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## EDUCATING ATHLETES RE-ENVISIONING THE STUDENT-ATHLETE MODEL

William W. Berry III

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# EDUCATING ATHLETES

## RE-ENVISIONING THE STUDENT-ATHLETE MODEL

WILLIAM W. BERRY III\*

*This article contends that if the NCAA and universities are serious about saving the current student-athlete model, then they should double-down on the concept of "student" in the student-athlete model. In particular, this paper suggests that adopting a more realistic approach to educating athletes will benefit both the universities and student-athletes, relieving pressure on the current model and improving educational outcomes.*

*Specifically, this article argues for a revised student-athlete model. First, the new model would require mandatory six-year scholarships for student-athletes and a reduction in the required academic hours "in-season" from nine to three. The model also mandates that students use their eligibility in the first four years at the university. After student-athletes have used their four years of eligibility, half of their education will remain. The students can attempt to become a professional athlete, but if that fails, they will have the opportunity to engage academically for two years in a discipline that will prepare them for the career they seek, rather than follow the path of least resistance to graduation. Indeed, this idea that graduation rates alone indicate the receipt of a robust and valuable education, rather than a short-circuited and compromised one, cheats many student-athletes of the education that they deserve.*

*Part I of the article briefly describes the broken model of intercollegiate athletics. In Part II, the article advances its central proposal for saving the concept of student-athlete: six-year scholarships with a reduction to three hours in-season for student-athletes, coupled with a requirement of eligibility use in the first four years. Part III concludes the paper by demonstrating how the proposal can resuscitate the concept of student-athlete and why the proposal can improve outcomes for universities and student-athletes alike.*

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## INTRODUCTION

“It was the best of times, it was the worst of times.”

– Charles Dickens<sup>1</sup>

By any objective measure, intercollegiate athletics is thriving.<sup>2</sup> After unprecedented growth over the past decade, the obsession with college sports, particularly football and basketball, seems to deepen

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1. CHARLES DICKENS, *A TALE OF TWO CITIES* 1 (Alfred A. Knopf 1993) (1859).

2. Indeed, many have noted the positive effects of such success on colleges and universities. See, e.g., Doug G. Chung, *The Dynamic Advertising Effect of College Football* (Harvard Bus. Sch. Working Paper No. 13-067, 2013) available at [http://www.hbs.edu/faculty/Publication%20Files/13-067\\_86a0b712-f29e-423f-b614-0165b770dd65.pdf](http://www.hbs.edu/faculty/Publication%20Files/13-067_86a0b712-f29e-423f-b614-0165b770dd65.pdf) (study measuring the “Flutie Effect”) (on file with author); Devin G. Pope & Jaren C. Pope, *The Impact of College Sports Success on the Quantity and Quality of Student Applications*, 75 S. ECON. J. 750 (2009) (noting the positive impact of football and basketball); Devin G. Pope & Jaren C. Pope, *Understanding College Application Decisions: Why Sports Success Matters*, 15 J. SPORTS ECON. 107 (2014).

daily.<sup>3</sup> No longer limited to actual games, interest in these sports continues through the off-season, with recruiting information and off-season practices garnering significant attention.<sup>4</sup>

The popularity of college football and basketball is at an all-time high, setting television ratings records<sup>5</sup> and spawning high sales in merchandise.<sup>6</sup> Television and the Internet are certainly responsible for much of this growth.<sup>7</sup> Not only do television contracts continue to indicate an almost exponential rate of growth, but conferences and schools also have their *own* television networks.<sup>8</sup> This continued influx of capital manifests itself in expanded stadiums,<sup>9</sup> world-class training facilities,<sup>10</sup> and escalating coaching salaries.<sup>11</sup>

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3. Eric Chemi, *The Amazing Growth in College Football Revenues*, BUSINESS WEEK (Sept. 26, 2013), <http://www.businessweek.com/articles/2013-09-26/the-amazing-growth-in-college-football-revenues>.

4. In recent years, websites devoted to following the highest ranked high school players have become increasingly popular. Dedicated fan bases tune in year round. See, e.g., *Basketball Recruiting*, RIVALS, <http://basketballrecruiting.rivals.com> (last visited Sept. 21, 2014); *Football Recruiting*, RIVALS.COM, <http://footballrecruiting.rivals.com> (last visited Sept. 21, 2014); *Recruiting Nation Football*, ESPN, <http://espn.go.com/college-sports/football/recruiting/index> (last visited Sept. 21, 2014); *Recruiting Nation Basketball*, ESPN <http://espn.go.com/college-sports/basketball/recruiting/index> (last visited Sept. 21, 2014).

5. Sara Bibel, *2013 NCAA Final Four is Highest-Rated and Most-Viewed in Eight Years*, ZAP2IT (Apr. 7, 2013), <http://tvbythenumbers.zap2it.com/2013/04/07/2013-ncaa-final-four-is-highest-rated-and-most-viewed-in-eight-years/176862/>; Michael Humes, *Hundreds of Millions of Fans Tune to Record-Setting College Football Coverage Across ESPN Networks*, ESPN MEDIAZONE (Dec. 10, 2013), <http://espnmediazone.com/us/press-releases/2013/12/hundreds-of-millions-of-fans-tune-to-record-setting-coverage-across-espn-networks/>.

6. Darren Rovell, *Texas Leads in Merchandise Royalties*, ESPN (Aug. 12, 2013), [http://espn.go.com/college-football/story/\\_id/9560094/texas-longhorns-again-to-p-merchandise-sales-list](http://espn.go.com/college-football/story/_id/9560094/texas-longhorns-again-to-p-merchandise-sales-list).

7. Daniel Roberts, *ESPN's Secret Web Weapon: ESPN3*, CNN MONEY (Jan. 22, 2014), <http://features.blogs.fortune.cnn.com/2014/01/22/espns-secret-web-weapon-espn3/>; Adam Kramer, *Where Did All The College Football Fans Go?*, BLEACHER REPORT (Oct. 17, 2013), <http://bleacherreport.com/articles/1814887-where-did-all-the-college-football-fans-go>.

8. Kristi Dosh, *A comparison: Conference television deals*, ESPN.COM (Mar. 19, 2013), [http://espn.go.com/blog/playbook/dollars/post/\\_id/3163/a-comparison-conference-television-deals](http://espn.go.com/blog/playbook/dollars/post/_id/3163/a-comparison-conference-television-deals). For instance, the University of Texas has its own channel. Steven Godfrey, *The Eye of Texas: Inside the Longhorn Network as It Continues to Enter Uncharted Television Territory*, SB NATION (Oct. 3, 2013), <http://www.sbnation.com/longform/2013/10/3/4798078/the-eye-of-texas-inside-the-longhorn-networks-uncharted-television>.

9. See, e.g., Brian Bennett, *Arms Race Proves Recession-Proof*, ESPN.COM (June 14, 2012), [http://espn.go.com/college-football/story/\\_id/8047787/college-football-](http://espn.go.com/college-football/story/_id/8047787/college-football-)

With the advent of a college football playoff,<sup>12</sup> the launch of the Southeastern Conference (the "SEC") television network in 2014,<sup>13</sup> and the expansion of many stadiums, the potential for continued growth is obvious.<sup>14</sup> Indeed, by many estimations, intercollegiate athletics is far from reaching its saturation point, despite its overwhelming current popularity.<sup>15</sup>

And yet, the status quo is troubling.<sup>16</sup> Despite the economic growth, only a handful of universities have athletic departments that yield an annual profit.<sup>17</sup> Indeed, the average athletic department runs an annual deficit of over one million dollars.<sup>18</sup> In

facilities-arms-race-proves-recession-proof; Brian Favat, *ACC Football Arms Race: Duke's Wallace Wade Stadium Expanding to Seat 43,915*, BC INTERRUPTION SB NATION (Oct. 2, 2012, 9:01 AM), <http://www.bcinterruption.com/2012/10/2/3440482/acc-football-arms-race-duke-wallace-wade-stadium-expansion>.

10. Oregon has one obvious example of this. See Peter Berkes, *Incredible Photos and Video of Oregon's New Football Facility*, SB NATION (July 31, 2013), <http://www.sbnation.com/college-football/2013/7/31/4574556/oregon-football-building-new>.

11. See, e.g., Patrick Rische, *College Football Coaching Salaries Grow Astronomically Due to Escalating Media Rights Deals*, FORBES (Nov. 20, 2012), <http://www.forbes.com/sites/prishe/2012/11/20/college-football-coaching-salaries-grow-astronomically-due-to-escalating-media-rights-deals/>; Allie Grasgreen, *Coaches Make More Than You*, INSIDE HIGHER ED (Nov. 7, 2013), <http://www.insidehighered.com/news/2013/11/07/football-coach-salaries-10-percent-over-last-year-and-top-5-million>.

12. See, e.g., Heather Dinich, *Playoff Plan to Run Through 2025*, ESPN (June 27, 2012), [http://espn.go.com/college-football/story/\\_id/8099187/ncaa-presidents-approve-four-team-college-football-playoff-beginning-2014](http://espn.go.com/college-football/story/_id/8099187/ncaa-presidents-approve-four-team-college-football-playoff-beginning-2014).

13. Richard Sandomir, *SEC Will Start TV Network in 2014*, N.Y. TIMES, May 2, 2013, at B16; see also *Get the SEC Network*, ESPN SEC NETWORK, <http://www.getsecnetwork.com> (last visited Sept. 23, 2014).

14. See, e.g., Dennis Dodd, *College football in 2012 More about Growth Potential Than Settling In*, CBS SPORTS (Jan. 1, 2012), <http://www.cbssports.com/collegefootball/story/16669574/college-football-in-2012-more-about-growth-potential-than-settling-in>.

15. *Id.*

16. See, e.g., Charles Clotfelter, *5 Problems to Tackle in Big College Sports*, THE ATLANTA JOURNAL-CONSTITUTION July 2, 2012, at A10; Nick Veronica, *College Sports and Money: Decades-old Issues Remain Unresolved*, PITTSBURGH POST-GAZETTE (June 16, 2013), <http://www.post-gazette.com/sports/college/2013/06/16/College-sports-and-money-Decades-old-issues-remain-unresolved/stories/201306160224#ixzz2ukNq2FNx>; Jason Whitlock, *Making the Wrong Argument*, ESPN (Sept. 13, 2013), [http://espn.go.com/espn/story/\\_id/9669762/investigative-stories-distract-real-issues-sports](http://espn.go.com/espn/story/_id/9669762/investigative-stories-distract-real-issues-sports).

17. Steve Berkowitz et al., *Most NCAA Division I athletic departments take subsidies*, USA TODAY (July 1, 2013), <http://www.usatoday.com/story/sports/college/2013/05/07/ncaa-finances-subsidies/2142443/>.

18. *Id.*; KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, COLLEGE

addition, most schools rely heavily on student fees to subsidize athletic department expenses.<sup>19</sup>

Since 2011, the number of major National Collegiate Athletic Association (the "NCAA") violations has been unprecedented, with major scandals at athletic powerhouses like Miami,<sup>20</sup> North Carolina,<sup>21</sup> Ohio State,<sup>22</sup> Tennessee,<sup>23</sup> Oregon,<sup>24</sup> and Oklahoma State.<sup>25</sup> The child sex abuse scandal at Penn State<sup>26</sup> further sounded the alarm that the culture surrounding intercollegiate athletics has reached a dangerous level at many universities.

Perhaps most disconcerting is the compromised academic experience of student-athletes.<sup>27</sup> By any estimation, the in-season demands on college football and basketball players are that of a full-

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SPORTS 101: A PRIMER ON MONEY, ATHLETICS, AND HIGHER EDUCATION IN THE 21ST CENTURY 9–12 (2009), available at <http://www.knightcommission.org/collegesports101/chapter-2>.

19. This is particularly damaging in a time when higher education more generally is coming under attack for its high tuition levels. See Jon Solomon, *Alabama Universities Spend Money at a Faster Rate on Athletics than Academics*, AL.COM (Dec. 4, 2013), [http://www.al.com/sports/index.ssf/2013/12/alabama\\_universities\\_spend\\_mon.html](http://www.al.com/sports/index.ssf/2013/12/alabama_universities_spend_mon.html).

20. Jorge Milian, *NCAA Investigators in Miami Hurricanes' Booster Scandal Probe Under Investigation*, PALM BEACH POST (Jan. 23, 2013), <http://www.palmbeachpost.com/news/sports/college-football/ncaa-investigators-in-um-booster-scandal-probe-and/nT5RH/>.

21. Dan Kane, *A Former UNC Dean Recalls Athletes Unable to Do College-Level Work*, CHARLOTTE OBSERVER (Jan. 31, 2014), [http://www.charlotteobserver.com/2014/01/30/4652834/a-former-unc-dean-recalls-athletes.html#.UwLE\\_PldUsp](http://www.charlotteobserver.com/2014/01/30/4652834/a-former-unc-dean-recalls-athletes.html#.UwLE_PldUsp).

22. Nick Carbone, *Ohio State Hit with One-Year Bowl Ban Over Bribery Scandal*, TIME (Dec. 20, 2011), <http://newsfeed.time.com/2011/12/20/ohio-state-hit-with-one-year-bowl-ban-over-bribery-scandal/>.

23. Andy Glockner, *Tennessee Sex Scandal Could Grow Quickly if Academics are Involved*, SPORTS ILLUSTRATED (May 14, 2013), <http://college-basketball.si.com/2013/05/14/tennessee-sex-scandal-could-grow-quickly/>.

24. *Reports: 'Major' Violations Occurred*, ESPN (Apr. 16, 2013), [http://espn.go.com/college-football/story/\\_/id/9177148/ncaa-oregon-ducks-agree-major-violations-committed-football-program](http://espn.go.com/college-football/story/_/id/9177148/ncaa-oregon-ducks-agree-major-violations-committed-football-program).

25. Scott Coleman, *Oklahoma State Football Accused of Money 'Bonus Program' for Players*, SB NATION (Sept. 7, 2013), <http://www.sbnation.com/college-football/2013/9/7/4705460/joe-defrost-oklahoma-state-west-virginia-sports-illustrated-report>.

26. Bill Chappell, *Penn State Abuse Scandal: A Guide and Timeline*, NAT'L PUBLIC RADIO (June 21, 2012), <http://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>.

27. See, e.g., Peter Adler & Patricia A. Adler, *From Idealism to Pragmatic Detachment: The Academic Performance of College Athletes*, 58 SOC. OF EDUC. 241 (1985).

time job.<sup>28</sup> Student-athletes often spend over forty hours a week in-season dedicating time to practices, meetings, team activities, travel, and the competitions themselves.<sup>29</sup> Couple this reality with the reduced academic credentials of many of these athletes when they arrive on campus, and the likelihood of such students receiving a robust college education becomes vastly diminished.<sup>30</sup> To expect students who are often underprepared for higher education to balance the demands of a full-time athletic commitment with a full schedule of classes seems shortsighted.

The responses to this combination of athletic and academic pressure are well known. Clustering of majors, excessive reliance on academic tutors, and restrictions in available class offerings are all commonplace, even at the top public universities in the country.<sup>31</sup> Even worse, cutting corners through prohibited methods, including academic fraud, continues to persist.<sup>32</sup>

The recent *O'Bannon* lawsuit has again raised questions about the propriety of the NCAA's amateurism model, exploring whether student-athletes should receive compensation for their athletic contributions, including for the use of their likenesses by the NCAA.<sup>33</sup> Similarly, the football team at Northwestern University recently filed for status as a labor union with the National Labor Relations Board.<sup>34</sup>

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28. Lynn O'Shaughnessy, *Do College Athletes Have Time to be Students?*, CBS NEWS (Feb. 18, 2011), <http://www.cbsnews.com/news/do-college-athletes-have-time-to-be-students/>.

29. David Moltz, *How Athletes Spend Their Time*, INSIDE HIGHER ED (Feb. 14, 2011), [http://www.insidehighered.com/news/2011/02/14/ncaa\\_survey\\_details\\_athletes\\_missed\\_class\\_time](http://www.insidehighered.com/news/2011/02/14/ncaa_survey_details_athletes_missed_class_time); see also NAT'L COLLEGIATE ATHLETIC ASS'N, EXAMINING THE STUDENT-ATHLETE EXPERIENCE THROUGH THE NCAA GOALS AND SCORE STUDIES 16-20 (Jan. 13, 2011), available at [http://www.ncaa.org/sites/default/files/Goals10\\_score96\\_final\\_convention2011\\_public\\_version\\_01\\_13\\_11.pdf](http://www.ncaa.org/sites/default/files/Goals10_score96_final_convention2011_public_version_01_13_11.pdf).

30. Allison Go, *Athletes Show Huge Gaps in SAT Scores*, US NEWS & WORLD REPORT (Dec. 30, 2008), <http://www.usnews.com/education/blogs/paper-trail/2008/12/30/athletes-show-huge-gaps-in-sat-scores>; Doug Lederman, *The Admissions Gap for Big-Time Athletes*, INSIDE HIGHER ED (Dec. 29, 2008), <http://www.insidehighered.com/news/2008/12/29/admit>.

31. Paul M. Barrett, *In Fake Classes Scandal, UNC Fails Its Athletes—and Whistle-Blower*, BUSINESS WEEK (Feb. 27, 2014), <http://www.businessweek.com/articles/2014-02-27/in-fake-classes-scandal-unc-fails-its-athletes-whistle-blower>; Ella Powers, *Athletic Fraud in Collegiate Athletics*, INSIDE HIGHER ED (Oct. 2, 2007), <http://www.insidehighered.com/news/2007/10/02/fraud>.

32. See Barnett, *supra* note 31.

33. Mark Koba, *The Lawsuit That Could Reshape College Sports*, CNBC (Dec. 21, 2013), <http://www.cnn.com/id/101285999>.

34. Chip Patterson, *Northwestern players start union movement in college*

The NCAA continues, as it has done for a number years, to argue that the principle of amateurism is crucial to preserving the student-athlete model that has persisted over the past half century.<sup>35</sup> While this has often been a successful litigation strategy,<sup>36</sup> the commercialization of intercollegiate athletics over the past decade begs the question whether the NCAA can continue to adhere to this model.<sup>37</sup>

This article contends that if the NCAA and universities are serious about this student-athlete model, then they should double-down on the concept of “student.” In particular, this article suggests that adopting a more realistic approach to educating athletes will benefit both the universities and student-athletes, relieving pressure on the current model and improving educational outcomes.

Specifically, this article argues for a revised student-athlete model. The new model would require six-year scholarships for student-athletes and would reduce the required academic hours “in-season” from nine to three. The model also mandates that students use their eligibility in the first four years at the university. After student-athletes use their eligibility up over the four years, half of their education will remain.<sup>38</sup> The students can attempt to become professional athletes, but if that fails, they will have the opportunity to engage academically for two years in a discipline that will prepare them for the career they seek, rather than follow the path of least resistance to graduation. Indeed, this idea that graduation rates alone indicate the receipt of a robust and valuable education, rather than a short-circuited and compromised one, cheats many student-athletes of the education that they deserve.<sup>39</sup>

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*athletics*, CBS SPORTS.COM (Jan. 28, 2014), <http://www.cbssports.com/collegefootball/eye-on-college-football/24422752/northwestern-players-start-union-movement-in-college-athletics>.

35. Anna McCullough, *Ancient Greek “Amateurism,” the NCAA, and the Courts*, 31 INT’L J. OF THE HISTORY OF SPORT 1033 (2014).

36. See, e.g., Nat’l Collegiate Athletic Ass’n v. Smith, 525 U.S. 459 (1999); Nat’l Collegiate Athletic Ass’n v. Tarkanian, 488 U.S. 179 (1988); Hysaw v. Washburn University of Topeka, 690 F. Supp. 940 (D. Kan. 1987); Bloom v. CAA, 93 P.3d 621 (Colo. Ct. App. 2004); Waldrep v. Texas Emp’rs Ins. Assn., 21 S.W.3d 692 (Tex. App. 2000); Brennan v. Bd. of Trustees, 691 So. 2d 324 (La. App. 1 Cir. 1997). *But see* Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Oklahoma, 468 U.S. 85 (1984).

37. See, e.g., Joe Nocera, *Let’s Start Paying College Athletes*, N.Y. TIMES MAGAZINE Jan. 1, 2012, at MM3; Taylor Branch, *The Shame of College Sports*, THE ATLANTIC, Oct. 2011, at 80.

38. As discussed below, this proposal places no restriction on students completing their education and graduating in four years.

39. What athletes “deserve” is certainly a debatable proposition. Here, it simply refers to the terms of the contracts that the student-athletes currently enter into



Part I of the article briefly describes the broken model of intercollegiate athletics. In Part II, the article advances its central proposal for saving the concept of the student-athlete: six-year scholarships with a reduction to three academic hours in-season for student-athletes, coupled with a requirement of eligibility use in the first four years. Part III concludes the article by demonstrating how the proposal can resuscitate the concept of the student-athlete and why the proposal can improve outcomes for universities and student-athletes alike.

## I. THE BROKEN MODEL OF COLLEGE ATHLETICS

### A. *The Model in Principle*

For a generation or more, the NCAA has based its existence on promulgating and defending the ideal of amateurism in intercollegiate athletics.<sup>40</sup> Section 2.9 of the NCAA Constitution provides that “[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”<sup>41</sup> Not only does this principle clearly establish that intercollegiate athletes should not receive compensation for their participation, but it also frames athletic participation as an adjunct to higher education.<sup>42</sup>

Indeed, this principle of amateurism specifies that the primary motivation for participation in college sports is “education.”<sup>43</sup> In other words, the NCAA model of student-athlete characterizes athletic participation as an “avocation,” a hobby or extra-curricular activity that helps to diversify and enhance a student’s education.<sup>44</sup> Using the NCAA’s own model, then, the most accurate definition of student-athlete<sup>45</sup> is simply “student,” as athletics are simply part of

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with the university when becoming student-athletes.

40. See, e.g., McCullough, *supra* note 35; Patrick Dobel, *The Beleaguered Ideal: Defending NCAA Amateurism*, (Mar. 23, 2012) (manuscript available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2028182](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2028182)).

41. NAT’L COLLEGIATE ATHLETIC ASS’N, 2013-14 NCAA DIVISION I MANUAL § 2.9 (July 2013), available at <http://www.ncaapublications.com/productdownloads/D114.pdf>, (hereinafter *NCAA Division I Manual*).

42. *Id.*

43. *Id.*

44. *Id.*

45. Interestingly, former NCAA executive director Walter Byers coined this

the education.<sup>46</sup> Recent advertisements by the NCAA, which emphasize that student-athletes typically “go pro” in many other vocations besides athletics, highlight this theoretical frame.<sup>47</sup>

By tying the athletic experience to the academic one, the NCAA justifies its model of amateurism. If students are merely participants in a university, then the NCAA and its member institutions have a duty to protect these athletes from “exploitation by professional and commercial enterprises.”<sup>48</sup> This paternalistic approach, and any legitimacy it might possess, rests on the concept that the goal of the student-athlete’s participation in athletics is purely educational.<sup>49</sup>

Before going further, it is important to emphasize the nature of the NCAA—the organization promulgating this model of the amateur student-athlete.<sup>50</sup> The presidents of the colleges and universities participating in the NCAA govern it.<sup>51</sup> Thus, a better understanding of the NCAA is not as some external body imposing its will on colleges and universities, but rather an encapsulation of the majority will of the colleges and universities with respect to intercollegiate athletics.<sup>52</sup>

### B. *The Model in Practice*

Given the NCAA’s model, it is interesting to examine how the principle of amateurism intersects with the commercial realities of intercollegiate football and basketball—both of which are, by any

phrase. See Tom Ferrey, “*Student-Athlete*” Term in Question, ESPN (Sept. 19, 2012) [http://espn.go.com/espn/otl/story/\\_id/8396753/ncaa-policy-chief-proposes-dropping-student-athlete-term](http://espn.go.com/espn/otl/story/_id/8396753/ncaa-policy-chief-proposes-dropping-student-athlete-term).

46. See NCAA DIVISION I MANUAL, *supra* note 41.

47. Press Release, Nat’l Collegiate Athletic Ass’n, NCAA Launches Latest Public Service Announcements, Introduces New Student-Focused Website, Nat’l Collegiate Athletic Ass’n (Mar. 13, 2007) (available at <http://fs.ncaa.org/Docs/PressArchive/2007/Announcements/NCAA%2BLaunches%2BLatest%2BPublic%2BService%2BAnnouncements%2BIntroduces%2BNew%2BStudent-Focused%2BWebsite.html>).

48. See NCAA DIVISION I MANUAL, *supra* note 41.

49. Indeed, this principle has saved the NCAA in a number of court cases. See *supra* note 36.

50. See *supra* note 45.

51. See NCAA DIVISION I MANUAL, *supra* note 41, § 4.01.1.

52. The complex governance structure of the NCAA, including its largely democratic voting system results often in the smaller universities (of which there are many) imposing their will upon the larger universities. Indeed, much of the discussion within the NCAA recently has not been over the question of amateurism, but instead over the degree to which the big five conferences—SEC, ACC, BIG 10, PAC 12, and BIG 12—can possess a greater level of autonomy within the NCAA structure.

measure, big businesses.<sup>53</sup> In short, the current practice has three key aspects: (1) athletes generate revenue through competition, (2) the NCAA limits athlete compensation for that competition to the expenses of education (tuition, room, and board),<sup>54</sup> and (3) the increased revenue related to the athletic competition places undue pressure upon, and in many cases compromises, the student's "non-athletic" education.<sup>55</sup>

Upon closer examination, these three elements raise serious questions about whether the NCAA's model is anything more than a sham, a cover to preserve a status quo that has long departed from the initial vision of amateurism. Indeed, the big business model that currently prevails allows virtually everyone—administrators, coaches, institutions, alumni, fans, sponsors, and networks—to profit at the expense of the majority of student-athletes. This is especially true for those who are unable to be among the few who can "go pro" in football or basketball.<sup>56</sup>

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53. At least 20 collegiate basketball teams earn an estimated \$8 million in profit every season while a number of college football teams regularly bring in profits in excess of \$30 million. Chris Smith, *College Football's Most Valuable Teams 2013: Texas Longhorns Can't Be Stopped*, FORBES (Dec. 18, 2013), <http://www.forbes.com/sites/chris-smith/2013/12/18/college-football-most-valuable-teams-2013-texas-longhorn-s-cant-be-stopped/>; Chris Smith, *Louisville Cardinals Lead the List of College Basketball's Most Valuable Teams*, FORBES (Mar. 18, 2013), <http://www.forbes.com/sites/chris-smith/2013/03/18/louisville-cardinals-lead-the-list-of-college-basketballs-most-valuable-teams/>;

54. See NCAA DIVISION I MANUAL, *supra* note 41, § 15.1. The NCAA and a number of universities have indicated that these benefits fall slightly short of the total cost of education. As a result, in recent years the NCAA has considered adoption of a small stipend on top of tuition, room, and board, but a majority of the membership are against it because of its economic impact on athletic departments. See Jeremy Fowler, *NCAA president Mark Emmert hopes to unveil new stipend plan in April*, CBSSPORTS.COM (Jan. 1, 2013), <http://www.cbssports.com/collegefootball/writer/jeremy-fowler/21483211/ncaa-president-mark-emmert-hopes-to-unveil-new-stipend-plan-in-april>.

55. This presumes, of course, that the NCAA's characterization of athletics as education is an accurate one. Many do not share this view. See, e.g., Sara Ganim, *Some College Athletes Play Like Adults, Read Like 5th Graders*, CNN (Jan. 8, 2014), <http://www.cnn.com/2014/01/07/us/ncaa-athletes-reading-scores/>; Gary Gutting, *The Myth of the Student-Athlete*, N.Y. TIMES (March 15, 2012), <http://opinionator.blogs.nytimes.com/2012/03/15/the-myth-of-the-student-athlete/>.

56. *Probability of Competing Beyond High School*, NAT'L COLLEGIATE ATHLETIC ASS'N (Sep. 2013), <http://www.ncaa.org/about/resources/research/probability-competing-beyond-high-school>.

### 1. Athletes Generate Revenue

At the heart of the current manifestation of intercollegiate athletics is the revenue-generating ability of college football and basketball.<sup>57</sup> This revenue comes from several primary sources: television networks, advertisements, ticket and merchandise sales, and private donations.<sup>58</sup> For instance, in the SEC, the television networks ESPN and CBS pay a whopping \$205 million to televise their football games annually.<sup>59</sup> In addition, ESPN and the SEC are launching a new network, the SEC Network, in 2014 to provide coverage of SEC sports 24 hours a day.<sup>60</sup>

While, in theory, this influx of money could benefit the universities themselves, most schools<sup>61</sup> put the majority of this profit back into the sports that generate the income, as well as support the other non-revenue sports of the university.<sup>62</sup> With the constant pressure to win from rabid fan bases, athletic departments spare no expense when attempting to recruit the best high school athletes.<sup>63</sup> This includes use of private jets, helicopters, and other travel expenses, as coaches spend significant time and energy courting star players.<sup>64</sup> Coaches realize that recruiting the right athletes is the

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57. Kristi Dosh, *Which Football and Basketball Programs Produce the Largest Profits?*, *The BUSINESS OF COLLEGE SPORTS* (Jun. 20, 2011), <http://businessofcollegesports.com/2011/06/20/which-football-and-basketball-programs-produce-the-largest-profits/>.

58. *College Athletics Revenues and Expenses*, ESPN (2008), <http://espn.go.com/ncaa/revenue>.

59. Mike Ozanian, *Deal Between ESPN and SEC Likely The Richest Ever*, *FORBES* (May 31, 2013), <http://www.forbes.com/sites/mikeozanian/2013/05/31/deal-between-espn-and-sec-conference-likely-the-richest-ever/>.

60. Chris Suarez, *ESPN and SEC to Air New 24-Hour Network*, *ON CAMPUS SPORTS* (May, 2013), <http://oncampussports.com/2013/05/espn-and-sec-to-air-new-24-hour-network/>.

61. Some universities do share this largesse with their academic programs. *See, e.g.*, <http://www.floridatrend.com/print/article/17538>.

62. Indeed, without the revenue from college football and college basketball, many athletic departments would struggle to field teams in non-revenue sports given the costs of coach salaries, travel, scholarships, and upkeep of facilities.

63. Alica Jessop, *The Economics of College Football: What the Top-25 Teams Spend on Recruiting*, *FORBES* (Aug. 31, 2013), <http://www.forbes.com/sites/aliciajessop/2013/08/31/the-economics-of-college-football-what-the-top-25-spend-on-recruiting/>.

64. *See, e.g.*, Mitch Sherman, *Balancing the Recruiting Budget*, ESPN (June 12, 2012), [http://espn.go.com/college-sports/recruiting/football/story/\\_/id/8041461/the-cost-recruiting](http://espn.go.com/college-sports/recruiting/football/story/_/id/8041461/the-cost-recruiting).

difference between another multi-million dollar contract and a pink slip.<sup>65</sup>

And the pressure to recruit has led to a facilities “arms-race” among universities.<sup>66</sup> There is the consistent upgrading of facilities with each school attempting to keep up with their peers.<sup>67</sup> The excesses of the physical plant of the athletics department, particularly when compared to dilapidated classrooms on the other side of many campuses, paint an interesting picture of where university priorities ultimately lie.<sup>68</sup> As a result, most athletic departments run a deficit and have to depend on outside revenue sources, including student fees and alumni giving.<sup>69</sup>

Even worse, the pressure to recruit has opened the door to a number of questionable, and in some cases illegal, activities on the part of athletic departments and universities.<sup>70</sup> Each athlete is able,

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65. Interestingly, firing a coach sometimes adds a significant cost, and can postpone any corresponding benefit. See, e.g., Jeré Longman, *Firing a Coach, at a Price, With Little Evidence the Move Pays Off*, N. Y. TIMES, November 29, 2012, at A1.

66. David Harten, *Dayton Basketball Getting a Piece of \$6 Million Athletic Facilities Upgrade*, COLLEGE BASKETBALL TALK (Jul. 29, 2013), <http://collegebasketballtalk.nbcsports.com/2013/07/29/dayton-basketball-getting-a-piece-of-6-million-athletic-facilities-upgrade/>; Joe Scalzo, *YSU Using Upgrades To Lure Recruits*, VINDY.COM (Jan. 26, 2014), <http://www.vindy.com/news/2014/jan/26/facilitating/>; Lindsay Schnell, *Oregon State Athletics: Beavers Plan facility Upgrades, but with Limited Finances*, OREGON LIVE (Dec. 6, 2013), [http://www.oregonlive.com/beavers/index.ssf/2013/12/oregon\\_state\\_athletics\\_beavers.html](http://www.oregonlive.com/beavers/index.ssf/2013/12/oregon_state_athletics_beavers.html).

67. Brian Bennett, *Arms Race Proves Recession-Proof*, ESPN (Jun. 14, 2012), [http://espn.go.com/college-football/story/\\_id/8047787/college-football-facilities-arms-race-proves-recession-proof](http://espn.go.com/college-football/story/_id/8047787/college-football-facilities-arms-race-proves-recession-proof).

68. Sean Gregory, *Athletics Over Academics: The Growing College Sports Spending Gap*, TIME (Jan. 17, 2013), <http://keepingscore.blogs.time.com/2013/01/17/athletics-over-academics-the-growing-college-sports-spending-gap/>; Brian Lee, *Are College Sports Worth the Cost?*, PBS (Mar. 7, 2011), <http://www.pbs.org/wnet/need-to-know/pitchroom/are-college-sports-worth-the-cost/7827/>.

69. See, e.g., *College Athletics Revenues and Expenses*, supra note 58; Donna M. Desrochers, *Academic Spending Versus Athletic Spending: Who Wins?*, Delta Cost Project, AM. INSTS. FOR RESEARCH (Jan. 2013), [http://www.deltacostproject.org/sites/default/files/products/DeltaCostAIR\\_AthleticAcademic\\_Spending\\_IssueBrief.pdf](http://www.deltacostproject.org/sites/default/files/products/DeltaCostAIR_AthleticAcademic_Spending_IssueBrief.pdf); Kristi Dosh, *Does College Football Fund Other Sports at College Level*, FORBES (MAY 5, 2011), <http://www.forbes.com/sites/sportsmoney/2011/05/05/does-football-fund-other-sports-at-college-level/>.

70. Ryan Aber, *OU Releases List of Self-Reported NCAA Violations*, THE DAILY OKLAHOMAN, Feb. 19, 2014, at 3B; Doug Lesmerises, *Tim Tebow's 8-Second Call, Pocket Dials, Sports Illustrated's Tobacco Reveal: Ohio State Football's 2013 Secondary NCAA Violations*, CLEVELAND.COM (Feb. 24, 2014), [http://www.cleveland.com/osu/index.ssf/2014/02/tim\\_tebows\\_8second\\_call\\_pocket.html](http://www.cleveland.com/osu/index.ssf/2014/02/tim_tebows_8second_call_pocket.html); John Marshall,

under NCAA rules, to participate in up to five “official visits” of campuses during the recruiting process, which creates opportunities for malfeasance.<sup>71</sup>

In many cases, prospective student-athletes receive benefits, financial and otherwise, as inducements to attend the university, despite NCAA rules prohibiting such practices. Other actors have also tried to cash in as well. High school coaches have demanded compensation to convince their students to attend a particular university.<sup>72</sup> Similarly, parents of student-athletes have demanded financial compensation, including automobiles and houses, in exchange for their children attending a particular university.<sup>73</sup> Additionally, it is common practice for schools to employ cheerleaders and other attractive female students as hostesses for the athletes on these visits.<sup>74</sup> Sadly, some of these interactions have resulted in sex scandals at several different universities.<sup>75</sup>

As with recruiting, the fan experience also becomes an important consideration for university athletic departments. Stadium expansions and the addition of skyboxes and other amenities have improved the fan experience at the game, and in doing so, extract more money for tickets, concessions, and merchandise. Indeed, college revenue sports remain at the center of a feeding frenzy that by many estimates has not reached its saturation point.

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*NCAA Puts Oregon Football on Probation for Recruiting Violations*, THE WASHINGTON TIMES (June 26, 2013), <http://www.washingtontimes.com/news/2013/jun/26/ncaa-puts-oregon-football-probation-recruiting-vio/?page=all>; Chip Patterson, *Washington Investigating alleged recruiting violations under Sarkisian*, CBS SPORTS (Dec. 19, 2013), <http://www.cbssports.com/collegefootball/eye-on-college-football/24380855/washington-investigating-alleged-recruiting-violations-under-sarkisian>.

71. NCAA DIVISION I MANUAL, *supra* note 41, § 13.6.2.2.

72. *FBI Investigates Allegation of Money Paid to Coach of High School Recruit*, L.A. TIMES (Jan. 27, 2001), <http://articles.latimes.com/2001/jan/27/sports/sp-17676>.

73. *See Auburn releases Cam Newton docs*, ESPN (Nov. 5, 2011), [http://espn.go.com/college-football/story/\\_/id/7190987/auburn-tigers-records-reveal-details-cam-newton-scandal](http://espn.go.com/college-football/story/_/id/7190987/auburn-tigers-records-reveal-details-cam-newton-scandal).

74. Pete Thamel & Thayer Evans, *N.C.A.A. Puts Tennessee's Recruiting Under Scrutiny*, N.Y. TIMES, Dec. 9, 2009, at B15.

75. George Dohrmann, Thayer Evans, & Melissa Segura, *Special Report on Oklahoma State Football: Part 4 — The Sex*, SPORTS ILLUSTRATED (Sep. 13, 2013), <http://sportsillustrated.cnn.com/college-football/news/20130913/oklahoma-state-part-4-the-sex/>; Mindy Sink, *COLLEGE FOOTBALL; Rape Inquiry Involves Players From Colorado*, N. Y. TIMES, Dec. 15, 2001, at S4; *Scandal Deepens with Company's Confirmation*, ESPN (Feb. 10, 2004), <http://sports.espn.go.com/ncf/news/story?id=1731589>.

## 2. Athlete Compensation Limited to Education

Despite the influx of capital and revenue resulting directly from the performance of student-athletes in football and basketball games, the NCAA prohibits athletes from receiving any compensation for their efforts.<sup>76</sup> Under its principle of amateurism, the NCAA insists that student-athletes remain amateurs in every sense of the word.<sup>77</sup>

For instance, the NCAA does not allow a student-athlete to participate as a professional in one sport while maintaining amateur status in another.<sup>78</sup> One particularly telling example is that of former Olympic skier Jeremy Bloom.<sup>79</sup> A world champion before attending college, Bloom wanted to receive endorsement money related to his skiing while playing college football at the University of Colorado.<sup>80</sup> The NCAA denied him this opportunity, requiring him to eschew such opportunities to maintain his eligibility as an amateur.<sup>81</sup>

The NCAA also denies student-athletes the ability to profit from sales of merchandise, even when such merchandise directly relates to their performance on the field or court. Student-athletes may not derive income from sales of jerseys with their name and number on them, photographs of their games, video reproductions of the games, and other similar items, despite the financial windfall that they provide to the university.<sup>82</sup> Student-athletes such as former Michigan basketball player Chris Webber have questioned this situation, finding a fundamental problem with the university and/or NCAA profiting off their name at a time when they could not even afford to buy the jersey with their name on it.<sup>83</sup>

Even more limiting, athletes cannot receive any compensation for things that they possess.<sup>84</sup> Athletes may not sell their old uniforms, championship rings, or other memorabilia, or they lose their status as amateurs.<sup>85</sup> A number of Ohio State football players, including star quarterback Terrelle Pryor, violated this rule and

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76. NCAA DIVISION I MANUAL, *supra* note 41, § 12.1.2.

77. *Id.* at §§ 12.01.1, 12.1.2.

78. *Id.* at § 12.1.2.

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

80. *Id.* at 622.

81. Bloom challenged this in court and lost, based largely on the Court's affirmation of the NCAA's principle of amateurism. *Id.* at 626–27.

82. NCAA DIVISION I MANUAL, *supra* note 41, § 12.5.2.1.

83. 30 FOR 30: THE FAB FIVE (ESPN Films 2013).

84. NCAA DIVISION I MANUAL, *supra* note 41, § 12.5.2.1.

85. *Id.*

received suspensions for selling their rings and jerseys in exchange for tattoos.<sup>86</sup>

Similarly, student-athletes may not sell their autographs, make photographs, or use their likeness to advertise for anything, even non-profit organizations.<sup>87</sup> The NCAA investigated Texas A&M star quarterback Johnny Manziel at the beginning of the 2013 football season based on allegations that he had sold memorabilia with his autographs.<sup>88</sup>

These limitations exist despite the marketing and advertising efforts of the NCAA and the universities. Perhaps most egregious is the licensing of student-athlete likenesses to video game companies, which has generated revenue for the NCAA and its member schools.<sup>89</sup> The *O'Bannon* case, on appeal at the time of this writing, challenges this use of player likenesses.<sup>90</sup> The video game company, EA Sports, has settled its part of the lawsuit with the plaintiffs, and has discontinued its college sports video games.<sup>91</sup> The NCAA continues to defend its role in the case, which now includes all uses of current student likenesses, and is currently appealing the district court's holding.<sup>92</sup>

One word encapsulates the justification for the limitations imposed by the NCAA on the ability of student-athletes to earn money: amateurism.<sup>93</sup> The NCAA has long reasoned that allowing student-athletes to receive any form of compensation will

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86. Starting Blocks, *Terrelle Pryor Under Investigation by the NCAA and Ohio State on Allegations He Received Cars, Other Benefits: Report*, CLEVELAND.COM (May 30, 2011), [http://www.cleveland.com/ohio-sports-blog/index.ssf/2011/05/post\\_177.html](http://www.cleveland.com/ohio-sports-blog/index.ssf/2011/05/post_177.html).

87. NCAA DIVISION I MANUAL, *supra* note 41, § 12.5.2.1.

88. Peter Berkes, *Johnny Manziel Briefly Suspended, Ending NCAA Autographs Investigation*, SB NATION (Aug. 28, 2013), <http://www.sbnation.com/college-football/2013/8/28/4668634/johnny-manziel-suspended-texas-a-m>.

89. Chris Smith, *NCAA Football Video Game Is Worth Over \$75,000 Per Year For Top Teams*, FORBES (Aug. 22, 2013), <http://www.forbes.com/sites/chris-smith/2013/08/22/ncaa-football-video-game-is-worth-over-75000-per-year-for-top-teams/>.

90. Robert Wheel, *Ed O'Bannon vs. the NCAA: The Lawsuit Explained*, SB NATION (Jan. 31, 2013), <http://www.sbnation.com/college-football/2013/1/31/3934886/ncaa-lawsuit-ed-obannon>.

91. Steve Eder, *E.A. Sports Settles Lawsuit with College Athletes*, N.Y. TIMES, Sep. 27, 2013, at B18.

92. Stewart Mandel, *Judge allows Ed O'Bannon v. NCAA to proceed to trial*, SPORTS ILLUSTRATED (Feb. 20, 2014), <http://sportsillustrated.cnn.com/college-football/news/2014/02/20/ed-obannon-lawsuit-proceeds-to-trial/>.

93. See NCAA DIVISION I MANUAL, *supra* note 41, § 12.1.1.



compromise its mission.<sup>94</sup> Further, allowing any remuneration for the athletes will destroy the integrity of intercollegiate athletics.<sup>95</sup>

As each year passes, this justification becomes increasingly thin for several reasons. First, as mentioned above, the amount of capital and the sheer magnitude of the business that is intercollegiate athletics becomes such that the divide between the unpaid athlete and the compensated university becomes unworkable.<sup>96</sup> It is difficult to tell student-athletes that it is improper for anyone to help them pay for a bus ticket home when assistant coaches have million dollar salaries (much less the head coaches with multi-million dollar salaries).<sup>97</sup>

Second, this gap gives rise to cheating under the NCAA rules. It has been a significant problem for decades but is reaching unforeseen depths.<sup>98</sup> By any estimation, 2011 was the “year of the scandal” in college football, and the problems do not seem to be dissipating any time soon.<sup>99</sup> Oregon, Ohio State, Southern California, LSU, Auburn, Tennessee, North Carolina, and Miami all had major scandals that raised serious questions about the influence of money in intercollegiate athletics and the lack of commitment to education.<sup>100</sup> Of these, the North Carolina scandal, which involved widespread academic fraud for over a decade, was the most egregious with respect to academics.<sup>101</sup> And the Miami scandal

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94. *NCAA Prez: Stipend Not ‘Pay-for-Play’*, ESPN (Nov. 3, 2011), [http://espn.com/college-sports/story/\\_/id/7187028/ncaa-stipend-not-lean-pay-play-president-mark-emmert-says](http://espn.com/college-sports/story/_/id/7187028/ncaa-stipend-not-lean-pay-play-president-mark-emmert-says).

95. *Id.* (describing paying student-athletes as “antithetical to what college athletics is.”).

96. *College Athletics Revenues and Expenses*, *supra* note 58.

97. Steve Berkowitz et al., *2013 NCAAF Coaches’ Salaries*, USA TODAY (2013), <http://www.usatoday.com/sports/college/salaries/>.

98. See Doug Lederman, *Bad Apples or More?*, INSIDE HIGHER ED (Feb. 7, 2011), [http://www.insidehighered.com/news/2011/02/07/ncaa\\_punishes\\_almost\\_half\\_of\\_members\\_of\\_football\\_bowl\\_subdivision\\_for\\_major\\_rules\\_violations](http://www.insidehighered.com/news/2011/02/07/ncaa_punishes_almost_half_of_members_of_football_bowl_subdivision_for_major_rules_violations); Doug Lederman, *Half of Big-Time NCAA Programs had Major Violations*, USA TODAY (Feb. 7, 2011), [http://usatoday30.usatoday.com/sports/college/2011-02-07-ncaa-infractions\\_N.htm](http://usatoday30.usatoday.com/sports/college/2011-02-07-ncaa-infractions_N.htm); *NCAA Legislative Services Database, Major Infractions Case Search*, NAT’L COLLEGIATE ATHLETIC ASS’N (2014), <https://web1.ncaa.org/LSDBi/exec/miSearch> (last visited Sept. 23, 2014).

99. Mike Huguenin, *NCAA Football in 2011: Year of the scandal*, YAHOO SPORTS (Dec. 27, 2011), <http://sports.yahoo.com/news/ncaa-football-2011-scandal-091200840--ncaaf.html>.

100. See *supra* notes 20–26.

101. See Kane, *supra* note 21; Barrett, *supra* note 31; Powers, *supra* note 31.

exceeded any scheme of paying players since the Southern Methodist scandal in the 1980's in which it received the death penalty.<sup>102</sup>

The volume of such scandals at high profile programs blackened the image of intercollegiate athletics and raised new questions about the ability of the NCAA to regulate universities in any meaningful way.<sup>103</sup> To make matters worse, unethical tactics used by NCAA investigators in the investigation of Miami brought the NCAA its own negative publicity.<sup>104</sup>

Third, the exultation of intercollegiate athletics has reached such a pinnacle that criminal behavior can go unreported in an effort to protect the good name of the program.<sup>105</sup> The child sex abuse allegations at Penn State are the paradigm example of allowing the allure of a successful program to cloud the judgment of officials—both athletic and academic. Jerry Sandusky, an assistant football coach and later a consultant to the program, engaged in numerous incidents of sexual abuse of children within the football facilities.<sup>106</sup> Despite evidence that many members of the athletic department were aware of such allegations, including head coach Joe Paterno, many of these incidents went unreported for over a decade.<sup>107</sup>

Fourth, the tuition, room, and board amounts are increasingly unable to cover the basic needs of the student-athlete.<sup>108</sup> The NCAA has recognized this, and in 2012, proposed the award of a \$2000 stipend to student-athletes.<sup>109</sup> Characterized as a supplement to cover the cost of attendance, the NCAA membership ultimately voted against this reform.<sup>110</sup> The negative vote most likely stemmed from the smaller colleges and universities that make up a majority of the NCAA being unable to afford such a stipend for all of their student-athletes. Under Title IX, the universities would be obligated to pay such a stipend equally to male and female athletes.<sup>111</sup>

Finally, the reality of big-time college sports looks nothing like the amateur, intramural type of competition that comports with the

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102. See Milian, *supra* note 20.

103. See *supra* notes 20–26.

104. See *supra* notes 20–26.

105. See Chappell, *supra* note 26.

106. *Id.*

107. *Id.*

108. Nina Mandell, *Why Full Scholarships and Stipends Don't Always Add Up for Student-Athletes*, THE POST GAME (July 30, 2013), <http://www.thepostgame.com/blog/daily-take/201307/living-high-life-not-so-much-college-athletes-say>.

109. Fowler, *supra* note 54.

110. *Id.*

111. 20 U.S.C. § 1681 (2012).

original vision of student-athlete.<sup>112</sup> Rather than small competitions attended by friends and family members, many contests involve over 100,000 spectators, plus millions more watching on television. The practical reality is certainly a far cry from the humble beginnings of college athletics.

As this pressure cooker continues to tighten, particularly with the appeal of the *O'Bannon* lawsuit and other similar pending suits, the primary response from the NCAA is that student-athletes do receive sufficient compensation for their efforts: a university education, including room and board.<sup>113</sup> At prestigious private universities, such as Stanford, Duke, Northwestern, and Vanderbilt, this argument gains more traction, as annual tuition at those institutions can exceed \$50,000.<sup>114</sup> Even at public universities, the cost of higher education is not insignificant, and athletic scholarships constitute a meaningful financial benefit.<sup>115</sup>

Pressure from the NCAA increasingly results in student-athletes receiving degrees from these institutions, not just attending them.<sup>116</sup> As part of its effort to emphasize academic education, the NCAA has heightened its academic standards in the past decade, both with

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112. Branch, *supra* note 37.

113. See *Judge Rules Against NCAA*, ESPN (Aug. 9, 2014), [http://espn.go.com/college-sports/story/\\_/id/11328442/judge-rules-ncaa-ed-obannon-antitrust-case](http://espn.go.com/college-sports/story/_/id/11328442/judge-rules-ncaa-ed-obannon-antitrust-case).

114. See, e.g., *Cost & Financial Aid*, DUKE UNIV., <http://admissions.duke.edu/application/aid>; *Costs for 2014-2015*, VANDERBILT UNIV., <http://www.vanderbilt.edu/financialaid/costs.php>; *Tuition, Fees, And Expenses*, NORTHWESTERN UNIV., <http://www.ugadm.northwestern.edu/financial-aid/tuition-fees-and-expenses.html>; *Tuition and Fees, 2013-14*, STANFORD UNIV., <http://financialaid.stanford.edu/undergrad/budget/>.

115. See generally *What's the Price Tag for a College Education?*, COLLEGEDATA, [https://www.collegedata.com/cs/content/content\\_payarticle\\_tpl.jhtml?articleId=1064](https://www.collegedata.com/cs/content/content_payarticle_tpl.jhtml?articleId=1064).

116. A recent study suggests that the NCAA's method of measurement is skewed because it includes part-time and non-traditional students instead of comparing only traditional, full-time students. See *Report: Football Players' Graduate at Rates Lower Than Non-Athletes*, INSIDER HIGHER ED (Sept. 27, 2013) <http://www.insidehighered.com/quicktakes/2013/09/27/report-football-players-graduate-rates-lower-non-athletes>; James Joyner, *Why Athletes Graduate at Higher Rates Than Other Students*, OUTSIDE THE BELTWAY (Oct. 26, 2011), <http://www.outsidethebeltway.com/why-athletes-graduate-at-higher-rate-than-other-students/>. But see *Keeping Score When It Counts: Assessing the 2012-2013 Bowl-Bound College Football Teams' Graduation Rates*, THE INSTITUTE FOR DIVERSITY AND ETHICS IN SPORTS (Dec. 3, 2012), [http://www.tidesport.org/Grad%20Rates/2012\\_Bowl\\_Study.pdf](http://www.tidesport.org/Grad%20Rates/2012_Bowl_Study.pdf); *Keeping Score When It Counts: Graduation Success and Academic Progress Rates for the 2013 NCAA Division I Men's Basketball Tournament Teams*, THE INSTITUTE FOR DIVERSITY AND ETHICS IN SPORTS (Mar. 18, 2013), <http://www.tidesport.org/Grad%20Rates/2013%20Men's%20Basketball%20Tournament%20Teams%20Study.pdf>.

respect to eligibility requirements for scholarships and eligibility requirements during college.<sup>117</sup>

Currently, the NCAA requires completion of sixteen core high school courses, as well as a minimum combined GPA and SAT score or ACT sum on the NCAA's sliding scale.<sup>118</sup> On this scale, there is a minimum GPA of 2.00, and the minimum SAT score or ACT sum is inversely dependent upon GPA—the higher GPA, the lower the required standardized test score.<sup>119</sup> A GPA of 2.00, for instance requires an SAT of 1010 or an ACT of 86, while a 3.00 GPA only requires an SAT of 620 or an ACT of 52.<sup>120</sup> At the other end of the scale, a GPA of 3.550 requires an SAT of 400 and an ACT of 37.<sup>121</sup>

In addition to the eligibility requirements for incoming students, the NCAA attempts to promote academics through its Academic Progress Rate system (the "APR").<sup>122</sup> The APR measures academic eligibility and graduation rates of students.<sup>123</sup> Beginning with the 2012–13 championships, teams with either an APR average of 900 over four years or an average of 930 over the two most recent years are eligible to compete.<sup>124</sup> Teams that fall short of this mark are ineligible.<sup>125</sup> In addition, the NCAA imposes three levels of penalties

117. See generally *NCAA Eligibility Center Quick Reference Guide*, NAT'L COLLEGIATE ATHLETIC ASS'N, available at [http://fs.ncaa.org/Docs/eligibility\\_center/Quick\\_Reference\\_Sheet.pdf](http://fs.ncaa.org/Docs/eligibility_center/Quick_Reference_Sheet.pdf) (last visited Sept. 23, 2014).

118. *Id.* These include four years of English, three years of mathematics (Algebra I or higher), two years of natural/physical science, two years of social science, one year of additional English, mathematics, or science, and four years of additional courses (from the above areas, foreign language or comparative religion/philosophy. *Id.* Beginning in 2016, prospective student-athletes must have completed ten of these courses by the end of their junior year. *Id.*

119. *Id.*

120. In 2016, the numbers at the bottom of the scale will increase slightly. *Id.*

121. *Id.*

122. *APR: Division I Academic Progress Rate*, NAT'L COLLEGIATE ATHLETIC ASS'N, available at [http://www.ncaa.org/sites/default/files/91852%20BTBD%20Academic%20Progress%20Rate%20WEB\\_0.pdf](http://www.ncaa.org/sites/default/files/91852%20BTBD%20Academic%20Progress%20Rate%20WEB_0.pdf) (last visited Sept. 23, 2014).

123. *Id.* While eligibility requirements make the individual student-athlete accountable, the Academic Progress Rate (APR) creates a level of institutional responsibility. The APR is a Division I metric developed to track the academic achievement of teams each academic term. Each student-athlete receiving athletically related financial aid earns one retention point for staying in school and one eligibility point for being academically eligible. A team's total points are divided by points possible and then multiplied by one thousand to equal the team's APR score. *Id.*

124. These numbers increase to 930 and 940, respectively, for 2014–15 and become a four year average of 930 in 2015–16 and beyond. *Id.*

125. *Id.*

for low APR scores.<sup>126</sup> The first level reduces the number of hours of practice per five days from twenty hours to sixteen, with the four additional hours allocated for academic activities.<sup>127</sup> The second level adds competition reductions.<sup>128</sup> The third level provides for more serious penalties, including coaching suspensions, financial aid reductions, and restricted NCAA membership.<sup>129</sup>

Graduation rates reflect this pressure, with student-athletes graduating at a higher rate than non-student-athletes at a number of institutions.<sup>130</sup> Further, these results speak to the outstanding efforts of many athletic departments to educate their students in the classroom, particularly in light of the lack of college preparedness of many student-athletes.<sup>131</sup> The resources invested in keeping athletes eligible—including vast tutoring resources, complicated tracking systems, and robust enforcement of class attendance—are important contributions to the educational development of student-athletes. Indeed, for athletic programs to remain successful, they must, at all costs, keep their student-athletes academically eligible and ultimately graduate them.

The deeper issue, however, is whether these graduation rates reflect the provision of a full education. As financial pressures begin to compromise every other aspect of the student-athlete model, it seems unreasonable to expect that academics can remain insulated. The next section explores this question.

### 3. The Potential of Athletic Demands to Compromise Academic Education

A close examination of the education of student-athletes reflects, at best, a system that compromises many of the NCAA's core ideas of what constitutes a student-athlete.<sup>132</sup> As discussed below, several problems persist, including: clustering of majors, focus on eligibility

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126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Joyner, *supra* note 116.

131. Ganim, *supra* note 55.

132. Andy Staples, *NCAA Fumbles Cross-Examination in O'Bannon Trial*, SPORTS ILLUSTRATED (June 16, 2014), <http://www.si.com/college-football/2014/06/16/obannon-v-ncaa-day-6-ellen-staurowsky-luis-li-cross-examination>. In the *O'Bannon* case, for instance, plaintiffs also presented testimony from Dr. Ellen Staurowsky, a sports management professor, who studied the experiences of FBS football and Division I basketball players and concluded that the time demands of their athletic obligations prevent many of them from achieving significant academic success. *Id.*

to the detriment of academic achievement, heavy reliance on tutors, unrealistic expectations placed on unqualified students, athletic participation requirements that exceed those of an average full-time job, and most disturbing, pure academic fraud.

*a. Clustering of Majors*

One recent phenomenon among student-athletes is the clustering of majors—where student-athletes in the same sport all choose the same major.<sup>133</sup> One study indicated that *over half* of the BCS schools had student-athletes clustered in majors.<sup>134</sup> In the abstract, this reality might be innocuous, as student-athletes perhaps have similar academic interests. The truth, however, might be more troubling—that student-athletes seek the path of least resistance with respect to their academic schedule. In other words, student-athletes and their coaches learn over time which classes are “athlete-friendly.” To the degree to which this is really happening, the academic education of student-athletes serves the primary purposes of maintaining eligibility and graduation rates and arguably undermines the academic education itself.

Given that the academic subjects of the clustering are different at various institutions, it indicates that, at the very least, athletes face restrictions in the types of classes they can choose to take. This is not to say that some student-athletes may not receive robust educations. Clustering merely raises important questions about the degree to which the external pressures and demands of athletics limit the ability of student-athletes to pursue certain educational paths.

*b. Pressures of Eligibility Requirements*

Similarly, the pressure to remain eligible, particularly in light of APR consequences, also favors the path of least resistance.<sup>135</sup> The NCAA’s stated goal of universities providing student-athletes with a robust academic education can easily fall prey to the more imminent goal of remaining eligible to play. Despite the student-athlete’s

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133. Doug Lederman, *Concerns about Clustering*, INSIDER HIGHER ED (Nov. 20, 2008), <http://www.insidehighered.com/news/2008/11/20/cluster>; Jodi Upton & Kristin Novak, *College Athletes Cluster Majors at Most Schools*, USA TODAY [http://usatoday30.usatoday.com/sports/college/2008-11-18-majors-graphic\\_N.htm?csp=34](http://usatoday30.usatoday.com/sports/college/2008-11-18-majors-graphic_N.htm?csp=34) (last updated Nov. 18, 2008).

134. Mark Dent et al., *Do Colleges Drop the Ball with Student-Athletes*, PITTSBURGH POST-GAZETTE, June 1, 2014, at A-1.

135. See *supra* notes 123–30.

academic interests, the difficulty of certain classes and the possibility of failure strongly dissuade at least some students from pursuing certain classes. Practically, the commitment and study time required for some disciplines makes it very difficult, if not impossible, to both study and participate in athletics at the same time.

As a result, universities rely heavily on tutors to help athletes make the grade. Indeed, for most big-time athletic departments, tutoring constitutes a significant item in the budget. One view is that tutors serve a valuable function in helping students succeed. A more pessimistic view is that the students' inability to learn the material on their own results in them relying too heavily on tutors to help, undermining their own learning process. A further disadvantage of the heavy involvement of tutors is the potential for academic fraud, or even just help that leads to the question of who really did the work.

### *c. Athletic Participation Is a Full-Time Occupation*

For most student-athletes, participation in major college athletics is its own full-time occupation. Despite the NCAA's limit of practice time to twenty hours a week, student-athletes often spend up to another twenty hours a week preparing for games, studying film, and reading playbooks. Additionally, the travel involved in many sports adds considerable time to an already full schedule. Other team policies, such as sequestering players in hotels the night before important games, also carve into the student-athletes' time.

While coaches and athletic departments are often equally diligent about requiring students to spend time in study halls or otherwise focus on their studies, the academic demands required of student-athletes make for a challenging and arduous schedule. Add this to the academic deficiencies of many student-athletes when they enter college, and the challenge becomes even greater.

Again, this model creates a pressure cooker for all that are involved and an environment that is not necessarily conducive to learning. The full-time commitment intercollegiate athletics requires cannot help but overwhelm a student-athlete's academic pursuits, particularly during the season for the revenue sports.

### *d. Graduation Does Not Equal Education*

Finally, and perhaps most importantly, the core assumption of the NCAA's promotion of academics is that receiving a degree symbolizes academic achievement. On some level, this may be true, particularly for individuals who arrived at the university under-

prepared for college. The NCAA's APR scale clearly demonstrates that it has adopted this proxy.

The reality, though, is that it is very possible to receive a degree without receiving an *education*.<sup>136</sup> This is particularly true where students, faculty, and administrators cut corners to maintain student-athlete eligibility. Certain athlete-friendly classes lie at one end of the spectrum and complete academic fraud—such as that at North Carolina<sup>137</sup>—lies at the other end. It is difficult to assess the extent to which the academic degrees conferred on student-athletes reflect the quality of the education. One would like to think that receiving a degree equates to receiving an adequate education, but media reports continue to suggest that this may not be the case, at least in some circumstances.<sup>138</sup>

Focusing on graduation rates is not a bad thing in and of itself, but if it merely adds pressure to a system fraught with academic challenges, it has the potential to compromise the delivery, and eventually the utilization, of an education. Finding a more realistic approach to educating student-athletes—one that accounts for the full-time demands of both academics *and* athletics, will help to restore integrity to intercollegiate athletics, and will improve the likelihood of student-athletes receiving a robust education. The following proposal seeks to take a step in that direction.

## II. THE PROPOSAL

If the NCAA is serious about its concept of “student-athlete,” it needs to make immediate reforms to alleviate the pressures that arise from the commercialization of intercollegiate athletics. Accordingly, this article proposes a series of modest reforms that may enhance the ability of college athletes to receive an educational opportunity more in line with that of non-athlete students.

### A. *Mandate Six-Year Scholarships for Revenue-Generating Sports*

The first step to improving the ability of student-athletes to be students is to provide a six-year scholarship for athletes participating in revenue sports. The long tradition of the NCAA has been to allow universities to provide one-year renewable

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136. See Ganim, *supra* note 55; Dennis Dodd, *UNC whistleblower Willingham: Academic Sins not Isolated*, CBS SPORTS (Feb. 11, 2014), <http://www.cbssports.com/collegefootball/writer/dennis-dodd/24439378/unc-whistleblower-willingham-academic-sins-not-isolated>.

137. See generally Dodd, *supra* note 136.

138. Ganim, *supra* note 55.



scholarships to student-athletes.<sup>139</sup> This approach created the possibility of coaches choosing not to renew scholarships when athletes suffered injuries, or even worse, to provide the scholarships to new recruits who had better prospects for on-the-field success.<sup>140</sup> Even worse, this situation was largely one-sided, as the NCAA transfer rule requires students to sit out for a year if transferring to another institution.<sup>141</sup> In addition, a university's ability to cancel scholarships after one year could put indigent students in a position requiring them to borrow significant amounts of money or leave school altogether. Thus, a student-athlete who does not have his or her scholarship renewed faces a difficult situation, while the university typically has no trouble filling the vacant scholarship.<sup>142</sup>

In 2011, the NCAA and its member schools decided to provide universities with the option of extending the one-year guaranteed athletic scholarships to up to four years to cover the entire athletic eligibility of the student-athletes.<sup>143</sup> This reform has allowed some student-athletes, particularly those at wealthier institutions, security with respect to their athletic career,<sup>144</sup> but there remains wide variety in the number of these scholarships that schools offer,

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139. The one-year scholarship rule has met significant backlash in recent years, including a 2010 antitrust suit and a narrowly passed NCAA rule amendment. *Suit Claims Antitrust Law Violations*, ESPN (Oct. 26, 2010), <http://sports.espn.go.com/ncaa/news/story?id=5727755>. While the NCAA now mandates that multiyear scholarships be made available, the availability of such scholarships remains at the member school's discretion. Michelle Brutlag Hosick, *Multiyear Scholarships to be Allowed*, NAT'L COLLEGIATE ATHLETIC ASS'N (Feb. 17, 2012), <http://www.ncaa.com/news/ncaa/article/2012-02-17/multiyear-scholarships-be-allowed>.

140. Technically, the Financial Aid Committee determines the renewal of scholarships to discourage this practice, but given the influence of coaches within some universities, it is certainly possible that such decisions are made based on ability and talent as opposed to academics or other reasons.

141. Student-athlete transfer policies are often dizzying. See Eamonn Brennan, *Want to understand transfer rules? Give up*, ESPN (Aug. 28, 2013), [http://espn.go.com/blog/collegebasketballnation/post/\\_id/87697/trying-to-understand-transfer-rules-give-up](http://espn.go.com/blog/collegebasketballnation/post/_id/87697/trying-to-understand-transfer-rules-give-up). See generally NCAA, *Transfer 101*, NAT'L COLLEGIATE ATHLETIC ASS'N (May 2012), available at <http://www.ncaapublications.com/productdownloads/TGONLINE2012.pdf>.

142. See *supra* note 120.

143. See Hosick, *supra* note 139.

144. It is important to remember, though, that multiyear scholarships are awarded at the university's option. See Zac Ellis, *Report: NCAA Multiyear Scholarships not Taking Hold in Major Programs*, SPORTS ILLUSTRATED (Apr. 19, 2013), <http://www.si.com/college-football/campus-union/2013/04/19/ncaa-multiyear-scholarships>.

varying among sports and within sports.<sup>145</sup> The accompanying pressure for institutions to graduate their athletes also helps to ensure that athletes stay beyond one year.<sup>146</sup> Nonetheless, many student-athletes do not receive four-year scholarships under the current system.<sup>147</sup>

Whether the university provides a four-year scholarship or four consecutive one-year scholarships, the athletic department typically pays tuition, room, and board for student-athletes for four years. In addition, many football programs “redshirt” some of their student-athletes—meaning the athlete sits out his first year—so the athletic department pays for a fifth year.<sup>148</sup> This can also occur if a student-athlete suffers a significant injury that causes him or her to miss the majority of a season, and the NCAA grants a medical redshirt.<sup>149</sup>

In light of the current reality, this Article’s proposal suggests giving student-athletes six years to complete their education. In other words, athletic scholarships would cover tuition, room, and board for students for six years.<sup>150</sup> This proposal would not *require* students to take six years to graduate but would give them that option.

The argument for the proposal is three-fold: (1) many students take six years to graduate already, (2) the cost to the athletic department is not excessive, and (3) given the other parts of the proposal, six years is necessary to receive a worthwhile education. I explore each in turn.

First, at most large public universities, including those that dominate college football, four-year graduation rates among the

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145. *NCAA College Athletics Statistics*, STATISTICS BRAIN, <http://www.statisticbrain.com/ncaa-college-athletics-statistics/> (last updated Apr. 26, 2014).

146. This is especially true of football players, who are unable to enter the draft until they are out of high school for three years. See *Clarett v. Nat’l Football League*, 369 F.3d 124 (2d Cir. 2004); *NFL Draft Rules*, DRAFTSITE.COM, <http://www.draftsite.com/nfl/rules/>. The National Basketball Association, by comparison, allows players to enter the draft one year after high school. NAT’L BASKETBALL PLAYERS ASS’N, NAT’L BASKETBALL PLAYERS ASS’N COLLECTIVE BARGAINING AGREEMENT, art. X, available at <http://www.nbpa.org/sites/nbpa.org/files/ARTICLE%20X.pdf> (last visited Sept. 23, 2014).

147. In fact, at least one school has been outspoken against multiyear scholarships: “Who gets a four-year, \$120K deal guaranteed at age 17?” Christine A. Plonsky, women’s athletic director at the University of Texas, wrote . . . . “The last thing young people need right now is more entitlement.” Ellis, *supra* note 144.

148. NCAA rules, of course, limit student-athletes to four years of eligibility. NCAA DIVISION I MANUAL, *supra* note 41, § 14.2.

149. *Id.* at § 14.2.1.5.1.1(a).

150. This is particularly important for the revenue sports of men’s football and men’s basketball.

general population of students are low. Many flagship state universities have four-year graduation rates of 40% or less.<sup>151</sup> In fact, the NCAA assumes a six-year academic career for its student-athletes already, as it measures their graduation rates for APR purposes using a six-year metric.

Second, at many universities, the school determines the amount of tuition a student pays per academic credit hour taken.<sup>152</sup> As a result, the tuition burden for a student-athlete will be the same, irrespective of the time it takes to graduate.<sup>153</sup> Thus, the only increased costs for many athletic departments under a required six-year scholarship would be room and board. While such costs are not incidental, the increase in television revenue, particularly at larger schools, could cover such costs.<sup>154</sup>

Finally, if student-athletes only take three hours per semester in-season, as proposed below, a six-year time frame is necessary to complete the required academic work to graduate. Again, this seems like a small shift, particularly given that many student-athletes already spend five years on campus, and much of the general population takes five or six years to graduate.

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151. See, e.g., *College Completion: Who Graduates from College, Who Doesn't, and Why It Matters*, MISSISSIPPI PUBLIC COLLEGES, THE CHRONICLE OF HIGHER EDUCATION, [http://collegecompletion.chronicle.com/state/#state=MS&sector=public\\_four](http://collegecompletion.chronicle.com/state/#state=MS&sector=public_four) (last visited Sept. 22, 2014). See generally *College Results Online*, THE EDUCATION TRUST, <http://www.collegeresults.org/default.aspx> (last visited Sept. 22, 2013).

152. For students enrolled in fewer than twelve hours, many universities charge per credit hour. Fees vary per school. See, e.g., *Tuition*, GEORGETOWN UNIVERSITY, <https://scs.georgetown.edu/admissions/tuition> (last visited Sept. 1 2014); *Tuition for Undergraduate Students Taking Undergraduate Courses*, UNIVERSITY OF AKRON, <http://www.uakron.edu/student-accounts/costs/> (last updated Apr. 2014); *Undergraduate Tuition and Fees*, INDIANA STATE UNIVERSITY, <http://www.indstate.edu/tuition/fall2014-2015-undergraduate/percredit.htm> (last visited Sept. 1 2014); *Undergraduate Tuition and Fees*, UNIVERSITY OF MARYLAND, <http://www.umd.edu/catalog/index.cfm/show/content.section/c/49/s/962> (last visited Sept. 1 2014); *Tuition and Fees Required of Every Student as a Condition of Enrollment*, WICHITA STATE UNIVERSITY, <http://webs.wichita.edu/?u=tuitionfees&p=2013/tuitionfees/> (last visited Sept. 1, 2014).

153. Generally speaking, spreading the cost of tuition over six years instead of four is not an excessive cost to universities.

154. Eric Chemi, *The Amazing Growth in College Football Revenues*, BUSINESS WEEK (Sep. 26, 2013), <http://www.businessweek.com/articles/2013-09-26/the-amazing-growth-in-college-football-revenues>.

*B. Reduce Academic Load to Three Hours  
During In-Season Semesters*

Currently, NCAA rules require that student-athletes take a minimum of nine academic hours per semester.<sup>155</sup> The core of this proposal is the reduction of the required academic hours during the season (autumn for football, winter-spring for basketball) to three hours of academic credit. By allowing student-athletes to reduce their course load to three hours, this proposal takes into consideration the current requirements of athletic participation. NCAA rules allow college football and basketball teams to participate in up to twenty hours of required team activities per week.<sup>156</sup> Studies show, however, that the reality for many student-athletes is that they spend closer to forty hours per week on their sport.<sup>157</sup>

With the current limitations on practice schedules and time outside of the season, such a schedule would place a more reasonable burden on student-athletes. In particular, this model could help the many student-athletes who come to college underprepared academically.<sup>158</sup> Students who are partial qualifiers, usually known as “special admits,” and others who fall at the bottom end of eligibility for student-athletes in terms of their academic credentials would benefit from having an entire semester to adjust to college before having to take a full complement of classes.<sup>159</sup> Further, slowing down the academic process and spreading it over six years would allow those who have less academic ability to develop over their time at the university. In many ways, then, such an approach could act almost as a type of “academic redshirt.”

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155. NCAA DIVISION I MANUAL, *supra* note 41, § 14.3.

156. *Id.* at § 17.1.6.1.

157. The 2011 NCAA GOALS and SCORE study showed that students often spend 38 hours or more on practices, conditioning, film, etc. Conference Presentation, 2011 NCAA Convention, San Antonio, Tex., Nat'l Collegiate Athletic Ass'n, Examining the Student-Athlete Experience Through the NCAA GOALS and SCORE Studies, (Jan, 13, 2011), available at [http://www.ncaa.org/sites/default/files/Goals10\\_score96\\_final\\_convention2011\\_public\\_version\\_01\\_13\\_11.pdf](http://www.ncaa.org/sites/default/files/Goals10_score96_final_convention2011_public_version_01_13_11.pdf).

158. Colleges and universities frequently make allowances for “special admits,” or relaxed admission standards for student-athletes. While this opens the door to a better education, students with a history of poor academic performance are also set up for failure. Jeff Barker, *For 'At-Risk' Athletes, a Boost That Sometimes Leads Nowhere*, THE BALTIMORE SUN, Dec. 23, 2012, at D.1; Alison Go, *Athletes Show Huge Gaps in SAT Scores*, U.S. NEWS & WORLD REPORT (Dec. 30, 2008), <http://www.usnews.com/education/blogs/paper-trail/2008/12/30/athletes-show-huge-gaps-in-sat-scores>.

159. For basketball players, of course, this would be a second semester phenomenon.

During the off-semester, student-athletes would also have a better chance to focus on their studies without the full-time burden of competition. The travel, media, public pressure, and campus focus on the athletic events alone provide significant distractions for athletes during the season. Further, the travel schedule of many sports precludes those students from taking certain classes, particularly science labs. Having one semester each year where the student-athlete's experience can have some level of similarity to other undergraduate students would aid immensely in their academic education. Indeed, a recent study indicated that the academic motivation of football athletes in the spring semester significantly increased.<sup>160</sup>

Allowing student-athletes the opportunity to focus more completely on academics would not only improve their ability to learn, but also boost their grades. Perhaps more importantly, a more manageable schedule would lessen the worry of maintaining academic eligibility. This would allow students to more fully explore their academic interests and would relieve the pressure to limit their curriculum to certain "athlete-friendly" classes. It would likewise diminish the clustering of majors phenomenon and lend greater legitimacy to the academic achievements of student-athletes. Other potential gains include reducing the need for tutoring. Over time, the image of the student-athlete among faculty and the campus community might improve, undermining the current "athlete-student" stereotype that is pervasive on many college campuses.

Perhaps most significantly, the large majority of student-athletes that do not make the cut for professional athletics would have two full years after their eligibility expires to focus on "going pro" in something besides sports. Student-athletes, then, would spend half of their college careers as students, without the responsibilities or obligations of athletics.

An important part of this proposal is *requiring* the three hours of academic work in-season. This requirement would keep student-athletes enrolled as students at all times. Having a semester without classes would make student-athletes appear more like employees and less like students, a proposition the NCAA fears. Further, requiring one class would keep student-athletes connected to the university academically, albeit in a small way, which would help maintain some level of continuity in their studies.

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160. Ian R. Potter, Investigating academic motivation among NCAA division I football players within their competition and non-competition semesters 134, (2013) (unpublished Ph.D dissertation, Georgia Southern Univ.), available at <http://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=1872&context=etd>.

### C. Reduce the College Basketball Season to One Semester

One additional change necessary for the proposal to work is the reduction of the college basketball season to one semester. Currently, the season begins in early November, with teams playing several games, including early season tournaments, around the fall semester examination period.<sup>161</sup> As football season is still in full swing, these games are often not a large source of revenue anyway,<sup>162</sup> and moving them into December or eliminating them entirely seems to be a viable possibility. If necessary, the NCAA could extend the regular season one week to create time for the additional games.

It is worth noting that I am not the first to advocate for such a change. As Dan Wolken and others have pointed out, the amount of revenue generated, the level of competition, and the popularity of the sport could increase by shifting the season entirely into the spring semester.<sup>163</sup>

By limiting games to one semester, student-athletes could fully focus in the classroom during the fall semester. While basketball would have an intense practice season in the fall leading up to the season, postponing games until after the completion of the fall semester would reduce the impact of team duties on academic performance.

For other sports, the one semester season is less problematic. For football and baseball, games are already limited to the fall and spring semesters, respectively. For some other non-revenue sports, limiting the season to one semester might create more of a problem. Exceptions to a one-semester season might be acceptable given the academic performance of student-athletes in such sports. Unlike in the big revenue sports of football and basketball, non-revenue student-athletes have traditionally had a much stronger record in

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161. In recent years, the NCAA has considered and approved earlier practice dates for college basketball programs, presumably to increase competition and athleticism earlier in the season. Eamonn Brennan, *Earlier practice date approved for fall*, ESPN (May 3, 2013), [http://espn.go.com/blog/collegebasketballnation/post/\\_/id/84230/earlier-practice-date-approved-for-fall](http://espn.go.com/blog/collegebasketballnation/post/_/id/84230/earlier-practice-date-approved-for-fall); Michelle Brutlag Hosick, *Calendar Moves Forward For Midnight Madness*, NAT'L COLLEGIATE ATHLETIC ASS'N (May 3, 2013), <http://www.ncaa.org/about/resources/media-center/news/calendar-moves-forward-midnight-madness>. Consequently, student-athletes are forced to miss additional classes, further diminishing their ability to realize an effective fall semester.

162. For many schools, this would require moving only a handful of games because teams typically do not play many November games.

163. Dan Wolken, *NCAA Should Shift Basketball Season*, Fox Sports (Feb. 29, 2012), <http://gamedayr.com/sports/college-basketball-one-semester-sport-91693/#>.

the classroom.<sup>164</sup> Indeed, if the NCAA adopted the proposal advocated herein, many non-revenue student-athletes would likely take a full academic load and graduate in four years.

#### *D. Limit Eligibility to the First Four Years*

The final part of the proposal is to require student-athletes to complete their eligibility in their first four years at the institution. The common practice, at least for college football, is to redshirt a large number of incoming freshmen student-athletes. The idea is, in part, a vestige of the historical system that did not allow freshmen to participate in varsity athletics. The benefit under the current system is to allow the student-athlete to adjust to university life, and more importantly, to improve physically for a year before playing in games. This process, however, merely extends the athletic career of the student-athlete; its academic benefits are marginal because the responsibilities of the redshirted athlete do not substantially differ from the rest of the student-athletes on the team.

Requiring student-athletes to exhaust their eligibility in the first four years, then, allows them to get the athletic responsibilities out of the way in four years, and thus, enable greater focus on academics during the last two years of college. Indeed, that is the core thought behind the proposal of this paper—it is hard to succeed in the classroom and on the field *at the same time*, without compromising one or both. And typically, it is the classroom that is the victim. Limiting eligibility to four years, with three hour semesters in-season creates a much better opportunity for balance and, in keeping with the NCAA's goals, a better opportunity to educate student-athletes, both athletically and academically.

The one potential exception to this rule would be medical redshirts. Currently, the NCAA grants a fifth year of athletic eligibility to some student-athletes in situations where an injury precludes competition for most of a season.<sup>165</sup> Under this model, medical redshirts would still be acceptable, but in such cases, students would have to take a full academic load in-season.

On the whole, this model consists of four elements: (1) required six year scholarships; (2) changing the NCAA rule to require only three hours per semester; (3) limiting sports, at least revenue ones,

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164. In a recent study of APR trends between 2009 and 2013, football and men's basketball ranked last among men's and women's sports in average APR over the period. See *National and Sport-Group APR Averages and Trend*, NAT'L COLLEGIATE ATHLETIC ASS'N (May 2014), available at [http://www.ncaa.org/sites/default/files/CAP\\_may2014\\_public-release\\_FINAL.pdf](http://www.ncaa.org/sites/default/files/CAP_may2014_public-release_FINAL.pdf).

165. NCAA DIVISION I MANUAL, *supra* note 41, § 14.2.1.5.1.1(a).

to one semester; and (4) requiring completion of eligibility within four years.

### III. JUSTIFICATIONS

#### *A. Amateurism Fails Without Real Educational Opportunity*

The obvious justification for adopting the proposed reforms is to recapture the amateurism model, at least to some degree, by refocusing on the welfare of the student-athlete. As discussed above, the model of amateurism rests in large part on the idea that the ultimate goal is the education of the student. Indeed, from the NCAA's perspective, the athletics themselves are a part of that education. But, they should not be the only part.

For the amateurism model to succeed, student-athletes must have real educational opportunities. This does not mean that student-athletes merely follow the path of least resistance (with extensive tutoring) to a college degree of some sort. Instead, student-athletes should have an opportunity to pursue any course of study they desire, and be able to do so in a robust manner.

If the reality of commercialized intercollegiate athletics is that it requires a commitment that seriously compromises the academic opportunities of student-athletes, the amateurism model begins to collapse. With each step that universities take toward compromising the academic education of student-athletes, the model loses credibility, and ultimately, sustainability because the commercial value of athletics could ultimately overtake the academic value of the university.<sup>166</sup>

At first, the academic requirements become a hassle to the student-athlete, and ultimately they become an impediment to the athletic success that receives greater significance, both for the athlete and the university. In such a world, the amateurism model seems less authentic. Indeed, the criticism is that the model is simply a tool to keep athletes from receiving their share of the financial windfall arising from the athletic competitions.<sup>167</sup>

To avoid the perception that the amateurism model and the concept of the student-athlete is merely a sham, universities must provide real educational opportunity for students. This does not mean merely opportunity that does not interfere with athletics. Rather, it means opportunity in spite of athletics. This proposal more realistically advances these competing demands. By separating

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166. Some have argued that this happened long ago.

167. See *supra* note 37.



the academic and athletic pursuits temporally, it allows each to complement the other, rather than oppose the other. In essence, it provides a road map for preserving the amateurism model.

*B. Students Deserve a Chance at an Education*

Perhaps more important than saving the concept of amateurism is providing student-athletes a genuine chance at an education. As detailed above, participation in revenue sports compromises the ability of most student-athletes to receive the kind of education that ordinary students receive. Adopting a more realistic educational model, such as the one advocated in this article, at least increases the possibility that this will happen. By limiting the academic requirements during the season, athletes can focus on their sports without having to attempt to strike the virtually impossible balance between academics and athletics. In the off-seasons and the two years after the expiration of eligibility, student-athletes will have fewer distractions and can pursue their desired course of study.

This approach will be particularly valuable to students with low test scores or otherwise deficient qualifications. Such students can take remedial classes in season and have more time to get up to speed academically in semesters when the team does not play any games. Likewise, by making expectations more realistic for such student-athletes, the possibility for academic success increases. In addition, first generation college students will thrive under this arrangement because spreading the course of study over six years will enhance their ability to adjust to college life and acquire the cultural capital needed to succeed academically.

Beyond the time constraints associated with athletics, college athletes frequently face a certain stigma on campus, possibly further hindering their academic potential. Moving athletic seasons to a single semester will not only allow athletes to better concentrate on studies, but can also give them an opportunity to overcome any stigma associated with being a student athlete.<sup>168</sup>

As Jeff Stone has argued, because of relaxed admission and eligibility standards, student-athletes now have a “dumb jock” stigma hanging over their heads that penetrates throughout campus among both students and professors.<sup>169</sup> That school newspapers and

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168. See Jeff Stone, *A Hidden Toxicity in the Term “Student-Athlete”: Stereotype Threat for Athletes in the College Classroom*, 2 WAKE FOREST J.L. & POL’Y 179, 184 (2012) (discussing the negative stereotypes associated with student-athletes).

169. *Id.* at 179–80.

national news publish academic eligibility stats for individual athletes furthers this stigma.<sup>170</sup>

It is certainly possible that some students will drop out of college after completing their four years of athletic eligibility. It is surprising though, that such individuals would forego the free housing, meals, and tuition to do so. Providing students with a genuine opportunity for education is preferable to providing a sham version, which results in a degree but not an education. Indeed, if universities cannot impress upon such students the value of education during their first four years on campus, the institutions need to re-evaluate their educational process.

### *C. Universities Have an Obligation to Educate*

Even beyond the value of saving the amateurism model and providing student-athletes a fair chance at a robust education, colleges and universities have an obligation to educate all of their students, not just the ones who do not play intercollegiate athletics. At the heart of the mission of most institutions of higher education is the goal and responsibility to educate their students.

Education, not big-time athletics, is what universities can and should do well. The mission and obligation of all higher education institutions is to educate their students and prepare them for the workforce. It should be no different with student-athletes. If higher education really seeks to educate, and not merely create hoops to jump through to receive a piece of paper, it should seek to maximize that opportunity for all of its student-athletes.

## CONCLUSION

Over the past quarter century, the commercialism of intercollegiate athletics has placed an increasing number of obstacles in the way of the academic education of student-athletes. If the student-athlete model is to survive, the NCAA and its member universities should reinvest in the concept of academic education.

This article offers a proposal to take a step in that direction. It proposes the adoption of six-year scholarships and the reduction of the required academic hours in-season to three. The proposal would

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170. See, e.g., Jake Trotter, *3 Texas Players Out of Alamo Bowl*, ESPN (Dec. 22, 2013), [http://espn.go.com/college-football/bowls13/story/\\_/id/10180623/texas-longhorn-s-daje-johnson-kennedy-estelle-jalen-overstreet-academically-ineligible-alamo-bowl-v-s-oregon-ducks](http://espn.go.com/college-football/bowls13/story/_/id/10180623/texas-longhorn-s-daje-johnson-kennedy-estelle-jalen-overstreet-academically-ineligible-alamo-bowl-v-s-oregon-ducks); Pete Volk, *Auburn, Florida State Players All Academically Eligible for BCS Game*, SB Nation (Dec. 28, 2013), <http://www.sbnation.com/college-football/2013/12/28/5251990/bcs-national-championship-fsu-auburn-players-eligible>.

make student-athletes part-time students for four years, and allow them two years without intercollegiate athletics in which to complete their degree. As explained above, this approach is a more realistic and robust approach to ensuring that student-athletes are able to maximize the educational opportunities that a university has to offer.