588301-theres-no-crying-in-college-the-case-against-paying-college-athletes>

Over 20 years ago, the rise of the Fab Five basketball team at the University of Michigan helped spark what is now one of the most debated topics in all of sports. Should college athletes get a piece of the \$871.6 million pie the NCAA brings in annually? The answer is simple: No, absolutely not. **College athletes are already being paid with an athletic scholarship that is worth between \$20-\$50,000 per year. Oh, and that does not even begin to factor in the medical and travel expenses, free gear, top-notch coaching, unlimited use of elite athletic facilities and a national stage to audition for a job in the professional ranks.**

## Huge benefits to top athletes

Zach Dirhlan, March 1, 2013, There's no crying in college: The case against paying college athletes, <http://bleacherreport.com/articles/1588301-theres-no-crying-in-college-the-case-against-paying-college-athletes>

All of those perks are paid for in full by the universities these athletes choose to attend. Before attempting to discredit some of the cases for compensating players at the college level, let's take into account all of the things they already receive cost-free. **Athletic scholarships cover just about everything a student-athlete needs to survive for four years at a major university. Campus housing, daily medical care and free meals via training table are all included. Tuition and books are covered as well. None of those things are cheap. It costs \$57,180 to attend Duke University. The University of Texas charges \$35,776 for out-of-state enrollees. Even Butler University charges \$31,496 per year. This means many college athletes are being reimbursed with nearly as much money as the average American makes per year. Leaving a four-year college with a degree will help former players earn more money than those who only have a high school diploma, regardless of whether or not they move on to a professional sports career. Students who attain a Bachelor's degree will make \$1.1 million more in their lifetimes than non-graduates. Traveling around the world is another privilege these student-athletes are afforded. The Michigan State Spartans and Connecticut Huskies opened the college basketball season in Ramstein, Germany. The Notre Dame Fighting Irish and Navy Midshipmen played in the Emerald Isle Classic in Dublin, Ireland last year. Michigan sent its football team to train with Navy SEALs in San Diego, before opening the 2012 regular season at Cowboys Stadium in Arlington, Tex.** Numerous basketball tournaments are held at tropical venues. Seven schools get to play in the Maui Invitational every year. Others will head to the Battle for Atlantis in the Bahamas, Puerto Rico Tip-Off or the Paradise Jam. **Some people scrolling through this article can only dream of being able to visit any of those locations.** Each and every athlete will leave their university free of debt. I'm willing to bet some of you reading this are still paying off college loans, or took quite a while to do so. Heck, I have racked up over \$80,000 in tuition fees over the past four years in college. I work in an athletic department to help pay off my debts. Athletes pay theirs off by going to practice and performing in games.

## Greater scholarship compensation now

Jenny Wilson, February 7, 2017, Hartford Courant, College Athletes As Employees? That raises questions in Connecticut, <http://www.courant.com/sports/uconn-huskies/hc-ncaa-paying-athletes-union-0208-20150207-story.html>

The NCAA, athletic conferences and member institutions have been exploring ways to address some of these concerns without having to do so at the bargaining table. In recent months, some schools, including UConn, have announced that they will start offering full cost of attendance scholarships that provide a stipend to athletes on a full ride. The purpose of these enhanced scholarships is to compensate for money that students cannot earn on their own because the time requirements of college sports prevent them from holding a part-time job. **In the 2015-16**

**school year, UConn will start offering full cost of attendance scholarships to athletes in all sports who are on a full scholarship. The policy will cost an estimated \$1.5 million a year in increased aid to nearly 200 UConn athletes.** The UConn athletic department has declined to comment on the proposed union legislation. **Their new scholarship policy follows a decision by the Power Five conferences to offer full cost of attendance scholarships.** Under new NCAA rules, Power Five conferences have the authority to self-govern on student athlete welfare issues. Schools in smaller conferences, like UConn, may adopt the changes passed by the Power Five but are not required to do so. In addition to granting the major conferences autonomy to provide increased benefits to student athletes, **the NCAA last year ruled that all college athletes, including walk-ons, are allowed to receive unlimited meals and snacks from universities.** The NCAA decision came shortly after Napier told reporters that he often went to bed hungry, but the policy change had been in the works before Napier's comments.

### **Being a student athlete is not a career, and most avoid loans**

Horace Mitchell is president of California State University—Bakersfield NCAA Division I Board of Directors, 2014, US NEWS, Students are Not Professional Athletes, <https://www.usnews.com/opinion/articles/2014/01/06/ncaa-athletes-should-not-be-paid>

Students are not professional athletes who are paid salaries and incentives for a career in sports. They are students receiving access to a college education through their participation in sports, for which they earn scholarships to pay tuition, fees, room and board, and other allowable expenses. Collegiate sports is not a career or profession. It is the students' vehicle to a higher education degree. This access is contingent upon continued enrollment, participation in the sport for which they received the scholarship, and academic eligibility. The NCAA Student Assistance Fund can be used to help those student-athletes who have unusual needs in excess of the usual cost of attendance. A high percentage of student-athletes graduate without the burden of student loans, which most other students accumulate.

### **98% of college athletes won't go pro and they gain a lot from the experience**

**Craig Thompson is commissioner of the Mountain West Conference. Tom Burnett is commissioner of the Southland Conference** September 8 2017 Denver Post, College athletes are students, not employees, <http://www.denverpost.com/2017/09/08/college-athletes-are-students-not-employees/>

The beginning of a new academic year is a thrilling time for college athletes on campuses across the country. **Thousands of young men and women will compete in fall sports, from football and field hockey to cross country, soccer and volleyball. They are diverse and they come from all over the world, but they have one thing in common. They are college students chasing their dreams and working hard to earn degrees.** While this is the reality, our critics often don't see it that way and they have sued in court, claiming college athletes are exploited. They claim the system isn't fair. They want to dismantle intercollegiate athletics and replace it with a flawed model that would professionalize sports played by college students. Critics and plaintiffs' lawyers say students who play sports should be paid salaries. They favor allowing the students

to unionize. They see them as employees. And that is where our critics have it wrong. **College athletes are not employees. They are students.** It's that simple. **The cynical view critics have comes from a distorted picture created by the relatively small number of athletes who leave college early to go pro. They mistakenly believe many of our athletes are merely taking detours through college, just waiting to get drafted. The truth is less than 2 percent of students who will play college football this fall will be drafted into the NFL. Even fewer will ever play a single down. The numbers are similar in college basketball. Put another way, about 98 percent of the college students who play football or basketball will go pro in something other than sports. That is why the vast majority of student-athletes we see are serious about academics and sports.** They know college athletics is preparing them for successful lives and careers because of the experiences they enjoy and the education they receive. **As commissioners, we have an obligation to help students be successful in college and in life.** We take that charge seriously, and we are proud of the work being done on all of our campuses to give our athletes — including many first-generation college students — every chance to succeed in the classroom and in the community. **The critics and the lawyers who want to tear down college sports would have a much different picture if they were to visit our campuses. They would have a different view if they talked to the many students who take advantage of the incredible support system in place to help them succeed academically, socially and athletically. They would not see athletes being exploited. They would see young men and women from all over the world taking their studies and their sports seriously. They would see mentors and tutors, coaches and career counselors, nutritionists and administrators doing everything they can to equip them with the help they need to reach the finish line that really counts: graduation day.** While we oppose paying students and allowing them to form unions because of the irreparable damage it would do to college sports, we believe in reform. The real story of reform is not the kind of story that goes viral. But these reforms are having a real impact on the day-to-day lives of thousands of college athletes. **Our students receive more benefits than ever before. On top of scholarships that fund tuition, room and board, they now receive stipends for living expenses based on the full "cost of attendance." Many enjoy unlimited meals and can get help if they need it with everything from winter coats and eye exams to transportation to and from home in case of family emergencies. Starting this fall, athletes will have more time off from their sports to study, work internships or rest. They can practice and compete knowing their scholarships will never be taken away if they are injured or are not performing to the level they had hoped.** All of those positive changes are a result of reform over the past three years. In the debate over intercollegiate athletics, **we should never lose sight of the value of a college degree. College graduates will earn up to \$800,000 more over their careers than those who only have high school diplomas. Think of the impact that can have on first-generation college students and their families.** College athletes who earn their degrees with the help of scholarships have another advantage over their peers who don't play sports. Many athletes graduate without a dime of debt at a time when the majority of college students are burdened by loans just as they are launching their careers. The system may not be perfect. We will continue to evolve and do what must be done to preserve the integrity and ensure the future of intercollegiate athletics. The young men and women who come with dreams of competing for championships and then leaving with diplomas in their hands deserve nothing less.

## **Their exploitation/payment articles only assume a few universities**

Warren, Nicholas, graduating student in economics, May 2017, “The Economic Feasibility of Paying College Athletes,” Department of Finance, Texas Christian University. May 8, 2017, [https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren\\_\\_Nicholas-Honors\\_Project.pdf?sequence=1](https://repository.tcu.edu/bitstream/handle/116099117/19866/Warren__Nicholas-Honors_Project.pdf?sequence=1) Thesis overseen by Supervising Professor: Steven Mann, Ph.D. Department of Finance Barbara Wood, Ph.D. Department of Finance Chad Proell, Ph.D. Department of Accounting

Following the analysis of the data, it is possible that the results could make a major mark on the current ethical argument in the world of whether or not college athletes should be paid. With many in the nation citing large television deals, endorsements, and ticket and apparel sales as the main drivers for the argument of paying college athletes, **there is little focus on the actual profits gained from these revenues. By not discussing the large costs that come with the revenues and the lack of revenues from the majority of the other sports, there is little substance to many opinion based arguments. It becomes increasingly more difficult for the pro-pay arguments to stand when the actual profits of the programs as a whole as found in this study are matched up with each opinion based piece.** Additionally, **most of the literature around this topic that argue points for the payment of athletes only focus on a select number of universities that are widely known as some of the powerhouses in the nation. Though some of these programs could stand to support a salary for their athletes, it is because of their status as the college athletic juggernauts that they are able to generate large donations and endorsements, and they are in the minority. The vast majority of programs at even the highest of levels within the Power Five conferences cannot generate the revenues needed to offset the costs of operations to the point that they could pay athletes, something that is commonly left out of the ethical argument.**

**The brand name is the universities, not the players. It is the university names that attract attendance and ticket sales**

Nicholas Kraft, Assistant Professor at the School of Communication at Ohio State University, April 21, 2017, Should College Athletes be Paid? <http://u.osu.edu/sportsandsociety/2017/08/21/should-college-athletes-be-paid/>

Big money and the value of college athletes. **The most common argument is that universities reap millions of dollars in revenue on the backs of unpaid and overworked athletes.** Coaches are paid millions of dollars and are often the highest paid employees at many universities with big-time sports programs. A common analysis is to calculate the “fair market value” of college football players. Business Insider did an analysis calculating the value of each player by allocating 47% of annual football revenue over the 85 scholarship athletes. The University of Texas had the highest value \$671,000, at OSU that value was \$462,000 and the NCAA Division I-A (FBS) average was \$164,000. The implication, although not often stated in these types of analyses, is that these universities are able to attract ticket buyers and ancillary revenue

because of the notoriety and brand value of the athletes. Were it not for Ezekiel Elliott, no one would show up for the games on Saturday. **This analysis is flawed- wrongfully attributing the brand value to the athletes rather than the University sports programs. This argument was addressed in an article in the Chronicle of Higher Education which rightfully points out that the brand value is Ohio State football and not the individual players (not to negate how exciting a player Ezekiel Elliott was). If Ezekiel Elliott was injured early in the season, would 100,000+ people still show up for the games on Saturday. The answer is of course-yes. A perfect example of this was the spring game last April which was held the day after the panel discussion. OSU had sent a record number of athletes to the NFL following the prior season and, in fact, returned only a small handful of starters. So, in a practice game in which most of the participants were not at all well known, over 100,000 people still attended. Certainly they came in anticipation of seeing the next Ezekiel Elliott, but undeniably the brand value accrues to the OSU football program built up over 100 years and not any particular athlete.**

### **If athletes are paid, they will completely ignore their educations**

Larry Scott, PAC-12 Commissioner, Pac-12 commissioner: Why we won't pay or unionize college athletes, USA Today, September 29, 29 2017. <https://www.usatoday.com/story/opinion/op-ed/2017/09/29/pac-12-pay-collegeathletes-mistake/704866001/>

If universities paid student-athletes for athletic performance, education would risk becoming a second priority to these teenagers with large paychecks. As salaried employees, they would be subject to market-based financial pressures and could even be fired or have their salaries cut for poor sports performance.

### **Hardly any players will go pro**

Larry Scott, PAC-12 Commissioner], Pac-12 commissioner: Why we won't pay or unionize college athletes, USA Today, September 29, 29 2017. <https://www.usatoday.com/story/opinion/op-ed/2017/09/29/pac-12-pay-collegeathletes-mistake/704866001/>

These students are not professionals bidding their time before being drafted into the National Football League. They are college students. **They are young men chasing dreams and pursuing college degrees. Ninety-eight percent of them will never be drafted, yet alone play a single down in the NFL. And 100 percent of them deserve an education so they can be prepared for life after school. In last year's NFL draft, Arizona and Arizona State combined had one player drafted out of 170 scholarship athletes.** Athletes like Jacob Alsadek, a senior offensive lineman at Arizona, know graduation and a good job are far more likely than a future in the NFL. "We all want to play football at the highest level, but there has to be something in place to support a career and finances whenever playing football is no longer an option," Alsadek said. "Playing college football is a special opportunity that won't last forever, but earning my degree by the

time I was 22 is something I will have for the rest of my life.” **With a degree, Alsaidek and other students who play college sports are prepared to compete in a new arena — the job market — with soft skills today’s employers value, such as the ability to work on teams, complete tasks efficiently and manage time effectively.**

**Even if they are right, their argument is about 1% of more than 500,000 college athletes**

Nicholas Kraft, Assistant Professor at the School of Communication at Ohio State University, August 21, 2017, Should College Athletes be Paid? <http://u.osu.edu/sportsandsociety/2017/08/21/should-college-athletes-be-paid/> Amateurism-are athletes employees?

Two major events have challenged the traditional NCAA position on amateurism. First, the lawsuit filed by former UCLA basketball star Ed O’Bannon sought compensation for the commercial use of his image. The courts held that certain NCAA rules violate federal antitrust law, but failed to sanction pay-to-play. Second, the Northwestern University football team sought the opportunity to unionize as employees. Similar to the court in the O’Bannon case, the National Labor Relations Board did not allow the team to unionize but held many of the rules imposed on the players by the University to be “unlawful”. All of this begs the question-are big-time college athletes amateurs? By some measures they are certainly well compensated. The value of a four-year scholarship can reach upwards of \$250,000. The counterargument here is twofold. First, **no one is arguing that the vast majority of the almost half-million NCAA athletes are not truly amateurs. Division III athletes are prohibited from receiving any financial aid as a result of their participation. So, the question is, where to draw the line. The range of possibilities is quite broad. One end of the spectrum is the starting Division I football player and, at the other end, the benchwarmer on a Division III team. In between are Division I athletes, both men and women, in a variety of sports that receive only partial scholarships or none at all. Almost all discussions, including the panel discussion at OSU, focus on a minuscule handful of athletes-certainly no more than 5000 out of 500,000 or less than 1%. The proverbial tail wagging the dog.**

**Athletes graduate debt free and also receive stipends**

Larry Scott, PAC-12 Commissioner], Pac-12 commissioner: Why we won’t pay or unionize college athletes, USA Today, September 29, 29 2017.  
<https://www.usatoday.com/story/opinion/op-ed/2017/09/29/pac-12-pay-collegeathletes-mistake/704866001/>

While many students work throughout college to scrape up living expenses and still accrue significant debt, **students who play sports on scholarship graduate debt-free, giving them a huge head start on life. Many students now receive stipends for living expenses based on their “full cost of attendance.” Today’s students on scholarship don’t pay for tuition, fees, room, board, books, transportation or many other personal expenses. Special funds from the NCAA**

**help those with needs to afford transportation to funerals, or for winter coats or even eye glasses.** Reforms enacted over the past three years have impacted the day-to-day lives of students. That is especially true for those who represent the 65 institutions in the “Autonomy Five” conferences: the ACC, Big 12, Big Ten, Pac-12 and SEC, but it’s also true throughout college sports. College sports administrators have acted on other issues that needed to be addressed, too, from tougher protocols to protect athletes from concussions to changes that guarantee scholarships can’t be taken away for poor athletic performance or injury.

### **College athletes very successful when school is over**

Larry Scott, PAC-12 Commissioner, Pac-12 commissioner: Why we won’t pay or unionize college athletes, USA Today, September 29, 29 2017. <https://www.usatoday.com/story/opinion/oped/2017/09/29/pac-12-pay-collegeathletes-mistake/704866001/>

It would also fundamentally change higher education and the core purpose of college athletics, which is to give more than 175,000 young men and women who play sports in Division I a chance to earn college degrees while launching them toward successful lives and careers. **A national survey conducted by Gallup shows students who play sports thrive after college compared to their non-athlete peers. College athletes graduate at higher levels. They are more likely to get a job. They are healthier, happier and more fulfilled. In addition, women business executives disproportionately were college athletes. According to a study by the EY Women Athletes Business Network and espnW, more than half of all C-suite women executives played college sports. More work must be done to ensure generations of future men and women have the same opportunity to earn degrees and learn the lessons athletics can teach. While our love of the game and loyalty to our institutions make all of us fans of college sports, we must remember it is more than a game.** College sports is about making dreams come true for thousands of young men and women, including many who are the first in their family to attend college. Those are the wins we should be cheering about this season.

### **Students receive enormous financial benefits**

Craig Thompson and Tom Burnett, College athletes are students, not employees, Denver Post, September 8, 2017. <http://www.denverpost.com/2017/09/08/college-athletes-are-students-notemployees/> Craig Thompson is commissioner of the Mountain West Conference. Tom Burnett is commissioner of the Southland Conference.

**While we oppose paying students and allowing them** to form unions because of the irreparable damage it would do to college sports, we believe in reform. The real story of reform is not the kind of story that goes viral. But these reforms are having a real impact on the day-to-day lives of thousands of college athletes. Our students receive more benefits than ever before. On top of scholarships that fund tuition, room and board, they now receive stipends for living expenses based on the full “cost of attendance.” Many enjoy unlimited meals and can get help if they



need it with everything from winter coats and eye exams to transportation to and from home in case of family emergencies. **Starting this fall, athletes will have more time off from their sports to study, work internships or rest. They can practice and compete knowing their scholarships will never be taken away if they are injured or are not performing to the level they had hoped. All of those positive changes are a result of reform over the past three years. In the debate over intercollegiate athletics, we should never lose sight of the value of a college degree. College graduates will earn up to \$800,000 more over their careers than those who only have high school diplomas. Think of the impact that can have on first-generation college students and their families. College athletes who earn their degrees with the help of scholarships have another advantage over their peers who don't play sports. Many athletes graduate without a dime of debt at a time when the majority of college students are burdened by loans just as they are launching their careers. The system may not be perfect. We will continue to evolve and do what must be done to preserve the integrity and ensure the future of intercollegiate athletics. The young men and women who come with dreams of competing for championships and then leaving with diplomas in their hands deserve nothing less.**

### **Students could skip school and be paid to play if they wish**

Max Herrera, Student-athletes are students, not professionals, The Aragon Outlook. April 24, 2014, <http://aragonoutlook.org/2014/04/student-athletes-students-professionals/>

Moreover, if a player feels that he or she should be compensated for their work, they can join a money-paying league. Every sport offers an opportunity to make money without going to college. Baseball has the minor leagues, basketball has the development league, and even football has the arena league. A player cannot argue that they should be paid in college when they had the option to go make money by playing sports after graduating high school. The fact that almost all top high school athletes choose to go to college first proves that an education is worth something to them.

### **Many fringe benefits to being a college athletes**

Max Herrera, Student-athletes are students, not professionals, The Aragon Outlook. April 24, 2014, <http://aragonoutlook.org/2014/04/student-athletes-students-professionals/>

Football players deserve compensation for this sacrifice, it just happens to take the form of scholarships. Not only that, but the perks of being a student-athlete are luxurious, with state-of-the-art training facilities, comfortable dorms, gourmet food, and being considered a celebrity on campus. According to Stanford triathlon athlete Ryan Schumacher, most Division I athletes even

receive Nike Christmas, where they can select any two Nike items from a Nike catalog for free. Jacobs adds, “Just the perks of being a student-athlete are worth it.”

### **They can go Pro if they wish**

Patrick T. Harker is the president of the University of Delaware and a member of the board of directors of the National Collegiate Athletic Association, Division I, , New York Times, “Student Athletes Shouldn’t Unionize,” The New York Times, April 1, 2014, <https://www.si.com/college-football/2015/08/17/northwestern-football-players-union-nlrb-ruling-analysis>

The answer for young athletes who want to be paid to play is not to target universities, which have a different mission, but professional sports leagues like the National Basketball Association and the National Football League, which still bar high school athletes from turning pro. If players are good enough to earn a living at that age, I say, let them. Very few, however, are that good. At the college level, even the highest-ranked teams field relatively few players who will ever play a day of professional sports.

### **Student athletes have a positive experience with participation college athletics, regardless of race**

Potuto, Josephine R., and James O’Hanlon. [Potuto is a Professor of Constitutional Law at the Nebraska College of Law; O’Hanlon is a Professor at the College of Education and Human Sciences at the University of Nebraska-Lincoln]. National study of student athletes regarding their experiences as college students , College Student Journal, Vol. 41, No. 4. December 2007 <https://www.ncaapublications.com/p-4086-national-study-of-student-athletes-regarding-their-experiences-as-college-students.aspx>

What emerges from the D1 **A student-athlete survey responses is a generally positive picture of college life as experienced by a very large majority of student- 81 athletes.** Several findings stand out. **First, D1A student-athletes know that their participation in varsity athletics means that they miss out on other** aspects of college life, both curricular and co-curricular. Second, D1A **student-athletes** regret some of the things that they miss. Third, D1A student-athletes **value their athletics participation and believe that it both instills values independent of those derived from other aspects of college life and enhances particular skills and the overall college experience.** Fourth, **D1A student-athletes know that they make trade-offs to participate in varsity athletics.** Fifth, **D1A student-athletes rate those trade-offs as the acceptable, or more than acceptable, cost of athletics participation.** Sixth, **D1A student-athletes are satisfied with their overall college experience and the outcomes of that experience, curricular as well as co-curricular.** These responses clearly undercut oft-stated Therefore, even if misperceptions or false values are at work, there is good reason to conclude that they infect students generally and not only D1 A student-athletes. In other words, an indictment of the overall college experiences of student-athletes might well be an indictment of the overall college experiences of all students. All of us live in a zero-sum world. None of **us can do all the things we would like to do. All college students, not just student-athletes, must make choices about how they use their time. Some may invest large amounts of time in employment, on co-curricular activities, on service activities, or on study that**

**rule out other possibilities for them. All of us may well regret the paths not taken. Some students may regret not participating in athletics.** An assessment of what student-athletes say they miss in their college experience may give us some handle on the relative importance they place on a host of college activities. This, we think, is good to know as the more informed we are, the better the programs we can create. ... **The student-athlete responses discussed throughout this monograph provide, we think, useful insight into the college experience of D1A student-athletes. What they tell us is that as a whole they have good feelings about what they learn from being student-athletes, about their overall college experiences, and about how those experiences prepare them for life after college.** Certainly what they say should be welcomed by all of us interested in college athletics at the D1A level. Student-athlete perceptions of their college experiences are a necessary, although not a sufficient, piece of the puzzle. The more we know, the more we can structure an optimally successful experience for student-athletes – certainly a goal worth pursuing and hopefully one that is achievable.

### **Student athletes grow up to be well adjusted adults and have positive experiences in university**

Kaitlin Mulhere, Student Athletes More Likely to Thrive After College Than Non-Athletes, Survey Says, Time, February 17, 2016, <http://time.com/money/4226158/college-student-athlete-life-outcomes-gallup/>

**Former student athletes are more likely to be engaged at work, involved in their community, and driven to meet goals, according** to a survey released today. And even though collegiate athletes have considerable time demands due to training and competitions, **they also were more likely than non-athletes to report participating in a club or joining a Greek organization, the survey found.** The survey polled 1,670 former NCAA athletes ranging in age from 22 to 71 and compared their responses with more than 22,000 non-athletes. Sixty percent of student athlete participants were male and nearly half competed in Division I athletics, the most competitive division. The National Collegiate Athletic Association partnered with Gallup to track the long-term effects of participating in intercollegiate athletics and, for the first time, compare those outcomes to other students, says Todd Petr, managing director of research at the NCAA. NEWSLETTER: COLLEGE\_PLANNERSign up for COLLEGE\_PLANNER and more View Sample **The survey found a slightly greater share of student athletes were thriving in four out of five areas of well-being: purpose, or liking what you do and being motivated to achieve goals; social, or having strong relationships; community, or liking where you live and feeling safe; and physical, or being healthy and energetic. Former student athletes and non-athletes were equally likely to be thriving in financial well-being.** Overall, less than four in 10 survey participants were considered thriving on that measure, based on questions such as whether they've worried about money in the past week. Forty-two percent of former student athletes and 39% of non-athletes said they were engaged at work, based on measures such as having the opportunity to work on projects that interest them and having a co-worker or boss who encourages them. But the gap was more significant for female workers; 48% of the athletes said they were engaged at work, compared with 41% of non-athletes, said Brandon Busteded, executive director of workforce and training at Gallup. **Student athletes were more likely to say they had a professor who cared about them as a person, a key indicator of feeling supported on campus.** They were just as likely (68% vs. 66%) to earn their degree within four years, but slightly less likely to have a job or internship related to what they were learning in the

classroom. It's difficult to say whether student athletes' experiences in collegiate sports contribute to their out-performing non-athletes on the wellness factors, or if the type of person who's able to compete at the collegiate level already has attributes that make her or him more likely to be, for example, goal-oriented and engaged in group activities. NCAA research scientist Tom Paskus says it's probably a bit of both, based on a separate survey that found 90% of student athletes say participating in collegiate athletics helped them develop leadership skills and improve their work ethic. The researchers did not break down the answers by division or institution-level, but they did compare the experiences of football and male basketball players with other student athletes. Football and men's basketball are the most scrutinized of collegiate sports. Time demands on those players tend to be the most extreme, and the pressure to pay athletes has intensified as revenue from the most lucrative football and basketball programs grows. There were few differences between football and basketball players' responses and those of other student athletes, except that they were less likely, by 19 percentage points, to be thriving physically (47% vs. 28%).

### **Many benefits to participating in college sports and those who want to be paid can go pro**

Ben Sutton, President, IMG College, A case for amateurism in college sports, Sports, Business Daily, April 21 2014.

<http://www.sportsbusinessdaily.com/Journal/Issues/2014/04/21/Opinion/Ben-Sutton.aspx>

Let's start with understanding the amateur model. **Participating in college sports is rooted in a basic, deeply American concept: work hard, make sacrifices, and get something extremely valuable — an education at an elite American university, something most families save for a lifetime to attain. Make no mistake, student athletes' hard work and commitment absolutely benefit schools, which generate revenue and bigger donations while building their brands. Student athletes also get a lot in return: an invaluable education at prestigious institutions; free room and board; professional mentoring; opportunities to travel; a crash course in perseverance, discipline, teamwork, sacrifice and toughness; and a chance to learn life lessons while being taught, coached and guided in a nurturing environment preparing them for the ultimate game of life.** What you see is a consensual, symbiotic relationship between schools and student athletes in which everyone benefits. **Students who want a salary for their athletic prowess, or who simply do not appreciate or want a college education, should be allowed to take a separate path and play professional sports.** College sports were never intended to be a minor league feeder system for professional sports and, based on the fact that less than 1 percent of all student athletes ever play their sport professionally, college sports clearly are not that.

## **Answers to: Students Do Not Have An Education**

### **Many students take advantage of their educational opportunities**

Max Herrera, Student-athletes are students, not professionals, The Aragon Outlook. April 24, 2014, <http://aragonoutlook.org/2014/04/student-athletes-students-professionals/>

**Athletes are being compensated in the sense that they do not have to spend thousands of dollars in tuition as a regular student does.**

Not only this, but **the value of a college education is priceless.** Only one percent of all college athletes turn pro, making life after sports a quick reality for almost all college athletes. **College graduates earn on average 85 percent more than adults with only a high school diploma** according to the U.S. Census Bureau. **Athletes are compensated with a college education, which tees them up for future success, and in most cases, more money. While certain athletes may receive acceptance to top universities for their athletic skill more so than their intellectual capacity, schools provide practically unlimited resources to assist their athletes in the classroom including tutors, study sessions, and well-planned daily schedules.**

One might argue that many athletes do not take advantage of this and forego up to several years of college. However, more often than not, the athletes that do this become professionals right away, such as National Basketball Association (NBA) stars Carmelo Anthony and Anthony Davis.

No matter how you slice it, it is impossible to pay athletes fairly.

## **Answers to: Students Don't Care About School**

### **Scholarships include grade and character stipulations**

Deborah Ziff is a Chicago area-based freelance education reporter for U.S. News, covering college savings and 529 plans, 4 Myths About Athletic Scholarships, US News & World Report, October 4, 2017, <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-10-04/4-myths-about-athletic-scholarships>

Myth 4: You don't need good grades for a college scholarship. **When students sign a letter of intent to play at a school, Randolph says there will frequently be stipulations attached, such as maintaining a minimum GPA and good conduct. Randolph advises students to be aware of what they're committing to before they sign a letter of intent.** Mesa Sr. says it was clear that grades during the recruiting process and then for maintaining a scholarship were important to interested colleges. "It's a job," he says. **"They're paying for your education. They're paying for your food, room and board and everything else. Something is expected of you. You're going to go out and perform on the football field, but you're also going to be a person of character. You're going to be a good ambassador of the school."**

## **Exploitation Turn**

### **Paying players just protects and reifies the exploitive system**

Theodore Ross is a features director at The New Republic, New Republic, Don't Pay College Athletes, September 1, 2015, <https://newrepublic.com/article/122686/dont-pay-college-athletes>

I disagree. Division I athletes are being cheated of their just due by the present system, and they would undoubtedly be aided by the diversion of money their way. But the transfer of cash from the NCAA and the universities to the players would not address the basic problems of big-time college athletics. Why would it? What makes us believe that the creation of an explicitly professional class of student athletes (as opposed to today's implicit class) would change anything? How would payments to the players mitigate the excesses of Heritage Hall or any of the other walled citadels of sport hogging valuable real estate on our campuses?

Taylor Branch, in "The Shame of College Sports," his 2011 evisceration of the NCAA published in The Atlantic, writes, "The tragedy at the heart of college sports is not that some college athletes are getting paid, but that more of them are not." But is it? To me, the tragedy at the heart of college sports is college sports. Paying the players would only ensure the continuation of athletic programs as currently constructed. Everything would remain as it is, with the freakishly lucrative enterprises that are Division I college football and basketball nestled awkwardly within our higher education system. Payment would, in fact, give the system needed space to grow, protect it with a thin veneer of legitimacy, and free everyone from the constraints that have lately burdened the good time of college athletics.

### **Paying players won't reduce the commercialism of college athletics**

Theodore Ross is a features director at The New Republic, New Republic, Don't Pay College Athletes, September 1, 2015, <https://newrepublic.com/article/122686/dont-pay-college-athletes>

I see no reason to believe that the commercialism and the pedagogical mockery would subside if the players were paid. You could, I suppose, sidestep the entire issue by dropping the requirement that the athletes go to school. Given the option, many football and basketball players might, of their own accord, pursue a college degree, using the proceeds of their athletic labor to pay for it. Others would not. Either way, if the goal is to curb the scholarly scofflawism—the commercialism still isn't going anywhere—logic suggests that the players be allowed to choose to study or no. Of course, having well-paid college athletes opt into or out of the classroom may be good for them, and fair, but it can hardly be said to be for the benefit of the wider college population, the educational system, or the rest of society. The best that could be

said for this approach would be that it would eliminate the hypocrisy of fake student athletes of the kind periodically uncovered by reporters and whistle-blowers and bemoaned as a scandal.



## **This turn exploitation – a college degree reduces inequality**

College Board, 2016, Education Pays,

<https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>

**Young adults with a college degree are much more likely to be at the upper end of the income distribution than those from similar backgrounds with only a high school diploma.** However, even within each education level, those who grew up in more affluent families are more likely to have high earnings. – **Among high school sophomores whose parents were in the lowest income group in 2001, 21% of those who earned at least a bachelor’s degree, 17% of those with an associate degree, and 13% of those with only a high school diploma had reached the highest income quartile themselves 10 years later.** – **Among high school sophomores who came from the lowest income group and whose highest degree was a high school diploma, 45% were in the lowest income quartile themselves 10 years later, compared with 32% of those who earned an associate degree and 29% of those with at least a bachelor’s degree.** – **Among high school sophomores whose parents were in the highest income quartile, 27% of those with only a high school diploma were in the lowest income quartile and 21% were in the highest income quartile as young adults — about the same percentages as among those from low-income backgrounds who earned at least a bachelor’s degree (29% and 21%, respectively).** ALSO IMPORTANT: – The earnings shown here represent early career earnings and may not provide a full picture of the relationship between parents’ income and children’s economic outcomes. Studies that examine the relationship between parents’ income and children’s income as adults show similar results. For example, Pew Charitable Trusts found that 47% of adults without a bachelor’s degree who grew up in the bottom family income quintile remained in the bottom quintile, compared with just 10% of those with at least a bachelor’s degree. (Pew Charitable Trusts, 2012, Pursuing the American Dream: Economic Mobility Across Generations, Figures 3 and 18) – There is geographic variation in upward mobility within the United States, with less mobility in metropolitan areas in the Southeast and the industrial Midwest and the highest mobility in metropolitan areas in the Northeast, the Great Plains, and the West. (Chetty, Hendren, Kline, & Saez, 2013) – **The high level of economic inequality in the United States is widely viewed as an important explanation for the relatively low level of social mobility. Other explanations include inequality in childhood educational opportunities and disparities in the resources that parents at different levels of the income distribution devote to enrichment activities for their children.** (Krueger, 2012; Corak, 2013; Greenstone et al., 2013)

## **Improving education reduces poverty**

College Board, 2016, Education Pays,

<https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>

For all household types, **the poverty rate falls as the level of education increases. For example, the 2015 poverty rates for adults living in households headed by unmarried females with children were 13% for bachelor's degree recipients and 35% for high school graduates.** FIGURE 2.16A Percentage of Individuals Age 25 and Older Living in Households – SOURCES: U.S. Census Bureau, Current Population Survey, 2016 Annual Social and Economic – – – Supplement; calculations by the authors. FIGURE 2.16B Living Arrangements of Children Under 18 Years of Age, by Poverty Status and Highest Education of Either Parent, 2015 Living with Both Living with Living with Fathers Only Parents Mothers Only or Living with Neither Parent ALSO IMPORTANT: – In 2015, 6% of all adults and 16% of adults below the poverty threshold lived in households headed by unmarried females with children. (U.S. Census Bureau, Current Population Survey, 2016 Annual Social and Economic Supplement; calculations by the authors) – The official poverty threshold varies with family size, number of children under 18, and senior citizen status. In 2015, the poverty threshold was \$12,331 for a single person under age 65, \$19,096 for a family of three with two children, and \$24,036 for a family of four with two children. (U.S. Census Bureau, Poverty Thresholds, 2015) – The poverty threshold is the official measure of poverty and is slightly different from the poverty guidelines used to determine eligibility for public programs. In 2016, the poverty guidelines for families of four issued by the Department of Health and Human Services was \$24,300. (U.S. Department of Health and Human Services, 2016)

## **Exploitation Turn – Education Good**

### **Providing an education means students have a back up plan if they don't go pro**

Allison Schrager, Paying college athletes won't solve the big problem with US college sports, March 21 2016, <https://qz.com/625014/payingcollege-athletes-wont-solve-the-big-problem-with-us-college-sports/>

The student-athlete model also avoids a potentially bad market outcome. **Many American college football and basketball players aspire to a multi-million-dollar professional career. But fewer than 2% will go pro. Paying student athletes in education means hopeful 17-year-olds have a built-in back-up plan; if they don't attain fame and fortune, they still have a sensible degree and a path to another career. Finally, student athletics gives scholarships to people who might not otherwise have the money or the grades to go to college.**

## Exploitation Turn – Many Benefits to an Education

### Benefits of a higher education are high

College Board, 2016, Education Pays,

<https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>

THE BENEFITS OF HIGHER EDUCATION AND VARIATION IN OUTCOMES Individuals with higher levels of education earn more, pay more taxes, and are more likely than others to be employed. – In 2015, **median earnings of bachelor's degree recipients with no advanced degree working full time were \$24,600 (67%) higher than those of high school graduates.** Bachelor's degree recipients paid an estimated \$6,900 (91%) more in taxes and took home \$17,700 (61%) more in after-tax income than high school graduates. (Figure 2.1) – The median four-year college graduate who enrolls at age 18 and graduates in four years can expect to earn enough relative to the median high school graduate by age 34 to compensate for being out of the labor force for four years and for paying the full tuition and fees and books and supplies without any grant aid. (Figure 2.2A) – **In 2015, median earnings were 84% (\$23,200) higher for females age 25 to 34 with at least a bachelor's degree working full time year-round than for high school graduates;** the premium for males was 75% (\$26,200). The earnings gaps between high school graduates and college graduates peaked in 2014 among both women (90%) and men (79%). (Figure 2.6) – In 2015, among adults between the ages of 25 and 64, 68% of high school graduates, 72% of those with some college but no degree, 77% of those with an associate degree, and 83% of those with a bachelor's degree or higher were employed. (Figure 2.11) – **The unemployment rate for individuals age 25 and older with at least a bachelor's degree has consistently been about half of the unemployment rate for high school graduates.** (Figure 2.12A) – In 2015, when the unemployment rate for 25- to 34-year-olds with at least a bachelor's degree was 2.6%, 8.1% of high school graduates in this age range were unemployed. (Figure 2.12B) Median earnings increase with level of education, but there is considerable variation in earnings at each level of educational attainment. – In 2015, the percentage of full-time year-round workers age 35 to 44 earning \$100,000 or more ranged from 2% of those without a high school diploma and 5% of high school graduates to 25% of those whose highest attainment was a bachelor's degree and 38% of advanced degree holders. (Figure 2.3) – Between 2013 and 2015, Asian men and women age 25 to 34 working full time year-round whose highest attainment was a bachelor's degree had median earnings twice as high as those who were high school graduates. The earnings premium for a bachelor's degree relative to a high school diploma was smaller for other racial/ethnic groups. (Figure 2.4) – In 2015, median earnings of female four-year college graduates working full time year-round were \$51,700. However, 25% of them earned less than \$37,100 and 25% earned more than \$75,800. (Figure 2.5) – In 2015, median earnings of male four-year college graduates working full time year-round were \$71,400. However, 25% of them earned less than \$47,000 and 25% earned more than \$102,000. (Figure 2.5) – In 2015, among occupations that employed large numbers of both high school graduates and college graduates, the median earnings of those with only a high school diploma ranged from \$30,000 for retail salespersons to \$50,000 for wholesale and manufacturing sales representatives and first-line supervisors of nonretail workers or production and operating workers. The median earnings of those with at least a bachelor's degree ranged from \$38,000 for general office clerks to \$85,000 for first-line supervisors of nonretail workers. (Figure 2.8) – Between 2013 and 2014, median earnings for early career bachelor's degree recipients ranged from \$30,000 a year for early childhood education and psychology majors to \$54,000 for computer science majors, a \$24,000 range. By mid-career, the range in median earnings grew to \$46,000 a year. (Figure 2.9) – Institutional median earnings vary by sector. The typical four-year college's median earnings of 2001-02 and 2002-03 federal student aid recipients ranged from \$33,600 at for-profit institutions to \$39,800 at public institutions and \$40,500 at private nonprofit institutions. (Figure 2.10A) **College education increases the chance that adults will move up the socioeconomic ladder and reduces the chance that adults will rely on public assistance.** – Young adults with a college degree are much more likely to be at the upper end of the income distribution than those from similar backgrounds with only a high school diploma. (Figure 2.15) – Among high school sophomores whose parents were in the lowest income group in 2001, 21% of those who earned at least a bachelor's degree, 17% of those with an associate degree, and 13% of those with only a high school diploma had reached the highest income quartile themselves 10 years later. (Figure 2.15) – In 2015, 4% of bachelor's degree recipients age 25 and older lived in poverty, compared with 13% of high school graduates. (Figure 2.16A) – In 2015, 8% of individuals age 25 and older with associate degrees and 11% of those with some college but no degree lived in households that benefited from the Supplemental Nutrition Assistance Program (SNAP), compared with 13% of those with only a high school diploma. (Figure 2.17) **College**

**education is associated with healthier lifestyles, reducing health care costs.** Adults with higher levels of education are more active citizens than others and are more involved in their children’s activities. – In 2014, 69% of 25- to 34-year-olds with at least a bachelor’s degree and 45% of high school graduates reported exercising vigorously at least once a week. (Figure 2.19A) – Children of parents with higher levels of educational attainment are more likely than others to engage in a variety of educational activities with their family members. (Figures 2.21A and 2.21B) – Among adults age 25 and older, 16% of those with a high school diploma volunteered in 2015, compared with 39% of those with at least a bachelor’s degree. (Figure 2.22A) – In the 2014 midterm election, the voting rate of 25- to 44-year-olds with at least a bachelor’s degree (45%) was more than twice as high as the voting rate of high school graduates (20%) in the same age group. (Figure 2.23A)

## **It’s linear and non-debatable – the greater access to higher education the better**

College Board, 2016, Education Pays,

<https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>

Moreover, not every degree has the same expected payoff. Figure 2.3 shows the broad distribution of earnings among individuals of similar ages with the same level of education. The following indicators include information about differences by race/ethnicity, gender, occupation, and college major. The variation in outcomes, even among those who graduate, provides an important explanation for the widespread questions about whether or not college is really worth it. The visible examples of individual students for whom going to college did not work out well are not inconsistent with the high average returns. For most people, postsecondary education has a high payoff, but college is an uncertain investment. About 20% of college graduates earn less than the median earnings of high school graduates. Some live in low-wage areas. Some choose professions like early childhood education or the clergy that don’t pay well. Some have personal or medical issues that prevent them from following the most remunerative paths.

**The overall patterns are clear and dramatic — more education means increased opportunities.**

**Although it requires a considerable investment of dollars, time, and effort, higher education measurably improves the lives of most who participate. It pays off very well for most students, both financially and in terms of personal and intellectual development. Higher education improves people’s lives, makes our economy more efficient, and contributes to a more equitable society. As Figure 2.15 illustrates, postsecondary education is key to the ability of adults to rise above the socioeconomic status of their parents. Without a college education, those born into the lower economic rungs are likely to stay there.**

Some expressions of skepticism about the value of higher education cite stagnation or decline in the earnings of college graduates. There is no doubt that the economic strains of the late 2000s took a toll on college graduates, leading to both increases in tuition prices and declines in earnings. The inflation-adjusted median earnings of both men and women with a bachelor’s degree or higher were lower in 2010 than in 2005. By 2015, earnings for men had returned to their 2005 level and earnings for women were just 2% higher than they had been a decade earlier. However, the earnings premium — the ratio of these earnings to the median for high school graduates — grew from 1.63 in 2005 to 1.75 in 2015 for men and from 1.70 to 1.84 for women. Even if the earnings premium had not grown, college would still be a good investment. It is not increases in the payoff to college, but its consistently high level that makes the investment worth it. Numerous economic analyses indicate that students who, because of their demographic characteristics and academic experiences, hesitate to go to college may benefit the most from a postsecondary degree (Zimmerman, 2014; Turner, 2015; Ost, Pan, & Webber, 2016). This finding does not imply that individuals on the margin of college attendance will end up earning more than those who knew from an early age that they would attend college. It means that the incremental gain in their earnings resulting from a college education may be larger. It is relatively rare for young people whose parents are affluent — or even middle-class — college graduates to skip college altogether. For them, going to college and earning a bachelor’s degree is the “default option.” Those who choose not to enroll usually have actively considered and rejected the idea. But for too many low-income and first-generation students, financial and logistical barriers loom so large that the possibility of going to college never seems realistic. Many of these students would likely benefit from appropriate postsecondary educational opportunities. Unfortunately, the stories of the less typical individuals for whom the college experience turns out badly attract a disproportionate amount of attention. We should work to make these outcomes even more rare — and also to prevent these stories from discouraging people who are likely to benefit from college from pursuing higher education. THE DATA IN CONTEXT Many of the graphs in this report compare the experiences of people with different education levels. In general, while simple descriptions of correlations provide useful clues, they do not reliably determine causation or measure the exact size of the effects. They are best interpreted as providing broadly gauged evidence of the powerful role that higher education plays in the lives of individuals and in society. That said, a growing body of evidence points to

the direct impact of higher education not only on specific job-related skills, but also on the attitudes and behavior patterns of graduates (Oreopoulos & Salvanes, 2011; Lochner, 2011). **Education enables people to adapt more easily to change. It also makes them more likely to take responsibility for their health and for the society in which they live, and to parent in ways that improve the prospects for their own children.** Many discussions of college education focus on four-year colleges and bachelor's degrees. But "college" encompasses many different types of institutions and many different types of education and training. Students come to college with very different levels of preparation, are of a wide range of ages, and have very different motivation and goals. The data in Education Pays can provide only an introduction to the variation in experiences.

## **Answers to: They Aren't Getting Paid Fair Market Value**

### **Wrong – They get what they are worth at their age**

Zach Dirhlan, March 1, 2013, There's no crying in college: The case against paying college athletes, <http://bleacherreport.com/articles/1588301-theres-no-crying-in-college-the-case-against-paying-college-athletes>

The two sports impacted by this argument the most are football and basketball, because their revenue funds just about every other varsity team at most universities. These athletes have to be worth millions, right? Wrong. College athletes are not worth a single cent on the open market, at least until they are eligible for the NBA or NFL draft. Changes to the NBA draft eligibility requirements brought an end to high school athletes heading straight to the professional ranks. Now, NBA hopefuls must be one year removed from high school to enter the draft. Meanwhile, NFL prospects have to wait three years before they can be drafted. Every student-athlete knows they cannot get paid in college, but if they do not like it there are other options. Brandon Jennings was the No. 1-overall basketball prospect in the country in 2008. Instead of attending college, Jennings opted to sign a \$1.2 million deal with Lottomatica Roma, a professional team in Italy. The Compton, CA product was drafted 10th by the Milwaukee Bucks after playing one season overseas. Much like the foreign basketball associations, the Canadian Football League does not have an age requirement. High school graduates wishing to play pro football can head north and sign a contract right away. The No. 2 running back in the class of 2009, Bryce Brown, flirted with the CFL before eventually signing a letter of intent for the Tennessee Volunteers. Instead of choosing this route, though, NFL and NBA hopefuls take their talents to the NCAA. The media exposure, coaching and training provided by the universities is far better than the athletes will receive in foreign markets. Going to classes is simply the tradeoff for reaping these benefits. In my opinion, if an athlete is talented enough, professional scouts will draft them whenever they become eligible. I am truly surprised most of the top high school athletes do not choose to play overseas. I mean, they feel they are good enough to be paid, right? Go prove it

## **Answers to: Poor Athletes Need More Money**

### **Poor athletes have Pell Grants**

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

One thing that shocked me while I was doing research on thestate.com was that the athletes that are basically impoverished receive a federal supplement every semester. It is called Pell Grant money. Qualified college athletes receive up to 5,645 dollars put in their bank accounts a year. The athlete can choose to spend this money in any way they want. So it is pretty much up to them to be smart with it and not blow it on something stupid. This money is meant to help athletes from impoverished backgrounds live like average students without hardship.

### **Other sources of hardship assistance**

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

Most fans of college sports do not know that the NCAA allows for additional help to athletes through the student athlete opportunity fund. It is intended to provide direct benefits to student athletes or their families as determined by conference officers. Some of the benefits include non-athletics related health expenses that are not covered by an athlete's insurance plan, travel expenses for an athlete to attend funerals or family emergencies, and a 200 dollar annual clothing allowance, as long as Pell Grants are available.



## **Answers to: Social Justice**

### **There are better avenues for social justice than supplying athletic scholarships**

Theodore Ross is a features director at The New Republic, New Republic, Don't Pay College Athletes, September 1, 2015, <https://newrepublic.com/article/122686/dont-pay-college-athletes>

Sports at the college level, particularly the money sports, are about much more than the games: They represent a form of social leveling and an avenue for social justice. Football and basketball afford access to higher education to groups of gifted young men who might not receive it otherwise. But if the goal is to make social redress—and ours is a society most definitely in need of correction—why do we believe that its best expression is via the athletes? When the players I knew at USC argued in favor of compensation, I would often think of their high school girlfriends, or the valedictorian at their schools, the kids who wanted to be actors or engineers, any of the meritorious others who do not get free rides to college.

## Answers to: Unionization Good

### **Unionization is a terrible approach – it would not represent the collective interests of all athletes and the NCAA is not an employer**

Sally Jenkins, April 15, 2014, College athletics have many problems, but a union is the wrong way to try and fix them, Washington Post, [https://www.washingtonpost.com/sports/colleges/college-athletics-have-many-problems-but-a-union-is-the-wrong-way-to-try-and-fix-them/2014/04/15/19f453c0-c4e3-11e3-bccc-b71ee10e9bc3\\_story.html?utm\\_term=.3b1081b519ae](https://www.washingtonpost.com/sports/colleges/college-athletics-have-many-problems-but-a-union-is-the-wrong-way-to-try-and-fix-them/2014/04/15/19f453c0-c4e3-11e3-bccc-b71ee10e9bc3_story.html?utm_term=.3b1081b519ae)

**A union is a large-tool solution for workers who share common interests and injustices. It only seems like the right tool and remedy for NCAA athletes, until you start weighing whether it would actually create more economic opportunities, and more benefits for more players, than it would destroy. It's the wrong tool for this job.** Any useful discussion of unionization in college sports has to start with an acknowledgement that athletes need leverage against the NCAA's pocket-lining administrators. What former Northwestern quarterback Kain Colter and his allies are after in asking the National Labor Relations Board for the right to unionize is a crowbar. The problem is that their crowbar wouldn't provide leverage to fix what's wrong. **It would just create a lot of splintered wreckage for thousands of scholarship athletes who would have to live with the adverse implications of being called "labor."** The inequities in college athletics are complex and nuanced; no one solution fits all. First of all, **a union wouldn't have the right to collectively bargain anything with the NCAA. No one ever mentions that. The NCAA is not an employer. It's just a flawed bureaucracy, the kind that makes stupid rules that send Shabazz Napier to bed hungry.** The real issue is this: A relatively small number of high-profile athletes, isolated in football and men's basketball, help generate immense revenues for their schools, without getting fair treatment or full value from their scholarships because of the cultures of their sports, which have weak connections to classrooms. A regional NLRB director used these grounds to rule last month that Colter and his fellow Northwestern football players are "employees" and thus union-eligible; Northwestern is appealing the decision. But a victory would give Colter and his teammates only the right to bargain with Northwestern, a private school. It wouldn't address or redress larger systemic issues — though the case has created some public pressure for the NCAA, which was embarrassed into relaxing the meals rule Tuesday after Connecticut guard Napier complained there were nights he went to bed "starving." All of this leads to a larger question: **Does this small number of high-profile athletes really represent the best interest of all?** Colter is the headliner for an advocacy group named College Athletes Players Association (CAPA), which claims about 17,000 Division I members. But more than 150,000 athletes compete in more than 20 sports, at hundreds of schools, each with different requirements, budgets and standards. Almost none of these athletes generate revenue; almost all of them have extremely strong connections to academics. All told, there are 460,000 athletes competing at various levels in the NCAA. Colter and his fellow activists, who

are seeking to unionize all of college sports, only seem representative because their appeal is such a broadly emotional one, based on a viscerally disgusting fact that while revenues in football and basketball are swelling, athletes are locked out of direct financial participation. NCAA revenue approaches \$1 billion annually, some coaches are making \$5 million a year, and athletic directors get bonuses based on the sweat of the athletes, while Johnny Manziel can't even profit from his own likeness under the rules. Lots of people want to give CAPA and Colter an A for this argument, and for taking their classroom education on labor relations into the real world. They aren't after money, Colter says, but justice on issues such as medical care and academic fraud. But I give them a D, because despite the good intentions, there is an inherent, buried selfishness at the heart of the argument. The cold fact is, any collective bargaining gains for football players would come at the expense of non-revenue athletes, a fact they either don't grasp or totally fail to acknowledge. As commentator George Leef remarked in a recent analysis in *Forbes*, "Whatever marginal gains collective bargaining might bring for the players must come at the expense of other parts of the university community." **What this means is, the likely effect of a union on your local campus would be: take from one set of deserving, hard-working athletes and students, and redistribute their resources to another set. It would mean defunding sports such as track, tennis, swimming, women's basketball, rowing.** So, let's ask again: Is the quest to unionize really for the mutual benefit and broader interest of all college athletes? The answer — the awkward, uncomfortable answer — is no. In fact, football players are already economically subsidized better than most of their athlete peers. Their lack of consciousness of this, and their unstated assumption that they somehow work harder and are more deserving than, say, Olympic-caliber wrestlers or softball players, borders on offensive. It's nice to fantasize that unionization would force schools to do away with overpaid deputy athletic directors, instead of cutting women's golf. Or that it would force them to wrench away part of a coach's \$3 million salary and use it for MRI exams of players' ankles. Or better yet seize NCAA President Mark Emmert's \$1.7 million salary and use it to extend football scholarships for life. But the more probable result is that unionization would kill scholarships, open athletes to taxation, and other forms of collateral damage. The real gains would go to United Steelworkers, the backers of this argument, in the form of dues from college kids. Athletes deserve a cut, and a voice, and the NCAA won't grant them those without being forced. But there is a better form of leverage than unionization. You want to cap coaching and athletic director salaries, so member schools have more money to devote to athlete welfare? That's going to take an antitrust lawsuit, not a union. The Ed O'Bannon class action case is a promising example: It would end NCAA restrictions on athletes profiting on their likeness and images, and force schools to redistribute that merchandising income. A union is a great tool for fighting for living wages and decent, safe working conditions. But it's the wrong tool to get at the NCAA.

**IN the Northwestern case, the appeals board did not deny that the students weren't employees, they only said they did not have jurisdiction on the unionization question. So, that precedent still stands, but they are still blocked from unionizing**

Nicholas Kitko, JD, University of Cincinnati Law Review, *The Law May Cave, But Economics Will Not: The Road to Paying Student Athletes is Longer Than We Think*, March 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr85&div=14&id=&page=>

In 2013, Kain Colter, a former Northwestern University quarterback, organized a movement to unite college athletes. n72 Colter hoped to "reset the balance of power between players, their universities, and the NCAA." n73 Ultimately, this movement resulted in a push to unionize Northwestern University football players for collective bargaining purposes under the National Labor Relations Act (Act). n74 [\*328] Before any bargaining could take place, the NLRB's Regional Director had to determine whether the players were "employees" within the meaning of the Act. n75 On review, the Regional Director of the NLRB found that "players receiving scholarships from [Northwestern University] are employees under Section 2(3) of the Act." n76 This allowed the players to elect a representative for collective bargaining. n77 Northwestern University requested a review of the Regional Director's decision before the election took place, which the Board approved and took under review. n78 In an appeal decision that effectively reversed the Regional

Director, the Board denied jurisdiction over the issue and dismissed the petition filed to elect a representative. n79 **The Board did not decide whether athletes were employees, even though that inquiry was central to the Regional Director's opinion. n80 Instead, the Board stated that asserting jurisdiction "would not promote stability in labor relations,"** which is one of the primary purposes of the Act, and therefore denied jurisdiction. n81 If a silver lining exists in this decision, it lies in the Board's snub to the employee matter. n82 **Since the Board avoided discussion of whether grant-in-aid scholarship athletes were employees, these athletes still enjoy the benefit of the Regional Director's affirmative decision on the matter, and students may use that opinion to bolster future arguments if student athletes can prove that the NLRB's involvement would promote labor stability. n83**

**NRLB agreed they are employees, but wouldn't assert jurisdiction to enable them to bargain**

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, Cardozo Law Review, <https://goo.gl/FNxGnE>

On January 28, 2014, the Northwestern University football players filed a petition with **the National Labor Relations Board (NLRB) seeking to become the first group of college athletes to form a union.** n1 Although **the NLRB's Thirteenth Region** (Region 13) **concluded that Northwestern University grant-in-aid college football players constituted "employees" under the National Labor Relations Act (NLRA or the Act), the NLRB Board Members nevertheless declined to assert jurisdiction because they believed the proposed bargaining unit would not "promote stability in labor relations."** n2

**Even without formal rights, players can pressure universities to improve**

**Edelman, June 2017**, Marc Edelman, tenured Professor of Law at the Zicklin School of Business, Baruch College He is also an adjunct professor at Fordham University School of Law and a columnist for Forbes SportsMoney. Professor Edelman advises numerous businesses on legal issues related to antitrust, gaming, intellectual property, collective bargaining, and sports law, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern*

University and Potential Next Steps in the College Athletes' Rights Movement, Cardozo Law Review, <https://goo.gl/FNxGnE>

The NLRB's decision to decline jurisdiction over the Northwestern University football players, nevertheless, does not end all efforts to unionize college athletes. Since the NLRB's decision in Northwestern University, Richard F., Griffin Jr., in his capacity as General Counsel to the NLRB, issued a memorandum on the statutory rights of university faculty and students in the unfair labor practice context, in which he recognized that the Northwestern University grant-in-aid football players, as well as all other scholarship football players in Division I FBS private sector colleges, constitute "employees under the NLRA, with the rights and protections of that Act." n86 **This memorandum helps union organizers of premier college athlete labor to overcome at least one of the obstacles to forming a recognized college athlete union.** Furthermore, new attempts to unionize college athletes will likely continue to serve as a "useful pressure tactic" for the college athletes' rights movement. n87

As explained by University of Illinois law professor Michael H. LeRoy, even the mere threat of litigation by college athletes "will ratchet up pressure on the NCAA to make swift and significant reforms that are responsive to player grievances." n88 Similarly, according to University of Nebraska law professor Steven Willborn, the Northwestern University decision represents "only one arrow in an overflowing quiver." n89 Indeed, based upon the foregoing reasons, there are many other possibilities under which labor organizations such as CAPA could attempt to move forward with efforts to unionize college athletes, even despite the Northwestern University decision. n90 Language within the Northwestern University decision may even serve as a reasonable roadmap for future attempts to unionize

## **Unionization crushes team camaraderie, as the starters would be worth more than others**

Scott Jennings is a former adviser to President George W. Bush and U.S. Sen. Mitch McConnell. He is a partner at RunSwitch Public Relations. This originally appeared in The Courier-Journal(Louisville), 4-2-14, USA Today, Don't Unionize College Athletes: Column, <https://www.usatoday.com/story/opinion/2014/04/02/ncaa-march-madness-louisville-northwestern-column/7173943/>

While the regional NLRB came down on the side of unionization, the decision now goes to the full NLRB in Washington D.C., which should reject unions for college athletes.

**Unionizing college athletes could ruin the camaraderie. What would stop an All-American from demanding first class airfare and penthouse suites, as opposed to other scholarship athletes that fly coach and share a regular hotel room? After all, they could argue they are more valuable "employees" than the third stringers.**

## **Unionization pits some teams against others**

Scott Jennings is a former adviser to President George W. Bush and U.S. Sen. Mitch McConnell. He is a partner at RunSwitch Public Relations. This originally appeared in The Courier-Journal(Louisville), 4-2-14, USA Today, Don't Unionize College Athletes: Column, <https://www.usatoday.com/story/opinion/2014/04/02/ncaa-march-madness-louisville-northwestern-column/7173943/>

**Unionization could well pit different sports against one another. Football and basketball generate the biggest revenues, so what's stopping them from joining forces to demand better "working conditions" than the rowing team? Do we really want union reps on college campuses organizing student athletes against each other? Probably not. Nor do we want players going on strike the night before the Rose Bowl or the Final Four, holding college athletics hostage until demands are met.**

## **Answers to: Corruption**

### **Unionization increases corruption**

Scott Jennings is a former adviser to President George W. Bush and U.S. Sen. Mitch McConnell. He is a partner at RunSwitch Public Relations. This originally appeared in The Courier-Journal(Louisville), 4-2-14, USA Today, Don't Unionize College Athletes: Column, <https://www.usatoday.com/story/opinion/2014/04/02/ncaa-march-madness-louisville-northwestern-column/7173943/>

Introducing union corruption into a \$16 billion industry populated by teenagers is a bad idea. In the last two years alone union officials "have been arrested for or convicted of embezzlement, extortion, bribery, racketeering, money laundering, fraud, and witness tampering," according to the Justice Department and The Heritage Foundation.

## Answers to: Racism/Plantations

### Many steps can be taken to address racial inequality outside of paying players

SHAUN R. HARPER, American scholar and racial equity expert, professor a, USC, COLLIN D.

WILLIAMS JR., AND HORATIO W. BLACKMAN []. Black Male Student-Athletes and Racial

Inequities in NCAA Division, U Penn, 2013.

[https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper\\_Williams\\_and\\_Blackman\\_%282013%29.pdf](https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_%282013%29.pdf)

Problems as pervasive as the underrepresentation of Black men in the undergraduate student population at predominantly white colleges and universities, their overrepresentation on revenue-generating NCAA Division I sports teams, and their comparatively lower six-year graduation rates warrant a multidimensional response from various stakeholders. In this section we provide recommendations for five groups, including Black male student-athletes and their families. The NCAA and Sports Conference Commissioners The NCAA Federal Graduation Rates Database was one of two data sources used for this study. We **commend the Association for gathering and making publicly available these data. A necessary next step would be to produce a series of NCAA research reports that disaggregate data by race, sex, sport, division, and particular subsets of institutions within a division (for example, the six conferences that routinely win Division I football and men’s basketball championships)**. Data in the aggregate allows the NCAA to make claims such as “Black male student-athletes at Division I institutions graduate at higher rates than Black men who do not play college sports.” While this may be true across the entire Division I, it is not the case at the overwhelming majority of colleges and universities in the six championship conferences. **We also recommend that the NCAA establishes a commission on racial equity that routinely calls for and responds to disaggregated data reports, raises consciousness within and beyond the Association about the persistence and pervasiveness of racial inequities, and partners with athletic conferences and institutions to develop policies and programs that help narrow racial gaps. Each athletic conference should create its own commission that is charged with overseeing racial equity at member institutions.** In March 2010, U.S. Secretary of Education Arne Duncan suggested that any sports team failing to graduate at least 40% of its players should be ineligible for participation in post-season play and championship contests. We support this recommendation. A policy intervention such as this is important and should be racialized. That is, **the NCAA and conference leaders must pay attention not only to overall team rates, but also racial trends within teams**. For instance, the overall graduation rate for a football team may be 49% – but Black men, the population that comprises two-thirds of that team, may graduate at a rate far below 40%. One response from the NCAA to the Duncan proposal is that it is unfair to punish current student-athletes for graduation rates based on previous cohorts. We do not see the difference here between this and other sanctions imposed by the NCAA. Ohio State University and Penn State University, for example, were ineligible for post-season play in 2012 because of policy violations (and in the case of PSU, felony crimes) committed several years prior. Furthermore, while the release of data from the federal government and the NCAA tends to lag by 2-3 years, our four-cohort analysis of six-year graduation rates showed very little variation from one year to the next. Teams that sustain racial inequities should not be rewarded with opportunities to play for NCAA championships. **We believe conferences should commit a portion of proceeds earned from championships and other revenue sources back to member institutions for programming and other interventions that aim to improve racial equity within and beyond sports. For example, admissions offices typically do not have enough staff to do what we propose in the next section – money from athletic conferences would help. These funds also could be used to support the work of the commissions on racial equity that we proposed earlier.** College and University Leaders Accountability is practically impossible in the absence of transparency. Thus, college and university presidents, trustees, provosts, and faculty senate committees that oversee athletics must demand disaggregated data reports from athletics departments and offices of institutional research. These reports should include analyses of



racial composition on individual sports teams in comparison to racial demographics within the undergraduate student body, as well as inequities in graduation rates. Furthermore, campus leaders should pay more careful attention to racial differences in student-athletes' grade point averages (GPAs), classroom experiences, course enrollment and major selection patterns, participation in enriching educational experiences beyond athletics (e.g., study abroad, summer internships, service learning, and research opportunities with faculty), and post-college pathways (graduate school, employment in one's major field of study, etc.). Presidents must hold themselves and athletics directors and coaches accountable for narrowing racial gaps documented in these reports. The underrepresentation of Black male undergraduates is an issue that many campus leaders (especially admissions officers) view as difficult to address. Recommendations for Improving A Call for Greater Transparency... **Perceivably, there are too few young Black men who meet admissions standards and are sufficiently prepared for the rigors of college-level academic work. Despite these arguments, colleges and universities somehow manage to find academically qualified Black male student-athletes to play on revenue-generating sports teams. Perhaps admissions officers can learn from some practices that coaches employ. For instance, a coach does not wait for high school students to express interest in playing for the university – he and his staff scout talent, establish collaborative partnerships with high school coaches, spend time cultivating one-on-one relationships with recruits, visit homes to talk with parents and families, host special visit days for student-athletes whom they wish to recruit, and search far and wide for the most talented prospects (as opposed to recruiting from a small number of high schools). We are convinced that if admissions officers expended as much effort as coaches, they would successfully recruit more Black male students who are not athletes.** Some would likely argue that affirmative action policies might not permit such targeted recruitment of one specific racial group. Somehow, there is considerably less institutional anxiety about potential affirmative action backlash when coaches do all that is necessary to recruit Black men for participation on revenue-generating sports teams. **Black undergraduate men elsewhere on campus could benefit from the centralized resources and institutionalized support offered to student-athletes. If targeted academic advising, tutoring, clubs and activities, life skills development resources, structured study spaces, alumni networks, and committed institutional agents were made available to Black men who are not student-athletes,** their academic success and college completion rates would improve. Likewise, Black undergraduate men who receive scholarships comparable to those awarded to student-athletes are far more likely to persist through baccalaureate degree attainment than are those who encounter financial stressors or work more than 20 hours each week to support themselves. Postsecondary administrators should commit more financial and human resources to replicating the best features of athletics departments for populations that graduate at the lowest rates. This would surely include Black undergraduate men. Racism and routine encounters with racial stereotypes are among many factors that undermine Black students' persistence rates and sense of belonging on predominantly white campuses. Several scholars (e.g., Edwards, 1984; Hodge et al., 2008; Hughes, Satterfield, & Giles, 2007; Oseguera, 2010) have noted that Black male student-athletes are often stereotyped as dumb jocks. "One could easily summarize their status as Niggers with balls who enroll to advance their sports careers and generate considerable revenue for the institution without learning much or seriously endeavoring to earn their college degrees" (Harper, 2009b, p. 701). **Any effort to improve rates of completion and academic success among Black male student-athletes must include some emphasis on their confrontations with low expectations and stereotypes in classrooms and elsewhere on campus. Provosts, deans, and department chairs should engage faculty colleagues in substantive conversations and developmental exercises that raise consciousness about stereotypes and racist/sexist assumptions they possess about students of color and student-athletes in general, and Black men in particular.** Coaches and Athletics Departments **In preparation for athletic competitions, coaches develop strategies for defeating the opposing teams. This usually entails watching their opponents' films, making necessary adjustments to the playbook, strategizing with the coaching staff, and a range of other preparatory activities. This same degree of strategy and intentionality is necessary for tackling racial inequities in intercollegiate athletics. The director of athletics must collaborate with coaches and other staff in the department to devise a strategy for narrowing racial gaps in graduation rates, academic success indicators (e.g., GPAs and timely progress toward degree**

**completion), and other student-athlete outcomes. In the absence of a comprehensive and actionable strategy document, inequities are likely to persist or worsen over time.** The plan must be constructed in response to data that are disaggregated by race, sex, and sport. Racial equity goals, efforts that will enable the department to actualize those goals, key persons who will be chiefly responsible for particular dimensions of the strategy, and methods of assessment should be included in the plan. The implementation of any strategy is unlikely to be successful without compliance from coaches. Hence, they must be involved in all phases of the process and view themselves as departmental agents who are rewarded for winning games and achieving equity in student-athlete success. Black male studentathletes should also be involved in this strategic planning process. **Similar to our first recommendation for the NCAA and the six athletic conferences, we also recommend that athletics departments create internal committees or task forces that focus on racial equity. This group should be comprised of stakeholders within and beyond the athletics department, including administrators from academic and student affairs, current and former Black male student-athletes, and professors who study and write about race and/ or sports. Commission members could engage colleagues from their respective areas of the institution in the athletics department’s strategic efforts to improve racial equity. For instance, professors could help their colleagues understand how they are complicit in conveying low expectations and racial stereotypes to Black male student-athletes who take their courses. Moreover, these particular faculty members could assume leadership for crafting an institutional strategy to disrupt classroom practices that sustain racial inequities for student-athletes and other students of color.** Martin, Harrison, and Bukstein (2010) studied Black male student-athletes who had good grades, records of athletic accomplishment, and impressive résumés that included leadership roles within and beyond athletics. More student-athletes like these can be found at colleges and universities across the country. Athletics departments that wish to improve Black male studentathletes’ academic success can learn much from Black male student-athletes who are academically successful. There are Black men on NCAA Division I football and basketball teams who graduate with higher than average GPAs and transition into rewarding careers and productive post-college lives that no longer include participation in organized sports. Understanding how these men managed to succeed in college would be useful to coaches and others who endeavor to help lower-performing student-athletes thrive personally, academically, and athletically. Similarly, athletics departments can learn from other NCAA Division I institutions at which Black male student-athletes graduate at rates comparable to or higher than student-athletes overall, undergraduate students overall, and Black undergraduate men overall. What is it about these institutions that enable them to achieve racial equity? Inspiration can be derived from effective programs and practices implemented elsewhere to improve Black male student-athlete success. One example is the University of Wisconsin’s Beyond the Game initiative, which prepares Black male student-athletes for post-college options beyond professional sports. The initiative is led by a cross-sector team that includes senior administrators from the athletics department as well as Black male student-athletes, graduate students, alumni, full-time professionals from the UW Career Services Office, tenured faculty, and a vice provost. While an athletics department may genuinely care about academic success and the healthy development of student-athletes, players often receive contradictory messages from coaches who are expected to win, advance to bowl games and the NCAA basketball tournament, and fill stadiums with excited fans who buy tickets and make donations to the university. These pressures explain, at least in part, why coaches discourage student-athlete engagement in activities and experiences beyond athletics that lead to academic and personal success (Martin, Harrison, & Bukstein, 2010). Most Division I institutions offer centralized resources and support services for student-athletes, which we think is praiseworthy. However, we agree with other scholars (e.g., Comeaux et al., 2011; Gayles & Hu, 2009; Martin, 2009) that coaches and staff in athletics departments should encourage student engagement with faculty outside the classroom, a diverse cadre of peers who are not members of sports teams, and professionals in other offices on campus (the counseling center, career services office, etc.). Moreover, student leadership skills can be enhanced through campus clubs beyond athletics; perspectives can be broadened through spending a semester overseas; and essential knowledge that is necessary for admission to graduate school or success in one’s future career can be gained through doing research with professors or an internship related to one’s field of study. Student-athletes are unlikely to be engaged in these ways unless their coaches are supportive; coaches are unlikely to be supportive of anything that threatens their own career stability. If racial equity and student-athlete engagement are to improve, college presidents and athletics directors must expand the reward structure for coaches to include metrics related to student-athlete engagement. Journalists and Sports Media Young Black men’s aspirations to play professional sports are shaped largely, though not entirely, by television and other forms of media (Benson, 2000). We believe it important for journalists to highlight other aspects of Black male student-athletes beyond their athletic prowess. More reporting must be done on those who simultaneously perform well in classrooms and on the field or court, similar to participants in Martin, Harrison, and Bukstein’s (2010) study. An ESPN film or some other documentary on former Black male student-athletes who attended college, achieved academic and athletic success, were engaged campus leaders within and beyond athletics, graduated in 4-6 years, and took divergent post-college pathways (meaning, some enrolled in graduate school, some began full-time jobs in their fields of study, and others embarked on professional sports careers) would advance a more complete understanding and realistic depiction of this population. The film could highlight strategies these men employed to balance

academic commitments and sports, as well as how some crafted post-college aspirations beyond playing for the NBA or NFL. Stories such as these also can be told through newspaper articles and sports magazine features. We deem irresponsible (and racist) journalistic practices that continually yield single narrative, one-sided portrayals of Black male student-athletes. Black Male Student-Athletes and Their Families As noted on Page 2 of this report, the NFL and NBA draft fewer than two percent of college student-athletes each year (Martin, 2009). Put differently, over 98% of these students will be required to pursue other options. Given this, we advise Black male student-athletes and their families to resist the seductive lure of choosing a university because it appears to be a promising gateway to careers in professional sports. It can be for a very small number of student-athletes, but not for the overwhelming majority. In addition to asking “how many of your former players have gone to the league,” it is important for prospective student-athletes and those who support them to pose a more expansive set of questions to coaches during the college recruitment process: What is the graduation rate for Black men on your team? Besides the few who got drafted, what are recent Black male graduates doing? Will you support my interest in spending a semester abroad and doing a summer internship in my field? How many players on your team studied abroad or did internships in their fields this past school year? What will happen to me if I don’t get drafted? How prepared will I be for a career in my field? Give me specific examples of ways you encourage academic success and the holistic development of your players. Students who are highly engaged inside and outside the classroom are considerably more likely than are their disengaged peers to graduate from college and compete successfully for highly-coveted jobs and admission to graduate school. They also learn more, earn higher GPAs, and develop a wider array of skills that will be useful in their lives and careers after college. Thus, we strongly encourage Black male student-athletes to take advantage of clubs, activities, and experiences outside of sports. Spending all one’s time in the athletics department and on team-related activities is unlikely to yield a résumé and portfolio of enriching educational experiences that render him competitive for rewarding post-college options beyond the NFL or NBA.

### **Payers don’t have to go to school, they can join an alternative development league and get paid**

Rick Maese, January 11, 2017, “New summer pro football league aims to offer paid alternative to college football,” Washington Post, Jan 11, 2017.

[https://www.washingtonpost.com/sports/redskins/new-summer-pro-football-league-aims-to-offer-paid-alternative-to-college-football/2017/01/10/6b7d33a8-d753-11e6-9a36-1d296534b31e\\_story.html](https://www.washingtonpost.com/sports/redskins/new-summer-pro-football-league-aims-to-offer-paid-alternative-to-college-football/2017/01/10/6b7d33a8-d753-11e6-9a36-1d296534b31e_story.html)

A group of organizers with deep NFL ties plans to launch a new professional football league, with the ambition of giving promising young players an alternative to college football that offers a salary and instruction they feel is lacking in the college game. **Pacific Pro Football aims to begin play in 2018 with four teams based in Southern California. Unlike many other start-up leagues, its talent pool will be limited to athletes who are less than four years removed from high school graduation. The goal is to give young prospects a professional outlet to prepare for the NFL.** said Don Yee, the league’s CEO. The league launches in the midst of a growing debate about amateurism and a college model that rewards student-athletes with scholarships but not salaries. Labor lawyers have challenged the NCAA, and the battle is being waged in several court rooms across the country. Yee has been an outspoken critic of the college model and says his league will treat young athletes as employees, like any other pro sports outfit. ADVERTISEMENT “As I’ve thought about this and studied it for years, I felt that it would be terrific if these emerging football players had a choice in determining how they wanted to get better at their craft,” said Yee, the longtime agent of New England Patriots quarterback Tom Brady. Along with Yee, the league is co-founded by Ed McCaffrey, a former NFL wide receiver, and Jeff Husvar, a former Fox Sports executive. Its advisory board includes former NFL coach Mike Shanahan; Mike Pereira, the league’s former officiating czar; ESPN reporter Adam Schefter; Jim Steeg, a longtime NFL executive; and veteran political strategist Steve Schmidt. **Organizers hope to eventually expand beyond California. All teams will be owned by the league, and the average player salary will be \$50,000, Yee said. The league initially will play a six- to eight-game season that runs through July and August, concluding just before the NFL and college seasons begin.** While NFL officials have expressed an interest in forming a developmental league of their own, Pacific Pro Football has no relationship with the NFL. But **the upstart league will be focused on preparing them for the NFL, focusing on technique and systems required at the next level.** “I think this is a unique experience for these young men,” Shanahan said. “Maybe we’re talking about a guy who for some reason didn’t make grades or maybe he was at a position with competition and rather than transfer to another school and sit out a year, he now has this option. Or maybe a guy just wants to spend more time with football than he’s currently allowed.” Shanahan explained that the new league will serve as a

training ground for coaches, officials and executives as well. While college football long has served as the NFL's de facto feeder system, **organizers hope that prospects will gravitate toward an alternative that pays a salary and doesn't have academic requirements.** (Players will be offered tuition and books at a community college, organizers say.) "It's never been done before, and I'm not sure why not," said McCaffrey, who played 13 years in the NFL and is now a radio analyst for the Denver Broncos. "There's so many players now that can be identified at early ages as having a unique skill set that allows them to be successful football players." Troy Vincent, the NFL's head of football operations, has been outspoken in recent years about the need for a developmental league to better prepare young players and has initiated discussions about the NFL starting one of its own. "It's pretty clear, given some of the public comments that we've heard recently from professional football coaches and executives, that the new talent coming into the professional football ranks isn't quite as developed as it needs to be," Yee said. "It appears the gulf between the professional style of play and the amateur game is wider than it's ever been." Other professional football leagues have been short-lived. The much-hyped XFL, backed by pro wrestling titan Vince McMahon, lasted one season (2001). The Stars Football League also made it just a single year (2011), the Fall Experimental Football League two (2014-15) and the United Football League four (2009-12). While financing has usually been an issue, fans were also indifferent to the product. "When you talk about all these leagues, they were working with players who were cut from the NFL," Shanahan said. "Who really wants to watch a league filled with guys who've been cut?" While the new league hopes to eventually attract the most talented high school graduates possible, officials expect to initially rely heavily on junior college players or those with a year or two of college seasoning under their belt. They know long-term viability hinges on the type of athletes it fields. "I think everything is driven by the players, driven by the talent," said the league's chief operating officer, Bradley Edwards, a former executive at both the NFL and ESPN. "Who can we get? Who's going to play in this league? I think that's going to be the driver of a lot of this." Rosters could be filled with players who don't academically qualify for four-year schools, who have played a bit of college ball and want a change, who have competed in junior college, or who want to get a jump-start on preparing for the NFL draft.

### **Paying black athletes will not reduce the racism they experience**

Billy Hawkins, Professor at the University of Georgia in the department of Kinesiology, 2010 ,  
The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions  
. Palgrave Macmillan US. Kindle Edition

It is important to note that both Black students and Black athletes experience institutional and cultural racism, and regardless of class or athletic status, neither are immune to the racism that exists on predominantly White campuses. At first glance, it would appear that Black athletes would benefit from preferential treatment and experience less racism than Black students (nonathletes) because of their celebrity status and high degree of visibility by the media (print and electronic) as athletes around campus. However, Black athletes have suffered overt forms of racism ranging from being called nigger on campus to being told to sit on the back of the team bus by White teammates.<sup>37</sup> The defamatory remarks and other racial actions are similar to situations that constantly plagued Black nonathletes on predominantly White college and university campuses. Furthermore, the perception of their intellectual abilities<sup>38</sup> is often called into question and presents opportunities for racist assumptions. The fact that they are herded into remedial classes and clustered into majors that are of little interest to them, but have been proven to assist them in maintaining eligibility, are institutional racist practices.<sup>39</sup> Therefore, in many cases it did not matter how many points they scored, how many yards they ran, how much publicity they received in the local or national media, they were still Black and subject to having a “Black experience.”<sup>40</sup> I find it rather ironic, but not surprising, that Black athletes must struggle with the various forms of racism at predominantly White colleges and universities, because every fall and early spring semester they are athletic ambassadors representing these institutions nationally and in some cases internationally. Institutional and cultural racism are those unseen forces that all Black students and other people of color must continuously work against in order to succeed on these campuses, and in this society. The overt racist acts that I have experienced were not as devastating as the covert acts of not being represented in the curriculum, or having limited representation as students and members of the staff or faculty. Growing up in the South, I had become immune to being called racist names, but I was challenged in adjusting to those forms of racist practices that secretly denied me of my “inalienable rights” as a student, as an American, and as a human being. Institutional and cultural racism create additional barriers to the academic success of both Black students and Black athletes. Even though they wish to be students with equal opportunity at these institutions of higher education, Black students are constantly reminded of their “twoness” as Blacks and students; and in the case of Black athletes, their “threeness”: Black, student, and athlete.<sup>41</sup> In these unaccepting environments, racism in all forms constantly reminds Blacks of “our place” in society. It can also

produce other challenges for Black athletes such as, alienation, and voluntary and involuntary social and racial isolation. **Alienation, or estrangement from the dominant group, can develop as a shield to protect Black students from these two unreconciled strivings.**<sup>42</sup> **It can also be enforced due to the structure and settings of these environments. Therefore, the next topics to be addressed in this historical overview are invisibility, alienation, and social and racial isolation and how Black students and Black athletes experience these on predominantly White campuses.** Hawkins, B.. *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (p. 34). Palgrave Macmillan US. Kindle Edition.

## Competitive Imbalance DA

### **Paying athletes will result in a massive competitive imbalance**

Cork Gains, editor, Business Insider Sports Page, Why The NCAA Can't Allow Pay Athletes Even If It Wants To, Business Insider, October 15 2010., <http://www.businessinsider.com/why-the-ncaa-cant-allow-schools-to-pay-athletes-even-if-they-want-to-2010-10>

#### COMPETITIVE IMBALANCE OF THE WORST KIND

Of the nearly 250 Division I-A and Division I-AA football programs (I loathe the FBS and FCS designations) **how many actually have athletic programs that generate large revenue streams?** Most of the schools in the BCS conferences? Possibly. Does Northwestern make a ton of money off their football team? Maybe. What about schools from non-BCS conferences? What about Akron or Florida Atlantic or Arkansas State? Are those teams going to be able to pay their players? And if they can't pay their players, how many good players can they recruit? Sure, the big BCS schools are already getting all of the top high school football players. But schools like Boise State thrive off the next wave of talent. That group of players that will choose Boise State over USC because they have a better chance of **getting playing time or because of the scholarship limits instituted by the NCAA for competitive balance. What you will get is a situation where the NCAA would be sanctioning yet another competitive advantage for the big schools and it would mark the end of upstart programs like Boise State. And really, who wants to live in a world where Notre Dame can once again hog all the top players and compete for national titles every year? But more importantly, with so much money on the line with the BCS and the bowl games, no court system is ever going to allow a system in which a few select schools have access to the big prizes. Major League Baseball has an anti-trust exemption. Congress is never going to give one to the NCAA. Of course, not doing anything won't solve the problem. But the NCAA is going to have to be more creative than just "pay the players." They can start by allowing them to have jobs during the school year. That, or make sure all kids that need money are adopted by the Tuohy.**

## **General Solvency Answers**



## Practicality/Feasibility

### Can't determine what to pay the athletes

Nicholas Kitko, JD, University of Cincinnati Law Review, The Law May Cave, But Economics Will Not: The Road to Paying Student Athletes is Longer Than We Think, March 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr85&div=14&id=&page=>

Now consider the potential challenges to assigning a fair value to each of the 472,625 student athletes. **While the district court deemed \$ 5,000 fair, one would be hard-pressed to think each of those 472,625 players represent the same value.** Perhaps the NCAA already demonstrated that by drawing the immediate distinction between Division I athletics and the other divisions. Would that same distinction not exist in the smaller sampling of student athletes that comprise Division I? Consider the conjoint analysis n153 discussed in A Rapid Reaction to O'Bannon: The Need for Analytics in Applying the Sherman Act to Overly Restrictive Joint Venture Schemes. n154 In this analysis, the author considered the limits to student-athlete compensation in order to maintain consumer demand for college football and basketball. n155 **The results indicated that not paying athletes created the most positive effect on consumer demand, while paying the athlete between \$ 5,000 and \$ 50,000 showed incrementally worse effects.** n156 **Therefore, if student athletes are paid based on their value and their value is based on their demand, but consumer demand is inversely related to compensation, then paying athletes will decrease their value.** More stifling than this is the fact that the analysis began with assigning three different ticket values to three different games, where the price of the ticket also inversely affected demand. **Therefore, a vicious cycle begins: when student athletes are compensated, ticket prices increase to offset costs, which in turn also decreases consumer demand, subsequently decreasing the value of the student athlete, and so on.** These two analyses represent basic economics principles that cannot be avoided with the compensation of student athletes.

### Many practical barriers to determining a fair payment

Nicholas Kitko, JD, University of Cincinnati Law Review, The Law May Cave, But Economics Will Not: The Road to Paying Student Athletes is Longer Than We Think, March 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr85&div=14&id=&page=>

C. Practicability While the economic barriers previously discussed heighten the [\*340] hurdles for student-athlete compensation, another major hurdle still exists: practicability. n157 The conjoint analysis depicted the circular effect compensation would have on demand and value of student athletes from a broad perspective. Yet, what the analysis did not consider was varying demands across different conferences, teams, and players. n158 **Since demand varies at all three levels and the cause for the demand is indeterminate, there is no fair solution to student-athlete compensation.** 1. Conference Level Starting at the conference level, analytics show that consumer demand varies from one conference to the next, even including within the top five conferences discussed in the NCAA's recent policy changes. n159 Each season, Sports Media Watch compiles data on television ratings for Division I football games. This data is then broken down to show the various ratings by conference and team. n160 **Based on the 2013 study, the SEC had the most viewers and the highest television ratings, followed by the Big Ten, ACC, Pac 12, Big 12, MWC, AAC, MAC, C-USA, and Sun Belt, respectively.** n161 **In 2013, the SEC had an average of 3.8 million viewers per week, while the Big 10 had an average of 2.92 million, indicating a stark difference in consumer demand.** n162 Then, in 2014, the SEC remained atop the list averaging 4.52 million viewers per week, while the Big 10 averaged 2.69 million. n163 Certainly, players graduated and left the various teams in the conferences and demand changed, but viewership did not dissipate. This indicates that the conference - and not solely the players - drives at least some demand. Student athletes' NIL value at a conference level is therefore undefined because, outside of individual consumer surveys, it is impossible to determine which viewers are watching because of the [\*341] players and which are watching because of the conference. 2. Team Level The data from the next level, team demand, indicates that the University of Alabama - the top rated member of the SEC in 2013 - had an average of 6.47 million viewers per week, while the Ohio State University - the second rated member of the Big Ten in 2014 - had 5.24 million. n164 Then in 2014, Alabama had 6.02 million viewers per week, while Ohio State had 3.81 million. n165 Although demand for the Big 10 conference remained high, demand for the individual school, Ohio State, dropped. Interestingly, Ohio State won the National Championship in 2014, suggesting the program had the best players in the NCAA and therefore should have more viewers. This again indicates that the demand for the student athlete is indeterminate, and calculating fair compensation for that student athlete is nearly impossible if the conference, as well as the team, drive demand. 3. Player Level Now consider demand at the level of the individual student athletes. Consumer demand in relation to individual student athletes varies just like team and conference demand. **Recall that value is based on consumer**

**demand; a student athlete's valuation, which would likely correspond to his payment, must therefore include demand that he drives individually. This level of demand is likely the student athletes' most practical argument for compensation.** in O'Bannon, the plaintiffs presented evidence at trial regarding a market for jersey sales that creates additional value for the student athletes' NILs. n166 As the district court properly noted, the plaintiffs abandoned this argument because it would not have bolstered the argument for group licenses; rather, it would have suggested proof of a market for individual licenses.

**The NCAA could easily recognize which individual player is responsible for driving the demand for a particular jersey because the player's name is stitched on the back. Identifying the individual player responsible for driving demand based on the name on the jersey suggests that individual licenses should be granted to those players, but does not support a claim that a group license is necessary.** However, the NCAA rules prohibit colleges from [\*342] selling jerseys depicting players' names, yet do not prohibit them from selling jerseys with the most popular players' numbers. n168 Even though the plaintiffs abandoned the argument, they failed to address how NCAA rules would additionally prohibit the schools from identifying individuals through jersey sales. Perhaps it was just a coincidence that a consumer could easily purchase a #8 jersey from Oregon and a #5 jersey from Florida State, representing Marcus Mariota and Jameis Winston - two 2014 Heisman Trophy finalists. n169

**The NCAA eventually recognized the potential legal threat of appropriation by simply selling jerseys with the numbers of the most popular players. In response, some member schools ceased selling jerseys with popular players' numbers on them in order to avoid a battle similar to the one faced when student athletes' names were stitched on the back.** n170 Currently, these schools are selling jerseys with generic numbers on them, consistent from year to year, and unassociated with a particular player. Practical challenges come into play when the NCAA changes its bylaws to allow schools to pay athletes for demand driven by and attributable to each student athlete. Additionally, suppose the NCAA allowed schools to print names on the back of their jerseys, thus allowing consumers to communicate their support of a certain player.

**Because the NCAA must give a portion of those revenues to the player, the school, the distributor, and the manufacturer, and because all of these portions add up to an increased cost to the consumer, the vicious demand cycle is again initiated. n171 Adding to this dilemma, let us again suppose the NCAA will allow schools to compensate student athletes for demand driven and attributable to each student athlete. However, suppose also that the NCAA has maintained its current policy of prohibiting jerseys from displaying players' names.** Under this scenario, a consumer can purchase a jersey displaying the numbers of the most popular players on the field. Therefore, with respect to Ohio State, a person can purchase a [\*343] #7 jersey with a degree of confidence that the public will recognize his or her support for wide receiver Jalin Marshall. However, that is not necessarily true, because the #7 jersey has been associated with a handful of marquee Ohio State players in the past. n172 Yet, based on the NCAA restrictions and profit-sharing plan, Jalin Marshall will never see the revenues generated from that jersey sale. Instead, those profits go into the NCAA revenues that are distributed to its member schools based on a schedule. The counter to this argument could be to compensate the player who wears the jersey at the time of the purchase. Perhaps the consumer purchased the #7 jersey to communicate her love for NFL standout Joey Galloway, who played for Ohio State in the '90s; or, perhaps she bought the jersey to show her support for Chris Gamble, who was a member of the 2002 Ohio State National Championship team. n173 After all, consumers purchase historical NFL jerseys all the time, and one may safely assume the same for NCAA football jerseys as well. For example, a consumer may purchase a Bernie Kosar jersey - #19, and a former quarterback for the Cleveland Browns - because she still supports the team now even though Kosar is no longer a part of it. Yet suppose Kosar's name was not on the back of the jersey. In that case, should the player bearing #19 now get the profits from the jersey? There are practical challenges associated with the system towards which the NCAA is trending. The member schools have begun selling generic jerseys with the same numbers on them from year to year.

**To be fair, this trend began after the O'Bannon decision as schools realized the potential threat of the student athletes' NIL appropriation, so there is a slight circular-reference problem with this hypothetical. n174 Nevertheless, suppose that student athletes were compensated for individual demand. The sale of each student athlete's jersey is the easiest measure of demand at the individual level.** Teams only sell generic jerseys and not any name-or number-specific options. The dilemma that exists from trying to determine what

**drove the demand for the jersey sale has two potential solutions, each of which is improbable. First, the NCAA amends the bylaws to require schools to sell jerseys [\*344] with student athletes' names on them. Second, schools compensate student athletes at a rate corresponding to the proceeds from the generic jersey sales, which again introduces the O'Bannon challenge of an indeterminate driver of demand. We know there is a demand for the team itself, and we know there is a higher demand for some players' jerseys compared to others. This would start the same argument all over again when the marquee players**

**realize they are receiving the same stipend as the others.** Perhaps the same argument would surface if SEC players were paid the same as the Big Ten athletes even though the SEC is more competitive in revenue and viewership. Even if the student athletes overcome the Sherman Antitrust Law, the bigger barrier of practicability still exists. **Additionally, there are several other considerations this article does not highlight that may still affect the practicability of student-athlete compensation. n175 These considerations are just the tip of the iceberg.**

## **The entire NCAA structure would have to be overhauled to pay players**

Nicholas Kitko, JD, University of Cincinnati Law Review, The Law May Cave, But Economics Will Not: The Road to Paying Student Athletes is Longer Than We Think, March 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr85&div=14&id=&page=>

VI. Conclusion Regardless of one's personal stance on student-athlete compensation, challenges clearly exist when modeling an ideal compensation model. **Any model would require a complete overhaul of the NCAA structure and its bylaws, essentially creating a league directly comparable to the NFL or NBA. As consumers, the public should be hesitant to adopt that system given the youth involved and the risks to which they would be exposed.** It is important to remember that in a system where the student athletes are fighting to get the most they can for their perceived value, the NCAA will seek to squeeze that value - ultimately hurting both parties. The NCAA and the student athletes will be fighting a proxy battle through their agents, each trying to achieve the best terms for their side. This battle will unfold in place of putting the best product on the field, thereby decreasing consumer demand and hurting third-party fans. Part I of this article introduced the idea of the NCAA and the revenue gap between it and its student athletes. Part I further provided a guideline of the article's process for reaching the antitrust claims and practicability challenges regarding student-athlete compensation. Part II discussed the NCAA's history, the role amateurism plays in the NCAA, and the gap in revenue mentioned above. Part III discussed a brief history of the cases the NCAA and its athletes have battled, ultimately leading to O'Bannon. Part IV continued with O'Bannon by introducing antitrust law - the basis for O'Bannon's suit - and how it affected the outcome of the case. Following this was an analysis of the [\*345] considerations that antitrust, the courts, and student athletes have yet to evaluate in order to earn fair compensation. This section highlighted various challenges related to NCAA governance, basic economics, and practicability. **The final verdict is this: while paying student athletes may eventually be legal in the future, it is not presently feasible, given the structural and economic hurdles that currently exist.**

## **Paying male athletes from revenue generating sports means female athletes would also have to be paid**

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses, <http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

**Title IX is an obstacle that all colleges and universities will need to comply with** even though **O'Bannon only requires paying Division I men's basketball and FBS football student--athletes.** <sup>n202</sup> **Although women's college sports programs typically do not generate as much revenue as their male counterparts, it is essential that women's athletics receive an equal amount of funding to prevent discrimination scrutiny under Title IX.** <sup>n203</sup> While some may argue that paying both male and female student--athletes limits the amount of funds that are available because the funds will be split in half, **it is the only way for schools to avoid a potential lawsuit from any female college athlete.** <sup>n204</sup>

## **If athletes are treated as employees, they have to be taxed**

Need li

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,

<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

While the tax issue as a whole is beyond the scope of this note, it is important to briefly identify the ramifications when considering the idea of compensating student--athletes for the use of their names, images, and likenesses. n166 **Since states have a constitutional right to tax, paid student--athletes would be subject to federal and state income taxation.** n167 **Such a situation would ultimately make student--athletes employees of their respective schools, which is a contradiction of the NCAA's focus toward amateurism.**

Paying athletes reduces the connection of the sports to the campus life, undermining the unifying element of college sports (and it's long term value)

Ekow N. Yankah is a professor at Cardozo School of Law, October 15, 2015, New Yorker, <https://www.newyorker.com/news/sporting-scene/why-ncaa-athletes-shouldnt-be-paid>

And yet I believe that the **drive to pay college athletes is a grave mistake**—not because it misdiagnoses the disease but because it suggests that the only cure is to put the patient out of his misery. **It fails, first of all, to recognize the value of sports as a part of education. This value can be seen in the countless student athletes, from gymnasts to softball players, who pour hours of work into training and competing with no hope of going pro.** (Similarly, many of those in even the biggest sports show dedication long after it is clear that they will never be professionals.) **This value is again revealed in the fact that many N.C.A.A. teams are vastly more popular than their professional counterparts. My beloved Michigan Wolverines pack the Big House with more than a hundred thousand spectators each football Saturday; the Detroit Lions, meanwhile, do not.** (I know, I know—it's the Lions. That's why their stadium is smaller.) Minor-league arenas attract even fewer spectators. Fans are not only seeking athletic excellence as such—the biggest and fastest players in descending order. **Our connection to the athletes is deeper. These student athletes walk the same halls, have the same professors, and sweat the same midterms that we did, however long ago. At the University of Illinois at Urbana–Champaign, where I once taught, the inscription on the statue of Alma Mater reads, “To thy happy children of the future, those of the past send greetings.” It's easy to dismiss that sentiment as saccharine, but it gets at an important truth: we are embedded in our cultures and social groups, and we revel in their excellence. Paying student athletes erodes that association. If a high-school football prodigy reported that he chose Michigan not for its academic quality, tradition, or beautiful campus but because it outbid all other suitors, a connection to the university's values would be lost. This is not naïve idealism. Auburn fans still bristle at accusations that Cam Newton auctioned them his services; prideful Michigan fans still smart over the sanctions surrounding Chris Webber, and over stinging comments intimating that he might just as well have**

**attended a rival school. These episodes reveal what happens when college sports are reduced to a market; that this occurs all too often already is no reason to surrender to it.**

### **Benefits of attending college for students**

Ekow N. Yankah is a professor at Cardozo School of Law, October 15, 2015, New Yorker, <https://www.newyorker.com/news/sporting-scene/why-ncaa-athletes-shouldnt-be-paid>

None of this would be easy to accomplish, of course, given the money that is at stake, and there would be casualties. Some of the players who might at least have been exposed to college would forgo it entirely. We might lose the story of the exceptional athlete, often poor and dark-skinned, who goes to school solely to play sports but then sees the world widen before him. Nor should we imagine that those who opt for the developmental leagues have made it; minor-league baseball and the lower tiers of European soccer remind us how thankless and poorly compensated such a life can be. But this is no less true for those who skip college to pursue music or theatre, and, more to the point, there is no reason to think that we wouldn't hear stories of intellectual discovery among slightly less athletically gifted athletes from the same streets. Even if we cannot save sports (or music, or theatre) from its high-risk nature, we can go some way toward making sure that a few elite college programs are not unduly feeding off it.

### **Many practical problems**

Muarice Reed Jones, July 18, 2016, Why College Athletes should not be paid, <https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

Throughout the years big name college athletes have been trying to get six digit numbers in their bank account before making it to the pros. What they do not understand is that college is not a place of work and that it is meant to further education for a future career. Also no college, big or small, has enough money to pay them. They have to pay to build facilities, pay coaches, give scholarships, and pay athletic directors to make sure that the school has the best chance of winning. Despite the fact that most athletes do not have money to get by while they are in college, schools do not gain enough revenue back from the money that they put into their sports programs. They are technically already paid with a free education due to their scholarship, and all of the different sports would not be able to be paid the same amount.

If colleges were to pay their athletes, there would not be as much money to go around for any of the other things like the facilities or the coaches. Not only do colleges not have enough money, but it would also defeat the purpose of going to school. If athletes were to start getting paid, it would give people a reason to talk about paying other students in the school. "If we pay the athletes maybe we should also do it for the first violinist in the school orchestra, or the lead actor in theatrical productions, and perhaps popular professors should allocate course enrollment slots to those students who bid the highest" according to Andrew Zimbalist of [theatlantic.com](http://theatlantic.com). It would also make the cost of college more expensive. The money would have

to come from somewhere. That would just make it harder for a regular student to attend a college. According to [star.txstate.edu](http://star.txstate.edu) it would be really unfair to the other students. Some if not all college athletes are already on scholarships, so why should they be paid like they are professionals? Many college athletes argue that since they do not have time to get jobs that they should be paid by the university so that they can have extra money to spend. What they do not realize is that the average college student is middle class and has to pay their way through school. It is not that since they do not play a sport they have money to spend. These students would kill to have their school paid for and all they would have to worry about is their grades.

#### Paying players ruins the culture of campus sports

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

It would really ruin the culture of college sports. College students love college sports because the athletes are students just like they are. The athletes are in classes and are seen on campus. They are a part of the school's community. Money would separate the athletes from the student body. It would make them seem like they are the most important people at the school.

#### Not feasible to pay student sin other sports, not doing so is unequal

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

Forbes.com was also able to bring up some good points. Football and basketball are the two sports that most people think of when it comes to athletes being paid. What about the other sports? Athletes participate in sports like soccer, tennis, golf, baseball, volleyball, track and field. They work just as hard as football and basketball players, but just because they do not generate as much money they have to be treated differently than the people that work out in the same facilities as they do. Even if it were possible for athletes to be paid they should all be paid the same. Some people claim that football and men's basketball should be the only sports to be paid because those are the sports that generate the bulk of the revenue. This would be violating the federal Title IX law. This law stipulates equal compensation for male and female athletes. Besides the issue of paying the participants of every sport, there is also the issue of everyone being paid - should you just pay your elite athletes or the whole team? How much would you pay players? Is it one set amount for every athlete, or will there be pro-like contracts? If you let athletes get paid for endorsements, will it give some programs unfair advantages? If someone plays for a school like Alabama they are more likely to get an endorsement than if they were playing for a school like Tulsa. It is the same issue with allowing profit off merchandise sold with their name or number. Playing for Florida would give a better opportunity to make profit off of merchandise than playing for Western Michigan.

#### **Paying players make it too difficult to teach character**

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

Also imagine a coach trying to discipline a college player if they were paid. Even if they know they messed up all they would care about is the money. Paying them would affect their character and it would affect the way they act if they were to go out in the real world and play professionally. College teaches you about life and tells you to be disciplined. It is hard to be disciplined when you are getting paid a lot of money.

### **Even schools with high revenues cant pay players**

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

One thing that may surprise the reader of this paper is that most colleges, even the big name ones, do not even make the money back that they put into their sports programs. Despite all the tickets, merchandise, and memorabilia that these big name universities sell, they cannot breakeven. According to theatlantic.com the average FBS athletic program ran a 9.44 million dollar operating deficit. This brings up the question where would the money come from?

While researching on forbes.com only 14 athletic programs are generating a profit without having to rely on institutional support like student fees. Ohio state university needs over 22 million dollars from the booster club in order to balance. OSU could ask the boosters for money to pay the players, but what would a school like Western Kentucky do? They already spend 5.6 million on grants-in-aid and it takes 8.2 million from the university to balance their budget. How would they pay their players?

### **College sports is not professional sports**

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

A big reason college athletes should not be paid is simply because they are not professionals. College athletes are people that are trying to get to the pros and therefore, are not paid because they have not made it yet. Since these players are in college, they should never be paid to play their sport. College sports are just like another class. College students pick something that they want to major in so that they can learn and start a career. College sports should be treated the same way. "I am a broadcast journalism major and no one pays me to set up interviews, anchor a show or broadcast on the college radio station, U92 FM. The reason why no one pays me to do any of that is because I am learning my field in order to get paid when I get a job. In college sports you play to get to the pros, not to earn a paycheck as a student." says Josh cooper of bdlsports.net. What people forget about college athletes is that they are student athletes. The word student comes before athlete. No one in college gets paid to get an A+ or pass an important test. College is a place where you learn to grow up and how to manage your life.

## College sports provide exposure to wealthy boosters

Muarice Reed Jones ,July 18, 2016, Why College Athletes should not be paid,  
<https://www.theodysseyonline.com/college-athletes-should-not-be-paid>

While reading an article by John Rocker from wind.com I discovered that college athletes also have the opportunity to meet the boosters of the schools that they play for. A school's boosters club is made up of alumni that give a lot of money to the school. They most likely own their own businesses. This is another job opportunity for an athlete. If the pros do not work out the booster could remember the athlete's buzzer beater against their rival and give them a job.

### Scholarship values super high – would require large salaries and high taxes

John Thelin, March 1, 2016, Here's Why We Shouldn't Pay College Athletes,  
<http://time.com/money/4241077/why-we-shouldnt-pay-college-athletes/> John Thelin, a professor at the University of Kentucky, is author of A History of American Higher Education, published by Johns Hopkins University Press. In 2006 he was selected for the "Ivy League at 50" roster of outstanding scholar-athlete alumni.

So, to start the "play for pay" games, let's assume that salaries replace scholarships in big-time men's college sports. What happens, for example, to the college player if he were paid \$100,000 per year? A full athletic scholarship (a "grant-in-aid") at an NCAA Division I university is about \$65,000 if you enroll at a college with high tuition. This includes such private colleges as Stanford, Duke, Northwestern, University of Southern California, Syracuse, and Vanderbilt. The scholarship is \$45,000 for tuition and \$20,000 for room, board and books. At state universities, the scholarship would be lower if you were an "in state" student—because tuition would be about \$13,000. But if Michigan coach Jim Harbaugh recruits nationwide and wants a high school player from California or Texas, the University of Michigan out-of-state tuition bumps up to about the same as that charged by the private colleges. That's the old model. In the new era, a coach could offer a recruit a salary instead of a scholarship. Does a \$100,000 salary give the student-athlete a better deal than the \$65,000 scholarship? The \$100,000 salary is impressive. A future Heisman Trophy winner might command more, but \$100,000 is not bad for an 18-year-old high school recruit. But since it's a salary, not a scholarship, it is subject to federal and state income taxes. Tuition and college expenses would not be deductible because the income level surpasses the IRS eligibility limit. So, a student-athlete paid a salary would owe \$23,800 in federal income tax and \$6,700 in state taxes, a total of \$30,500. In cities that levy an employee payroll tax, the salaried student's taxes go up about \$2,400 per year. Income taxes then are \$32,900. And, as an employee, the player would have to pay at least \$2,000 in other taxes, such as Social Security, for a total of \$34,900. This leaves the college player with \$65,100. Since college bills come to \$65,000, the player has \$100 left. By comparison, how bad was the scholarship model? According to the federal tax code, the \$45,000 tuition award is deductible, but room and board are not. The student-athlete will be able to deduct book expenses and qualify for a tax credit under the American Opportunity Tax Credit (AOTC), reducing his tax. The



bottom line is that the student-athlete gets a \$200 refund in federal taxes and pays \$820 in state taxes, for a total tax bill of \$620. There's no local payroll tax because he was not an employee. This means \$64,380 of the \$65,000 scholarship can go toward paying academic expenses of \$65,000. How does the salary compare to the scholarship for student purchasing power? The \$100,000 salary gives the college sports "employee" an advantage of \$720 per year, the difference between his net salary of \$65,100 versus the scholarship player's net of \$64,380. That's not great news for the salaried player. It's bad news for the athletics department which paid \$100,000 in salary rather than \$65,000 in scholarship, driving up expenses \$35,000.

### **Most programs are not profitable**

Horace Mitchell is president is California State University—Bakersfield NCAA Division I Board of Directors, 2014, US NEWS, Students are Not Professional Athletes, <https://www.usnews.com/opinion/articles/2014/01/06/ncaa-athletes-should-not-be-paid>

Let's be clear about the context within which this question usually arises. It usually does not come up at those NCAA Division I institutions that struggle to fund their athletic programs or in Division II or Division III. There is a misconception that athletic programs in general are profitable and institutions are making money hand-over-fist. The truth is that only a fraction of the programs are profitable while most operate at a cost to the institution

## **Answers to: Paying Solves the Scandals/Corruption**

### **Scandals are inevitable, payments to players won't solve**

Zach Dirhlan, March 1, 2013, There's no crying in college: The case against paying college athletes, <http://bleacherreport.com/articles/1588301-theres-no-crying-in-college-the-case-against-paying-college-athletes>

Contrary to popular belief, the recent scandals involving the Ohio State Buckeyes, Miami (Fla.) Hurricanes and USC Trojans are not exactly anything new to college athletics. Paying players will not eliminate any of the greed or determination to win at all costs that exists in today's society. Cheating will never stop, and it existed at the NCAA level well before the era of modern technology. Henry Beach Needham outlined some fairly alarming issues college athletics faced in its early years in a 1905 piece titled "The College Athlete", which was published in McLure's Magazine. The biggest scandal at the time was Columbia University paying non-students to compete. The University of Kentucky men's basketball program conspired with gamblers in the 1950s. Point-shaving plagued the NCAA during the 1970s, all the way through to the 1990s. Southern Methodist University ran afoul of the by-laws in the 1980s, Michigan basketball vacated several victories after a scandal came to light in 2002, and the Hurricanes had some issues with Pell Grants in 1995. Scandals are nothing new to the NCAA, and paying players will not purify these dirty waters. I hate seeing these improper benefits scandals as much as the next person, but if we are being honest, the history proves there will always be some form of cheating going on. Paying athletes is not going to provide a solution for these problems.

## **Answers to: Profits are Super High**

### **Most athletic programs don't turn a profit**

Zach Dirhlan, March 1, 2013, There's no crying in college: The case against paying college athletes, <http://bleacherreport.com/articles/1588301-theres-no-crying-in-college-the-case-against-paying-college-athletes>

Although the NCAA reels in over \$800 million per year, 81 percent of which comes from television and marketing-rights fees, the organization continues to be non-profit. How is this possible? An astounding 96 percent of the revenue the NCAA brings in annually is redistributed to its members' institutions. This is done through donations to academic enhancement, conference grants, sports sponsorships, student assistance funds and grants-in-aid. A percentage of the revenue is also added to the basketball fund, which is divided up and distributed to the NCAA tournament field on a yearly basis. The universities themselves are not exactly rolling in wads of cash, either. Last year, only 22 athletic departments were profitable. Football and basketball bring in the dough, and every other college sport survives as a result. Remember this year's Cinderella story in March Madness, the Florida Gulf Coast Eagles? The university nearly lost money as a result of their run to the Sweet 16. Two years ago, the Division I Board of Directors approved a \$2,000 stipend for college athletes to cover the "full cost of attendance." Less than two months later, the NCAA's member institutions repealed the stipend, because they could not afford it. College athletics may sound like a great business, but in reality only the top-tier programs are churning out a profit. I do not agree with everything the NCAA does. However, the evidence shows it is not the booming business everyone thinks it is.

## Status Quo Solves

### **Thanks to the Bannon decision – students get \$5,000 in deferred compensation now**

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,  
<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

The district court proposed several alternative restrictions and remedies that would allow the NCAA to comply with fair competition. n127 First, **the court stated that the NCAA could allow Division I men's basketball and FBS football student--athletes to receive stipends from schools up to the full cost of attendance with funds generated from licensing revenues.** n128 Alternatively, the court stated that the NCAA could permit schools to have a trust holding limited and equal shares of their respective licensing revenues to be distributed to the student--athletes after they leave college or their eligibility has expired. n129 After exploring possible alternative restrictions and remedies to the NCAA's rules against compensation, the district court concluded that the NCAA's challenged rules unreasonably restrained trade and violated the Sherman Antitrust Act. n130 The court specified that prohibiting student--athletes from ever receiving any compensation for the use of their names, images, and likenesses restrains price competition among Division I schools as suppliers of an unique combination of academic and athletic opportunities. n131 **This decision ultimately led to an appeal as well as the NCAA increasing the value of athletic scholarships to cover the full cost of attendance and allowing its member schools to grant deferred cash payments up to \$ 5,000 per year.** n132

### **An example is Notre Dame. They sell student athlete paraphernalia in the book store in which proceeds go to student athletes and their families**

University of Notre Dame Athletics Website, 11-2-2017, "#33Trucking Hats Available With All Proceeds Going Back To Irish Student-Athletes," University of Notre Dame Website,  
<http://www.und.com/sports/m-footbl/spec-rel/110217aad.html>

**The No. 3-ranked University of Notre Dame football team recently revealed #33Trucking**, a modest trucking company that specializes in long-haul, smash-mouth deliveries by its lead trailer, Heisman Trophy candidate Josh Adams. **The company's hat**, which was debuted by #33Trucking board members on Oct. 27, **will now be available to the general public**, with all of the proceeds benefitting current and future Fighting Irish student-athletes. Who Benefits? **Proceeds from the hat sales will supplement the Student Assistance Fund, which provides direct benefits to student-athletes and their families**. The fund is used to assist student-athletes in meeting a variety of financial needs that arise in conjunction with participation in intercollegiate athletics and enrollment as a student. Preference for distribution of the funds is given to those student-athletes who display a financial need for assistance. How much do they cost? The hat costs \$26 to purchase. Where can you Buy? #33Trucking hats will go on sale at Noon ET Friday from the University of Notre Dame at the following campus locations: Hammes Notre Dame Bookstore, Notre Dame Bookstore at Eddy Street Commons and Notre Dame Stadium Shop. Hats will also be available for purchase online at [NDCatalog.com](http://NDCatalog.com).

## General States Solvency

### Federal Labor Law is limited. States are a better actor

**Fram & Frampton, August 2012**, Buffalo Law Review, A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics, Nicholas Fram+ and T. Ward Frampton++ + J.D., University of California, Berkeley, School of Law; M.A., Stanford University, 2007; Clerk to the Hon. George B. Daniels, Southern District of New York, 2012-2013 Term + J.D., University of California, Berkeley, School of Law; M.A., Yale University, 2006; Clerk to the Hon. Diane P. Wood, United States Court of Appeals for the Seventh Circuit, 2012-2013 Term, [http://www.buffalolawreview.org/past\\_issues/60\\_4/Fram.pdf](http://www.buffalolawreview.org/past_issues/60_4/Fram.pdf)

While several scholars have set forth some version of the argument in Part II.B-that **NCAA athletes likely enjoy collective bargaining rights under NLRB precedent involving other student-employees-they have overlooked federal labor law's limited reach. The NLRA ordinarily preempts attempts by states to establish alternative regimes governing collective bargaining between employers and employees, but the NLRA specifically exempts from its definition of employer "any State or political subdivision thereof."** This statutory exemption leaves collective bargaining rights for public employees, including those at **public universities (athletic or otherwise), contingent on state law.** Unions of public sector workers have existed throughout the twentieth century, n190 but it was not until Wisconsin enacted a landmark law in 1959 that states began to formally recognize and encourage collective bargaining of their employees. n191 By 1972, "the debate over the legitimacy of unionism in the government sector [had become] largely academic," with the majority of states enacting legislation allowing collective bargaining for public employees. n192 Generally, these laws mirrored federal labor law: "many state statutes drew heavily on the NLRA in their definitions" n193 -including their (vague and circular) definitions of "employee"-and created state labor boards to adjudicate controversies over disputed provisions. This "similarity in language . . . has led to extensive reliance upon federal precedents" by state labor boards and courts. n194 And, as a result, most previous scholars have simply assumed that college athletes would therefore be treated comparably under federal and state labor law regimes. Professors McCormick and McCormick, for example, in their otherwise thorough discussion of potential unionization of college athletes, conclude that because many states' labor statutes are modeled on the NLRA, federal law "remains the starting, and usually ending, point for this inquiry" into "employee" status. n195 [\*1040] Yet however closely **state labor boards and courts may track the NLRB in other contexts, they have diverged from federal precedent when determining the "employee" status of student workers. In adjudicating whether students who provide services for their universities are "employees" entitled to union recognition, state labor boards (unlike the NLRB) have repeatedly recognized that students can have dual academic and economic relationships with their universities. Even in states with statutory language identical to the definition of "employee" in NLRA § S 2(3), students at public universities often enjoy more robust rights than their counterparts at private universities. As we show below, some states' approaches present more auspicious openings to college athletes than others. But in at least a dozen states, it seems likely that NCAA college athletes satisfy the statutory definition of "employee."** The following section provides the first detailed survey of state laws regarding the collective bargaining rights of students at public universities and explores the status of NCAA athletes under these regimes. In Section A, we consider in depth four states (California, Florida, Michigan, and Nebraska) where college athletes at big-time athletics programs might seek to unionize. **Favorable state constitutional and statutory provisions, expansive interpretations of those provisions by state labor boards and courts, demonstrated success in organizing college athletes, a history of undergraduate and graduate unionism, and other political considerations render these states** (all of which are home to large, lucrative college athletics programs) **particularly promising for college athletes.** In Section B, we discuss another twelve states where graduate and undergraduate students have unionized at public universities. While college athletes would struggle to gain union recognition in a few of these states, labor boards in most have issued rulings that would likely recognize a cognizable employer-employee relationship when applied to universities and their athletes. In the interest of space, we provide less detailed discussions of these jurisdictions, though some (e.g., Oregon, Massachusetts) may be even more favorable to college athletes than states discussed in Section A. Finally, in Section C, we briefly consider the remaining states, none of which have directly considered

the "employee" status of students. State law is at least open to the possibility of a union of college athletes in a few of these jurisdictions; in others, however, state law clearly [\*1041] forecloses the possibility of any collective bargaining at public universities.

## States the better actor to lay the claim, and they are “laboratories of democracy”

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However clear existing state labor statutes and board precedent may be, it would undeniably take some degree of courage for a state labor board to recognize college athletes as "employees." The systemic uncertainty that would necessarily attach to such a ruling, and the reaction it might provoke from the NCAA, alumni and state legislatures, would loom heavily over such deliberations. Yet arguments against recognizing a college players' union based on such concerns run contrary to the fundamental objectives of collective

bargaining law: **anticipated retaliatory acts by a private third-party have little place in legal determinations of who is, and who is not, entitled to statutory protections. And courageous states have long served as laboratories for "novel social and economic experiments" in American history.** n333 **State labor law, with its ability to incubate new ideas and its historic sympathy for student-employees, represents the most promising vehicle for such an experiment to occur in college sports**

Indeed, as the experience of academic student-employees has demonstrated, exemption from the National Labor Relations Act is likely to be a boon (not an obstacle) for college athletes at public universities. Whereas teaching assistants and research assistants at private universities continue to struggle for recognition under the NLRA, n334 many of their counterparts at public universities have enjoyed mature collective bargaining relationships for several decades. State labor law has provided a foothold for these student-workers, allowing them to make organizing headway decades before the NLRB even considered recognizing them as "employees" under federal labor law. n335 Much of this success has come as a result of state labor boards' heightened sensitivity to the new economic realities of the contemporary university, a point that will be central for any claims brought by college athletes. In the graduate assistant context, the move to unionize emerged, at least [\*1070] partially, "as a backlash against higher education trends . . . where universities have increasingly sought to contain costs and function more like businesses." n336 These enormous "sea changes"-a phenomenon scholars have dubbed "the rise of the corporate university"-engendered a

new reliance on undercompensated graduate students' labor in the basic teaching and research functions of university life. n337 **Just as these economic imperatives have remade the role of graduate students within the academy, the skyrocketing economic stakes of college athletics have transformed the meaning and importance of today's college athletes' labor. The rise of the "corporate university" has impacted** not just classroom education, but **all aspects of university life, including (perhaps especially) college athletics. To the extent that graduate assistants and college athletes can be considered "employees," it is a result of the same evolving reorganization of basic economic structure of today's universities.** Time and again, **state labor boards have taken notice of these dynamics, while the NLRB has not.**

## States have different definitions of “employee” than the federal government does under FRLA

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law, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, *Cardozo Law Review*, <https://goo.gl/FNxGnE>

Nevertheless, even though public employees at the state level are not subject to the NLRB's preferences in determining whether they can unionize, **public workers are generally subject to state labor laws and their limits on union recognition.**<sup>n107</sup> **While most states model their labor laws after the NLRA, state labor laws are "more diverse" and "differ in many important ways, including in their definition of "employee."**<sup>n108</sup>

## Many states support unionization

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**In addition to Wisconsin and Florida, Massachusetts, Nebraska, and Oregon are three other states where it is reasonable to attempt to unionize public colleges' football or men's basketball players.**<sup>n119</sup> **As in Wisconsin and Florida, the labor boards of Massachusetts, Nebraska, and Oregon each have adopted favorable views toward unionizing graduate**

**assistants.**<sup>n120</sup> Furthermore, Nebraska passed a bill in 2003 that entitles college football players the right to "fair financial compensation for playing football" if four other states within their football conference pass a similar law.<sup>n121</sup> Although this statute does not directly relate to the topic of unionizing, the statute signifies a general sentiment toward acknowledging that college athletes deserve at least some form of compensation.<sup>n122</sup>

## This turns their collectivization advantage – experimentation is needed to spur productive reforms in labor law

**Henry H. Drummonds, 2009**, law professor, Lewis & DClark, *Reforming Labor Law by Reforming Labor Law Preemption Doctrine to Allow the States to Make More Labor Relations Policy*, 70 LA. L. REV. 97, 97 (2009), <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=6305&context=lalrev>

The road forward for labor relations policy in the United States lies not in Washington, D.C., but in state capitols. 1 As the current debate over the Employee Free Choice Act (EFCA) reveals, 2 stifling [\*98] federal labor law orthodoxy grips the private sector union movement. Indeed private sector collective bargaining faces the vanishing point; 3 to the ninety-two point four percent of private sector employees who hold their jobs outside the unionized sector, collective bargaining constitutes, at best, an abstraction. 4 **Ironically, public sector unions, governed**

**largely by state law, flourish.** 5 Why [\*99] do blue, pink, and white-collar public employees flock to unions while their counterparts in the private sector do not? Private sector union membership varies widely from state to state and industry to industry. New York (twenty-four point three percent) and California (eighteen point four percent) contrast with much lower rates of unionization in the South, parts of the Midwest, and the Mountain states. 6 Not surprisingly the twenty-one "Right to Work" 7 states count among the lowest rates of membership. 8 Despite this widely varying support for unionization in the states, judicially-created, broad federal labor relations preemption doctrines ensnarl all states in a stifling and exclusive, yet strikingly inconsistent, federal labor law regime. 9 Part II reviews the need for reform of private sector labor relations law. Sixty years have passed since the last fundamental revision of private sector labor law occurred when the Republican Congress overrode President Truman's veto and enacted the Taft--Hartley [\*100] Act in 1947. 10 Taft--Hartley, vociferously opposed by the unions of that time, rebalanced the national labor policy to

make it less hospitable to unions in response to perceived abuses during and after World War II. 11 Today, new conditions exist. **After more than a half-century, another fundamental rebalancing is needed to provide more robust protection for employees wishing to voice concerns to their employers as a group. 12 At the same time labor law must break out of the confining doctrinal boxes that impede private sector unions from developing new ways to represent employees in more democratic structures that attract support from women, minority employees, younger employees, and those in growing sectors of the economy such as information technology and health care jobs in nursing homes, assisted living centers, and home health.** Beyond the fate of private sector unions, the prevailing federal labor law orthodoxy carries broader public policy implications. **Federal labor law, and the folklore surrounding union-management relations generally, cabins the potential for unions to help recreate a structural balance in the allocation of the wealth jointly created by managers, investors, and employees in twenty-first-century corporate life.** 13 Corporations and the wealth they create are not the personal fiefdoms of executives or hedge funds managers and investment bankers. Yet the times demand new thinking about the role of unions and the processes under which they operate. At the same time, collective bargaining offers a private ordering [\*101] alternative to the increasing demands for direct governmental regulation of economic life in the Great Recession now afflicting the U.S. and world economies. 14 As Part III shows, the needed new thinking, experimentation, and flexibility will most likely arise from a less centralized labor relations system. **Not only does the current federal labor law fail to keep the promises it makes to employees, 15 it further blocks efforts to enact reforms in the states. Although New Deal-era reformers were often prone to view the federal government as the protector of unions, as then Professor Scalia once observed, federalism is "a stick that can beat either dog."** 16 As the current national debate over EFCA reveals, **federal legislative initiatives in labor law come hard and require a kind of federal common denominator for new labor relations policie**s. 17 While the fate of that Act remains at this writing undecided, a review of the ideas in play shows that, while some suggested amendments to the National Labor Relations Act (NLRA) may help to restore more balance in the national labor policy, the ideas under discussion will likely not suffice to reverse the long decline of the private sector unions as collective bargaining (as distinct from lobbying) agents of employees. **The current focus on federal level reform stands in sharp contrast to the broader field of employment law. In that broader area of workplace regulation, federal level support for change most often follows state and local level initiatives. 18 Indeed shared state [\*102] and federal policy making constitutes the dominant model in the now vast field of employment law generally. 19 Thus, small, medium-size, national, and global companies conform their human resources practices to varying state requirements in the area of status discrimination, wage and hour laws, occupational health and safety, maternity and family leave laws, privacy regulation, and wrongful discharge law.** 20 The broad federal labor law preemption initiated by judges a half-century ago stands today as a relic of an earlier era when the law of the workplace is viewed as a whole. Considered in a broader context, reexamination of the federalist balance in labor relations would continue an ongoing discussion dating to the Founders and continuing across many other areas of public policy today. 21 These include the regulation of prescription drugs and medical devices, bank lending, greenhouse gas and automobile emission and mileage standards, immigration policy, and many others. 22 After suffering the vice-like [\*103] grip of the broad federal preemption doctrines now prevailing, labor relations policy must become part of this larger federalism discussion. Ironically, globalization erodes the power of the federal government to effectively regulate transnational corporate entities whose size and reach now often eclipse the reach of nation-states. Given the dynamics of globalization, with power and influence drifting upward toward national and international level actors, an adjustment of the federalist balance in labor relations, as in other areas of public policy, creates a countercurrent to this drift. Here we can learn from our neighbors in Canada and the European Union where labor relations policies from Ottawa and Brussels coexist with those of provincial governments and sub-union nation-states. Part IV turns to the existing, uniquely broad federal labor law preemption doctrines that prevent the states from exercising the shared authority found in other areas of workplace law. Three distinct doctrines exist: the Garmin doctrine, the Machinists doctrine, and Section 301 preemption. 23 This discussion shows that federal labor relations law not only creates a legal environment inhospitable to collective bargaining, 24 but also simultaneously prevents reforms and experimentation at the state level. 25 Thus the [\*104]

**states cannot adopt damages remedies for anti-union discrimination, implement "card check" and other innovative procedures for determining whether the union has established and maintained majority support, experiment with non-majority**



**and non-exclusive representation of employees for those who desire union representation, regulate the permanent replacement of strikers or the offensive lockout, provide meaningful remedies for bad faith bargaining, or develop new processes, such as interest arbitration, for resolving first contract disputes or an alternative to the cumbersome and ineffective National Labor Relations Board (NLRB) process for the vindication of Section 7 rights.**

<sup>26</sup> The mesmerizing mantra of a "uniform" and "expertise based" federal labor relations policy led generations of judges, labor lawyers, and academics to support these broad federal preemption doctrines. <sup>27</sup> As shown below, these doctrines find support neither in the text of the Labor Management Relations Act (LMRA), <sup>28</sup> nor in any consistent view of federal policy, rights, and remedies. <sup>29</sup> These preemption doctrines generated controversy within the Supreme Court even when adopted decades ago; nothing in the federal labor policy compels their continuance in changed conditions today. Moreover, labor law preemption doctrine exists within a bodyguard of exceptions making it at once one of the most complex and indecipherable areas in all of employment law. As the authors of a leading casebook summarized:

**No legal issue in the field of collective bargaining has been presented to the Supreme Court more frequently . . . than that of the preemption of state law, and perhaps no other issue has been left in as much confusion.**

<sup>30</sup> As in science, excessive complexity in legal doctrine signals a need for reconceptualization. <sup>31</sup>

## State Action Better -- Diversity

### Diversity in state labor law now

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Third, more generally, this Article highlights the growing centrality of state law in American labor relations and illustrates the divergent ways in which courts and labor boards have interpreted state and federal statutes, particularly with respect to student-employees. n38 Our state-level focus is both necessitated by and indicative of the changing landscape of today's labor movement, which now counts fewer union members in the private sector (governed [\*1012] primarily by the NLRA) than in the public sector (governed primarily by state labor law). n39

### Federal labor law is failing, state labor law is best

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<https://dash.harvard.edu/bitstream/handle/1/10488716/sachslaborlawrenwal.pdf?sequence=1>

Despite the statute's failings, however, and despite dramatic transformations in the U.S. economy and labor force, the NLRA has remained essentially unchanged for more than half a century. 5 This statutory stagnation has, in turn, produced a scholarly consensus that federal labor law is not simply dysfunctional but also peculiarly resistant to the reinvention it so clearly needs. 6 The explanations for this rigidity, moreover, seem inseparable from the decades-old decision regarding centralization. Thus, according to this now conventional account, by centering American labor law in a single federal statute, giving exclusive enforcement powers to a single federal agency, and depriving individuals and state and local governments of the ability to drive innovation, Congress has insulated labor law from the traditional avenues of rejuvenation and reform. And yet, while the NLRA has indeed failed at both facilitating collective action and keeping pace with changes in the economy, neither the statutory scheme nor Congress's unwillingness to amend it has prevented a reordering of labor law. To the contrary, the field is beginning the process of reinvention, and the conventional wisdom regarding labor law's dormancy is no longer tenable. 7 In this Essay, I briefly sketch three examples to illustrate labor law's new dynamism. The first concerns the ability of several thousand janitors in the South to secure wage increases and health benefits through a unionization campaign governed entirely by private agreements. The second involves the unionization of several hundred thousand home care and child care workers under a labor law regime developed by state governments. And the third is the story of an immigrant garment worker who, relying on a quintessential employment law statute and without the involvement of a traditional labor union, led a collective effort to secure overtime wages at her Brooklyn garment factory. As these three stories exemplify, an ad as I elaborate in a forthcoming article, 8 labor law is being reinvented through a process that I call the "hydraulic demand for collective action." That is, the NLRA's failings have left the traditional legal channel for collective action blocked, but this blockage has not dissipated the demand for organization. 9 Unable to find expression through the NLRA, the pressure from this continuing demand for collective action has forced its way out through three new legal channels. No longer a regime defined by a single federal statute administered by a single federal agency, American labor law is increasingly constituted by private processes, by state and local regulation, and by multiple federal statutes enforced by multiple actors. I propose, moreover, that each of these three decentralizing trends constitutes a form of experimentation with the optimal way to restructure American labor law. The first is an inquiry into the appropriate function of

private agreement in labor law; the second an investigation of the role that states and localities should play in the design of labor policy; and the third an exploration of whether a legal regime that offers strong protection for the most nascent phases of workers' organizing activity, but leaves outside of law's domain further organizational development and labor-management interaction, is an adequate—or even desirable—substitute for the NLRA. In the aggregate, and given a legal architecture capable of capturing the results, these experiments promise both to help us resolve practical quandaries integral to labor law reform and to answer questions at the conceptual core of the field.

## Labor law improvements throughout the country at the state level

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<https://dash.harvard.edu/bitstream/handle/1/10488716/sachslaborlawrenewal.pdf?sequence=1>

The California legislature responded, first by authorizing and then by requiring counties to establish a “public authority” (or other entity) to constitute an employer of the county’s IHSS home care workers. 57 Under the California law, IHSS home care workers were authorized to organize, to elect a collective representative, and then to bargain collectively over wages and benefits with the public authority of the county in which they work. 58 The state legislation thus provided a protected right to organize and required counties to create an employer and collective bargaining partner for hundreds of thousands of low-wage workers previously excluded from labor law’s coverage. **Similar state action has offered the beginnings of state labor law coverage to publicly financed home care workers in Illinois, 59 Massachusetts, 60 Michigan, 61 Oregon, 62 and Washington, 63 and to home-based child care providers in Illinois, 64 Iowa, 65 Michigan, 66 New Jersey, 67 Oregon, 68 Washington, 69 and Wisconsin.** 70 In its most fully developed iterations, the model is consistent: through ballot initiative, executive action, and/or legislation, a public entity is created (or, alternatively, the state or an existing subdivision of the state is assigned this role) and becomes the employer of the workers for collective bargaining purposes. **71 By law, the workers gain the right to organize and bargain collectively with the public authority over those terms and conditions of employment within the authority’s control, which primarily (and sometimes exclusively) are wages and benefits.** 72 Reflective of the nature of the services provided by home care workers and home-based child care providers, decisions regarding the hiring, firing, and supervision of workers are often reserved for the consumers of home care services and the families receiving child care services. Thus, such decisions may not be the subject of collective bargaining between workers and the public authorities. 73 Reflecting similar concerns, home care workers and home-based child care providers are prohibited by many of these state laws from striking. 74 The results of these state efforts to expand labor law coverage into sectors of the workforce excluded from the federal regime have been significant. In 1999, in the largest successful organizing drive since 1937, 74,000 home care workers in Los Angeles unionized. 75 And since 1999, more than 300,000 home care workers and 130,000 home-based child care providers nationally have gained union representation through rights granted and procedures established by state law. **76 With unionization, these workers have made impressive gains. In recent years, home care workers in Illinois secured wage increases of 149%, in California 147%, and in Oregon 42%. 77 Illinois child care workers won a 35% wage increase over the first three years of their new collective bargaining agreement.**

78

## State action can solve, there is already a movement

Jenny Wilson, February 7, 2017, Hartford Courant, College Athletes As Employees? That raises questions in Connecticut, <http://www.courant.com/sports/uconn-huskies/hc-ncaa-paying-athletes-union-0208-20150207-story.html>.

**A state legislator introduced a bill this session that would define some college athletes at public institutions as employees,** allowing them to collectively bargain for increased benefits, such as better medical coverage, compensation when their name or likeness is used — and perhaps even wages. The bill is part of a national movement for increasing benefits for student athletes, which has led to significant changes in the NCAA in the past year alone. But the union

proposal raises significant questions in Connecticut. .... **Rep. Matthew Lesser, D-Middletown, introduced a bill that would define a student athlete as an employee if he or she were on a scholarship of 90 percent or more and played a revenue-producing sport.** As the legislation is currently written, UConn football and basketball players would be the only college athletes in the state defined as employees for collective bargaining purposes.

## State Innovation Critical to the Economy

### State innovation is key to economic competitiveness

**DeMuth 11** – Christopher, president of AEI from December 1986 through December

2008, J.D. @ University of Chicago, “Beware the Erosion of Competition”

<http://www.aei.org/article/society-and-culture/free-enterprise/beware-the-erosion-of-competition/>

Competition is a fact of life--the driving force of biological evolution and a constant presence in all human interactions. It is also a method of organization, used to promote efficiency and excellence and to resolve conflict peaceably. Competition is the key to the success of private-market economies and is used in many other areas; for example, the Nobel and Pulitzer prizes spur competition in the sciences and in journalism. Even when we don't like competition when we face it in our personal lives, we appreciate its benefits and admire it in action--from Steve Jobs to Li Na. The American Constitution uses competition to promote good government Regular democratic elections limit incumbents' hold on power and open succession to outside competition. The "separation of powers" in our national government forces Congress and the president to compete for public favor and to balance each other's excesses; the 2010 election is only the latest to demonstrate that Americans like their government divided. Under our federalist system, states compete for citizens and employers by offering different mixes of schools, transportation, public amenities, regulations, and taxes--think of booming Texas versus bankrupt California. And the federal and state governments compete with each other, as in the current state challenges to the Affordable Care Act (Obamacare) and the federal challenge to Arizona's immigration law. The Constitution also protects and promotes private competition. The First Amendment is more than a matter of individual rights: it also ensures unbridled competition in the supply of news, religious faiths, political creeds, and information of all kinds. These are great goods in themselves and also keep political officials relatively honest and well-informed. And out of mischief: the First Amendment averts political-religious violence, stemming from the prospect of a state religious monopoly, of the sort that was common in England and Europe when the Constitution was drafted and that remains a terrible problem in the Arab Muslim world today. Finally, the Constitution contains many provisions protecting private property and free economic competition. The Founders regarded competitive enterprise as a critical source of prosperity and national strength. They also hoped that numerous competing and conflicting interests would cancel each other out politically, thereby weakening demands for special-interest favoritism. The competitive nature of the American system means that our government is often fractious, muddled, and indecisive. As a result, we hear frequent calls for a parliamentary system where the executive is a handmaiden of the legislature. But parliamentary systems are prone to instability--especially in the face of crises, when legislative divisions can cause the government to fall at the worst possible time. Also, authoritarian governments such as China's are sometimes envied (sotto voce) for their superior decisiveness and orderliness. But authoritarian governments become corrupt, sclerotic, and insular over time. The American regime, now 222 years old, has outlasted hundreds of regimes that looked stronger for a time but came to ignominious and often ruinous ends. In government as in biology, competition promotes resilience and adaptability. Our political system is, however, becoming markedly less competitive. State policy competition is being supplanted by "cooperative federalism"--as a result of federal policies (such as Medicaid) that encourage state uniformity and judicial policies that permit states to "export" taxes and regulatory requirements to citizens of other states. The National Labor Relations Board's current effort to prevent Boeing from opening a new plant in South Carolina rather than Washington state is a conspicuous effort to inhibit state policy competition. But the most worrisome instance of declining political competition is the weakening--collapse might be a better word--of the separation of powers. Our national government is now, in many critical respects, a unilateral Executive government with occasional oversight by the Congress and Judiciary. Most domestic discretionary policy-making is now conducted by regulatory agencies. The agencies are executive-legislative hybrids that write and enforce rules--de facto laws which often have enormous economic consequences--under very broad delegations of authority from the Congress. The migration of law-making from the Congress to regulatory agencies has been underway for many decades, but has accelerated dramatically since the financial crisis of 2008. In the course of the financial crisis, the Federal Reserve Board and Treasury Department made financial commitments of more than \$2 trillion, used regulatory powers aggressively to arrange mergers of private banks, and bailed out and acquired substantial control over scores of major financial institutions and two automobile companies. The major decisions were all made within the executive branch, with scant congressional involvement. Congress was outraged--yet promptly acquiesced through supporting legislation. And then, a year later, Congress passed two laws--the Dodd-Frank Act and Affordable Care Act--which set new standards of legislative delegation. Although both statutes are very long, they decide very little; instead they create new regulatory agencies and launch many hundreds of new rule-making proceedings, under extraordinarily vague standards that leave the serious policy choices to the agencies. The new structures of national policy in the financial and health-care sectors are still largely unknown to be determined as the agency proceedings run their course. But one thing is certain: both sectors will become much less competitive. A few large financial institutions will be designated "systemically important" and thereafter operate

under the government's protection. When power is concentrated in government, it becomes concentrated in the private sector as well.

## Answers to: Federal Preemption

### No, states can act in a way that blocks federal preemption

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<https://dash.harvard.edu/bitstream/handle/1/10488716/sachslaborlawrenwal.pdf?sequence=1>

By assuming the role of employer and collective bargaining partner for these atypical workers, state governments are stepping into the breach left by the NLRA's exclusion of an expanding segment of the U.S. labor force. A second exception to federal labor preemption doctrine has left room for a second

body of emerging state and local labor law. **Namely, states and localities are subject to federal labor preemption only when they "regulate." But when state and local governments act in**

**their "proprietary" capacity, they are freed from preemption scrutiny.**<sup>79</sup> Thus, through

legislation aimed at employers who receive public funds or work on public contracts, states and localities are also attempting to reorder the rules governing employer and union behavior during organizing campaigns. In some instances, these statutes directly define an alternative range of permissible and impermissible conduct. In other instances, the statutes mandate that unions and employers reach a private accord that sets the relevant parameters.<sup>80</sup> Recent legislation in California and New York exemplifies the former type of state labor law, often characterized as "state neutrality laws."

<sup>81</sup> California Assembly Bill 1889 (the "Cedillo Act") prohibits employers who receive state funds from using those funds to "assist, promote, or deter union organizing."<sup>82</sup> Similarly, under New York Labor Law section 211-a, no employer in the state who receives any state funds may use those funds to hire or pay contractors or employees to encourage or discourage union organization or participation.<sup>83</sup> Although both laws apply only to employers

who receive state funds, their impact is quite far reaching.<sup>84</sup> **Through statutes like the Cedillo Act and section 211-a,**

**states encourage—and for employers who receive a significant proportion of their income**

**from state sources, strongly encourage—employer neutrality on the question of union**

**representation.** Another emerging body of state and local law does not itself impose rules for organizing, but rather requires covered employers—again the recipients of certain state funds or contracts—to enter into agreements with unions that establish such alternative rules. These laws are generally classified as "labor peace" legislation, although there has been substantial variation in this body of state and local law as well

## Answers to: Federal Best

### Federal action isn't working

Benjamin Sachs, 2007, Harvard Law & Policy Review, Labor Law Renewal, Joseph Goldstein Fellow and Visiting Lecturer in Law, Yale Law School  
<https://dash.harvard.edu/bitstream/handle/1/10488716/sachslaborlawrenwal.pdf?sequence=1>

r law. With the National Labor Relations Act 1 (NLRA), Congress moved to encompass all of American labor policy within a single federal statute to be interpreted, administered and enforced by a single federal agency. When it came to labor law's core functions—facilitating and regulating the self-organization of workers and the collective interactions between labor and management—there was to be a single legal channel: **Neither other federal laws nor state or local legislation was to interfere with the dominance of the NLRA and its administrative agency, the National Labor Relations Board. 2 Today, however, this centralized regime of labor law is no longer functional.** The current diagnosis points to two basic pathologies. **First, and most fundamentally, the NLRA fails to protect workers' ability to choose to organize and bargain collectively with their employers. 3 Second, the NLRA is ill-fitted to the contours of the contemporary economy, and increasingly out of step with its demands.**



## Alternative Solutions

### **Don't let them be employees, but let them use their own image and likeness**

Jake Simpson, 2014, August 7, The Atlantic, Of course student athletes are university employees, <https://www.theatlantic.com/entertainment/archive/2014/04/of-course-student-athletes-are-university-employees/360065/>

Taylor believes the best possible outcome doesn't involve universities recognizing student-athletes as employees, but rather allowing college athletes to profit off their images and likenesses. Taylor said the inability to profit off his brand as an All-American wrestler hindered his ability to make money for himself in the offseason. "If I could have run a wrestling camp using my name, my brand and my image, that would have been significant to me as a college athlete," he said. "That was an opportunity that was taken from me."

### **Letting Athletes use their own image would allow them to profit. Liangelo Ball Proves**

Rodger Sherman, 8-31-2017, "LaMelo Ball Might Be Saying Farewell to College Eligibility With His New Shoe," Ringer, <https://www.theringer.com/2017/8/31/16236514/lamelo-ball-new-shoe-big-baller-brand>

Hypothetically, **Ball is set to join UCLA in 2019. But he's now in an ad for his own signature shoe**, which (a) looks like a regular pair of basketball shoes got super into third-wave ska and (b) can now be **preordered for \$395 at Big Baller Brand's website**. A Big Baller Brand spokesperson told ESPN's Darren Rovell that LaMelo's eligibility is up **to the NCAA to decide**. I have a funny feeling I know how the NCAA will decide. **The NCAA's website states that prospective athletes might affect their eligibility if they appear in a commercial or receive an endorsement before attending college**. The caveat is that if the athlete is selected for the commercial for reasons besides their athletic talent, they might maintain eligibility. **The company's tweet specifically mentions that Ball is "the first high school player ever to have his own signature shoe," so that'll be a tough case to argue**. I don't see any way LaMelo ends up eligible to play college basketball if the Balls sell his shoe. But it doesn't seem like this was an oversight by the Balls. **The article about the shoe release on Slam's website indicates the family has been careful not to include the middle Ball brother, LiAngelo, in any advertising or promotional photographs because he's currently a freshman at UCLA**. Before reading that, I assumed the Balls were pre-emptively Cooper-ing middle child LiAngelo, the son that father LaVar has publicly said is not talented enough to make the NBA. Perhaps UCLA isn't the future for LaMelo. Other players, from Brandon Jennings to Emmanuel Mudiay, have found ways to play professionally in between college and the NBA without hurting their draft stock. If LaMelo is good enough, that's a pathway available to him. It's a move that would fit with this family's philosophy. LaVar Ball has decided the best route in any situation is to keep everything within the family. Lonzo didn't sign with Nike or Under Armour or Adidas, turning down million-dollar deals to jumpstart Big Baller Brand. LaMelo doesn't play for somebody else's AAU team, but the Big Baller Brand team, coached by LaVar. Their new reality show isn't on any TV channel—you can watch it on Facebook. LaVar can barely stand the fact that somebody else is allowed to coach his sons at Chino Hills, as they've gone through two coaches in two seasons in spite of their major on-court success. A few years ago, the Balls needed the NCAA system. Without the exposure that came with playing at one of the highest-profile schools in college hoops, Lonzo wouldn't have achieved the fame he has now. But now, the Balls are household names. Rovell said earlier this year that a story on LaVar Ball was one of the top-five most-read stories on ESPN's website in 2017. You realize how wild that is? ESPN writes stories about literally every sport. It covers the Super Bowl and the NBA and March Madness and everything. And the most read thing on their site was about a player's dad saying stuff. Why do you think I'm writing this right now? Ball-family-related content pays the bills. I'll starve if I don't get up seven LaVar Ball thinkpieces this month.

### **Alternative – enhanced scholarships for name/likeness**

Chaz Gross, JD, April 2017, Chicago-Kent Journal of Intellectual Property, Modifying Amateurism: A Performance-Based Solution To Compensating Student--Athletes For Licensing Their Names, Images, And Likenesses,

<http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1177&context=ckjip>

This Note proposes a solution to the amateurism with compensation problem, suggesting that **the NCAA allow conferences, colleges, and universities to award student--athletes with performance-based scholarships for both academic and athletic achievements.** <sup>n22</sup> This proposal allows (1) collegiate athletic programs to provide compensation to student--athletes in all sports based on the school's revenue from the use of students' names, images, and likenesses; (2) athletic departments to structure the amount of money that is awarded to student--athletes in a way that prevents possible tax implications and maintains the student--athletes' amateur statuses; n23 and (3) the NCAA to reopen the market for video game development to increase revenue and consumer demand. <sup>n24</sup>

### **Alternative to paying athletes**

Allison Schrage, Paying college athletes won't solve the big problem with US college sports, March 21, 2016. <https://qz.com/625014/payingcollege-athletes-wont-solve-the-big-problem-with-us-college-sports/>

These failures won't be solved by paying student athletes a small salary. Here is a better way to spend the NCAA revenue:

Guaranteed scholarships for five years, even if the student gets injured

Allow those in high-revenue sports to take fewer classes during the season

Hold student athletes accountable for taking real classes and earn decent grades

Offer them the academic support they need to learn, not just to barely scrape through with a pass

Placing a higher value on education and guaranteeing student athletes an extra year over the four-year norm for a US college course means they can focus on getting a good degree if a pro career doesn't materialize.

Paying student athletes would make them into employees. That undermines the very concept of student athletics and also gives universities permission to short-change the players. It's better to fully embrace the concept of student athlete, and hold universities accountable for the education they promised to provide.

### **Many alternatives to paying athletes**

Nicholas Kraft, Assistant Professor at the School of Communication at Ohio State University, August 21, 2017, Should College Athletes be Paid? <http://u.osu.edu/sportsandsociety/2017/08/21/should-college-athletes-be-paid/>

The preponderance of the arguments here, as well as the general sentiment of the panels, was that, regardless of the issues, paying athletes was not necessarily the right solution. In fact, the athlete's panel in particular, posited a number of remedies that were quite sensible and addressed a number of the issues. Among these were using total cost of attendance in calculating scholarship award levels (which has already been widely implemented), continuing tuition support for athletes once they are done competing (which OSU already provides), continuing medical support, improved academic support as well as more substantive academic programs, limitations on practice and participation hours and additional training in managing finances and other life skills. There are other actions that could be considered, including deferred compensation and eliminating the NBA and NFL rules limiting entry to the professional ranks for a period of time. These more drastic changes have their own issues.

### **Many alternative options**

Ramogi Huma, National College Player's Association president, Let's Compensate College Athletes By Making Sure They Graduate, Business Insider, April 9, 2012, <http://www.businessinsider.com/lets-compensate-college-athletes-by-ensuring-that-they-graduate-2012-4>

Despite outlining the feasibility of paying football and men's basketball players, the NCPA is not advocating for players to receive salaries. We are advocating for basic protections and an increase in graduation rates. For instance, the NCAA does not mandate that colleges pay for any sports-related medical expenses—it's optional. This arrangement too often leaves players stuck with sports-related medical bills. Permanently injured players can have their scholarships taken away. College football and men's basketball players' graduation rates hover around 50 percent and, despite the billions of dollars in revenue, the NCAA caps full scholarships below the price tag of the school. This leaves unsuspecting players with about \$3000-\$5000 per year in out-of-pocket educational-related expenses. The NCPA is advocating for increased "payments" to players in the form of continuing education to increase graduation rates, coverage for sports-related medical expenses, the elimination of the scholarship shortfall, and the continuation of scholarships for athletes who are removed from their teams while in good academic and disciplinary standing. Without an intervention, the \$800 million in new annual TV revenue will

continue to flow exclusively toward coaches salaries, new stadium luxury boxes, and mega athletic complexes that have nothing to do with the NCAA's expressed mission of educating college athletes.

### **Can improve the current system without making them employees**

Max Herrera, Student-athletes are students, not professionals, The Aragon Outlook. April 24, 2014, <http://aragonoutlook.org/2014/04/student-athletes-students-professionals/>

Student athletes should not be paid, but the current system could use some improvements. Colleges need to prove that academics are the first priority. University of Alabama head football coach Nick Saban is currently the fourth highest paid coach in America. Rather than giving away \$7 million in revenue a year to Saban, Alabama should be investing in education, such as paying revered professors and augmenting resources to help their athletes. One of the biggest improvements that can be formed is a stipend system. Rather than a salary, athletes can have a small amount of extra money strictly for things such as flying home to see their families or going out with friends (currently not included in a scholarship). With no time to work, athletes have no chance of acquiring money needed for these activities. While a salary is impractical and unnecessary to solve this, a small stipend can. The NCAA has started this as of last week when the Legislative Council deemed that there shall be no bans on any food amounts for its Division I member schools and their student-athletes. However, it's doubtful that 385-pound Alabama offensive tackle Brandon Hill ever had a problem finding a meal before the rule change.

## **Articles Don't Support Paying ALL student Athletes**

**When articles on this issue discuss “college athletics” they do not refer to all student athletes**

Justin C. Vine, 2015, JD, Cardozo Public Law, Policy & Ethics, Leveling the playing field: Student athletes are employers of their own university, <http://www.cplpej.org/wp-content/uploads/2015/08/Vine-Justin.pdf>

n1. For the purpose of this Note, **“college athletics” is limited to men's football and basketball programs**. Both of these sports are universities' highest revenue generating sports and are therefore most reflective of the problem discussed in this Note.

**Earl Scott is only argue for payment in revenue generating Division I sports**

Earl Scott, Master's Candidate, Wake Forest University, “MPROVING OPPORTUNITIES FOR TODAY'S STUDENT-ATHLETES WITHIN THE NCAA,” May 2015. [https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr\\_wfu\\_0248M\\_10693.pdf](https://wakespace.lib.wfu.edu/bitstream/handle/10339/57114/ScottJr_wfu_0248M_10693.pdf) John T. Llewellyn, Ph.D., Advisor Anthony S. Parent Jr., Ph.D., Chair Michael D. Hazen, Ph.D.

My research paper will examine whether today's student athletes are compensated fairly. This will be based off of the amount of money they generate and the amount of money they receive in return. **I will focus mainly on today's big-time college sports, which is considered to be men's basketball and football at the Division I level, because those are the two most lucrative college sports in our country.** I will look at the amounts of money authorities make at universities for managing these players, along with the revenue different businesses make from being tied to college sports, in order to investigate whether or not authorities are distributing money fairly to their student-athletes. I will make comparisons between the average amount of time a student-athlete is required to partake in sports-related activities each week, and compare that time frame to the average American working a job. These types of examples will show that big-time college sports have turned into a more professional-like system as opposed to being an amateur setting. As a result, this will prove that the NCAA system is damaged.

# College Sports Bad

## Widespread injuries in college sports

Jim Thomas has been a freelance writer since 1978. He wrote a book about professional golfers and has written magazine articles about sports, politics, legal issues, travel and business for national and Northwest publications. He received a Juris Doctor from Duke Law School and a Bachelor of Science in political science from Whitman College.]. "Frequency of Injury Among College Athletes," LIVESTRONG, <https://www.livestrong.com/article/513231-frequency-of-injury-among-college-athletes/>.

Two entities that compile injury statistics for the roughly 380,000 male and female college athletes. **The NCAA and the National Athletic Trainers' Association have an injury surveillance system that collects injury reports submitted by trainers. It has been in operation since 1988. Through 2004, there were 200,000 injury reports -- filed when an athlete misses a day or more of practice or competition -- which works out to about 12,500 injuries per year.** That number has been relatively consistent over the years. The National Center for Catastrophic Sports Injury Research in North Carolina has kept statistics on college sports injuries since 1982. Both organizations aim to reduce the number of injuries in college sports.....Male Athletes **Concussions at all levels of football are a tremendous problem as of 2011, with a growing number of retired professional football players suffering from dementia after repeated concussions during their playing days. Among college football players, 34 percent have had one concussion and 30 percent have had two or more concussions.** As the University of Pittsburgh Department of Neurological Surgery reports, if you have a second concussion, even a minor one, soon after the first concussion, you might die. A total of 26 deaths, most occurring since 2000, are attributed to "second impact syndrome." **The neurological effects of concussions in college athletes also can result in learning disabilities and severe memory impairments. There is a lower, but significant, incidence of concussions in soccer as well. While other sports, such as ice hockey and lacrosse have spectacular body-to-body contact and collisions during play, football still has the highest injury rate with 36 injuries per 1,000 male athletes. In addition to the high number of collisions in football, it also has the highest number of knee and ankle injuries.** Cheerleading is by far the most dangerous sport for women athletes. The National Center for Catastrophic Sports Injury Research found that cheerleading accounted for 70.5 percent of catastrophic injuries -- fatal, disabling or serious -- suffered by college athletes. The high-flying routines create unique risks for cheerleaders.

## Training increasing injury risks

Dan Childs, ABC News Managing Editor, Medical Unit, Dangerous Games: College Athletes at Risk of Injury, ABC News, May 2007.

<http://abcnews.go.com/Health/Exercise/story?id=3206483&page=1>

**With improved regimens and added training, it seems as if college athletes are getting larger and stronger with every passing year. But as linebackers, power forwards and strikers increase their size and speed, some worry that they could also be increasing the risk of serious injuries on the field.** "I think the training of athletes is improving, leading to bigger, faster, stronger athletes," said Christopher Ingersoll, editor-in-chief of the Journal of Athletic Training and a professor of sports medicine at the University of Virginia. **"When you put these big, strong bodies in a situation where they're going to collide with each other and with equipment, these things are going to happen," he said. "Maybe we're playing a little rougher."** This week, sports medicine researchers gained a new tool to assess exactly how much rougher these athletes could be playing. In a special spring issue of the Journal of Athletic Training, the National Athletic Trainers' Association and the National Collegiate Athletic Association released the largest ongoing collegiate sports injury database in the world. **The data covers injuries recorded in the NCAA Injury Surveillance System over a 16-year period, covering 15 collegiate sports.** The good news is that, as a whole, injury rates appear to be holding steady. "It is a fairly level curve. There has been no significant increase or decrease over the years," said Randall Dick, one of the study's authors and associate director of research for the NCAA. "Even though there has been an influx of people into intercollegiate athletics, we are still managing them well in terms of injury prevention," Ingersoll said. **But certain types of injury are still on the rise. And as young athletes train harder, becoming ever more competitive, some worry that the injuries they sustain could have lifelong implications.** Are Sports More Dangerous Today? Numbers aside, it is hard to dispute the notion that youth and collegiate sports today are more competitive than ever. "Sports have changed," said Dr. Edward Wojtys, chief of sports medicine at the University of Michigan Medical School. "I don't think there's any doubt that the sports kids are playing now are not the sports they were playing 20 years ago." **This added intensity may be leading to young athletes who hit harder, turn faster, and push themselves farther than those of generations past, leading to increases in certain types of injuries. "One of the things that stood out was the fact that injuries of the anterior cruciate ligament, or ACL, across all sports appeared to be on the rise," Dick said. "It was the same with concussions."** And this intensity isn't exclusive to the collegiate level. Wojtys says he only used to see ACL injuries in adults. Today, he says, girls as young as 12 and boys ages 13 and 14 are showing up in his clinic with this type of injury, and he says he's probably treated more than a dozen such cases so far this year. "I think that **20 years ago, we saw some things that then were rare, but now are quite regular.**" Dr. C.T. Moorman, director of sports medicine at Duke University, says that in college sports, female athletes seem to be markedly prone to debilitating ACL episodes. "Women have been particularly hit with these injuries, especially in field sports and basketball," Moorman said. "The rate is almost double that seen in men, and in some sports, like basketball, it is almost five times higher." Moorman says he believes proper training, in some cases, has not kept up with the influx of participants in college sports, which could lead to these injuries. **As for concussions, part of the apparent increase could be due to better detection methods for these injuries, compared to 16 years ago,** Dick says. But, citing soccer and basketball as two examples, Dick added, "There are a lot of sports that are not traditionally looked at as contact sports where the mechanism of injury is primarily player contact." A Painful Passion **Part of the problem may also be the increasingly competitive mentality that has come to typify the pursuits of young athletes.** "The competitive level keeps getting higher and higher," Ingersoll said, adding that

year-round training without seasonal breaks could lead to a rise in injuries due to overtraining without sufficient downtime. "I don't know that these data reflect that phenomenon, and I'm very concerned about that," he said. "I think we're going to see some more overtraining injuries." And injuries can have dire consequences for young athletes. "A lot of people look at this stuff and say, 'no big deal.' But that's not true." Ingersoll says **in the U.S. every year, there are 400,000 ACL injuries.** Even with successful treatment, he says, the average time to early onset of osteoarthritis in these patients is seven years. If teenage and college-age athletes are getting these injuries now, he says, this means that they will likely begin to experience osteoarthritis as early as in their 20s. "What are the chances they will be able to exercise and take care of themselves in their 40s, 50s and 60s in order to prevent diabetes, heart disease and other diseases?" he asked. "We're creating a whole generation of kids who might not be able to do this. We're starting to see the huge public health issue that this is." Saving Young Athletes But Dick said that, despite the fact that injuries are still an unfortunate reality in college sports, the newly released research will likely be an important tool that "will hopefully stimulate a new round of injury prevention measures."