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## Fair Pay to Play The NCAA 'Cartel'

Wynn Miller

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**FAIR PAY TO PLAY: THE NCAA 'CARTEL'**

Master of Arts Thesis

Submitted to

The Levy Economics Institute of Bard College

by

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## **Abstract**

The National Collegiate Athletic Association (NCAA), which is the primary governing board for intercollegiate athletics in the United States, has been widely criticized for making huge amounts of money off of the hard work and labor of college student-athletes without paying fair compensation to those student-athletes. The NCAA's revenue has consistently increased over the past century—however, it was not until the 1980s that the NCAA evolved into a multi-billion-dollar organization. Despite the billions of dollars in revenue that its student-athletes generate on an annual basis, the NCAA has refused to share the revenue with those student-athletes on the ground that doing so would compromise the “notion of amateurism” upon which intercollegiate athletics purportedly is based. However, there is nothing “amateur” about 18- to 22-year-old men and women spending long hours training, practicing, and competing in their sport everyday like it is their job, being expected to “win at all costs,” and generating billions of dollars for the NCAA and their schools through ticket sales, television broadcasts, advertising, apparel, etc. The sad reality is that the NCAA's governing board consists almost entirely of “older white men” who are not necessarily even interested in sports, whereas a majority of the student-athletes who participate in the sports that generate most of the NCAA's revenue (i.e., Division I football and men's basketball) are black and, in many cases, poor (*see NCAA Consolidated Financial Statements; NCAA Demographics*).<sup>1</sup> For this reason, the NCAA's worst

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<sup>1</sup> A 2018 study conducted by the University of Southern California's Race and Equity Center revealed that black males make up only 2.4 percent of the undergraduate student bodies at the 65 schools in the “Power Five” athletic conferences, but comprise 55 percent of the football players and 56 percent of the basketball players at those schools (Harper 3). The “Power Five” athletic conferences generate the largest proportion of revenue and consist of the Atlantic Coast Conference (ACC), Big Ten Conference, Big 12 Conference, Pac-12 Conference, and Southeastern Conference (SEC)..

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critics have labeled the organization's policies as racist and exploitive of student-athletes, and even compared the NCAA's regulation of intercollegiate athletics to "modern-day slavery" (*see* NCAA Consolidated Financial Statements; NCAA Demographics). This paper discusses how the NCAA acts as a monopoly corporation over intercollegiate athletics and exhibits characteristics—and challenges—similar to a modern-day cartel. It argues that the NCAA's commercialization of intercollegiate athletics has made the notion of *amateurism* in intercollegiate athletics a myth and that the NCAA's refusal to pay a fair wage to its student-athletes is hypocritical and exploitive. Finally, the paper discusses the benefits of "fair pay to play" for student-athletes and how social media have contributed not only to the commercialization of intercollegiate athletics, but also, to high school student-athletes' increased awareness of employment opportunities outside of the NCAA, thereby generating more market competition for the NCAA.

## I. Introduction

Despite the huge financial success of intercollegiate athletics, and the NCAA's willingness to share its revenue with a wide range of individuals and entities (e.g., coaches, athletic departments, athletic administrators, etc.), the NCAA has refused to compensate the student-athletes who actually generate the revenue beyond the cost of an athletic scholarship. Relating this "culture of greed" to amateurism allows the NCAA to continue exploiting the "less fortunate" while other authoritative bodies turn their heads in exchange for an annual check. As the NCAA promotes athletic scholarships as adequate compensation for its student-athletes, it does not afford these young student-athletes nor their parents any room to negotiate the terms of these scholarships. When one considers the huge amount of revenue student-athletes generate, as well as the extensive number of hours they devote to their sports, it is clear that there is nothing "amateur" about intercollegiate athletics and that athletic scholarships are essentially "business contracts." Thus, the "grant-in-aid" document that high school student-athletes must sign in order to accept an athletic scholarship to attend college is a "contract of adhesion" that is designed to generate billions of dollars for the NCAA at the expense of exploiting student-athletes—many of whom are black and underprivileged—for their talents and willingness to sacrifice time and effort in the classroom to be dedicated to their sport. Although the NCAA continues to try to justify its illicit acts of exploitation under the guise of amateurism, the harsh reality is that the NCAA's refusal to pay fair compensation to its student-athletes makes it an economic cartel.

## II. The NCAA Organization

The NCAA was created in 1906, as the Intercollegiate Athletics Association of the United States (IAA), in response to a directive from President Theodore Roosevelt for colleges and universities to develop rules to help reduce the number of serious injuries and deaths in college football. The original IAA consisted of 62 member schools and, in 1910, changed its name to the NCAA. As of 2019, the NCAA had 1,117 volunteer member institutions and over 480,000 student-athletes attending those institutions (NCAA Manual 440; NCAA Division I). The NCAA's member institutions are divided into three divisions—Division I, Division II, and Division III—based on such factors as the size of the institution, the number of sports offered, and the number of athletic scholarships awarded. The NCAA regulates all aspects of intercollegiate athletics, including in areas related to athletic competition and championship events, player eligibility, player recruitment, television broadcasting and promotional contracts, and licensing agreements for the NCAA name and logo.

### A. The NCAA as an Economic Cartel

Most people think of a *cartel* as a big, mean, drug-trafficking organization that imposes its will on the public through violence and cruelty. In economic theory, however, a *cartel* is a combination of independent enterprises that work together to coordinate activities and jointly agree on rules for competing against each other (e.g., OPEC is a business cartel) (Deiter). Illegal drug organizations perform illegal actions to climb the economic ladder and cover them up by laundering their illegal profits. The word *cartel* has been shaped by criminals and society to have a negative connotation and is not usually attached to organizations that are considered to

operate legitimate and fair businesses. The NCAA acts as an economic cartel in the way that it attempts to cover up its exploitation of student-athletes by solidifying agreements with advertisers (and other stakeholders) and promoting their brands as a form of *amateurism*. For most people, the notion of amateurism pertains to something that has a sense of honesty, innocence, and fairness. Likewise, the NCAA promotes this notion of amateurism in the context of intercollegiate sports to give the appearance that the atmosphere surrounding college athletics is caring and equitable with respect to play, recruiting, and the distribution of revenue. However, the NCAA eliminated the notion of amateurism from intercollegiate sports when it engaged in the commercialization of these sports.

#### B. The Myth of Amateurism in Intercollegiate Athletics

The NCAA might have been able to preserve the notion of amateurism in intercollegiate athletics if its move to commercialize college sports was advertisement-free, exploitation-free, and not motivated entirely by profit. Sadly, however, that is not the case. Intercollegiate sports generate massive amounts of income, and the NCAA oversees every aspect of this \$14 billion-dollar industry (Murphy 3).<sup>2</sup> The NCAA began as an organization that would regulate and promote fair, innocent play in intercollegiate athletics but now depends on a select few major athletic programs and conferences to generate its vast revenue. As noted above, the NCAA is comprised of nearly 1,200 participating colleges and universities (in 95 athletic conferences)—so why does it exclude so many schools from reaping equitable portions of the cash flow? The

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<sup>2</sup> In 2018, the U.S. Department of Education reported that college sports programs generated over \$14 billion in revenue—an increase of \$11 billion from 2003 (Murphy 3).



simple answer is that the NCAA hides behind a “veil of amateurism” that allows the concentration of cash to persist in the hands of a select few athletic programs and coaches that will help keep its exploitive culture alive. The NCAA’s principle of amateurism states that “student athletes shall be amateurs in intercollegiate sport, and their participation shall be motivated by education and by the physical, mental, and social benefits to be derived” (NCAA Manual 3-5). This principle of amateurism was drafted directly by members of the NCAA—presumably, its ideal is that student-athletes participate in intercollegiate sports to obtain a good quality education and the beneficial values (e.g., hard work, discipline, teamwork, sportsmanship, etc.) that derive from participating in sports generally. Although many student-athletes are happy to play college sports merely for “love of the game” and to obtain a college degree, it does not excuse the NCAA’s hypocrisy in this area.

There are two major inconsistencies with the NCAA’s refusal to compensate its student-athletes in the name of amateurism. First, if the NCAA and its member schools truly were concerned with instilling specific positive values in their student-athletes and helping them obtain college degrees, many more student-athletes actually would graduate from college and find employment in corporate fields rather than risking, and losing, their scholarships by declaring for the National Football League (NFL) or National Basketball Association (NBA) draft.<sup>3</sup> Second, the NCAA applies the principle of amateurism only to student-athletes while excluding coaches, athletic directors, and NCAA board members from upholding the same

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<sup>3</sup> Under NCAA rules, once a student-athlete enters a draft to play professional sports, he or she is no longer considered an amateur and is stripped of eligibility to participate in intercollegiate sports, even if the player goes undrafted.

principle. What then are the motivations for college coaches to recruit the most athletically gifted student-athletes and to demand so much of these kids' time and dedication to their sport? What are the motivations of NCAA board members not to pay fair compensation to student-athletes while they (and so many other stakeholders) feast on the student-athletes' hard work? The NCAA has long portrayed its own intentions as compassionate and innocent (i.e., in the name of amateurism), but its true motivations appear to be manipulative and controlling. Similarly, the NCAA's focus on commercializing intercollegiate athletics is nothing short of exploitation.

### III. Challenges of an Economic Cartel

#### A. Reducing Competition

There are four main challenges that every economic cartel must overcome if it wants to succeed, regardless of the field of work in which it engages. First, the cartel must reach an agreement with potential competitors, allowing them to operate at a level of production that is profit-maximizing for them. This challenge was probably the most difficult for the NCAA to overcome, considering the heterogeneity that exists amongst colleges and universities. Because there are so many different levels of competition within intercollegiate sports (i.e., women's and men's sports at the NCAA Division I, Division II, and Division III levels; and NAIA<sup>4</sup> sports), convincing the U.S. Supreme Court and professional sports leagues of the legality and morality of earning virtually all of its revenue on the backs of a select few large athletic conferences (and

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<sup>4</sup> Approximately 250 relatively small colleges and universities compete in intercollegiate sports under the National Association of Intercollegiate Athletics, or NAIA. The NAIA is the only other organization that governs intercollegiate athletics in the United States on any level.

their players) while maintaining authority over all other athletic conferences that generate only a fraction of the NCAA's revenue, if any at all, could not have been an easy task. Further, as noted by Sanderson and Siegfried, "[r]eaching an agreement among competitors to reduce competition in the sale of broadcast rights and in the acquisition of player talent would normally also face the considerable difficulty of likely antitrust challenges" (15). The NCAA, however, has managed to dominate the intercollegiate sports industry for more than a hundred years with little or no backlash from its member schools or the courts.

### 1. Non-Price Competition

When suppressing competition, an economic cartel must overcome the potential erosion of cartel profits through either *non-price competition* or *member cheating*. Non-price competition refers to the use of excess profits to advertise, innovate, and improve services to increase future profits. In 1940, for example, the University of Pennsylvania began televising its home games and, by 1950, was making more than \$150,000 a year from the broadcast rights. The NCAA became concerned about a possible reduction in ticket sales and forced Penn to stop televising its games (Sanderson 11). The following year, the NCAA implemented a "Television Plan" that restricted the number of games that could be televised and the number of appearances an individual school could make.<sup>5</sup> The NCAA's "Television Plan" restricted individual participants (i.e., NCAA member schools) from exercising their own form of non-price competition because the NCAA would not be able to "cash out" off of the big-name schools like

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<sup>5</sup> As discussed in more detail in chapter IV.C, in 1984, the U.S. Supreme Court issued its decision in *Board of Regents of the University of Oklahoma v. NCAA*, which held that the NCAA's "Television Plan" violated antitrust laws (Edelman 79-80).

they currently do if every school was battling for television time and marketing exposure.

Member schools that violate NCAA rules would be guilty of *member cheating* (discussed below) and subject to a range of penalties, such as fines, scholarship reductions, postseason bans, and even the infamous “death penalty.”<sup>6</sup>

Also, because college and university athletic departments do not have the ability to offer financial compensation beyond an athletic scholarship to young student-athletes that are being recruited, “big conference” programs have a distinct advantage over smaller schools because of the structure of how non-price competition is used in relation to the NCAA’s marketing scheme. When sports fans turn on the television to watch college football, for example, they usually see teams from major football programs like the University of Alabama, University of Texas, University of Southern California, etc. playing on major networks like NBC, CBS, ABC, or ESPN. These schools’ football programs generate massive amounts of revenue to build up their campuses and athletic facilities, which greatly intrigue fans and young student-athletes. This is a form of manipulation in recruiting that creates “tunnel vision” for young student-athletes by convincing them that they should desire to play for these big schools because they are “better” than smaller schools with older equipment and facilities. This phenomenon makes committing to big schools more of a trend than an accomplishment for student-athletes who believe that using the best facilities and getting the most media exposure increase their chances of getting drafted into the NFL or NBA. This aspect of intercollegiate sports is extremely political in that it gives

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<sup>6</sup> The NCAA’s most severe penalty is known as the “death penalty” and enables the NCAA to shut down a school’s athletic program for the entire regular season. The NCAA has imposed this penalty only once—against the Southern Methodist University football program in 1987.

smaller colleges little or no chance at recruiting top prospects out of high school, which is essential to increasing revenues for the entire institution. The University of Richmond, for example, which is considered to be a “mid-major” program in men’s basketball, has no chance of competing with Coach John Calipari and his University of Kentucky men’s basketball program when recruiting players since, under the NCAA’s system, Kentucky is favored in non-price competition while Richmond, and many other smaller institutions alike, is neglected.

## 2. Member Cheating

Member cheating in the NCAA takes on many forms, but the most common violations committed by member schools relate to paying compensation to young recruits to entice them to attend the school. Typically, it is difficult for the NCAA to monitor this type of cheating, as there are hundreds of thousands of coaches, administrators, and alumni that could potentially participate in such an activity on behalf of a particular school. Schools also commit this type of violation indirectly by giving money and other gifts to relatives of the student-athletes they are recruiting. The NCAA has employed an investigation team specifically for this reason— however, it is still rare for the NCAA to catch a college or university engaging in this type of member cheating. “The NCAA also relies on rival teams to discover improprieties and report them, which many do because the punishment of rival team violations can improve the competitive record of the whistleblowers” (Sanderson and Siegfried 17). This culture resembles that of an illegal drug cartel in which a cartel member will expose violations committed by his peers in order to ingratiate himself with “the boss.”

## B. Deterring New Entries into the Market

The second challenge a cartel must overcome to be successful is deterring entry into the market of new entities that are attracted by the prospect of sharing in cartel profits. In the context of intercollegiate athletics, this refers to the evolution of smaller athletic programs and their push to join one of the major athletic conferences that generate most of the NCAA's revenue. Michigan State University, for example, was not always in the Big Ten athletic conference—it had to grow its programs and make a pitch to the NCAA (and the Big Ten conference) that was convincing enough for it to be allowed to join. Essentially, Michigan State had to convince the NCAA that it would abide by cartel rules and help improve the value of the organization rather than cause the value to depreciate. NCAA rules in areas such as the capacity of facilities; attendance levels at sporting events; and number of Division I games played, sports offered, and scholarships awarded make it extremely difficult for schools to enter the top football and men's basketball divisions of the NCAA. In fact, "only 14 universities have gained NCAA Division I status since 2000" (Sanderson and Siegfried 19). One reason it is so difficult for lower level college athletic programs to acquire NCAA Division I status is that there are already hundreds of teams in various conferences that have established regular season schedules, marketing and advertising plans, and annual ticket sale numbers that are routinely reached, which enables the NCAA to estimate the revenue it will generate in a given year. Allowing new colleges to join NCAA Division I competition more frequently could potentially cause the NCAA and its member schools to lose a lot of revenue, since they would have to share the

revenue generated with the new entrant without any guarantees that the school would generate more revenue.

### C. Inequitable Culture

The third challenge cartels must overcome is that some members may deem the culture of the cartel to be inequitable with respect to its distribution of inputs and revenues—as they rightfully should, of course. The NCAA only broadcasts games played by college teams that they believe will generate revenue, which results in the unequal distribution of overall profits among NCAA member schools. Because the NCAA distributes its profits in relation to the production of output of all member schools, small liberal arts colleges whose games are not being televised will always get the “short end of the stick.” This may cause NCAA member schools outside of the five largest athletic conferences (i.e., the “Power Five”) to seek a more equal distribution of revenue or, at least, to desire equality in terms of television broadcasting and advertising rights. These schools, as well as the student-athletes that represent them, should be frustrated and dissatisfied with the “cartel-like” practices of the NCAA. Greed is the only logical explanation for why parents of student-athletes at big conference schools can sit back, kick up their feet, and turn on ESPN every Saturday to watch their child play, while parents of student-athletes at smaller schools must incur the costs of driving long distances or, if they are lucky, accessing private streaming links to see their child’s games. Clearly, the NCAA is motivated by greed and power when it comes to money, as any cartel would be.

#### D. Acts against Humanity

The fourth challenge a cartel must overcome to be successful is the most difficult for the NCAA to conquer—that is, acts against humanity. The NCAA’s implementation of “no-pay rules” for student-athletes under the guise of *amateurism*, while using these student-athletes and their images to generate billions of dollars in revenue, accounts for most of the inequality and exploitation that exists in intercollegiate sports. There are two main arguments against no-pay rules—the first argument is that they represent a form of wage-fixing that is dangerous to the market for student-athlete services and the quality of college sports’ on-field product. As a general rule, “wage-fixing involves any agreement by two or more employers to set the compensation rate of workers at a pre-specified amount” (Edelman 76). This type of activity stymies competition within the industry because pre-specified rates of pay equate every worker’s productivity to the next worker’s productivity and prevents any type of mobility within that occupation. This means that one worker may produce twice as much output as the next person with the same job but is paid the same amount as the less productive worker and has no chance of being promoted. Wage-fixing is illegal in a free market economy because it drives workers away from their specialized field of work into other industries where their productivity is much lower. Such activity also prevents workers from moving into higher paying jobs. Initially, when the NCAA began to focus on maximizing profits in college sports, it implemented a cap on the salaries of assistant coaches, restricting them to a low salary that would allow the NCAA to retain a larger proportion of the profits from intercollegiate athletics for itself and a select group of stakeholders, such as head coaches and athletic directors. In 1998, however, in *Law v. NCAA*,



the Tenth Circuit Court of Appeals (Tenth Circuit) found that the salary cap was illegal wage-fixing because it depressed assistant coaches' salaries without promoting a legitimate antitrust goal (Edelman 76).

By prohibiting colleges from paying a fair wage to student-athletes, the NCAA has implemented the same type of cap on student-athletes' salaries that the Tenth Circuit deemed illegal when it was imposed on assistant coaches' salaries. The main reason the NCAA's no-pay rule has not been declared illegal is because courts have found that student-athletes are not *employees* like assistant coaches are. Based on the amount of time they are required to devote to athletics and the amount of revenue they generate on behalf of the NCAA and their schools, however, it is illogical that student-athletes are not considered to be employees. A 2011 self-study performed by the NCAA showed that student-athletes devoted approximately 43.3 hours to their sport each week, more time than they spent on academics and more than a typical U.S. worker spends on his or her job" (Edelman 77). Student-athletes clearly meet the criteria to be treated as employees, given the time and effort put into producing output for their athletic programs. Nevertheless, the NCAA claims that student-athletes are mainly students, and not workers, to avoid any antitrust scrutiny.

#### IV. The Commercialization of Intercollegiate Athletics

##### A. Establishing Market Dominance

The NCAA has long fed into fans' love of sports and interest in seeing their favorite teams play while many young athletes—particularly, those from underprivileged backgrounds—have viewed playing the sport they love as a way to achieve economic success. So, if the love of

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sports and the thrill of seeing young student-athletes achieve economic success were not the motivations that influenced the transition of college sports into a billion-dollar commercial enterprise, what were the NCAA's motivations? Considering that we live in a capitalistic society, the answer is quite apparent: money and power. Not only did the NCAA move to commercialize college sports for money and power, but it solidified its dominance in the college sports industry by eliminating any organization that intruded on its cash flow:

In 2007, as the outcome of a settlement that ended an antitrust suit between the National Invitation Tournament (NIT) and NCAA, the NCAA purchased the NIT, thereby ending its modest competitive threat to the NCAA's lucrative 'March Madness' basketball tournament (Sanderson and Siegfried 3-4).

Ironically, the NIT had held the first basketball championship in 1938. The NCAA held its first championship the following year and, for a number of years, the tournaments co-existed.

Eventually, the NCAA prohibited teams that played in the NIT from also competing in the NCAA tournament, which led the NIT to file an antitrust suit against the NCAA. It is worth noting that the NCAA's "March Madness" postseason men's basketball tournament generates more than \$700 million between television broadcasting and ticket sales annually, as reported in 2014 (Hobson). The NAIA, which consists of about 250 relatively small colleges and universities and is the only other organization that governs intercollegiate athletics in the United States on any level, also has been marginalized and brought under the control of the NCAA and, as such, is generally considered by high school athletes to be "low-major Division I" competition.

Solidifying its dominance in the field of college sports allowed the NCAA to experience a "boom" commercially. Advances in technology enabled sports fans to watch college sporting

events live on television, causing the demand for sports broadcasts to increase exponentially. Now that die-hard sports fans did not have to spend extra time or money physically travelling to big college games, many chose to “stay on the couch” or visit a local bar to enjoy college sports live—rather than waiting for replays and box scores the following day. Sanderson and Siegfried note,

While the power conferences solidified their market power, technological developments have increase the relative value of televising events that viewers prefer to watch live...Many fans prefer to watch a sporting event in real-time rather than recording it to view later and skipping over the commercials (4).

It is no secret that most members of the NCAA governing board are older white males from affluent backgrounds, while most Division I football and men’s basketball players are black, and many come from low-income backgrounds and would not be able to afford college but for the grace of their natural-born talent and hard work that helped them acquire an athletic scholarship. There is nothing inherently wrong with embracing the NCAA as a lucrative, powerful establishment—however, because the NCAA promotes itself as a “non-profit” organization that adheres to the notion of amateurism while making billions of dollars at the expense of some of society’s most oppressed and vulnerable individuals, there arises a “humanity issue.” The commercialization of intercollegiate sports has enabled head coaches, athletic directors, and others to make millions of dollars annually, while many student-athletes have families that are barely surviving off of welfare checks back at home.

#### B. The NCAA’s Exploitive Behavior

Most of the investments and innovative moves made by corporations are not questioned by the general public because they usually are appealing and beneficial to the corporation’s

shareholders and society at large. However, many corporate actions are driven by underlying corrupt intent. For many years, few people questioned the NCAA's moves toward the commercialization of big sports like Division I football and men's basketball because it made life easier for the general public who loved to watch these sports. Over the years, however, it has become more and more apparent that the NCAA has engaged in underlying exploitive behavior in order to maintain its billion dollar revenue stream that is intercollegiate sports. When colleges and universities experience financial losses in their athletic departments, one would expect them to invest fewer funds in their sports programs but, surprisingly, they do not. To the contrary, colleges and universities whose athletic programs lose money tend to spend more money to pay huge coaches' salaries and improve athletic facilities in the hopes of making their athletic programs more competitive and, eventually, turning a profit. The most logical explanation for this behavior is the huge "cash cow" that is the NCAA and the idea that a successful athletics program will not only enable the school to share in the NCAA's profits, but also, improve the overall reputation of the school and enable it to profit in other areas. As noted by Sanderson and Siegfried,

First, intercollegiate sports might attract greater appropriations from state legislators concerned about their constituents' perceptions of public universities in their states...Second, intercollegiate athletics may boost private donations...Third, high-profile sports programs, like other campus amenities, may attract more applicants and thus additional enrollment, which is especially beneficial if fixed-cost facilities are underutilized (Sanderson and Siegfried 6-7).

While it is logical that high-profile sports programs are likely to generate more funds from State legislatures and alumni, studies have shown that big sports programs are directly tied to student

recruitment and enrollment. Colleges are keenly aware of the vast hype that their athletic programs generate for their campuses in all aspects, specifically admissions.

C. The ‘Real Purpose’ behind the NCAA’s Eligibility Rules

Although college sports have always been somewhat commercialized, the NCAA’s focus on earning revenue increased substantially after World War II when the G.I. Bill, the “baby boom,” and the expansion of television receivers increased demand for college sports (Sanderson 11). Initially, to control costs and increase revenue, the NCAA put rules and restrictions in place to regulate member schools’ use of the media. According to Sanderson and Siegfried, these rules were to “(1) limit the compensation and demand for the most essential input to games: players, and (2) restrict the number of games that [were] available for sale to broadcast networks” (12). Initially, the NCAA limited the number of players its member schools could recruit and prohibited any compensation (i.e., athletic scholarships) to student-athletes and, as discussed above, in 1952, implemented a “Television Plan” that restricted television broadcasts for member schools. Money is heavily desired in a capitalistic economy, however, and the NCAA did not expect the move towards commercialization to be as lucrative as it has become. The value of the restricted television rights agreement between the NCAA and its member schools gradually increased and, in 1984, in *Board of Regents of the University of Oklahoma v. NCAA*, the U.S. Supreme Court held that “big-time commercialized intercollegiate athletic competition is subject to the 1890 Sherman Antitrust Act” and dissolved the contract (Sanderson and Siegfried 3).<sup>7</sup> Although the *Board of Regents* decision abolished the broadcasting agreement, NCAA

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<sup>7</sup> *NCAA v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984).

restrictions in the areas of player recruitment and compensation remained in place. When the latter restrictions finally were lifted in 1951, the NCAA agreed only to permit colleges to award student-athletes a “grant-in-aid,” which generally consists of a tuition scholarship with room and board, books, and fees—now known as an athletic scholarship. However, as the television broadcasting restrictions were withdrawn, revenues for the NCAA rapidly increased, and the NCAA “doubled down” on its exploitation of student-athletes.

#### D. The NCAA’s ‘Partners in Crime’

Despite its best efforts, the NCAA’s power to suppress the income of its student-athletes would be substantially reduced without the cooperation of the NFL and NBA, both of which prohibit athletes from competing in their leagues immediately after high school. The most logical explanation for these types of restrictions by professional sports leagues is the existence of underlying agreements between the NCAA and the players’ associations of the NFL and NBA. While it is common knowledge in the world of sports that student-athletes can no longer enter the NFL or NBA immediately after graduating from high school,<sup>8</sup> few people are aware that the implementation of such rules are parts of mutual agreements between the NCAA and the NFL and NBA that benefit each organization. The NFL requires at least three years of college play or “post-high school experience” to enter its draft, while the NBA requires at least one year. This makes accepting an athletic scholarship to play college sports the only viable option for many young, naïve high school student-athletes. When one calculates the value these players bring to their schools as compared to the “compensation” they receive from their scholarships,

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<sup>8</sup> The NFL has limited eligibility to players who have been out of high school for at least three years since 1990, and the NBA has restricted eligibility to players who have been out of high school for at least one year since 2006. The NBA’s eligibility rule has led to the “one and done” phenomenon in college basketball.

however, the question becomes, “Is it really worth it?” As Sanderson and Siegfried note, “[t]hese professional league policies have drastically reduced the viable paid options that are available to young athletes” (13). Convincing the most talented student-athletes to hone their athletic skills in college keeps alive their hopes of competing at the professional level. Top football prospects lose at least three years, and top basketball prospects lose at least one year during which they could make millions of dollars playing professionally in the NFL and NBA, respectively, to support their families. If the NCAA were to pay fair compensation to its student-athletes, those student-athletes would have multiple options for achieving financial success besides declaring for the NFL or NBA draft—drafts that the student-athletes have little to no chance of succeeding in, by the way.<sup>9</sup>

The impact of the NFL and NBA bans on younger players signing professional contracts is even greater than it appears on the surface. By stripping high school student-athletes of the option of pursuing a career in professional sports, the NFL and NBA have essentially enabled the NCAA and its member schools to sign employees to work contracts without paying fair compensation. These arrangements are beneficial to the professional leagues because they do not have to incur the costs of putting young players through “training” (i.e., getting them ready for the league in a short amount of time) and are able to pay lower salaries for higher-quality players when the players enter the league. Further, it is not coincidental that the NFL and NBA, which draw athletes primarily from the NCAA’s major money-making sports (i.e., Division I football and men’s basketball), are the only professional sports leagues with such age

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<sup>9</sup> Harper notes that the idea of sports as an avenue of upward economic and social mobility for blacks is a myth. The reality is that less than two percent of Division I football and men’s basketball players are drafted into the NFL and NBA each year, and even fewer of those athletes will make NFL and NBA rosters (Harper 17)..

restrictions. If the NCAA's exploitation of student-athletes were not so blatant, it would be ironic that, despite the restrictions that have been imposed on the student-athletes that are doing the hard work and dedicating most of their time to output, there are no restrictions on the amount of money that can be paid to head coaches or athletic directors. "Nor does the NCAA control what an institution spends on athletic facilities...the NCAA does, however, limit recruiting costs...to help preserve the benefits that flow to those whose compensation is not restricted" (Sanderson and Siegfried 13). Thus, it is clear that the NCAA protects the interests of those individuals and entities that enable the exploitation of student-athletes to persist, rather than the interests of the student-athletes. In other words, the NCAA has systems in place that are specifically designed to facilitate its manipulation and oppression of some of its most vulnerable student-athletes.

## V. 'Fair Pay to Play'

### A. The NCAA's No-Pay Rule is an 'Illegal Group Boycott'

A number of scholars contend that the NCAA's no-pay rule constitutes an *illegal group boycott*. As discussed above, as the NCAA moved more towards the commercialization of intercollegiate athletics, just as it imposed a cap on assistant coaches' salaries, it implemented a cap on the amount of games an NCAA member school could broadcast (i.e., to enable more television time for the "big universities" that generated the most revenue). However, as discussed above, the U.S. Supreme Court ruled that the NCAA's broadcasting restrictions were illegal and exhibited qualities of an illegal group boycott "because [they] excluded competitors from the market, since only broadcasters able to bid on the entire NCAA could compete"



(Edelman 80). The NCAA's no-pay rule prevents schools from smaller conferences from competitive bidding to recruit the best qualified student-athletes. Despite their purported educational mission, over the years, the NCAA and the athletic programs of most of its member schools have become increasingly focused on maximizing profits rather than educating student-athletes. There are a number of schools, however, that have maintained their focus on academics and invest most of their resources and endowments towards improving academic programs and facilities rather than athletic programs and facilities. If the NCAA allowed student-athletes to receive fair compensation for competing in intercollegiate athletics, smaller schools could compete with larger schools in recruiting top-level student-athletes for their programs. This would result in a number of positive changes in intercollegiate athletics—the general competitiveness of intercollegiate sports would increase exponentially, more student-athletes would have access to a higher-quality education from prestigious liberal arts colleges that compete in lower NCAA divisions and currently are not allowed to award athletic scholarships, student-athletes would spend more time studying and increase their chances of graduating from college, and student-athletes would have more employment options after college.

#### B. The Benefits of 'Fair Pay to Play' for Student-Athletes

If student-athletes were paid a fair wage for their hard work and sacrifices, they would reap the benefits of a range of positive outcomes. First and foremost, the likelihood of student-athletes being subjected to exploitation by people who have no concern for their well-being would be substantially reduced. Second, more student-athletes would make it a priority to obtain a college education because they would not feel the need to “stress themselves out” trying to reduce their 40-yard dash time by two-tenths of a second. Third, student-athletes would have

some measure of financial freedom—athletic scholarships generally cover college tuition, room and board, books, and fees but do not provide enough compensation for student-athletes to provide financial support for their families. Many student-athletes accept athletic scholarships because they view them as their best chance to provide financial support for their families in the long-run—however, because of the demands that are placed on them to succeed in their sport, many Division I football and men’s basketball players use up their eligibility to play college sports without obtaining a college degree and, as a result, view making it to “the League” as the only way to provide financial support for their families long-term. Sadly, as mentioned above, playing professional sports is practically impossible to do.

Lastly, paying fair compensation to college student-athletes would take immense pressure off of them. Because many Division I football and men’s basketball players come from underprivileged backgrounds, many of these student-athletes have an abundance of people rooting for them, and depending on them, to succeed in professional sports, which can result in excessive mental and emotional pressure on the student-athlete. Bryce Gowdy, for example, was only 17 years old and had committed to play football for Georgia Tech University when he committed suicide by walking into an oncoming freight train. Although no one will ever know the true reason he took his own life, it has been widely speculated that the motive behind his actions was feeling intense stress about leaving for college and not being home to take care of his family. Bryce was the oldest male in his household and had taken on the responsibility of supporting his younger siblings; it is believed that the thought of him being away at college and living a manageable life while his family continued to struggle was “eating away at his soul.” Another example of the intense pressure many student-athletes feel to succeed in professional

sports is the case of a high school football player from Maryland who had committed to play football at the University of Oregon in the fall of 2020. The young student-athlete lost his athletic scholarship—for reasons unknown—and is now fighting a first-degree attempted murder charge for firing shots at the boyfriend of his now ex-girlfriend.

### C. The Influence of Social Media on College Sports

The media attention afforded to young student-athletes from middle school to high school has increased dramatically over the past decade. With “social media” and other technological innovations that facilitate posting and sharing content on the internet, coaches are able to start recruiting, and fans are able to start watching, the most promising college prospects at an early age. Alonzo Trier, for example, who is currently a guard for the NBA’s New York Knicks, has been featured on YouTube since he was in the sixth grade. The exposure he received through social media at an early age was essential to his college recruitment, as it enabled him to enroll in some of the Nation’s top-ranked college preparatory schools to play basketball. Nowadays, an extensive presence on social media is typical, and even expected, for most elite student-athletes from a very young age—some student-athletes do not even make it past elementary school before posting a “highlight video” on a huge social media platform for the world to see.

While social media exposure has contributed to the successful recruitment of many elite student-athletes across the country, it also has been an important tool in generating more revenue for the NCAA. As noted above, fans are able to watch video clips of top college prospects performing against their peers at a very young age, thereby establishing a fan base for these student-athletes before they even start their freshman year in college. The NCAA has been using this new social media culture to its benefit, as it has done with practically everything else. Zion

Williamson, for example, was the top draft pick in the 2019 NBA draft, despite playing only one season of college basketball at Duke University. During his last two years in high school, Zion built an enormous fan base through social media because of his “NBA-ready” physique and abnormally high vertical jump. On February 20, 2019, Duke was hosting its biggest rival, the University of North Carolina, and the demand for game tickets to see Zion play was higher than ever before. Because of this unusually high demand, Duke raised the price of its game tickets to approximately \$4,000 per ticket—yes, that’s correct. Important public figures like former President Barack Obama and actor and movie director, Spike Lee, were in attendance at this specific game—all for an 18-year-old kid. Unfortunately, Zion’s Nike athletic shoe ripped within the first minute of play, resulting in him leaving the game with a sprained ankle and causing Nike’s stock to drop by 1.1 percent the next day, which is the equivalent of \$1.1 billion (Murphy 1). It is quite hypocritical of the NCAA to hide behind a veil of amateurism when one 18-year old kid ripping his shoe can cost the largest athletic retailer in the world (i.e., Nike) to lose over a billion dollars.

#### 1. The ‘One and Done’ Phenomenon and Other Employment Options

With young student-athletes receiving more media attention, the popularity of NCAA sporting events, as well as the NCAA’s revenue also have steadily increased. Likewise, the public and prospective student-athletes have become more aware of the NCAA’s no-pay rule and its exploitation of student-athletes. Many of the top boys’ high school basketball players have started to “opt out” of signing athletic grants-in-aid and, instead, are choosing to play professional basketball overseas or semi-professional basketball in the U.S. in leagues like the NBA’s developmental “G League.” Former NBA star Brandon Jennings, who played overseas

in China for a year before declaring for the NBA draft, was one of the first top high school basketball prospects to exercise this option. Not surprisingly, many high school players also have turned down offers to play overseas in order to attend college. Canadian native Jamal Murray, for example, who currently plays for the Denver Nuggets, was offered \$1 million to play professional basketball overseas for a year immediately after high school but turned it down to play a year of basketball at the University of Kentucky under renowned coach John Calipari.<sup>10</sup> While opting to play college basketball clearly worked in Jamal's favor, a growing number of elite high school basketball prospects are choosing to earn a professional salary overseas and gain a year of professional experience under their belts rather than attend college for only one year.

## 2. The Ball Brothers

Over the last two years, exercising the option to play professional basketball overseas has become much more popular for elite high school student-athletes. Top high school basketball prospects have begun to opt out of athletic scholarships, even when they already have verbally committed to signing a grant-in-aid with a particular school. The increased popularity of this trend can be attributed—at least, in part—to a man named Lavar Ball, the father of three sons who were considered to be top high school basketball prospects and became known on most social media platforms as “the Ball brothers.” The oldest son, Lonzo, played one season of basketball at UCLA, was a top draft pick for the NBA's Los Angeles Lakers, and currently plays for the New Orleans Pelicans; the middle son, LiAngelo, also played briefly at UCLA but went

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<sup>10</sup> Coach Calipari helped make the “one and done” phenomenon popular by encouraging Kentucky basketball recruits to attend college for only one year before entering the NBA draft.

undrafted in the NBA draft and is now pursuing a contract to play professional basketball overseas; and the youngest brother, LaMelo, skipped college altogether and, arguably, is in the most desirable and influential position as the foundation of this new trend of top high school prospects playing professional basketball overseas. The Ball brothers took full advantage of the internet to gain notoriety, and their father, who saw the potential in his sons before anyone else, worked tirelessly to generate constant media attention for his sons. In 2016, Mr. Ball launched “Big Baller Brand,” or “BBB,”) an athletic apparel and shoe brand named after his sons.

Knowing that involvement in the BBB “family business” would make LaMelo ineligible to receive an athletic scholarship, Mr. Ball withdrew LaMelo from high school, began home schooling him, and helped him obtain a contract to play professional basketball in Australia. As of today, LaMelo intends to declare for the 2020 NBA draft, as he has now spent at least a year out of high school. In addition, LaMelo already has gained two years of experience playing professional basketball overseas, has earned millions of dollars, some of which he used to purchase his team in Australia, and is projected to be one of the top three picks in the 2020 NBA draft. One incident that influenced the Ball brothers’ moves was the NCAA’s suspension of top college player, James Wiseman, from the University of Memphis men’s basketball team. Wiseman, who is projected to be the number one overall pick in the 2020 NBA draft, was a couple of games into his freshman year at Memphis when he was accused of accepting compensation from the school as a high school recruit. Since that time, Wiseman has dropped out of college—supposedly because of the way he was treated by the NCAA—and is now preparing for the 2020 NBA draft. Since LaMelo’s withdrawal from high school and decision to play overseas, and Wiseman’s withdrawal from college, more top basketball recruits from the

high school class of 2020 have opted out of signing athletic scholarships than any class before them. Daishen Nix, for example, the most highly recruited point guard in the high school class of 2020, originally committed to play basketball at UCLA, but recently decommitted and has decided to play in the junior division of NBA's G League. In addition to Daishen, the number one overall recruit, Jalen Green; the top recruited shooting guard, Josh Christopher; and several other top high school basketball players have decided to play in the junior G League rather than play college basketball for the NCAA. Ironically, although social media has helped increase the popularity and profits of the NCAA and intercollegiate sports in general, it also has resulted in increased competition for the NCAA, as top high school prospects have begun to recognize the exploitive nature of the NCAA and to pursue more attractive employment options.

## VI. Conclusion

When the NCAA was originally created, its main purpose was to preserve morality and fairness in intercollegiate athletics while helping young student-athletes acquire a college education. Although the "notion of amateurism" is a core principle upon which the NCAA was founded, over the years, the NCAA has moved more towards the commercialization of intercollegiate sports and has implemented rules and policies to limit costs and increase revenue. As a result, intercollegiate athletics has developed into a billion-dollar industry, and the student-athletes that generate the revenue are being required to spend more time on the football field or basketball court than in the classroom. The NCAA's refusal to pay fair compensation to these student-athletes is hypocritical, at best, and exploitive and illegal, at worst. In short, the NCAA is operating like an economic cartel and, like all cartels, the NCAA is driven by greed. In any

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event, top college prospects are more aware than ever of the NCAA's cartel-like behavior and, as a result, the market is starting to adjust. If the NCAA wants to survive long-term, it must make a change—it cannot continue to generate billions of dollars in revenue on the backs of its student-athletes and then hide behind the “veil of amateurism” as its reason for refusing to pay a fair wage those student-athletes. Adopting a “fair pay to play” policy would not only help the NCAA rediscover the principles of “morality and fairness” upon which the organization was founded but, more importantly, it would be the right thing to do.



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