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The Whole Nine Yards: Should Student-Athletes Score an Education and Compensation?

This Article analyzes whether student-athletes are adequately compensated for their contributions. It also explores whether colleges and universities have any fiduciary duty to ensure a certain modicum of academic success and career development.

I. INTRODUCTION

National Collegiate Athletic Association (“NCAA”) Division I athletics have been an integral part of American culture for decades.¹ With the advent of multimedia technologies, collegiate sports now reach a national audience, thus increasing the accessibility for fans to follow their favorite teams.² Due to the widespread commercialization of large collegiate sporting events such as the Final Four and the College Football Playoff, collegiate sports have become a major revenue generating business, both at the university and corporate level.³ Millions of dollars in revenue are generated “through ticket sales, endorsement deals, broadcasting deals and jersey sales.”⁴ Everyone involved, from corporate sponsors to university administrators to

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1. See Thomas Rosandich, *Collegiate Sports Programs: A Comparative Analysis*, 122 *EDUC.* 471, 472–75 (2002); Taylor Branch, *The Shame of College Sports*, *THE ATLANTIC*, Oct. 2011, <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/> (last visited Sept. 20, 2017).

2. See, e.g., *NCAA March Madness Live VR App to Offer Enhanced Virtual Reality Experience for 2017 NCAA Division I Men’s Basketball Championship*, NCAA (Mar. 21, 2017, 1:28 PM), <http://www.ncaa.com/news/basketball-men/article/2017-03-20/ncaar-march-madnessr-livetm-vr-app-offer-enhanced-virtual>.

3. See Michael S. McLeran, Comment, *Playing for Peanuts: Determining Fair Compensation for NCAA Student-Athletes*, 65 *DRAKE L. REV.* 255, 260–61 (2017); Johnathan Berr, *March Madness: Follow the Money*, CBS NEWS (Mar. 20, 2015, 5:45 AM), <https://www.cbsnews.com/news/march-madness-follow-the-money/>; *Playoffs are a Revenue Bonanza for College Football*, NBC NEWS (Jan. 1 2015, 2:42 PM ET), <https://www.nbcnews.com/business/business-news/playoffs-are-revenue-bonanza-college-football-n277641>.

4. See generally Krikor Meshefejian, *Pay to Play: Should College Athletes be Paid?*, *Opposing Viewpoints in Context* (2008), <http://ic.galegroup.com/ic/ovic/ViewpointsDetailsPage/DocumentToolsPortletWindow?displayGroupName=Viewpoints&jsid=cefb8901aad2960f1f563899801e024&action=2&catId=&doc>

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coaches alike, receives a portion of the “financial pie.”⁵ The party responsible for these economic rewards, the student-athlete, is arguably left out of this equation.⁶ Therefore, it is imperative to explore certain conflicts that arise when college athletes are exploited for their on-field talent, as the academic component suffers at the student-athlete’s expense.⁷

The critical issues that will be addressed in this Article are: (1) whether student-athletes should be compensated for their player likeness, on-field performance, right to publicity and income generated from apparel sales, television, mobile application(s), live streaming deals, advertisements, and other sources; and (2) what, if any, fiduciary duty a college or university has to a scholarship athlete to ensure both the academic success of the student-athlete during matriculation as well as post-graduation career development.

By examining the disparate proportion of income generated by college athletics in comparison to the compensation received by the student-athlete in the form of athletic scholarships, this Article demonstrates that student-athletes do not receive the compensation they deserve for a myriad of reasons. In addition, this Article will reveal that while colleges may not have a “legal” fiduciary duty to ensure the academic success of both its current four-year varsity scholarship athletes and former scholarship players, colleges do have a reasonable duty to provide appropriate resources and/or support necessary for student-athletes to achieve a certain modicum of academic success and post-graduation career enhancement.

II. ANALYZING COMPENSATION ISSUES WITH RESPECT TO STUDENT-ATHLETES

A. Player Likeness

A critical issue in the debate over compensation of student-athletes is whether student-athletes should be compensated for their player-likeness.⁸ Universities often

umentId=GALE%7CEJ3010490203&u=sand55832&zid=bfdd9a8a6cf2a5dc620970f20529569f (last visited Nov. 10, 2017).

5. See McLeran, *supra* note 3, at 260–61; Ramogi Huma & Ellen J. Staurowsky, *The \$6 Billion Heist: Robbing College Athletes Under the Guise of Amateurism*, NAT’L C. PLAYERS ASS’N, 9 (2012), http://assets.usw.org/ncpa/pdfs/6-Billion-Heist-Study_Full.pdf.

6. See Huma & Staurowsky, *supra* note 5, at 9, http://assets.usw.org/ncpa/pdfs/6-Billion-Heist-Study_Full.pdf.

7. *Id.* at 8.

8. See, e.g., *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049, 1049 (9th Cir. 2015) *cert. denied*, 137 S. Ct. 277 (2016) (anti-trust lawsuit filed by current and former college athletes against the NCAA alleging Sherman Act violations for restraining trade in relation to players’ names, images, and likenesses); Travis Waldron, *ESPN’s Jay Bilas Exposes NCAA’s Hypocrisy on Amateurism with Simple Web Search*, THINKPROGRESS (Aug. 7, 2013), <https://thinkprogress.org/espns-jay-bilas-exposes-ncaa-s-hypocrisy-on-amateurism-with-simple-web-search-dba4300df7fd/>.

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print media guides for some of their larger or more lucrative programs such as football and basketball.⁹ These media guides, along with game schedules, posters, and radio and television advertisements feature a student-athlete's likeness in order to garner interest in the particular athletic program.¹⁰ Arguably, student-athletes waive their right to player-likeness upon their agreement to accept an academic scholarship.¹¹ The rationale behind this concept is rooted in an underlying contractual relationship amongst the parties whereby one party, the student-athlete, in effect, agrees that the university can use his/her image for the benefit of the university in exchange for the university's pledge to provide a substantially discounted opportunity to attend college.¹²

In the context of player-likeness, proponents of student-athlete compensation argue that an individual's likeness provides the vehicle to sell tickets, collegiate apparel, concessions and obtain lucrative corporate partnerships.¹³ Therefore, proponents contend that student-athletes should be compensated for the usage of their likeness since their presence is the primary catalyst facilitating this form of commerce.¹⁴

Critics of student-athlete compensation for usage of player-likeness claim that student-athletes receive compensation in the form of athletic scholarship, and therefore are sufficiently compensated.¹⁵ Critics believe that since the university provides the means for players to perform on national stages, thus facilitating a player's exposure to media attention and professional scouting, adequate

9. See, e.g., *Archive of Ohio State Football Statistics and Media Guides*, OHIO STATE BUCKEYES, <http://www.ohiostatebuckeyes.com/sports/m-footbl/spec-rel/statistics.html> (last visited Oct. 12, 2017) (providing links to Ohio State football media guides for the last fifty years).

10. See Maureen A. Weston, *Gamechanger: NCAA Student-Athlete Name & Likeness Licensing Litigation and the Future of College Sports*, 3 MISS. SPORTS L. REV. 77 (2013) (discussing NCAA rule requiring athletes to allow NCAA to use name and likeness for promotional purposes, and exploring ways to resolve antitrust and publicity rights issues NCAA is litigating).

11. See *id.* at 84–86; John Keilman & Jared S. Hopkins, *College Athletes Routinely Sign Away Rights to be Paid for Names, Images*, CHI. TRIB. (March 26, 2015, 8:23 PM), <http://www.chicagotribune.com/sports/college/ct-ncaa-waivers-met-20150326-story.html>.

12. Weston, *supra* note 10, at 84 – 86.

13. See Huma & Staurowsky, *supra* note 5, at 9; Branch, *supra* note 1, at 18–19.

14. See Branch, *supra* note 1, at 4–5; Sean Gregory, *Time Cover Story: It's Time to Pay College Athletes*, TIME (Sept. 16, 2013), <http://content.time.com/time/subscriber/article/0,33009,2151167,00.html>.

15. See Alex Prewitt, *Large Majority Opposes Paying NCAA Athletes, Washington Post-ABC News Poll Finds*, WASH. POST (Mar. 23, 2014), https://www.washingtonpost.com/sports/colleges/large-majority-opposes-paying-ncaa-athletes-washington-post-abc-news-poll-finds/2014/03/22/c411a32e-b130-11e3-95e8-39bef8e9a48b_story.html?utm_term=.b5a20b279d89.

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compensation is therefore provided in exchange for a university's right to exploit the student-athlete's player likeness.¹⁶

B. Right to Publicity

In the context of college athletics, the right to publicity is another major topic surrounding the issue of compensation.¹⁷ The right to publicity is derived from the tort right of privacy and protects an individual from unauthorized commercial exploitation of their identity.¹⁸ Right to publicity pertains to issues protecting an individual against defamation or libel.¹⁹ Under the current system, professional athletes and entertainers are entitled to a right to publicity and are paid accordingly.²⁰ NCAA collegiate athletes also have a right to publicity, however, their compensation is solely education-related because they are classified as "amateurs."²¹ In other words, NCAA collegiate athletes can only be compensated for the full cost of attendance at their respective college/university.²² NCAA collegiate athletes, therefore, cannot be "offer[ed] cash sums untethered to educational expenses"

16. See Brian Sweany, *Steve Patterson, UT's New Athletic Director, on Student-Athletes Profiting from Their Name and Likeness*, TEXAS MONTHLY, Aug. 15, 2014, at 3–4, <https://www.texasmonthly.com/the-stand-up-desk/steve-patterson-uts-new-athletic-director-on-student-athletes-profiting-from-their-name-and-likeness>.

17. See *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268, 1268 (9th Cir. 2013) (affirming that video game developer's use of former college athlete's likeness in its video games was not protected by the First Amendment, therefore former athlete's right-of-publicity claims were not barred by California's anti-SLAPP statute); Oliver Herzfeld et al., *Athletes in Video Games: Balancing Publicity Rights and the First Amendment*, FORBES, Sept. 22, 2016, at 1–2, <https://www.forbes.com/sites/oliverherzfeld/2016/09/22/athletes-in-video-games-balancing-publicity-rights-and-the-first-amendment/#46a87e855b3e>.

18. Alice Haemmerli, *Whose Who? The Case for a Kantian Right of Publicity*, 49 DUKE L.J. 383, 386–87 (1999).

19. *Id.* at 453.

20. In 2016, it is estimated that athletes Roger Federer, LeBron James, and Phil Mickelson each made over fifty million dollars in endorsement deals based solely on their name, image, and likeness. See *Top 100 Highest-Paid Athlete Endorsers of 2016*, OPENDORSE (June 29, 2016), <http://opendorse.com/blog/2016-highest-paid-athlete-endorsers/>. As for entertainers, Beyoncé Knowles-Carter inked a fifty-million-dollar endorsement deal with Pepsi in 2012 for the use of her name, image, and likeness. Allison Aubrey, *This is How Much Celebrities get Paid to Endorse Soda and Unhealthy Food*, NATIONAL PUBLIC RADIO (June 7, 2016, 5:57 PM), <http://www.npr.org/sections/thesalt/2016/06/07/481123646/this-is-how-much-celebrities-get-paid-to-endorse-soda-and-unhealthy-food>.

21. See *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268, 1289 (9th Cir. 2013) (noting that the publicity rights of college athletes are remarkably restricted, and a college athlete's right of publicity is "extraordinarily circumscribed and, in practical reality, nonexistent."); *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1075 (9th Cir. 2015) (noting the NCAA "amateur" model restricts compensation to only education based benefits).

22. Although this may vary from school to school, the full cost of attendance usually includes: (1) tuition and fees; (2) room and board; (3) books and supplies; and (4) transportation. See *O'Bannon*, 802 F.3d at n3.

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because doing so would force the NCAA to “surrender[] its amateurism principles entirely.”²³

Not all legal scholars agree with the notion that, because an NCAA athlete is classified as an “amateur,” he/she cannot be compensated for exercising his/her right to publicity.²⁴ In *Whose Who? The Case for a Kantian Right of Publicity*, author Alice Haemmerli utilizes Kantian philosophy to “justify an autonomy-based right of publicity.”²⁵ Haemmerli argues that the right to publicity can be “an extension of human worth and autonomy.”²⁶ She suggests that the right of publicity is a “property claim grounded in Lockean labor theory.”²⁷ Under this framework, Haemmerli would likely contend that regardless of an individual’s status as an amateur athlete subject to NCAA regulations, the individual has an inherent right to exploit his/her right to publicity whether it be for pecuniary gain or simply for privacy reasons.²⁸

The argument against student-athletes retaining a right to publicity is that a college-athlete surrenders his/her rights to publicity when he/she accepts the NCAA regulations and terms governing athletic scholarships.²⁹ Critics may argue that since the university retains the rights to the student-athlete’s likeness for university related promotional brochures or marketing material, the student-athlete does not retain a right of action against college administrators or corporate sponsors who legally transmit materials with the student-athlete’s likeness.³⁰

C. On-Field Performance

NCAA Division I athletes perform on the field at the highest level of amateur athletics.³¹ The main issue in the context of compensation of student-athletes is whether an athlete should reap a portion of the financial benefits that he/she may

23. *Id.* at 1078–79.

24. *See, e.g.,* Huma & Staurowsky, *supra* note 5, at 14.

25. Haemmerli, *supra* note 18, at 383.

26. *Id.* at 390.

27. *Id.* at 388.

28. *See id.* at 428.

29. *See, e.g.,* Kendall K. Johnson, Comment, *Enforceable Fair and Square: The Right of Publicity, Unconscionability, and NCAA Student-Athlete Contracts*, SPORTS L. J., 1, 6, 13–14 (2012); Darren Heitner, *NCAA Fails Kicker Donald De La Haye And All Student-Athletes*, FORBES, Aug. 3, 2017, at 1–4, <https://www.forbes.com/sites/darrenheitner/2017/08/03/ncaa-fails-kicker-donald-de-la-haye-and-all-student-athletes/#1731d9493776>.

30. *See* Johnson, *supra* note 29, at 34.

31. *See generally* Gary R. Gray & Scott E. Crowell, *Risk Management Behaviors in NCAA Division I Athletic Programs*, 3 J. LEGAL ASPECTS SPORT 64, 64 (1993) (“NCAA Division I athletes compete at the highest level of intercollegiate sports in America.”).

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bestow upon the university.³² There is a quantifiable disparate proportion of income generated by student-athletes for university benefit in comparison to the compensation that student-athletes receive in the form of scholarships, financial aid packages, and the like.³³

In NCAA Division I Football, for example, if a college team qualified for a College Football Playoff Berth, the earning potential for a university could reach in the millions.³⁴ For example, in 2004 “the Atlantic Coast Conference generated \$17.7 million just from the [Bowl Champion Series] alone, not including individual schools’ tickets sales or team apparel.”³⁵ A single Bowl Champion Series berth could bring an individual university \$13 million in revenue.³⁶ When one considers that the average athletic scholarship being awarded today is approximately \$18,000, one might argue that this form of compensation pales in comparison to the substantial financial gain accumulated by the university.³⁷

The “Pay-for-Play” advocates are proponents of compensating student-athletes for their on-field performance.³⁸ They contend that “student-athletes are exploited by the universities for which they play in order to create a financial windfall for the universities.”³⁹ In the past decade, the two most popular and typically greatest funded college programs are basketball and football, of which the “revenue generated by these two sports has increased nearly 300% such that they now fund almost all other

32. See McLeran, *supra* note 3, at 256 (“As the National Collegiate Athletic Association (NCAA) has transformed into an organization that runs a billion-dollar industry, a debate has begun about whether student-athletes should be entitled to greater compensation than a one-year renewable athletic scholarship.”).

33. Audrey C. Sheetz, *Student-Athletes vs. NCAA: Preserving Amateurism in College Sports Amidst the Fight for Player Compensation*, 81 BROOK. L. REV. 865, 866 (2016) (noting that the college sports industry is roughly \$11 billion dollars and student athletes do not receive any revenue other than scholarships); Leslie E. Wong, *Our Blood, Our Sweat, Their Profit: Ed O'Bannon Takes on the NCAA for Infringing on the Former Student-Athlete's Right of Publicity*, 42 TEX. TECH L. REV. 1069, 1093–94 (2010) (discussing the massive disparity between the billions of dollars of revenue generated from the use of collegiate athletes images versus the scholarships given to the players in return).

34. *Revenue Distribution*, COLLEGE FOOTBALL PLAYOFF, <http://www.collegefootballplayoff.com/revenue-distribution> (last visited Sept. 24, 2017).

35. Mike Vivenzio, *Should Athletes Receive Compensation?*, THE PENDULUM ONLINE (Feb. 24, 2005), http://www.elon.edu/e-web/pendulum/issues/2005/02_24/sports/compensation.xhtml.

36. See *BCS Media Guide*, SPORTSWRITERS.NET, www.sportswriters.net/fwaa/news/2002/bcsguide03.pdf (last visited Sept. 25, 2017) (detailing the revenue distributions for universities based on the BCS Bowl game).

37. See *Average Athletic Scholarship per Varsity Athlete*, SCHOLARSHIPSTATS, <http://www.scholarshipstats.com/average-per-athlete.html> (last visited Sept. 25, 2017) (detailing the average amount of funding collegiate athletes receive).

38. Christopher W. Haden, *Foul! The Exploitation of the Student-Athlete: Student-Athletes Deserve Compensation for Their Play in the College Athletic Arena*, 30 J.L. & EDUC. 673, 674 (2001).

39. *Id.*

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sports programs.”⁴⁰ For instance, in 1991, University of Notre Dame signed a “five-year television deal worth \$38 million to broadcast all Notre Dame Football home games.”⁴¹ Hypothetically, if there are 100 scholarships per football team, each student-athlete should receive \$380,000 of that \$38 million for his/her efforts.⁴² Therefore, proponents of Pay-for-Play contend that the compensation received in the form of tuition is grossly disproportionate to the exorbitant profits retained by the university or college.⁴³

D. Income Generated from Apparel Sales

Colleges and universities reap significant financial benefits from the sale of college sports team apparel.⁴⁴ In the context of student-athlete compensation, it is crucial to examine the licensing and trademark issues that impact the bottom line in college athletics.⁴⁵ For example, “the NCAA has approximately 35 licensees for merchandise, 16 marketing partners, 10 official ball licensees, 200 different domain names, and 40 U.S. trademarks and service marks.”⁴⁶ Moreover, highly debatable issues arise as to whether student-athletes should be compensated in proportion to the amount of sales generated as an indirect result of the student-athlete’s athletic feats and whether or not a player should be entitled to sell his/her licensing rights on the open market.⁴⁷

Proponents of student-athlete compensation argue that the only reason the university is selling particular team apparel is, due in part, to the star college athlete’s appeal.⁴⁸ However, critics may argue that the university retains the rights to the logo,

40. Greg Skidmore, *Payment for College Football Players in Nebraska*, 41 HARV. J. LEGIS. 319, 319 (2004).

41. Richard Sandomir, *College Football; Notre Dame Scored a \$38 Million Touchdown on Its TV Deal*, N.Y. TIMES (Aug. 25, 1991) <http://www.nytimes.com/1991/08/25/sports/college-football-notre-dame-scored-a-38-million-touchdown-on-its-tv-deal.html>.

42. *Id.*

43. Haden, *supra* note 38, 673–74.

44. *Id.* at 673 (noting that NCAA member institutions benefit financially from lucrative contacts for things such as apparel and concession sales).

45. See ADAM EPSTEIN, *SPORTS LAW* 243–44 (Thompson: Delmar Learning ed. 2003).

46. *Id.* at 244.

47. See generally Michael Aiello, *Compensating the Student-Athlete*, 23 SPORTS L.J. 157, 166–67 (2016) (evaluating various compensation schemes for student athletes); Aaron Brooks & David Davies, *Exploring Student-Athlete Compensation: Why the NCAA Cannot Afford to Leave Athletes Uncompensated*, 34 J.C. & U.L. 747, 756–57 (2008) (exploring various compensation models and legislation including exempt players from NCAA restrictions and creating an open market competition system for schools to compensate students based on their value).

48. Arash Afshar, *Collegiate Athletes: The Conflict between NCAA Amateurism and a Student Athlete’s Right of Publicity*, 51 WILLAMETTE L. REV. 101, 117 (2014) (finding that “the profitability of collegiate merchandising is, in large part, attributed to the student-athletes that elevate the NCAA athletic experience”).

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trademarks, and licensing deals associated with the sale of college athletic apparel.⁴⁹ These critics contend that a student-athlete relinquishes any right to compensation in the form of licensing deals in exchange for a scholarship.⁵⁰

For example, the University of Michigan's apparel sells "better than any other public college" in the United States.⁵¹ The University of Michigan has licensing deals for the sale of 600 different products.⁵² In 1999, the total revenue generated from the University of Michigan's licensing deals was worth approximately \$100 million, some of which, the university retains as royalty fees in exchange for the use of its names, logos, and colors.⁵³ This amounts to approximately "\$4.7 million in total royalties" retained by the university each year.⁵⁴ Proponents of student-athlete compensation would argue that the student-athlete is grossly underpaid for his/her contribution in comparison to the royalties reaped by the college administration each year.⁵⁵

E. Exploring Limitations Imposed Upon "Amateur" College Athletes

1. Case Studies of Student-Athletes: Jeremy Bloom & Mike Williams

In exploring the limitations imposed upon "amateur" college athletes, it is imperative to analyze the situations involving two superstar college athletes, Jeremy Bloom⁵⁶ and Mike Williams.⁵⁷ These two cases illustrate two unique situations where the NCAA had an opportunity to make an exception for these athletes, yet stayed the rigid course in furthering a bright-line rule distinguishing amateur sports from

49. *Trademark Licensing Policy*, BOSTON U., <https://www.bu.edu/brand/our-logos/licensing/> (last visited Sept. 24, 2017).

50. Wong, *supra* note 33, at 1088–91.

51. EPSTEIN, *supra* note 45, at 244.

52. *Id.*

53. *Id.*

54. *Id.*

55. See McLeran, *supra* note 3, at 260–61 (discussing how NCAA licensing is a \$4.6 billion industry and everyone is profiting but the student-athlete).

56. Joel Eckert, *Student-Athlete Contract Rights in the Aftermath of Bloom v. NCAA*, 59 VAND. L. REV. 905, 906–07 (2006).

57. Michael R. Lombardo, Comment, *Losing Collegiate Eligibility: How Mike Williams & Maurice Clarett Lost their Chance to Perform on College Athletics' Biggest Stage*, 3 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 19, 36–38 (2005).

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professional sports.⁵⁸ Both of these cases represent the NCAA's adversarial stance against student-athlete compensation.⁵⁹

Jeremy Bloom was both an Olympic skier and a member of the University of Colorado's football team.⁶⁰ Jeremy Bloom was an extremely talented athlete whom, prior to accepting a four-year athletic scholarship, had established himself as a world-class skier on an international stage.⁶¹ In order to keep his dream of competing in the 2006 Winter Olympic Games alive, Jeremy Bloom required financial support to continue his training.⁶² On the football field, Bloom was a highly acclaimed wide-receiver with great speed and catching ability.⁶³ In order to support his Olympic training, Bloom relied on corporate endorsement opportunities prior to attending college.⁶⁴ NCAA rules prohibit an amateur athlete from receiving outside compensation while participating as an active member of a college team.⁶⁵ Bloom challenged this rule, arguing that he was not receiving any financial gain in the capacity as a college football player but rather the compensation he would receive would be used solely for Olympic training.⁶⁶ The case made its way to the Colorado Court of Appeals which upheld the NCAA rules committee's decision prohibiting acceptance of a financial benefit by any college athlete.⁶⁷

Critics of the court's ruling contend that Bloom never violated his eligibility status with the NCAA because his endorsement opportunity was completely separate from his participation in the college football program.⁶⁸ While this case was a unique situation involving a talented two-sport athlete, it demonstrates the bright line rule that the NCAA has attempted to maintain between what it considers amateur athletics versus what is deemed professional sports.⁶⁹ Essentially, this decision limited Bloom's right to earn a living, thus forcing Bloom to choose between his two passions.⁷⁰

58. See *id.* at 36–38; see generally Laura Freedman, Comment, *Pay or Play - The Jeremy Bloom Decision and NCAA Amateurism Rules*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 673 (2003) (reviewing the NCAA's bright line rule preventing a potential Olympic skier from competing and receiving prize money and endorsements if he wanted to keep his "amateur" play football for the University of Colorado).

59. See Freedman, *supra* note 58, at 906–07.

60. Bloom v. Nat'l Collegiate Athletic Ass'n, 93 P.3d 621, 622 (Colo. Ct. App. 2004).

61. *Id.*

62. Eckert, *supra* note 56, at 907.

63. *Id.* at 906.

64. *Id.*

65. Bloom, 93 P.3d at 625.

66. *Id.* at 622.

67. *Id.* at 628.

68. Freedman, *supra* note 58, at 710.

69. *Id.* at 688.

70. *Id.* at 687.

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Proponents of the court's ruling argue that the precedent that could have been set had the ruling been in favor of Bloom may have had the potential of creating certain loopholes which allow for college-athletes to accept financial benefits without being subjected to NCAA sanctions.⁷¹ While some would disagree with the court's ruling in this situation given the unique circumstances facing both the NCAA and the legal system, it is important that the NCAA maintain a bright line rule in order to prevent future abuse of the system.⁷²

In the second case study, Mike Williams was a highly touted wide receiver for the University of Southern California Trojans Football Team.⁷³ After two stellar seasons as an All-American NCAA wide receiver catching thirty touchdowns and accumulating 2,579 receiving yards, Williams desired to test the professional market, presumably in the National Football League ("NFL").⁷⁴ However, the NFL already had a rule prohibiting individuals who were not three years removed from high school from entering the NFL Draft.⁷⁵

Shortly before the start of Williams' junior campaign with the Trojans, Maurice Clarett, an excellent freshman running back whose on-field contributions brought Ohio State the National Championship in 2002, filed suit against the NFL challenging the "3 Year Rule."⁷⁶ At that time, Clarett was suspended by Ohio State for the upcoming season due to his off-field conduct in violation of university policy.⁷⁷ Clarett, finding himself with no other outlet to cultivate his athletic talent, desperately desired to turn pro.⁷⁸ A lower court ruling "struck down the '3 Year Rule,' and suddenly the barn doors were flung open, ready for any freshman or sophomore who [was] confident in his ability to compete at the next level."⁷⁹ Viewing this ruling as an opportunity to exploit his own skills at the pro level, Mike Williams, dropped out of USC and hired an agent.⁸⁰ Williams also signed endorsement deals, reaping gifts and benefits in excess of \$100,000.00.⁸¹ Shortly

71. Brief of Respondent-Appellee at 40, *Bloom v. Nat'l Collegiate Athletic Ass'n*, No. 02CA2302 (Colo. App. Sept. 16, 2003).

72. See, e.g., Brief of Respondent-Appellee at 40, *Bloom v. Nat'l Collegiate Athletic Ass'n*, No. 02CA2302 (Colo. App. Sept. 16, 2003).

73. Bob Plain, *Personal Foul: Mike Williams Gets Screwed by the NCAA Again*, THE SIMON MAG. ONLINE, http://www.thesimon.com/magazine/articles/article_of_the_week/0.

74. *Id.*

75. *Id.*

76. *Clarett v. Nat'l Football League*, 306 F.Supp. 2d 379, 382 (S.D.N.Y. 2004), *rev'd in part*, 306 F.Supp. 3d 124 (2d Cir. 2004).

77. *Id.* at 388; Plain, *supra* note 73.

78. Plain, *supra* note 73; see *Clarett*, 306 F.Supp. at 388.

79. Plain, *supra* note 73.

80. *Id.*

81. *Id.*

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thereafter, on appeal, the Second Circuit Court of Appeals reversed the lower court's ruling finding in favor of the NFL, thus reinstating its coveted "3 Year Rule."⁸²

As a result of the Second Circuit decision, Williams found himself in a precarious predicament, unable to earn a living in the NFL and ineligible to return to college football.⁸³ He pleaded with the NCAA to reinstate his eligibility.⁸⁴ The NCAA half-heartedly entertained Williams' plea for reinstatement, even designing a course of rehabilitation for Williams' to follow, only to strike down Williams' attempt at reinstatement just one day prior to the Trojans' home opener.⁸⁵ There is speculation that the NCAA had no intention, whatsoever, of reinstating Williams, and his attempt at reinstatement was merely a charade that the NCAA orchestrated simply to put other student-athletes on notice that anyone who signs with an agent and receives financial benefits will automatically lose his/her eligibility regardless of the circumstances.⁸⁶

Proponents of student-athlete compensation argue that Williams' situation demonstrates the NCAA's long standing ability to circumvent anti-trust laws in order to keep individuals from exploiting their own talents in the job market for pecuniary gain.⁸⁷ Proponents contend that if student-athletes receive greater compensation for their efforts, then situations such as the one facing both Clarett and Williams may never have come to fruition.⁸⁸ Proponents further argue that the NCAA, in collusion with the professional sports leagues that impose age limitations, provides a major disservice to student-athletes and thus creates potential future situations analogous to these case studies in which individuals are prevented from earning a living in the marketplace.⁸⁹ Therefore, it is imperative that the NCAA either address the issue of

82. See *Clarett v. Nat'l Football League*, 306 F. Supp. 3d 124, 139 – 140 (2d Cir. 2004); Plain, *supra* note 73.

83. Plain, *supra* note 73.

84. *Id.*

85. *Id.*

86. *Id.*

87. Freedman, *supra* note 58, at 710 (2003). It can be argued, however, that student-athletes have begun to exploit their talents in the job market for pecuniary gain before entering college. For example, Adidas allegedly paid \$100,000.00 to the family of a "heavily recruited high school standout," steering him to play for a certain university. Marc Tracy, *N.C.A.A. Coaches, Adidas Executive Face Charges; Pitino's Program Implicated*, N.Y. Times (Sep. 26, 2017), <https://www.nytimes.com/2017/09/26/sports/ncaa-adidas-bribery.html?mcubz=0>. This practice, as well as alleged kick-backs to NCAA coaches to influence their student athletes, is a clear exploitation of the NCAA's amateurism rules. *Id.* If student-athletes were compensated, such a "black market for teenage athletes" would not exist. *Id.*

88. Alex Moyer, *Throwing out the Playbook: Replacing the NCAA's Anticompetitive Amateurism Regime with the Olympic Model*, 83 GEO. WASH. L. REV. 761, 777 (2015); Paul Solman, *Is the NCAA Failing Its College Athletes?*, PBS NEWSHOUR (Mar. 21, 2016), <http://www.pbs.org/newshour/making-sense/is-the-ncaa-failing-its-college-athletes/> (describing a situation where a student-athlete was suspended for accepting a benefit).

89. Moyer, *supra* note 88, at 777 (discussing the collusion between professional sports leagues and the NCAA); Huma & Staurowsky, *supra* note 5, at 13; Pat Garofalo, *NBA Age Limit is (March) Madness*, U.S. NEWS

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age restrictions with the professional sports leagues or loosen some of its more restrictive eligibility requirements.⁹⁰

The counter argument against student-athlete compensation is that since the NCAA is a private non-profit organization, free to impose its own regulatory scheme, those student-athletes that do not want to abide by the eligibility requirement should seek alternative means of honing their craft.⁹¹ Critics of student-athlete compensation contend that while Bloom's, Williams', and Clarett's situations were unfortunate, these circumstances were an aberration and not the norm in college athletics.⁹²

2. Student-Athletes Leaving College Early to Pursue Professional Sports

Today, more so than ever, student-athletes are leaving college early to pursue opportunities in professional sports.⁹³ Financial gain is typically the main reason that student-athletes leave college early.⁹⁴ For example, in a 2004 survey analyzing the graduation rates of each Division I men's basketball team that participated in the 2004 NCAA Tournament, 42 of the 65 participating teams graduated less than half of their players.⁹⁵ Another study showed that "four of the [participating] colleges had

(Mar. 27, 2015), <https://www.usnews.com/opinion/blogs/pat-garofalo/2015/03/27/nba-age-limit-is-march-madness> (advocating the abolishment of the age limit in the NBA).

90. Huma & Staurowsky, *supra* note 5, at 14 ("The U.S. Department of Justice should aggressively and whole-heartedly pursue antitrust suits against the NCAA to prevent further harm to college athletes, and Congress should act immediately to deregulate the NCAA. NCAA reform should be funded with new TV revenue streams that are surging throughout NCAA sport and include the following provisions.").

91. Glenn M. Wong, Warren Zola & Chris Deubert, *Going Pro in Sports: Providing Guidance to Student-Athletes in a Complicated Legal & Regulatory Environment*, 28 CARDOZO ARTS & ENT. L.J. 553, 577 n. 120 (2011) ("There have been some highly publicized attempts to circumvent the rule."). See Javier Morales, *It's Time for Draft Eligibility Rules that Make Sense for the Player, NCAA, and NBA*, COLLEGE AD (Apr. 20, 2016), <http://collegead.com/its-time-for-draft-eligibility-rules-that-make-sense-for-the-player-ncaa-and-nba/> (describing how Thon Maker skirted the NCAA's eligibility rules by playing in Canada).

92. Alan Milstein, *The Maurice Claret Story: A Justice System Failure*, 20 ROGER WILLIAMS UNIV. L. REV. 216, 227 (2015) (stating that Maurice Claret's situation was more dire than that of most college athletes); see Jared Walch, *Should Athletes be Paid to Play?*, USA TODAY: COLLEGE (Oct. 20, 2016), <http://college.usatoday.com/2016/10/20/should-athletes-be-paid-to-play/> (arguing that football and basketball bring the most revenue and it would be unfair to compensate them over other students).

93. Blake Williams, *The Numbers Behind the Record 107 College Players Leaving Early for the NFL*, FORBES (Jan. 22, 2016), <https://www.forbes.com/sites/blakewilliams3012/2016/01/22/the-numbers-behind-the-record-107-college-players-leaving-early-for-the-nfl/#79c6fb640c0f> (stating that a record 107 college football players declared for the NFL Draft in 2016).

94. Brooks & Davies, *supra* note 47, at 756 (describing the difficult financial situation of student-athletes, of which many cannot afford even incidental expenses); see Kareem Abdul-Jabbar, *Young Athletes, a Degree Matters*, ESPN (Sept. 6, 2012), http://www.espn.com/college-sports/story/_/id/8344785/young-athletes-degree-matters; Walch, *supra* note 92 (stating that many players cite financial hardship as primary reason for declaring early for the draft).

95. Dave Sheingold, *March Madness Player's Graduating Less Than Their Peers*, USA TODAY (Mar. 23, 2017), <https://www.usatoday.com/story/sports/college/basketball/2017/03/23/march-madness-basketball-tourn>

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graduation rates of zero, and 16 had rates of 25 percent or less.”⁹⁶ This phenomena has sparked debate as to whether college retention rates amongst student-athletes might be higher if student-athletes were adequately compensated for their efforts and, in turn, closer attention was paid by administrators to their academics.⁹⁷

Proponents of student-athlete compensation argue that it is in the best interest of both the university and the student to find ways to rectify this problem.⁹⁸ From the university’s perspective, it can be debilitating for an athletic program to lose its top recruit after only one or two seasons.⁹⁹ Consequently, the athletic program may find itself in a rebuilding stage for several years.¹⁰⁰ From the student-athlete’s perspective, it is undeniably beneficial for a student to obtain a degree that can be utilized in the job market.¹⁰¹

ament-players-graduating-less-graduation-rates/99509216/ (finding that players who participate in March Madness graduate at a 15-25% lower rate than the student body, based upon NCAA data).

96. *NCAA graduation rates improve*, ESPN (Oct. 28, 2014), http://www.espn.com/college-sports/story/_/id/11779124/ncaa-graduation-rates-improve-critics-cry-foul (“Those who question the NCAA’s [graduation rate] stats contend the higher numbers are skewed because athletes have more access to tutors, learning specialists and multimillion-dollar academic centers—all of which are intended to keep players academically eligible and on track to graduate. They also believe athletes are sometimes being advised to take easier courses.”); see Sheingold, *supra* note 95 (“[T]he typical school in this year’s NCAA men’s basketball tournament graduates 50 percent of its players within six years, compared to rate of 71.5 percent for student bodies as a whole.”).

97. Walch, *supra* note 92 (“If college athletes were paid for the talents that they possess while in school, they might be more willing to finish their degree.”); see also Matthew J. Gustin, *The O’Bannon Court Got It Wrong: The Case Against Paying NCAA Student-Athletes*, 42 W. ST. L. REV. 137, 140 n.32 (2015).

98. Brooks & Davies, *supra* note 94, at 755 (arguing that the NCAA has a responsibility to cover the entirety of the education costs for student-athletes on scholarship); Gustin, *supra* note 97, at 140 n.32 (stating that keeping talent in school through compensation could outweigh lost revenue from customers who disagree with a decision to compensate).

99. See Dylan Hernandez, *College Basketball’s So-Called One-and-Done Rule Needs Revisiting*, L.A. TIMES (Mar. 24, 2016), <http://www.latimes.com/sports/la-sp-college-one-and-done-herandez-20160324-story.html> (“The only beneficiary of the system is the NBA, which can use college competition instead of high school to screen its potential employees.”); Myron Medcalf, *Roots of One-And-Done Rule Run Deep*, ESPN (June 26, 2012), http://espn.go.com/mens-college-basketball/story/_/id/8097411/roots-nba-draft-one-done-rule-run-deep-men-college-basketball (discussing the instability and academic ramifications that are a product of the one-and-done rule in NCAA basketball). *Contra* NCAA, *The True “One-and-Done” Problem in Division I Men’s Basketball*, NCAA, (Apr. 1, 2015), <http://www.ncaa.org/about/resources/research/true-one-and-done-problem-division-i-men-s-basketball> (arguing that the real destabilizing force in college basketball is the high athlete transfer rate, not the one-and-done system) [hereinafter NCAA, *One-and-Done*]

100. See Hernandez, *supra* note 99 (“The only beneficiary of the system is the NBA, which can use college competition instead of high school to screen its potential employees.”); Medcalf, *supra* note 99 (discussing the instability and academic ramifications that are a product of the one-and-done rule in NCAA basketball). *Contra* NCAA, *One-and-Done*, *supra* note 99 (arguing that the real destabilizing force in college basketball is the high athlete transfer rate, not the one-and-done system).

101. Jennifer Cheeseman Day & Eric C. Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*, U.S. CENSUS BUREAU, at 4 (2002), <https://www.census.gov/prod/2002pubs/p23-210.pdf> (stating that individuals with a bachelor’s degree earn on average \$2.1 million more than those who did not finish college); GALLUP-PURDUE INDEX REPORT: UNDERSTANDING LIFE OUTCOMES OF FORMER NCAA

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Also, the additional time spent in college is viewed as being highly beneficial to the acceleration of a student-athlete's maturation process since college students are still growing both physically and emotionally.¹⁰² If there were greater incentive for the student-athlete to remain at school, besides the obvious reward of attaining an education, then school retention rates might be higher.¹⁰³ In addition, "legal" and ethical student-athlete compensation might reduce the abuse and corruption that occurs in college athletics on an underground level, thus diminishing the potential for overreaching booster influence.¹⁰⁴ While a college setting may afford a student-athlete a great opportunity for the student-athlete to hone his/her athletic skills and receive an education at the same time, the NCAA sometimes fails to consider the portion of student-athletes that desire to better not only themselves, but also their families.¹⁰⁵

Critics of compensation for student-athletes claim that by financially rewarding a student-athlete simply for his/her athletic prowess, the college, in turn, is consequently undermining the value of providing a highly discounted education.¹⁰⁶ Critics contend that financially rewarding student-athletes at the expense of funding

STUDENT-ATHLETES 3 (2016), http://www.ncaa.org/sites/default/files/2016_Gallup_NCAA_Student_Athlete_Report_20160503.pdf ("Former student-athletes who received a bachelor's degree between 1970 and 2014 are leading other college graduates in four out of five elements of well-being that Gallup studied.").

102. Hernandez, *supra* note 99, at 2 (reciting NBA Commissioner Adam Silver's belief that more time in college makes student-athletes better prepared to be professionals); GALLUP-PURDUE INDEX REPORT: UNDERSTANDING LIFE OUTCOMES OF FORMER NCAA STUDENT-ATHLETES, *supra* note 101, at 3 (stating that student athletes who earn degrees do better than non-athletes in life).

103. Steve Murphy & Jonathan Pace, *A Plan for Compensating Student-Athletes*, BYU EDUC. & L.J. 167, 177-78 (1994) ("A possible positive effect of paying student-athletes could be that more athletes would stay in school to finish their degree programs.").

104. Michael Rosenberg, *A Simple Solution to NCAA Corruption: Let Stars get Paid*, SPORTS ILLUSTRATED (July 26, 2011), <https://www.si.com/more-sports/2011/07/26/ncaa-pay> (arguing in favor of athlete compensation to reduce NCAA corruption); David M. Simon, *End NCAA Cheating and Corruption: Just Pay Student Athletes*, WASH. EXAMINER (Aug. 28, 2017), <http://www.washingtonexaminer.com/end-ncaa-cheating-and-corruption-just-pay-student-athletes/article/2632529> (allowing payments to athletes will reduce corruption).

105. Eckert, *supra* note 56, at 916-17 (arguing that the "courts should analyze under a stricter standard those claims brought by athletes who allege a failure to value the athletes' welfare over their athletic contributions").

106. Katherine Kargl, Note, *Is Amateurism Really Necessary or is it an Illusion Supporting the NCAA's Anticompetitive Behaviors: The Need for Preserving Amateurism in College Athletics*, 2017 U. ILL. L. REV. 379, 392-93 (2017) ("Education is the universities' main purpose, and paying the athletes would severely undermine this objective."); Wong, *supra* note 33, at 1102 (arguing that compensation detracts from the value of a student athletes education, thereby damaging the amateurism model); Ekow N. Yankah, *Why NCAA Athletes Shouldn't be Paid*, THE NEW YORKER (Oct. 14, 2015), <https://www.newyorker.com/news/sporting-scene/why-ncaa-athletes-shouldnt-be-paid> (arguing that paying athletes reduces the value of the education being offered).

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cultural programs, such as the arts, stifles creativity and negates achievement in many other facets of academia.¹⁰⁷

F. Taxation Issues

Under the current federal tax structure, universities “enjoy certain tax benefits based on the student-athletes’ amateur educational status.”¹⁰⁸ As a result, universities receive favorable tax treatment on the revenue generated from college athletics.¹⁰⁹ Since college athletics are designated by the Internal Revenue Service (“IRS”) to be an integral part of the education requirements of a university, universities receive favorable tax treatment compared to similarly situated businesses or corporations.¹¹⁰ Because the IRS does not consider a university to be engaged in a commercial venture for profit, this designation makes it increasingly difficult for proponents of student-athlete compensation to circumvent tax and labor law in order to legally compensate a student-athlete in accordance with both federal and NCAA guidelines.¹¹¹

G. Antitrust Law and Labor Issues

Antitrust laws, specifically the Sherman Act, are a critical ingredient for non-profit organizations associated with the world of amateur sports.¹¹² The main goals of antitrust laws are to remove “anti-competitive collusion and to prevent monopolistic

107. See, e.g., Roxanne Schroeder-Arce, *Why do We Value Sports Over the Arts?*, MY SAN ANTONIO: EXPRESS-NEWS (Mar. 5, 2016, 8:11 AM), <http://www.mysanantonio.com/opinion/commentary/article/Why-do-we-value-sports-over-the-arts-6872039.php>.

108. Haden, *supra* note 38, at 678 (“The pay-for-play advocates encounter additional obstacles in their quest to compensate the student-athlete due to the various tax benefits universities enjoy based on the student-athletes’ amateur educational status.”); see also Rev. Rul. 77-263, 1977-2 C.B. 47 (“[T]he athletic scholarships are awarded by the university primarily to aid the recipients in pursuing their studies, and therefore, the value of the scholarships is excludable from the recipients’ gross incomes under section 117 of the Code.”).

109. Haden, *supra* note 38, at 678.

110. 26 C.F.R. § 1.501(c)(3)-1 (2017); See John D. Colombo, *The NCAA, Tax Exemption, and College Athletics*, 2010 U. ILL. L. REV. 109, 113 (2010) (“The NCAA and private universities, however, rely for their exempt status on Section 501(c)(3), which provides exemption for charitable organizations, including religious and educational organizations.”).

111. 26 C.F.R. § 1.501(c)(3)-1 (2017); Erik M. Jensen, *Taxation, the Student Athlete, and the Professionalization of College Athletics*, 1987 UTAH L. REV. 35, 54 (1987) (“Under existing law, colleges quite simply have no clear protection from taxation of income attributable to professional sports.”).

112. Wendy T. Kirby & T. Clark Weymouth, *Antitrust and Amateur Sports: The Role of Noneconomic Values*, 61 IND. L.J. 31, 31 (1985) (“In recent years, courts have begun to address the question of how to apply the antitrust laws to nonprofit organizations and other entities which, although they operate in the commercial marketplace, assert ‘noneconomic’ justifications for their behavior. This question is becoming increasingly important to the National Collegiate Athletic Association (‘NCAA’) and similar amateur sports organizations.”).

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and oligopolistic market structures.”¹¹³ Antitrust law is used to describe all laws that intend to promote and regulate competition and make our competitive economic system work.¹¹⁴ In the context of college athletics, the legal issues that arise concern whether the laws should be applied to non-profit organizations such as the NCAA.¹¹⁵ In essence, the NCAA’s designation as a non-profit organization has sheltered it from antitrust violations despite the numerous profits derived by the universities as a result.¹¹⁶ Recently, however, this has begun to shift as evident by the Ninth Circuit’s decision in *O’Bannon v. National Collegiate Sports Athletic Association*.¹¹⁷

In *O’Bannon*, the Court held that the NCAA’s compensation rules were subject to antitrust scrutiny.¹¹⁸ The Court reasoned that even though the NCAA’s amateurism rules helped create the “character and quality” of the NCAA’s product,¹¹⁹ the rules can be invalidated under the Rule of Reason analysis.¹²⁰ This analysis requires that the plaintiff prove: (1) the restraint on trade creates anticompetitive effects in a specific market; (2) there is no procompetitive justification for the restraint; and (3) the restraint is either not reasonably necessary to achieve its objectives or those objectives can be achieved in a substantially less restrictive manner.¹²¹

Applying the Rule of Reason analysis, the Court first held that there was a college education market in which the NCAA compensation rules created an anticompetitive effect.¹²² The Court then held that the NCAA’s limits on student-athlete compensation do not make college sports “more attractive.”¹²³ Rather, it is the NCAA’s commitment to amateurism and integration of academics and athletics that

113. O. Yale Lewis, Jr., *Amateur Athletes and the Law*, HENDRICK & LEWIS (2005); see *Mission*, U.S. DEP’T OF JUST.: ANTI-TRUST DIVISION, <https://www.justice.gov/atr/mission> (last visited Oct. 12, 2017) (“The goal of the antitrust laws is to protect economic freedom and opportunity by promoting free and fair competition in the marketplace.”).

114. Daphne Alabama & Howard Bartee, Jr., *The Role of Antitrust Laws in the Professional Sports Industry from a Financial Perspective*, 8 THE SPORT J., no. 2, at 2 <http://www.thesportjournal.org/2005Journal/Vol8-No2/harry-bartee.asp> (Oct. 4, 2004); see *Guide to Antitrust Laws*, FED. TRADE COMMISSION, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws> (“These laws promote vigorous competition and protect consumers from anticompetitive mergers and business practices.”).

115. Kirby & Weymouth, *supra* note 112, at 32; Lewis, *supra* note 113.

116. Lewis, *supra* note 113 (citing a number of cases illustrating how courts have used anti-trust laws to shield the NCAA).

117. 802 F.3d 1049, 1053 (9th Cir. 2015).

118. *Id.*

119. The product being amateur collegiate athletes participating in sporting events. *Id.* at 1063 (citing Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 102 (1984)).

120. *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049, 1053 (9th Cir. 2015) *cert. denied*, 137 S. Ct. 277 (2016).

121. See *id.* at 1070 (quoting *Tanaka v. Univ. of Southern Cal.*, 252 F.3d 1059, 1063 (9th Cir. 2001)).

122. *Id.*

123. *Id.* at 1072.

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promote pro-competitive purposes.¹²⁴ The Court then analyzed the plaintiff's proposals for substantially less restrictive alternatives to the NCAA's compensation rules.¹²⁵ The first alternative was compensation up to the total cost of attendance.¹²⁶ The Court determined this was an acceptable alternative because it would not cause consumers of college sports to become less interested.¹²⁷ As for the second alternative, allowing students to receive compensation for their right to publicity, the Court found it was restrictive.¹²⁸ Unlike the first alternative, this alternative directly contradicted the NCAA's interest in promoting amateurism because "not paying student athletes is precisely what makes them amateurs."¹²⁹ From the Court's perspective, the difference between the two proposals was a "quantum leap."¹³⁰ Therefore, the Court upheld the lower court's permanent injunction requiring the NCAA to permit schools to provide compensation up to the cost of attendance, but vacated the lower court's permanent injunction requiring the NCAA to allow schools to pay their athletes for their right to publicity.¹³¹

In recent years, organized labor issues have come to the forefront of debate in the context of student-athlete compensation.¹³² Currently, "NCAA student-athletes are not represented by a players union."¹³³ Proponents of student-athlete compensation contend that "while athletic department coaches and administrators are often paid handsomely," student-athletes should have the opportunity to organize in order "to seek payment for their services" and potentially negotiate a collective bargaining agreement with the NCAA.¹³⁴ In 2015, the Northwestern University football players filed a petition with the National Labor Relations Board ("NLRB") seeking a determination that "the University's football players who receive grant-in-aid scholarships are employees within the meaning of Section 2(3) of the National Labor Relations Act and direct an election in a unit of the grant-in-aid players."¹³⁵ The

124. *Id.* at 1076.

125. *Id.* at 1074. The Ninth Circuit's Rule of Reason Analysis test does not consider whether the restraint is not reasonably necessary to achieve its objectives. *Hairston v. Pac. 10 Conference*, 101 F.3d 1315, 1319 (9th Cir. 1996).

126. *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1074 (9th Cir. 2015) *cert. denied*, 137 S. Ct. 277 (2016).

127. *Id.*

128. *Id.* at 1076.

129. *Id.*

130. *Id.* at 1078.

131. *Id.* at 1079.

132. See Shane Loughlin, Note, *Workers' Compensation and Student-Athletes: Protecting the Unpaid Talent in the Profit-Making Enterprise of Collegiate Athletics*, 48 CONN. L. REV. 1737, 1739-41 (2016).

133. EPSTEIN, *supra* note 45, at 233.

134. *Id.*

135. *Northwestern Univ.*, 362 N.L.R.B. No. 167 (Aug. 17, 2015).

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NLRB unanimously decided to decline jurisdiction on the grounds that the “case would not serve to promote stability in labor relations.”¹³⁶

Workers’ compensation is another labor issue that arises in the context of student-athlete compensation.¹³⁷ “Workers’ compensation laws are state statutes enacted to compensate employees for job-related injuries or death, regardless of fault.”¹³⁸ The argument made by proponents of Pay-for-Play clashes with the concepts of workers’ compensation because “in order to qualify for recovery under state workers’ compensation statutes, a person must meet the statute’s definition of an “employee” as defined by the statute.”¹³⁹ On one side of the argument, proponents of student-athlete compensation contend that the student-athletes are underpaid for their services, however in the context of workers’ compensation this argument fails because of the legalities involved in classifying a student-athlete as an employee of the university.¹⁴⁰ In addition, from an education policy stand point, the ramifications for classifying student-athletes as employees could potentially blur and subsequently erode the lines of demarcation distinguishing student-athletes from university employees.¹⁴¹

NCAA rules and regulations, for instance, prohibit student-athletes from signing with agents for the purpose of procuring outside employment.¹⁴² The NCAA contends that student-athletes no longer claim the rights and benefits accorded by their amateur status upon receipt of financial benefits or outside employment for monetary gain.¹⁴³ Within its NCAA Division I manual, the NCAA represents that its fundamental motivation is to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports.”¹⁴⁴

136. *Id.*

137. Sean Alan Roberts, *College Athletes, Universities, and Workers’ Compensation: Placing the Relationship in the Proper Context by Recognizing Scholarship Athletes as Employees*, 37 S. TEX L. REV. 1315, 1327–28 (1996).

138. Haden, *supra* note 38, at 676.

139. *Id.*

140. *Id.* at 674, 676.

141. Harold B. Hilborn, Comment, *Student-Athletes and Judicial Inconsistency: Establishing a Duty to Educate as a Means of Fostering Meaningful Reform of Intercollegiate Athletics*, 89 NW. U.L. REV. 741, 777 (1995).

142. NAT’L COLLEGIATE ATHLETIC ASS’N, SUMMARY OF NCAA ELIGIBILITY REGULATIONS – NCAA DIVISION I 3 (2017), http://www.ncaa.org/sites/default/files/2017DICOMP_SummaryofNCAARegulations_20170613.pdf.

143. *Id.*

144. NAT’L COLLEGIATE ATHLETE ASS’N, 2017-2018 NCAA DIVISION I MANUAL I (2017); *see* EPSTEIN, *supra* note 45, at 19.

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In *Banks v. National Collegiate Athletic Association*, a Notre Dame football player brought suit against the NCAA “after losing his college eligibility by submitting himself for the NFL Draft and signing with an athlete agent.”¹⁴⁵ In *Banks*, the Seventh Circuit Court of Appeals held that “Banks had failed to define an anti-competitive effect of the alleged restraints on the markets.”¹⁴⁶ The Seventh Circuit further concluded that “these (NCAA) rules were valid rules furthering the goal of amateurism, and that the rules were very similar to grade and enrollment requirements.”¹⁴⁷

Furthermore, it seems horribly unjust that a student-athlete is prevented from competing in the market place for his/her services, yet the universities and colleges are able to retain all profits from that player’s on-field performance.¹⁴⁸ However, critics of student-athlete compensation argue that the NCAA must maintain a bright line rule between amateurism and professionalism; otherwise the NCAA would be opening the door for abuse and corruption of the college education system.¹⁴⁹

H. Title IX Implications

It is undeniable that Title IX, since its inception, has had a profound impact upon college athletics.¹⁵⁰ In the context of student-athlete compensation, Title IX remains a highly controversial and widely debated issue.¹⁵¹ In theory, the main goal of Title IX is to provide equal opportunity and funding to both men and women’s collegiate programs.¹⁵² In *Sports Law*, author Adam Epstein contends that: “[p]roponents of the law argue that Title IX continues to benefit women socially, economically, and even emotionally.”¹⁵³

In reality, however, “revenue [generating] sports such as football and men’s basketball serve as the cash cow for women’s sports nationwide.”¹⁵⁴ Often times, the money generated from men’s programs is re-allocated to benefit a university’s entire

145. Lewis, *supra* note 113 (citing *Banks v. NCAA*, 977 F.2d 1081, 1083–84 (7th Cir. 1992)).

146. *Id.*

147. *Id.*

148. Keilman & Hopkins, *supra* note 11.

149. See Kargl, *supra* note 106, at 393.

150. Ellen J. Staurowsky, *Title IX and College Sports: The Long Painful Path to Compliance and Reform*, 14 MARQ. SPORTS L. REV. 95, 98–99 (2003).

151. Michael Rosen, Note, *Constitutional Implications of Title IX Compliance in Colleges and Universities*, 18 CARDOZO J.L. & GENDER 503, 509 (2012).

152. Allison Williams, Comment, *Title IX- Tipping the Scales of Equality*, 2005 DENV. U. SPORTS & ENT. L. J. 1, 2 (2005).

153. EPSTEIN, *supra* note 45, at 105.

154. *Id.* at 114.

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athletic department.¹⁵⁵ As a result, conflicts arise when a student-athlete loses his or her scholarship or receives less financial support as a direct result of a Title IX measure.¹⁵⁶

Proponents of student-athlete compensation argue that under certain circumstances student-athletes should be compensated in order to offset financial hardships directly related to Title IX mandated budgetary cuts to programs.¹⁵⁷ Often times these financial hardships result in a reduction in scholarships for some men's teams and the elimination of some teams altogether.¹⁵⁸ Consequently, many of these student-athletes find themselves with few financial outlets to fund general college expenses.¹⁵⁹ With respect to critics of Title IX, Epstein suggests that "[m]uch of the criticism of [Title IX] involves the interpretation of how it is applied."¹⁶⁰ While critics of Title IX may contend that Title IX unfairly penalizes men's sports programs to a certain degree, the "courts have *not* held this argument to be a valid one under a Title IX analysis."¹⁶¹ Therefore, in order to remedy this apparent funding problem, the NCAA, in accordance with Congress, should reassess the applicability of Title IX and its impact on college athletics in the context of student-athlete compensation.

155. See *id.* (generalizing that if men's programs are funding women's programs while at the same time cutting other non-revenue men's programs, then the revenue generating men's programs are funding the entire athletic department).

156. See Andrew J. Boyd, Comment, *Righting the Canoe: Title IX and the Decline of Men's Intercollegiate Athletics*, 37 J. MARSHALL L. REV. 257, 258–62 (explaining that Title IX is a contributing factor to men losing opportunities to play sports and men losing scholarship opportunities at institutions. These results have been actively challenged in the courts).

157. See Ross E. Simpson, Note, *The Previous Pay is Under Further Review: Payment Problems Arising from O'Bannon v. NCAA*, 68 ARK. L. REV. 1117, 1130 (2016) (arguing that one interpretation of the *O'Bannon* decision is that there would not be Title IX violations if cost-of-attendance stipends were delivered exclusively to male student-athletes because unequal compensation of male and female athletes is permissible if the male student-athletes are using a higher degree of skill, responsibility, and effort than their female counterparts).

158. See Kerensa E. Barr, Comment, *How the Boys of Fall are Failing Title IX*, 82 UMKC L. REV. 181, 200 (2013) (revisiting the history of NCAA football scholarships and determining that there was originally no limit on the amount of scholarships awarded but which progressively reduced to 105 in 1973, 95 in 1975, and finally to the current level of 85 in 1994-1995); see also EPSTEIN, *supra* note 45, at 105 (establishing that "numerous male swimming, wrestling, football, water polo, baseball, and other programs have been eliminated in the name of Title IX compliance.").

159. See Christopher Davis, Jr. & Dylan Oliver Malagrino, *The Myth of the Full Ride: Cheating our Collegiate Athletes and the Need for Additional NCAA Scholarship-Limit Reform*, 65 OKLA. L. REV. 605, 612 (2013) (explaining that if "[t]he difference between the estimated cost of attendance and the full grant-in-aid is approximately \$3000 annually, depending on the institution" those who lose some or all of their scholarship will incur more debt to fund general college expenses).

160. EPSTEIN, *supra* note 45, at 105.

161. See *id.* at 115 (determining that case law is unfriendly to the claim that Title IX unfairly penalizes men's sports programs).

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I. Financial Destitute and Post-Graduation Debt

Many scholarship student-athletes find that the financial package that they received in the form of an athletic scholarship is insufficient to meet the financial demands of attending college for four years.¹⁶² This financial insecurity stems from expensive living costs, i.e. rent, books, and food, which are usually not covered by athletic scholarship.¹⁶³ In addition to the rigid time constraints imposed by team commitment requirements, NCAA regulations hamper a student-athlete's ability to be gainfully employed full-time during the academic year.¹⁶⁴

For instance, while the NCAA promulgated a rule that permits a student-athlete to be employed during the academic year, the NCAA prohibits compensation for any publicity, reputation, fame, or personal following that a student-athlete may provide to his or her employer.¹⁶⁵ Considering the tremendous living expenses associated with attending college and the limited amount of time student athletes have to work, it becomes very difficult for student-athletes to stay afloat financially.¹⁶⁶ All of these factors contribute to a system in which some student-athletes find themselves "financially destitute" post-graduation.¹⁶⁷ For example, a 2005 survey of 5,600 NCAA student-athletes found that "the average student-athlete plans to graduate with approximately \$14,200 in student loans and credit card debt."¹⁶⁸ This survey also revealed that student-athletes envision themselves earning at least a starting salary of

162. See Davis, Jr. & Malagrino, *supra* note 159, at 612 (establishing that "[t]he difference between the estimated cost of attendance and the full grant-in-aid is approximately \$3,000 annually, depending on the institution").

163. See *id.* at 617, 620 (citing out of pocket expenses such as cell phone bills, laundry, toiletries, food, entertainment, and transportation costs as reasons why student-athletes cannot meet the financial demands associated with college).

164. Michael P. Acain, Comment, *Revenue Sharing: A Simple Cure for the Exploitation of College Athletes*, 18 LOY. L.A. ENT. L.J. 307, 315 (1998) (in 1996, the NCAA passed a rule allowing student-athletes to have part-time jobs to make up the difference between what a scholarship is worth and the actual cost of attendance).

165. Jon Solomon, *10 Ways College Athletes Can Get Paid and Remain Eligible for Their Sport*, CBS SPORTS (June 21, 2016), <https://www.cbssports.com/college-football/news/10-ways-college-athletes-can-get-paid-and-remain-eligible-for-their-sport/>.

166. See Caitlin D. Buckstaff, Comment, *Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering*, 16 VAND. J. ENT. & TECH. L. 133, 157 (2013) (explaining that "many college players live below the federal poverty line . . . [because] most athletic scholarships failed to cover the essentials like food and clothing.").

167. See John A. Maghamez, Comment, *An All-Encompassing Primer on Student-Athlete Name, Image, and Likeness Rights and How O'Bannon v. NCAA and Keller v. NCAA Forever Changed College Athletics*, 9 LIBERTY U. L. REV. 313, 317 (2015) (explaining that even student-athletes with the maximum scholarships can end up in debt between \$12,888 and \$30,000 because these scholarships only cover room and board, tuition, and books).

168. NCAA News Release, *College Athletes Optimistic About Financial Future, But Survey Shows Unrealistic Expectations*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (Oct. 24, 2005), <http://fs.ncaa.org/Docs/PressArchive/2005/Corporate%2BNews/College%2BAthletes%2BOptimistic%2BAbout%2BFinancial%2BFuture%2BBut%2BSurvey%2BShows%2BUnrealistic%2BExpectations.html>.

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approximately “\$64,500,” when in actuality, the average starting salary for a college graduate is “\$32,000.”¹⁶⁹ The reality is that both student-athletes and college administrators are not in tune with the financial hardships that await student-athletes after graduation.¹⁷⁰ It is imperative that the NCAA promulgate rules loosening earning restriction requirements, otherwise the NCAA will be perpetuating a culture of student-athletes unprepared for the financial struggles that occur both during and after graduation.

J. Efforts at Reform

Efforts to protect student-athletes and their earning capacity are underway in certain jurisdictions throughout the United States.¹⁷¹ In California, for example, the state legislature adopted a “Bill of Rights” for college athletes.¹⁷² The California Bill of Rights was designed to protect student-athletes from exploitation.¹⁷³ Earlier versions of the bill eliminated rules for the terms or duration of scholarships below the cost of tuition, gave an athlete the ability to transfer when his or her coach leaves the school, and reduced the earning capacity restrictions with respect to off-campus jobs held while school is in session.¹⁷⁴ Ultimately, these provisions did not make the final version of the bill passed by the California state legislature.¹⁷⁵ The California Bill of Rights only protects incapacitated or injured student athletes, and requires athletic

169. See Harold L. Sirkin, *Reality Check on Starting Pay*, FORBES (May 11, 2017, 2:06 PM), <https://www.forbes.com/sites/haroldsirkin/2017/05/11/reality-check-on-starting-pay/#6bf272257e9a> (explaining that 52% of college graduates expect to make at least \$50,000 or more per year); see also Kelsey Gee, *Outlook is Rosier for Class of '17*, WALL ST. J. (May 13, 2017) (stating that the base pay for college grads is \$49,785).

170. See Doug Webber, *To Ease the Student Debt Crisis, Hold Universities Accountable*, FIVETHIRTYEIGHT, (April 6, 2017, 6:00 AM), <https://fivethirtyeight.com/features/to-ease-the-student-debt-crisis-hold-colleges-responsible/> (arguing that while the public focus has been on the role of students borrowing money and the role of government encouraging such lending, we also need to focus on the universities role in the student debt issue).

171. Legislation was introduced during both the 113th and 114th sittings of Congress that attempted to help protect student athletes, but both measures failed to garner enough support. See generally Collegiate Student Athlete Protection Act, H.R. 3545 113th Cong. (2013); National Collegiate Athletic Association Act, H.R. 2731, 114th Cong. (2015). In 2017, Connecticut Representatives Patricia Dillion, Matthew Lesser, and Josh Elliot introduced a bill aimed at protecting the health and safety of college athletes. See generally H.B. 6870, 2017 Conn. Gen. Assemb. Jan. Sess. (Conn. 2017).

172. See generally CAL. EDUC. CODE §§ 67450–53 (2013).

173. See Matthew R. Cali, Comment, *The NCAA's Transfer of Power: An Analysis of the Future Implications the Proposed NCAA Transfer Rules Will Have on the Landscape of College Sports*, 21 JEFFERY S. MOORAD SPORTS L.J. 217, 242–43 (2014) (explaining that states such as California are taking steps to recognize, provide, and protect the rights of student athletes).

174. S.B. 1525, 2011–2012 S., Reg. Sess. (Cal. 2012) (as amended by S. Comm. On Rules, Mar. 27, 2012).

175. Compare CAL. EDUC. CODE §§ 67450–53 (2013), with S.B. 1525, 2011–2012 S., Reg. Sess. (Cal. 2012) (as amended by S. Comm. On Rules, Mar. 27, 2012).

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programs to conduct financial and life skills workshops for first-year and third-year student athletes.¹⁷⁶

In another effort at reform, commencing in 2004, the Division I Academic Cabinet Agents and Amateurism Subcommittee agreed to support a “legislative concept that would prohibit institutions, conferences and the NCAA from using a student-athlete’s name or likeness for retail sales while the student-athlete still has eligibility remaining.”¹⁷⁷ The Subcommittee met with CEOs in the licensing and manufacturing industries, University Athletic Directors and student-athlete representatives with the intent of tightening the NCAA’s licensing rules.¹⁷⁸ While former NCAA President Myles Brand offered encouraging words at this subcommittee stating: “[o]ur [NCAA] bottom line is educating students, whereas the bottom line for pros is making profits,” the reality is that the NCAA serves as an intermediary, brokering “For-Profit” deals between universities and the licensing and manufacturing industries.¹⁷⁹ Brand further clarified: “We need to draw a much brighter line between promotions and revenue gain. It’s a cutting-edge distinction between college and pro sports and it’s important that we get it right.”¹⁸⁰ Ultimately, only time will tell whether these efforts at reform come to fruition when the bottom line is at stake in the overall equation.

III. EXAMINING A COLLEGE OR UNIVERSITY’S FIDUCIARY DUTY TO ITS STUDENT-ATHLETES

A. Current Four-Year Scholarship Athletes

Upon signing a letter of intent to attend a particular institution, many college-athletes are promised, by their universities or colleges, compensation in the form of a four-year athletic scholarship.¹⁸¹ In turn, student-athletes are advised by the university of his/her obligations to remain eligible for these scholarships.¹⁸² Some of these requirements include: minimum grade point average, qualifying for a roster position,

176. See CAL. EDUC. CODE §§ 67452–53 (2013).

177. Gary T. Brown, *Cabinet Subcommittee launches review of Licensing Issues*, NCAA NEWS (June 21, 2004), <https://web.archive.org/web/20050214210000/http://www.ncaa.org/news/2004/20040621/active/4113n02.html>.

178. *Id.*

179. *Id.*

180. *Id.*

181. Patrick Hruby, *Why Top NCAA Recruits Shouldn’t Sign National Letters of Intent*, VIBE SPORTS (Feb. 1, 2017), https://sports.vice.com/en_ca/article/pgn38z/why-top-ncaa-recruits-shouldnt-sign-national-letters-of-intent (“Enter the NLI. By signing the letter, an athlete agrees to attend a particular school; in return, the school agrees to give that player an athletic scholarship. In theory, this is all well and good.”).

182. *Maintaining Your Eligibility, How to Keep Your Scholarship*, ATHLETES USA, <http://athletes-usa.com/blog/maintaining-eligibility-keep-scholarship/> (last visited Sept. 22, 2017).

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and high performance on the athletic field.¹⁸³ Failure to meet some of these requirements, in some instances, results in the loss of a scholarship.¹⁸⁴

In recent years, student-athletes have attempted to exercise their legal rights to an education through the court system.¹⁸⁵ Many of these lawsuits have come in the form of contractual claims.¹⁸⁶ In the landmark case, *Ross v. Creighton University*, a talented basketball player sued the “school for failing to give him a meaningful education.”¹⁸⁷ In *Ross*, the Seventh Circuit Court of Appeals held that Ross needed to show a specific promise and failure to deliver on that promise.¹⁸⁸ The Seventh Circuit elucidated in its decision that this was an “‘educational malpractice claim’ (a claim not heard by the courts) re-packaged as a contract claim” and therefore ruled against the student-athlete on those narrow grounds.¹⁸⁹

In *Jackson v. Drake University*, a slightly different case concerning a contractual right to academics and sports, the student-athlete claimed that the school “interfered with his academics as well as his participation in basketball because he was subjected to verbal abuse.”¹⁹⁰ The student believed that the verbal abuse was allegedly the catalyst for the student’s voluntary departure from the university.¹⁹¹ In *Jackson*, the Iowa State court granted summary judgment to the university on the grounds, again, that it did not permit educational malpractice claims.¹⁹² Both of these cases demonstrate the judicial system’s unwillingness to hold universities liable for “educational malpractice claims,” due in part, to the precedent it would set and the potential flood of litigation claims that might arise when a student-athlete believed that his/her right to an education was infringed upon.¹⁹³

B. Former Scholarship Student-Athletes

Former scholarship student-athletes, who for one reason or another, may have lost their scholarship often face financial hardships to pay for college, and consequently

183. *Id.*

184. *Id.*

185. *See* Lewis, *supra* note 113.

186. *See, e.g.*, *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992); *Jackson v. Drake Univ.*, 778 F. Supp. 1490 (S.D. Iowa 1991).

187. *See* Lewis, *supra* note 113 (citing *Ross v. Creighton Univ.*, 957 F.2d 410, 412 (7th Cir. 1992)).

188. *Id.*

189. *Id.*

190. *Id.* (citing *Jackson v. Drake Univ.*, 778 F. Supp. 1490, 1492 (S.D. Iowa 1991)).

191. *Id.*

192. *Id.*

193. *See* *Ross v. Creighton Univ.*, 957 F.2d 410, 412 (7th Cir. 1992); *Jackson v. Drake Univ.*, 778 F. Supp. 1490, 1492 (S.D. Iowa 1991).

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tend to either fail or drop out.¹⁹⁴ It is important to analyze what, if any, fiduciary duty a university may have to these former scholarship athletes. On first glance, it does not seem equitable that a former scholarship athlete could be deserted by an academic institution simply due to sub-par athletic performance.

This notion of university abandonment does not speak glowingly of higher education.¹⁹⁵ When one considers, for example, a hypothetical situation where a university offers a student a scholarship in the arts, it would be unheard of for the university to terminate a student's financial support simply because he/she either was not performing on Broadway or his/her artwork was not on display at a notable art gallery. In other words, therein lies a double standard in college education when a student-athlete's athletic achievement is solely connected to his/her financial support.¹⁹⁶ Whereas in other facets of academia, scholarship students do not face such intense scrutiny, and are less likely to be subjected to such rigid scholarship eligibility requirements as under the current system.¹⁹⁷

IV. CONCLUSION

College athletics serve as a critical staple of American culture, more so today than ever before.¹⁹⁸ As the number of individuals attending college has increased, so has the interest in college athletics.¹⁹⁹ While college athletics provide physically gifted students with an opportunity to hone their athletic skills, promote discipline, and build character, the reality is that there is also a flourishing business side to it that seeks to exploit the purest form of amateurism.²⁰⁰

The reality is that college athletics generate millions of dollars in revenue for universities across the country, helping to fund college programs, pay professors and

194. See Jamilah King, *How Scholarships Leave Student-Athletes Powerless in the NCAA Game*, COLORLINES, (Mar. 23, 2012), <https://www.colorlines.com/articles/how-scholarships-leave-student-athletes-powerless-ncaa-game>.

195. See *id.* (recounting the experience of a former Penn State Basketball player whose scholarship was taken away because of her sexual orientation).

196. See *id.*

197. See Deborah Ziff, *4 Myths About Athletic Scholarships*, U.S. NEWS, <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-10-04/4-myths-about-athletic-scholarships> (last visited Oct. 21, 2017) (explaining the rigorous criteria in obtaining an athletic scholarship); see also *Scholarships, DAUGHTERS OF THE AMERICAN REVOLUTION*, <https://www.dar.org/national-society/scholarships/specific-scholarships-0> (last visited Sept. 24, 2017) (explaining the criteria for performing arts scholarships).

198. See King, *supra* note 195 (stating that college athletics receive non-stop media coverage during March Madness).

199. *Id.*

200. See *id.* (quoting a recent study, which stated that "National College Player's Association found that in 2009-10, the poorest basketball and football players generated combined revenues in each sport of more than \$30 million but lived \$3,000 to \$5,000 below the poverty line").

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erect campus buildings.²⁰¹ The student-athletes' status under the current framework, however, remains one of controversial debate.²⁰² College athletes are still exploited for their athletic prowess, often at the expense of a quality education.²⁰³ Therefore, it is critical that this issue be addressed in a constructive and equitable manner that strikes a delicate balance between the preservation of higher education and the uncompromising protection of the legal rights of the student-athlete.

201. Maurice Peebles, *7 Common Sense Reasons Why College Athletes Should Be Paid (According to Jay Bilas)*, COMPLEX SPORTS, (Dec. 3, 2017) <http://www.complex.com/sports/2015/12/jay-bilas-interview/>.

202. *See id.* (addressing why college athletes deserve to be paid).

203. King, *supra* note 195.