
2024

UPON FURTHER REVIEW, THE RULING ON THE FIELD HAS BEEN OVERTURNED: THE NEW ERA OF COLLEGE ATHLETICS FOLLOWING NCAA V. ALSTON

Salvestrin, John

Follow this and additional works at: <https://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Salvestrin, John, Case Note, *UPON FURTHER REVIEW, THE RULING ON THE FIELD HAS BEEN OVERTURNED: THE NEW ERA OF COLLEGE ATHLETICS FOLLOWING NCAA V. ALSTON*, 63 SANTA CLARA L. REV. 353 (2024).

Available at: <https://digitalcommons.law.scu.edu/lawreview/vol63/iss2/3>

This Case Note is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized editor of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

**UPON FURTHER REVIEW, THE RULING ON THE
FIELD HAS BEEN OVERTURNED: THE NEW ERA
OF COLLEGE ATHLETICS FOLLOWING
NCAA V. ALSTON**

*John Salvestrin**

Recent market trends in college athletics elicit the true effects of the NCAA's constraint on student athletes across the United States. Since the NCAA's inception, student athletes have not been justly compensated for their efforts on the field—the NCAA and its member universities hoard the spoils that come about from these students' world-class athletic abilities. This inequity is becoming more apparent than ever before, as college athletics is shifting towards a more pro-athlete landscape where they can finally profit from their athletic status and contributions. The NCAA's justifications in prohibiting athletics compensation is quickly losing merit as we enter a new era of college athletics.

This Note discusses the power imbalance between the NCAA and student athletes, recent market trends in college athletics, the NCAA's justifications in prohibiting student athletic compensation, and the judicial scrutiny that arose from such prohibitions. I propose implementing a deferred compensation plan that levels the playing field between the NCAA and student athletes. This plan alters the current landscape of college sports by awarding athletes their fair share of the revenues they collectively generated through their efforts on the field.

* J.D. Candidate, Santa Clara University School of Law, 2023. Senior Managing Editor, SANTA CLARA LAW REVIEW, Volume 63. I would like to thank my fellow Editors for their insights, assistance, and support in helping me publish this Note.

TABLE OF CONTENTS

I. Introduction	354
II. Background	357
A. Introduction to the Sherman Act	357
B. History and Expansions of Collegiate Athletic Compensation	359
C. NCAA's Treatment Under the Sherman Act	362
III. Identification of the Legal Issue	366
IV. Analysis	366
A. The Supreme Court Rationale in <i>Alston</i>	367
B. Shift in the Market Realities of College Sports ...	368
C. Consumer Demand and the Allure of Amateurism	371
V. Proposal	374
A. The Deferred Trust Account	374
B. Solutions to Justice Kavanaugh's Queries	377
C. Deferred Trust Accounts v. Collective Bargaining Agreements	381
D. The Deferred Trust Accounts' Impact on NCAA Athletics	382
VI. Conclusion	383

I. INTRODUCTION

The National Collegiate Athletic Association (“NCAA”), the governing body created to oversee college sports,¹ has transformed into a multi-billion-dollar enterprise with questionable practices under antitrust law.² At the center of the NCAA's profitability are the athletes themselves—these students generate millions annually for the NCAA and universities alike.³ Despite this, the NCAA's current rules

1. See Amy Tikkanen, *National Collegiate Athletic Association*, BRITANNICA ONLINE ENCYCLOPEDIA <https://www.britannica.com/topic/National-Collegiate-Athletic-Association> (last modified Mar. 5, 2023).

2. See *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2154 (2021) (explaining that there is no dispute that the NCAA's rules limiting athletic scholarships and restricting compensation unrelated to education are price-fixing agreements).

3. Felix Richter, *U.S. College Sports Are a Billion-Dollar Game*, STATISTA (July 2, 2021), <https://www.statista.com/chart/25236/ncaa-athletic-department-revenue/>.

prohibit student athletes from receiving athletics-based compensation.⁴ The NCAA once stood for the betterment of collegiate sports through the protection of players; today, however, it stands for the exploitation of its student athletes' talents.⁵

This Note tackles the viability of the NCAA's rules prohibiting athletics-related compensation through the lens of antitrust principles, specifically the Sherman Act of 1890 ("the Act").⁶ In 2019, the NCAA generated \$18.9 billion in revenue;⁷ President Mark Emmert has an annual salary of \$2.7 million;⁸ Coaches Nick Saban, Kirby Smart, and Dabo Swinney all earn over \$10 million per year.⁹ This Note favors an athletic landscape where players, namely those within the South Eastern Conference, Atlantic Coast Conference, Big 10, Big 12, and Pacific-12 Conferences, ("SEC," "ACC," "Big 10," "Big 12," and "Pac-12," or "Power Five Conferences")¹⁰ are compensated for the respective share of revenues generated by their universities' athletic programs.

This Note argues that the NCAA's desire to uphold amateurism and satisfy consumer demand is unlikely to survive judicial scrutiny, since the means of achieving these

4. See *Alston*, 141 S. Ct. at 2154.

5. David G. Savage, *Supreme Court Justices See 'Exploitation' of College Athletes in NCAA Case*, L.A. TIMES (Mar. 31, 2021, 10:41 AM), <https://www.latimes.com/politics/story/2021-03-31/supreme-court-ncaa-case>.

6. *The Antitrust Laws*, FED. TRADE COMM'N, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Feb. 23, 2023) [hereinafter *Antitrust Laws*].

7. Richter, *supra* note 3.

8. Pete Thamel, *The NCAA's Shame and Embarrassment in Extending Mark Emmert's Contract*, YAHOO SPORTS (Apr. 27, 2021), <https://sports.yahoo.com/ncaa-shame-embarrassment-extending-mark-emmer-t-contract-054109598.html>.

9. Justin Byers, *Saban Leads Pack of Highest-Paid College Football Coaches*, FRONT OFF. SPORTS, (Oct. 14, 2022, 2:23 PM), <https://frontofficesports.com/saban-leads-pack-of-highest-paid-college-football-coaches/> (Nick Saban is the head football coach at the University of Alabama; Kirby Smart is the head football coach at the University of Georgia; Dabo Swinney is the head football coach at Clemson University).

10. Dennis Dodd, *Majority of Power Five Schools Favor Breaking Away to Form Own Division Within NCAA, Survey Shows*, CBS SPORTS (Oct. 13, 2020, 3:47 PM), <https://www.cbssports.com/college-football/news/majority-of-power-five-schools-favor-breaking-away-to-form-own-division-within-ncaa-survey-shows/> (explaining Power Five consists of the five largest and richest conferences. It encompasses sixty-five schools, plus the University of Notre Dame).

goals have significant anticompetitive effects.¹¹ Primarily, the NCAA fears that if students receive athletics-based compensation, student athletes would become akin to professional athletes, causing the intrigue of amateurism to vanish and as a result, consumer demand for college sports would diminish.¹² However, literature, case law, and analytical studies offer evidence supporting why the popularity of college sports and the NCAA's revenue would continue to grow if players received athletics-based compensation.¹³

This Note (1) begins by outlining the progression of student athletic compensation and the judicial scrutiny the NCAA has faced regarding their rules prohibiting athletics-based compensation,¹⁴ (2) examines the Supreme Court's decision in *NCAA v. Alston*, specifically, the Court's rationale in allowing the NCAA to continue restricting athletic compensation,¹⁵ (3) explores Justice Kavanaugh's concurring opinion in *Alston*,¹⁶ analyzes why the NCAA cannot claim antitrust immunity, and explains why the NCAA should begin compensating student athletes for their athletic contributions, (4) offers a proposal on how the NCAA can equitably compensate athletes while maintaining profits and demand,¹⁷ and (5) explains why the proposal is a more feasible option than past attempts to permit player compensation and addresses policy implications of the proposal.¹⁸

This Note aims to highlight the exploitation of student athletes' talents by the NCAA,¹⁹ sets forth how future litigation regarding college athletic compensation should unfold and offers an alternative to the NCAA's current rules limiting such compensation.

11. See Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2167 (2021) (Kavanaugh, J., concurring).

12. *Id.* at 2152 (majority opinion).

13. See *infra* Section IV.C.

14. See *infra* Sections II.B and II.C.

15. See *infra* Section IV.A.

16. See *infra* Section V.B.

17. See *infra* Section V.A.

18. See *infra* Section V.C and V.D.

19. Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2168 (2021) (Kavanaugh, J., concurring).

II. BACKGROUND

In June 2021, the Supreme Court decided *NCAA v. Alston*, which weakened the NCAA's ability to prohibit student athletes from receiving compensation.²⁰ Here, the Court struck down the NCAA's limits on education-based compensation as a violation of section one of the Act.²¹ However, before *Alston* is analyzed, it is important to introduce the Act and how it operates in practice, chronicle the progression of student athletes' right to compensation and endorsement deals, and summarize the recent legal challenges surrounding the NCAA's anti-competitive practices.²²

A. Introduction to the Sherman Act

Congress passed the Act in 1890 with hopes of promoting free trade and protecting consumers from injuries that result from diminished competition.²³ This Note focuses on the recent applications of section one of the Act, which states “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is hereby declared to be illegal.”²⁴ Individuals who engage in such practices are liable to punishments exceeding one million dollars, ten years imprisonment, or both.²⁵

In determining whether there is a section one violation, courts have historically considered several factors including whether the challenged practice was a concerted act with more than one actor, constituted an unreasonable restraint or trade, and the overall effect on interstate commerce amongst the states.²⁶ It is crucial to note that section one only prohibits contracts or conspiracies that are deemed unreasonable.²⁷ Such reasonableness is determined through focusing on “the competitive effects of [the] challenged behavior relative to such alternatives as its abandonment or a less restrictive

20. *See id.* at 2141.

21. *Id.* at 2166.

22. *See infra* Section II.

23. *Antitrust Laws, supra* note 6; *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 335 (7th Cir. 2012).

24. 15 U.S.C.S. § 1 (LEXIS through Pub. L. No. 117-285).

25. *Id.*

26. JULIAN O. VON KALINOWSKI, ET AL., *ANTITRUST LAW AND TRADE REGULATION* §11.02 (2nd ed. 2022).

27. *Antitrust Laws, supra* note 6.

substitute.”²⁸ For example, an agreement between two parties to form a partnership will be held lawful under the Act if it restrains trade within reason.²⁹

Courts have established three categories of analysis—per se, quick-look, and rule of reason—for determining whether actions have anticompetitive effects.³⁰ These tests may be applied individually or blended together.³¹ The per se rule is applied when a practice facially appears to always or almost always restrict competition and decrease output.³² The quick look method is used where “no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement.”³³

Lastly, rule of reason analysis is an assessment of market power and market structure, aimed at determining the challenged restraint’s effect on competition and its capacity to reduce output and increase price.³⁴ Before applying this method, courts must identify the relevant market in order to measure the defendant’s ability to lessen or destroy competition.³⁵ A relevant market is defined as the area of effective competition, or the arena within which significant substitution in consumption or production occurs.³⁶ After identifying the relevant market, courts will engage in a burden-shifting framework, which follows as:

First, plaintiff bears the burden to show substantial anticompetitive effects in a well-defined market; second, the defendant must show that the allegedly unlawful conduct has procompetitive benefits; and third, the plaintiff can overcome the defendant’s showing, and establish liability, if it can prove

28. *Agnew*, 683 F.3d at 335.

29. *Antitrust Laws*, *supra* note 6.

30. *Agnew*, 683 F.3d at 335.

31. *Id.*

32. *Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 100 (1984) (citing *Broadcast Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1, 19-20 (1979)).

33. *Agnew*, 683 F.3d at 336 (quoting *Bd. of Regents of the Univ. of Okla.*, 468 U.S. at 109) (citing *Nat’l Soc’y of Pro. Eng’rs v. United States*, 435 U.S. 679, 692 (1978)).

34. *See Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141, 2155 (2021).

35. *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2285 (2018) (“Because legal presumptions that rest on formalistic distinctions rather than actual market realities are generally disfavored in antitrust law, courts usually cannot properly apply the rule of reason without an accurate definition of the relevant market.”).

36. *Id.*

that a viable and substantially less restrictive, yet equally effective, alternative to the conduct exists.³⁷

B. History and Expansions of Collegiate Athletic Compensation

Whether for recruiting purposes or rewarding on-the-field performances, offering compensation to college players is not a recent phenomenon.³⁸ Prior to the twentieth century, compensation for student athletes was simply unregulated.³⁹ For instance, James Hogan committed to attend and play football at Yale University instead of their longtime rival, Harvard University.⁴⁰ As a recruiting strategy, Yale offered Hogan gifts and compensation ranging from trips to Cuba with the team's head trainer, the rights to his player scorecards, and allowing him to become the agent for the American Tobacco Company.⁴¹ However, such compensation soon became extinct after President Theodore Roosevelt held a meeting with leaders of collegiate football, including representatives of Harvard, Yale, Princeton, and other universities to discuss the reform of college football following a year that witnessed 18 deaths and 149 serious injuries.⁴² From this meeting arose the Intercollegiate Athletic Association of the United States ("IAAUS") and the IAAUS constitution.⁴³ The IAAUS constitution proscribed that "[n]o student shall represent a College or University in an intercollegiate game or contest who is paid or receives, directly or indirectly, any money or financial concession"⁴⁴ Such an award would result in that student's disqualification from that sport.⁴⁵

Despite this no tolerance policy remaining in force after the IAAUS morphed into the NCAA, universities continued

37. *Id.* at 2284.

38. *See Alston*, 141 S. Ct. at 2148.

39. *See id.* at 2149.

40. Henry Beach Needham, *The College Athlete*, 25 MCCLURE'S MAG. 123, 124 (1905).

41. *Id.*

42. *Timeline – 1900s*, NCAA, <https://d67oz7qfnvgpz.cloudfront.net/timeline-1900s> (last visited Feb. 13, 2023).

43. *Id.*

44. W. Burlette Carter, *The Age of Innocence: The First 25 Years of the National Collegiate Athletic Association, 1906 to 1931*, 8 VAND. J. ENT. & TECH. L. 211, 223 (2006).

45. *Id.*

paying their players handsomely for their on-the-field performances.⁴⁶ In the 1940's, Hugh McElhenny, running back at the University of Washington expressed “[a] wealthy guy puts big bucks under my pillow every time I score a touchdown.”⁴⁷

In an effort to further reduce these under-the-table payments and promote fairness among competitors, the NCAA introduced the Sanity Code in 1948.⁴⁸ The Sanity Code authorized universities to pay for their athletes' tuition, but remained steadfast in not allowing any other form of payment or compensation to the players.⁴⁹ These restrictions remained in effect until 1956, when the NCAA enacted grants-in-aid, which permitted universities to award athletic scholarships up to full tuition, fees, room and board, books, and incidental costs.⁵⁰ Decades later in 1976, the NCAA amended these grants-in-aid, stripping the students' ability to receive funds for incidental expenses related to attendance, such as laundry, supplies, and transportation.⁵¹

These limits remained in place until 2014, when the NCAA adopted new bylaws for the Power Five Conferences and allowed them to set the amount for the grant-in-aid; the universities raised the total amount to cover the costs of tuition, room and board, books and other expenses related to attendance at their institution—up to the cost of attendance.⁵² Cost of attendance is defined by bylaw 15.02.2 as “[a]n amount calculated by an institutional financial aid office, using federal regulations, that includes the total cost of tuition and fees,

46. See Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2149 (2021) (One coach estimated that a rival team “spent over \$200,000 a year on players.”).

47. *Id.*

48. *Id.*

49. *Id.*

50. *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1063 (N.D. Cal. 2019) [hereinafter *Antitrust Litigation*].

51. *Id.* at 1063-64.

52. *Bylaw 15.02.6*, NCAA LEGIS. SERV. DATABASE, <https://web3.ncaa.org/lstdbi/bylaw?ruleId=3822&refDate=20180922> (last visited Feb. 15, 2023).

room and board, books and supplies, transportation, and other expenses related to attendance at the institution.”⁵³

Additionally, the NCAA created funds to provide financial assistance to student athletes enrolled at a university. The two principal funds are the Academic Enhancement Fund (“AEF”) and the Student Assistance Fund (“SAF”).⁵⁴ The AEF focuses on the enhancement of academic support programs, while the SAF assists student athletes in meeting financial needs that arise in connection with participating in athletics, course enrollment, and overall academic achievement.⁵⁵ In 2021, the AEF and SAF disbursed nearly \$50 million and \$90 million respectively to student athletes.⁵⁶

Within recent years, both state and proposed federal legislation has allowed current student athletes to sign endorsement deals and profit from their Name, Image, and Likeness (“NIL”).⁵⁷ In 2019, California Governor Gavin Newsom signed Senate Bill No. 206 (“S.B. 206”) “Collegiate Athletics: Student Athletic Compensation and Representation” into law.⁵⁸ The Bill purports the following:

This bill would prohibit California postsecondary educational institutions except community colleges, and every athletic association, conference, or other group or organization with authority over intercollegiate athletics, from providing a prospective intercollegiate student athlete with compensation in relation to the athlete’s name, image, or likeness, or preventing a student participating in intercollegiate athletics from earning compensation as a result of the use of the student’s name, image, or likeness or obtaining professional

53. *Bylaw 15.02.2*, NCAA LEGIS. SERV. DATABASE, <https://web3.ncaa.org/lstdbi/bylaw?ruleId=4197&refDate=20180922> (last visited Feb. 15, 2023).

54. NAT’L COLLEGIATE ATHLETIC ASS’N, 2021 DIVISION I REVENUE DISTRIBUTION PLAN, 2 (2021), https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2021D1Fin_RevenueD1FintributionPlan.pdf (showing that the SAF is comprised of the Student Assistance Fund and the Student Athlete Opportunity Fund (“SAOF”).

55. *Id.*

56. *Id.* (showing that the SAF granted approximately \$19 million, while the SAOF granted approximately \$69 million).

57. Andrew Smalley, *Student Athlete Compensation*, NAT’L CONF. OF STATE LEGIS. (Mar. 24, 2022), <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/27087>.

58. S.B. 206, 2019 Leg., Reg. Sess. (Cal. 2019).

representation relating to the student's participation in intercollegiate athletics.⁵⁹

S.B. 206 became effective on January 1, 2023.⁶⁰ In addition to California, many states including Alabama, Texas, Oregon, and Georgia introduced similar NIL legislation.⁶¹ Federally, there have been bipartisan attempts to codify NIL rights for student athletes. Representatives Cleaver and Gonzalez of Missouri and Ohio respectively are reintroducing the Student Athlete Level Playing Field Act, which would establish a federal standard for student athlete compensation, create congressional oversight and amend federal law to protect the recruiting process.⁶² Other representatives have introduced legislation regarding NIL use, privileges, and player eligibility after receiving compensation.⁶³

C. NCAA's Treatment Under the Sherman Act

In 1984, the University of Oklahoma and University of Georgia Athletic Association together challenged the NCAA's practices in *NCAA v. Board of Regents of the University of Oklahoma*.⁶⁴ Here, the universities opposed the NCAA policy that fixed the terms of television broadcasting contracts between NBC, CBS, and participating NCAA institutions.⁶⁵ The contracts limited the number of games that each university could broadcast in a season and similarly set a limit on the number of games that networks could broadcast.⁶⁶ Upon review, the Supreme Court found that the policy constituted horizontal price and output fixing between the universities.⁶⁷

59. *Id.*

60. Smalley, *supra* note 57.

61. *See id.*

62. Press Release, Congressman Emanuel Cleaver, Cleaver, Gonzalez Reintroduce Legislation to Grant Name, Image, and Likeness to Student Athletes With Bipartisan Support (Apr. 26, 2021), <https://cleaver.house.gov/media-center/press-releases/cleaver-gonzalez-reintroduce-legislation-grant-name-image-and-likeness>.

63. Smalley, *supra*, note 57 (noting that Senator Corey Booker and Representative Jan Schakowsky introduced the "College Athletes Bill of Rights" in 2022, while Senator Chris Murphy and Representative Jamaal Bowman introduced the "College Athlete Right to Organize Act" in 2021).

64. *See Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984).

65. *Id.* at 88.

66. *Id.* at 94.

67. *Id.* at 120.

The NCAA argued that although the agreements restricted trade and limited the universities' ability to negotiate the terms of the deals, the restrictions were put in place because "television does have an adverse effect on college football attendance and unless brought under some control threatens to seriously harm the nation's overall athletic and physical system."⁶⁸ In response, the Court determined that prices were higher and output was lower as a result of the NCAA's plan to cabin the terms of broadcast deals—both of which were unresponsive to consumer preferences.⁶⁹ "Restrictions on price and output are the paradigmatic examples of restraints of trade that the Sherman Act was intended to prohibit."⁷⁰

In 2015, the Ninth Circuit's seminal decision *O'Bannon v. NCAA* clarified what compensation Division I football and basketball student athletes were entitled to, and determined whether the NCAA's compensation rules constituted unlawful restraints on trade under the Act.⁷¹ The district court held that the NCAA's compensation rules were unlawful restraints on trade, and enjoined them from prohibiting its universities from granting student athletes scholarships up to the full cost of attendance.⁷² The district court also allowed for up to \$5 thousand annually in deferred cash compensation for the revenue generated by NIL.⁷³ On appeal, the Ninth Circuit affirmed the district court's order in allowing scholarships up to the full cost of attendance, but concluded that the court erred in permitting an annual \$5 thousand deferred payment for NIL.⁷⁴ The Court noted that offering this additional compensation would eliminate the NCAA's procompetitive rationale in restricting athletes' compensation.⁷⁵ In essence, the Ninth Circuit feared that paying players for their athletic contributions and the revenues they generated would create a

68. *Id.* at 89-90.

69. *See Bd. of Regents of Univ. of Okla.*, 468 U.S. at 107.

70. *Id.*

71. *See O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015).

72. *Id.* at 1052-53.

73. *Id.* at 1053.

74. *Id.*

75. *Id.*

“minor league” football league that would negatively affect consumer demand.⁷⁶

Lastly, and potentially the most threatening to the NCAA’s governance over collegiate athletic compensation was the Supreme Court’s decision in *NCAA v. Alston*.⁷⁷ In *Alston*, the Court heard the NCAA’s challenge over an injunction that struck down the rules limiting education-based compensation for student athletes.⁷⁸ The Petitioners did not raise the question of the NCAA’s athletics-based compensation restrictions, so the Court only assessed the NCAA’s restrictions on education-based limits.⁷⁹ At the district level, several former and current Division I football and basketball players asserted the NCAA’s rules limiting compensation violated section one of the Act.⁸⁰ The lower court concluded that the NCAA’s rules limiting the amount of compensation available for athletes constituted horizontal price-fixing agreements that were enacted and enforced with monopsony power.⁸¹ Although the trial court enjoined the NCAA from restricting academic-related compensation, it permitted the NCAA to continue limiting athletics-based compensation, as such payments untethered to education could harm the consumer demand for college sports.⁸²

Both the students and the NCAA appealed to the Ninth Circuit.⁸³ The students asserted that the lower court should have gone farther and enjoined all of the NCAA’s compensation limitations, even those unrelated to academia; meanwhile, the NCAA argued that the district court went too far by weakening its constraints on education-based compensation.⁸⁴ The Ninth Circuit affirmed in full, saying “the district court struck the right balance in crafting a remedy that both prevents

76. *O’Bannon*, 802 F.3d at 1076-77 (citing Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85, 101-02 (1984)).

77. See Nat’l Collegiate Athletic Ass’n v. Alston, 141 S. Ct. 2141 (2021).

78. *Id.* at 2147 (noting that education-related benefits included vocational or graduate school scholarships).

79. See *id.* at 2154-55.

80. *Id.* at 2151 (citing *Antitrust Litigation*, 375 F. Supp. 3d 1058, 1065 (N.D. Cal. 2019)).

81. *Antitrust Litigation*, 375 F. Supp. 3d at 1109.

82. *Id.* at 1088.

83. *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1263 (9th Cir. 2020).

84. *Id.*

anticompetitive harm to Student-Athletes while serving the procompetitive purpose of preserving the popularity of college sports.⁸⁵ The Supreme Court unanimously sided with the lower courts in finding the NCAA in fact was not immune from antitrust scrutiny and their education-based compensation limits unequivocally violated section one of the Act.⁸⁶ The Court reasoned that the NCAA is no different than any other American corporation, and therefore did not deserve antitrust immunity.⁸⁷ While Justice Gorsuch's majority opinion greatly shifted the balance of power in favor of student athletes going forward,⁸⁸ Justice Kavanaugh's concurrence truly opened the floodgates for future antitrust litigation regarding the NCAA's limits on student athletic compensation.⁸⁹ Justice Kavanaugh warned that the NCAA would face many obstacles in justifying their remaining restrictions on athletics-based compensation.⁹⁰

Together *Board of Regents of the University of Oklahoma*, *O'Bannon*, and *Alston* display the constant scrutiny the NCAA has faced due to their monopolistic authority over college athletes.⁹¹ When assessing whether the NCAA's practices are anticompetitive and thus in violation of the Act, courts have traditionally reverted to the either per se or rule of reason analysis.⁹² Commonly, an entity may violate the Sherman Act, and is subject to criminal penalties, if it engaged in price fixing, bid rigging, and horizontal agreements between competitors regarding market allocations.⁹³ Such conduct requires no further analysis into its practical effects on competition within the given market.⁹⁴ Past antitrust litigation against the NCAA has evolved from including both per se and rule of reason

85. *Id.*

86. Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2166 (2021).

87. *Id.* at 2158-59.

88. *See generally Alston*, 141 S. Ct. 2141 (allowing students to receive such education-based compensation is unprecedented and decreases the financial inequities that currently exist in college athletics).

89. *See id.* at 2166-69 (Kavanaugh, J., concurring).

90. *Id.* at 2167 ("The NCAA's business model would be flatly illegal in almost any other industry in America.").

91. *See* pp. 6-8.

92. *See Alston*, 141 S. Ct. at 2167 (Kavanaugh, J., concurring); *see also* Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85, 100 (1984).

93. *Antitrust Laws*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/antitrust_laws (last visited Feb. 15, 2023).

94. *Id.*

analysis, as seen in *Board of Regents of the University of Oklahoma*, to solely rule of reason in *Alston*.⁹⁵ Going forward, Justice Kavanaugh set forth that all matters challenging the NCAA's compensation restrictions are to be analyzed under the rule of reason framework.⁹⁶

III. IDENTIFICATION OF THE LEGAL ISSUE

In *Alston*, the Supreme Court considered whether the NCAA's prohibitions on student athletic compensation constituted an unlawful restraint on competition and therefore violated section one of the Act.⁹⁷ Because the Respondents did not challenge the District Court's judgement, the Supreme Court did not decide the viability of the NCAA's athletics-based compensation limits, but instead centered its analysis on the limits regarding education-based compensation.⁹⁸ However, Justice Kavanaugh's concurring opinion noted how the NCAA may be subject to future judicial scrutiny regarding their compensation limits on athletic performance⁹⁹ The Court undermined the NCAA's restrictive policies, and it is only a matter of time until these questionable practices are revisited.¹⁰⁰ Such a dispute would not be unanimous in favor of the students, since the NCAA maintains procompetitive reasons why restricting compensation for athletes is needed.¹⁰¹ Despite these justifications, the manner in which they uphold these objectives raises skepticism under antitrust law.¹⁰²

IV. ANALYSIS

While the Supreme Court's decision in *Alston* greatly impacted the NCAA's ability to control players' compensation for educational purposes, the Court's silence regarding athletics-based compensation allows the NCAA to continue

95. *Alston*, 141 S. Ct. at 2167. (Kavanaugh, J., concurring).

96. *Id.*

97. *Id.* at 2147 (majority opinion).

98. *Id.* at 2153.

99. *Id.* at 2168 (Kavanaugh, J., concurring) (“[T]he NCAA's business model of using unpaid student athletes to generate billions of dollars in revenue for the colleges raises serious questions under the antitrust laws.”).

100. *See Alston*, 141 S. Ct. at 2168 (Kavanaugh, J., concurring).

101. *See Antitrust Litigation*, 375 F. Supp. 3d 1058, 1098 (N.D. Cal. 2019).

102. *Alston*, 141 S. Ct. at 2166.

their suspect practices.¹⁰³ In future disputes, the NCAA must offer procompetitive justifications for its remaining compensation rules, and according to Justice Kavanaugh, it may lack such objectives.¹⁰⁴

This section (1) discusses the Court's rationale in *Alston*, specifically, the NCAA's justifications for price-fixing¹⁰⁵ and alleged antitrust immunity,¹⁰⁶ (2) analyzes the shift in market realities in college athletics,¹⁰⁷ and (3) offers why consumer demand and the desire for amateurism in college sports would not diminish if the players are compensated based on their athletic contributions.¹⁰⁸

A. *The Supreme Court Rationale in Alston*

The NCAA sought antitrust immunity because it claimed to be a joint venture and therefore collaboration between its members is necessary to offer the product of collegiate sports to their consumers.¹⁰⁹ The Court was not skeptical of this procompetitive purpose, as Justice Gorsuch notes "joint ventures are calculated to enable firms to do something more cheaply or better than they did it before."¹¹⁰ Despite this acceptance of joint ventures, certain entities, such as the NCAA, are not automatically immune from the Act.¹¹¹ Recently, the Supreme Court held that a professional sports league was subject to ordinary rule of reason treatment because "the mere fact that [firms] operate jointly in some sense *does not* mean that they are immune."¹¹² Although the NCAA correctly raised that joint ventures are traditionally protected from antitrust review, that exemption is not absolute; neither the NCAA nor any other American venture is

103. *See id.* at 2167 (Kavanaugh, J., concurring).

104. *See id.*

105. *Antitrust Litigation*, 375 F. Supp. 3d at 1098.

106. *See Alston*, 141 S. Ct. at 2153-55.

107. *Id.* at 2158.

108. *Antitrust Litigation*, 375 F. Supp. 3d at 1098.

109. *Alston*, 141 S. Ct. at 2155.

110. *Id.*

111. *Id.*

112. Michael A. Carrier & Christopher L. Sagers, *The Alston Case: Why the NCAA Did Not Deserve Antitrust Immunity and Did Not Succeed Under a Rule-of-Reason Analysis*, 28 GEO. MASON L. REV. 1461, 1468 (2021) (citing *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 199 (2010)).

above the law.¹¹³ While some restrictions are needed to successfully maintain a sports league, not every restriction in place is warranted.¹¹⁴ As the Court expressed, “[j]ust as the ability of McDonald’s franchises to coordinate the release of a new hamburger does not imply their ability to agree on wages for counter workers, so the ability of sports teams to agree on a TV contract need not imply an ability to set wages for players.”¹¹⁵

Furthermore, the NCAA argued it was immune from rule of reason analysis because it is not a commercial enterprise, but instead oversees “an integral part of the undergraduate experience.”¹¹⁶ The Court found no merit in this point given that the NCAA’s monopolistic practices were deemed anticompetitive in *Board of Regents of the University of Oklahoma*.¹¹⁷ The Court also previously reviewed other non-profit organizations under the Act, and thus the NCAA’s argument was circular on this point.¹¹⁸ “[The] Court has regularly refused materially identical requests from litigants seeking special dispensation from the Sherman Act on the ground that their restraints of trade serve uniquely important social objectives beyond enhancing competition.”¹¹⁹ Therefore, the fact that the NCAA was a self-proclaimed non-profit did not provide immunity from the Court’s review.¹²⁰

B. Shift in the Market Realities of College Sports

The Supreme Court further expressed their skepticism of the NCAA’s compensation limits by analyzing the recent shift of market realities in college sports.¹²¹ Since *Board of Regents of the University of Oklahoma* in 1984, the NCAA has not only increased the compensation and funds available to student

113. See *Alston*, 141 S. Ct. at 2169. (Kavanaugh, J., concurring).

114. *Id.* at 2156.

115. *Id.* at 2157 (citing *Chicago Pro. Sports Ltd. Partnership v. Nat’l Basketball Ass’n*, 95 F.3d 593, 600 (7th Cir. 1996)).

116. *Id.* at 2158.

117. *Id.* at 2159.

118. *Alston*, 141 S. Ct. at 2159.

119. *Id.* (quoting *Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 100-01 (1984) (This argument lacks merit since the NCAA and its member universities are in fact organized to generate revenue).

120. See *id.* at 2158-59.

121. *Id.* at 2158.

athletes, but its revenue has increased significantly.¹²² For instance, the NCAA increased the overall scholarship limit, allowed for incidental benefits, and implemented funds such as the SAF and AEF; such funds collectively provided over \$100 million in 2018.¹²³ The most drastic shift was the increase in revenue. In 1985, Division I football and men's basketball generated approximately \$960 million.¹²⁴ In contrast, these same sports raised \$13.5 billion in 2016.¹²⁵ The television broadcasting contracts reached with major networks have similarly increased. The NCAA traditionally contracts with CBS for the broadcasting rights for the Division I men's basketball tournament,¹²⁶ such contracts were worth \$16 million from 1982 to 1984, and were worth roughly \$1.1 billion by 2016.¹²⁷ Lastly, the NCAA now permits universities to award their players up to \$5,980 in cash, rings, or trophies for their athletic performances in high profile games, such as college football championship bowls.¹²⁸ The current market realities of college sports significantly weaken the NCAA's stance that they need not compensate players and calls for an expansion in such compensation available to these athletes.

Additionally, NIL endorsement deals greatly shifted the college sports market.¹²⁹ In June 2021, the NCAA's governing bodies for the three divisions voted to suspend the rules restricting NIL deals for student athletes.¹³⁰ These deals allow

122. *Id.*

123. *Antitrust Litigation*, 375 F. Supp. 3d 1058, 1072 (N.D. Cal. 2019).

124. *Alston*, 141 S. Ct. at 2158.

125. *Id.*

126. Kevin O'Malley, *How CBS snared the NCAA Tourney rights from NBC 40 years ago – in a competitive world of 3 networks*, SPORTS BROAD. J. (Apr. 4, 2021), <https://www.sportsbroadcastjournal.com/how-cbs-snared-the-ncaa-tourney-rights-from-nbc-40-years-ago-in-a-competitive-world-of-3-networks/>.

127. *Alston*, 141 S. Ct. at 2158.

128. Nina Totenberg, *Supreme Court Weighs Whether NCAA is Illegally "Fixing" Athletic Compensation*, NPR (Mar. 31, 2021, 6:01 PM), <https://www.npr.org/2021/03/31/983139101/supreme-court-weighs-whether-ncaa-is-illegally-fixing-athlete-compensation>.

129. Travis Branham, *What Does the Change to NIL Mean for the Recruiting Landscape?*, 247SPORTS (July 1, 2021), <https://247sports.com/college/basketball/recruiting/Article/NIL-NCAA-rule-change-impact-on-recruiting-167267595/>.

130. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

student athletes to profit from their athletic status, independent of both the NCAA and their respective university.¹³¹ Some notable deals include Alabama quarterback Bryce Young, who has sponsorships valued around \$1 million.¹³² Others include Louisiana State University quarterback Myles Brennan, who signed with local establishments, and Miami quarterback D'Eriq King, who signed with College Hunks Hauling Junk for \$20 thousand.¹³³ King also has various other NIL deals in place.¹³⁴ Allowing these endorsement deals marks a new era in college sports and alters the power imbalance between the players and the NCAA.¹³⁵ Once widespread NIL legislation is enacted at either the state or federal level, it would appear counterintuitive for the NCAA to continue restricting athletic-based compensation.

Altogether, the NCAA's landscape has shifted dramatically, and players now can receive unprecedented benefits such as the SAF, AEF, and NIL deals. However, the NCAA recently has transformed into a tremendously profitable entity, as evidenced through the immense capital brought in through TV broadcasting contracts.¹³⁶ It is only logical that the NCAA permits athletics-related compensation, and this policy change will most likely come from courts striking down the NCAA's current rules in violation of the Act, or federal legislation permitting such payments.¹³⁷

131. *See id.*

132. David Kenyon, *The Biggest and Most Notable NIL Deals in College Football So Far*, BLEACHER REP. (July 26, 2021), <https://bleacherreport.com/articles/2946352-the-biggest-and-most-notable-nil-deals-in-college-football-so-far>.

133. *Id.*

134. *Id.*

135. *See* Branham, *supra* note 129.

136. Eben Novy-Williams, *March Madness Daily: The NCAA's Billion-Dollar Cash Cow*, SPORTICO (Mar. 26, 2022, 9:00 AM), <https://www.sportico.com/leagues/college-sports/2022/march-madness-daily-the-ncaas-billion-dollar-cash-cow-1234668823/>; *see also* Stewart Mandel, *With Big Ten's new deal, here's what college football will look like on TV for next decade*, THE ATHLETIC (Aug. 18, 2022), <https://theathletic.com/3520740/2022/08/18/big-ten-college-football-tv-rights/>.

137. *See* Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2168 (2021) (Kavanaugh, J., concurring).

C. *Consumer Demand and the Allure of Amateurism*

Although the NCAA did not raise issues regarding amateurism and the effect on consumer demand if players are paid in *Alston*, these points are nevertheless important to analyze because they are the NCAA's strongest justifications for their prohibitions on athletic compensation.¹³⁸ The NCAA believes their consumers fill stadiums and watch live broadcasts across the world not only to watch superior athletes, but because these athletes are amateurs who play solely for the love of the game.¹³⁹ The NCAA fears that if players are compensated for their athletic performances, the lust for college sports would disappear, as the student athletes would effectively become quasi-professional athletes.¹⁴⁰ Despite relying on this justification to avoid compensating players, neither the NCAA nor other leaders in the college sports arena can provide a concrete definition for what constitutes "amateurism."¹⁴¹ The NCAA argues that amateurism can be defined based on what it is not; that amateurism is not "pay for play."¹⁴² But the concept of "pay for play" does not help define amateurism because this term itself is undefined.¹⁴³ As stated by Justice Kavanaugh, "[a]ll of the restaurants in a region cannot come together to cut cooks' wages on the theory that 'customers prefer' to eat food from low-paid cooks."¹⁴⁴ The NCAA "cannot avoid the consequences of price-fixing labor by incorporating price-fixed labor into the definition of [the] product."¹⁴⁵ Amateurism is not about some social ideal, but rather is a scheme that keeps college athletics revenues in the hands of a select number of administrators and other personnel.¹⁴⁶ "If there were truly a demand for

138. *See id.* at 2155 (majority opinion).

139. *See id.* at 2152.

140. *See id.*

141. *Antitrust Litigation*, 375 F. Supp. 3d 1058, 1070-71 (N.D. Cal. 2019); *see also Amateurism*, NCAA, <https://www.ncaa.org/sports/2014/10/6/amateurism.aspx> (last visited Feb. 15, 2023) (showing that the NCAA does not define amateurism, leaving the courts with little direction on how to apply it).

142. *Antitrust Litigation*, 375 F. Supp. 3d at 1099.

143. *Id.*

144. *Alston*, 141 S. Ct. at 2167 (Kavanaugh, J., concurring).

145. *See id.* at 2168.

146. Marc A. Edelman, *A Prelude to Jenkins v. NCAA: Amateurism, Antitrust Law, and the Role of Consumer Demand in a Proper Rule of Reason Analysis*, 68 LA. L. REV. 228, 230 (2017).

amateurism, then consumer demand would be sufficient to prevent teams from making the ‘quantum leap’ that destroys demand, and the promise of a rigorous certification and inspection . . . would be all that is needed to ensure against market collapse.”¹⁴⁷ Furthermore, Dr. Daniel Rascher presented evidence that explained how recent increases in student athlete compensation have not decreased consumer demand.¹⁴⁸ Given the increased compensation that student athletes may receive through NIL contracts or the university-furnished funds, the NCAA’s reliance on amateurism to avoid compensating players is rapidly losing its merit.

Within the fantasy of amateurism is the NCAA’s belief that if student athletes receive compensation, they will effectively become professional athletes and consumer demand will significantly decrease as a result.¹⁴⁹ However, there is sufficient evidence disproving this notion.¹⁵⁰ As the District Court noted, the NCAA’s evidence failed to establish that the challenged compensation rules have any direct connection to consumer demand.¹⁵¹ The only evidence the NCAA furnished were interviews conducted with individuals associated with the NCAA and their schools—no studies of consumer demand were presented.¹⁵² An NCAA witness, Kevin Lennon testified that, in his more than thirty years with the organization, he “does not recall any instance in which a study on consumer demand was considered by the NCAA membership when making rules about compensation.”¹⁵³ In contrast, the students presented evidence showing that a negative causal link did not exist between compensating players and consumer demand.¹⁵⁴ Additional evidence clearly highlights how recent increases in student athletic consumption do not inhibit consumer demand. According to ESPN, the “New Year’s Six” bowl games attracted

147. Andy Schwarz & Richard J. Volante, *The Ninth Circuit Decision in O’Bannon and the Fallacy of Fragile Demand*, 26 MARQ. SPORTS L. REV. 391, 408 (2016) (explaining the Ninth Circuit’s rationale that offering cash sum untethered to education is not minor, and consumers would not purchase college sports if they were not seen as amateur).

148. *Antitrust Litigation*, 375 F. Supp. 3d at 1100.

149. *Id.* at 1104.

150. *Alston*, 141 S. Ct. at 2152.

151. *Antitrust Litigation*, 375 F. Supp. 3d at 1070.

152. *See id.* at 1075.

153. *Id.* at 1080.

154. *Alston*, 141 S. Ct. at 2152.

about 67 million viewers in 2021, and approximately 76 million viewers in the 2022 playoff season.¹⁵⁵ The 2022 college football championship between Georgia and Alabama witnessed more than twenty-two million viewers alone.¹⁵⁶ The fact that these players received higher compensation compared to the year prior but viewership increased by a significant amount deflates the NCAA's argument that amateurism is correlated to consumer demand. Polling data has also reflected this frail connection between compensating players and decreased consumer demand. A study completed by Seton Hall University provided that 56% of the general population favored allowing NIL deals, while only 25% were opposed.¹⁵⁷ Lastly, a study proctored by the National Sports and Society Survey ("NSSS") found that 51% of adults agreed that student athletes should be paid over school cost of attendance, compared to 41% of participants disagreeing.¹⁵⁸ The evidence surrounding the "pay-to-play" debate overwhelmingly favors players receiving athletics-based compensation.

155. Amanda Brooks, *College Football Playoff Semifinals Average 19 Million Viewers, ESPN's Third Most Watched Day on Record*, ESPN PRESSROOM (Jan. 5, 2021), <https://espnpressroom.com/us/press-releases/2021/01/college-football-playoff-semifinals-average-19-million-viewers/> (The "New Year's Six" includes the Sugar Bowl, Rose Bowl, Peach Bowl, Fiesta Bowl, Cotton Bowl, and Orange Bowl.); see also Amanda Brooks, *New Year's Six Delivers Multi-Year Viewership Highs, Second-Most-Watched Non-Semifinal Rose Bowl Game of College Football Playoff Era*, ESPN PRESSROOM (Jan. 4, 2022), <https://espnpressroom.com/us/press-releases/2022/01/new-years-six-delivers-multi-year-viewership-highs-second-most-watched-non-semifinal-rose-bowl-game-of-college-football-playoff-era/>.

156. Derek Saul, *Viewership for College Football Playoff Championship Up from Record Low 2021 – But Still Below NFL's Ratings*, FORBES (Jan. 12, 2022, 2:55 AM), <https://www.forbes.com/sites/dereksaul/2022/01/11/viewership-for-college-football-playoff-championship-up-from-record-low-2021---but-still-below-nfls-ratings/?sh=32be52de3622>.

157. Michael Ricciardelli & Marty Appel, *By More than 2-1, Public Says Student Athletes Should Be Allowed to Profit from Use of Name / Image / Likeness; Number Opposed to Student Athlete Compensation Drops Dramatically*, SETON HALL UNIV. STILLMAN SCH. OF BUS. (Mar. 18, 2021), <https://www.shu.edu/business/news/sports-poll-public-favors-pay-for-student-athletes.cfm>.

158. Jeff Grabmeier, *51% of Americans Agree Paying College Athletes Should be Allowed*, OHIO STATE NEWS (Nov. 24, 2020), <https://news.osu.edu/51-of-americans-agree-paying-college-athletes-should-be-allowed/>.

V. PROPOSAL

A. *The Deferred Trust Account*

Together, the increases in compensation for college athletes and the NCAA's growing profits call for a change in the NCAA's rules to allow athletics-based compensation for student athletes.¹⁵⁹ In order to accomplish this, the NCAA would need to adopt new policies that clearly outline the parameters of such compensation. Additionally, the method in determining a player's FMV would need to be applied uniformly by all universities, whether it be Division I, II, or III.

A proposal to compensate players equitably would be to allow eligible college athletes to sign contracts worth their FMV with their respective universities. The contracts would be measured in terms of the amount of revenue the individual athlete contributes to their university. These contracts would not resemble a professional athlete's contract. Rather, in an effort to find a common ground between the NCAA and its players, the funds would be placed in a protected trust account that the NCAA controls. It would not be accessible by the players while they are either (1) eligible to participate in the university's athletics program or (2) actively enrolled in said university. This would ensure that the players would not be able to profit from their contributions until they have severed all ties with their respective university and become ineligible as a student athlete. The trust accounts would be similar to a pension plan that vests after an employee no longer works with their company, instead of a direct deposit payment-plan that distributes funds to an employee during their employment. Additionally, the accounts would not survive a player's expulsion, voluntary removal, or other termination from their university. Athletes who transfer and take their talents elsewhere would similarly have their accounts frozen. In other words, student athletes would be compensated only for the revenue they personally generated, or that of which they are estimated to generate for that same university in the future. Severances would not apply to those players who suffer injuries. While this is not an absolute solution, it undoubtedly

159. *Alston*, 141 S. Ct. at 2150-51.

is a step in the right direction towards a more competitive and equitable era in college sports.

In estimating a Division I football player's FMV, the player's star-recruit rating, overall team performance, and bowl appearances by type are considered.¹⁶⁰ A study completed by Stephen A. Bergman and Trevon D. Logan accounted for these factors and from their analysis, they estimated that a five-star recruit is worth over \$650 thousand in annual revenue, with four and three-stars generating over \$350 thousand and \$150 thousand respectively.¹⁶¹ Two-star recruits are estimated at approximately \$13 thousand.¹⁶² Bergman and Logan determined that the quality of recruit significantly increases the wins, bowls appearances, and overall credibility of the school, all of which significantly heightens that school's revenue.¹⁶³ For instance, five-star recruits increase wins by .437 when using an Ordinary Least Squares ("OLS") regression, compared to a four-star recruit increasing wins only by .159.¹⁶⁴ Similarly, a five-star recruit increases a school's likelihood of going to a Bowl Championship Series ("BCS") bowl game by four percent.¹⁶⁵ Such bowl appearances increase university revenues by more than \$15 million.¹⁶⁶

These findings highlight how grossly inequitable the NCAA operates, and call into question the need for preserving amateurism and the fear of declined consumer interest. Applying Bergman and Logan's estimations to the incoming 2022 Division I football class illustrates the value of these players to their universities. Recruits from the Power Five Conferences were taken from ESPN and assigned the value according to their star-rank.¹⁶⁷ From this, it was calculated

160. See Stephen A. Bergman & Trevor D. Logan, *Revenue Per Quality of College Football Recruit*, 61 J. OF SPORTS ECON. 572 (2020).

161. *Id.* at 586.

162. *Id.*

163. *Id.*

164. *Id.* at 580.

165. *Id.* at 583.

166. Bergman & Logan, *supra* note 160, at 583.

167. *College Football Recruiting Classes*, ESPN, <https://www.espn.com/college-sports/football/recruiting/school> (last visited Mar. 13, 2023) (ESPN ranks recruits using numbers; each star correlates to every 10 numbers. For instance, three-star recruits receive grades of 70-79; four-stars receive grades from 80-89; five-stars are assigned numbers 90-99); Bergman & Logan, *supra* note 160, at 586.

that these five conferences alone (consisting of sixty-four teams in total) would generate an estimated \$278 million from their 2022 recruiting classes.¹⁶⁸ Notably, the SEC would bring in around \$77 million, headlined by Alabama, Georgia, and Texas A&M. These universities would generate revenues in the range of \$8 to \$11 million from their players annually.¹⁶⁹ Likewise, the Big 10 would receive approximately \$61 million, led by Penn State and Ohio State's classes at around \$7 million, and Michigan's at almost \$6 million.¹⁷⁰ The ACC, Big 12, and Pac-12 would receive revenues ranging from \$38 million to \$48 million, according to Bergman and Logan's findings.¹⁷¹ Lastly, Notre Dame would receive over \$6.5 million from their 2022 recruiting class.¹⁷²

Turning to men's college basketball ("MBB"), research conducted by Richard Borghesi found that the FMV for freshman recruits would be \$613 thousand for a five-star recruit, \$166 thousand for a four-star, \$91 thousand for a three-star, and \$50 thousand for two and one-star recruits.¹⁷³ This study considered university revenue estimates, athletic scholarships, and third-party donations.¹⁷⁴ Applying the same method used in calculating football revenue to the 2022 recruiting class for MBB produced results showing millions of dollars in additional revenue for these universities and the NCAA alike.¹⁷⁵ While the sizes of MBB classes are generally smaller as compared to football classes,¹⁷⁶ the figures nevertheless display significant profits generated. Applying

168. See *infra* Table I.

169. See *infra* Table II.

170. See *infra* Table III.

171. See *infra* Table I; see also BERGMAN & Logan, *supra* note 160, at 586.

172. See *infra* Table I; see also BERGMAN & Logan, *supra* note 160, at 586.

173. Richard Borghesi, *The Financial and Competitive Value of NCAA Basketball Recruits*, 19 J. OF SPORTS ECON. 31 (2015).

174. *Id.* (saying that athletic scholarships include the world-class facilities that these players are provided with).

175. See *infra* note 239.

176. This is due to the fact that the roster sizes of these sports differ greatly in size. Additionally, college football is played with eleven men on the field, compared to five players on a basketball court. *Duke Blue Devils Roster*, ESPN, https://www.espn.com/mens-college-basketball/team/roster/_id/150 (last visited Feb. 15, 2023); see also *Alabama Crimson Tide Roster*, ESPN, https://www.espn.com/college-football/team/roster/_id/333 (last visited Feb. 15, 2023) (comparing Alabama football's roster of over 100, to Duke basketball's of fourteen).

Borghesi's findings, the SEC would receive approximately \$10 million, while the Big 10 would gain over \$9 million.¹⁷⁷ The ACC, Big 12, and Pac-12 would collectively receive around \$20 million from their recruiting classes, while Notre Dame would generate around \$1 million.¹⁷⁸ Although player revenue for MBB may be less significant compared to football teams, these figures equally signify the disparity that exists between the players' labor input and the NCAA's financial gains.

B. Solutions to Justice Kavanaugh's Queries

Justice Kavanaugh criticizes the NCAA's suspect limitations on athletic compensation and emphasizes why these players deserve to get paid.¹⁷⁹ However, he notes that if the NCAA's current rules on athletic compensation are struck down, many questions would need to be addressed before implementing a payment plan.¹⁸⁰ The following questions will be addressed:

How would paying greater compensation to student athletes affect non-revenue-raising sports? . . . How would any compensation regime comply with Title IX? If paying student athletes requires something like a salary cap in some sports in order to preserve competitive balance, how would that cap be administered?¹⁸¹

Non-revenue sports are defined as “[a] sports program that reports a negative net generated revenue.”¹⁸²

177. *See infra* Table VIII.

178. *See infra* Table VIII.

179. *See Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2167-69 (2021) (Kavanaugh, J., concurring).

180. *Id.* at 2168.

181. *Id.*

182. John Adamek, *Academic Fraud in Revenue and Nonrevenue Sports*, THE SPORTS J. (Nov. 23, 2017), <https://thesportjournal.org/article/academic-fraud-in-revenue-and-nonrevenue-sports/> (“Generated revenues are produced by the athletics department and include ticket sales, radio and television receipts, alumni contributions, guarantees, royalties, NCAA distributions and other revenue sources that are not dependent upon institutional entities outside the athletics department. . . . Positive net generated revenue results when total generated revenues exceed university-paid (or guaranteed) expenses. [N]egative net generated revenue results when university-paid (or guaranteed) expenses exceed generated revenues.”).

Examples of non-revenue sports include swimming, diving, and fencing.¹⁸³ In contrast, football and men's basketball are well established revenue sports.¹⁸⁴ If the NCAA's rules on athletic compensation are struck down and players are allowed to profit from their FMV, it is unlikely that non-revenue sports will be burdened as a result. Principally, this is because revenue and non-revenue sport athletes are not in direct competition with one another. For instance, a football player at the University of California is likely not competing to fill a roster spot on the men's swimming team; conversely, a track and field runner at Northern Arizona University is likely not trying out for a spot on the basketball team. Additionally, non-revenue sports create substantial value through donation revenues.¹⁸⁵ As noted above, if revenue sport athletes are compensated, it would be far-fetched to say that the donations made for non-revenue sports would decline. Because the athletes in these sports are mutually exclusive, there is little reason to believe that the popularity or quality of non-revenue sports would diminish.

Justice Kavanaugh also voices concerns of equity related to Title IX and what equivalent compensation for men's and women's sports would look like.¹⁸⁶ Title IX in part states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"¹⁸⁷ The proposed deferred trust account for student athletes would be fully compliant with Title IX, as it would not favor any sport, athlete, or position over another, including on the basis of sex. This is chiefly because the trust account would be based solely off that individual player's estimated revenue they are bringing to the university. It would not take into account a

183. Emma Healy, *The Hidden Revenue Behind Non-Revenue Sports*, THE HEIGHTS (Feb. 8, 2021, 1:21 PM), <https://www.bcheights.com/2021/02/08/importance-of-non-revenue-sports/>.

184. *Id.* (defining revenue sports as programs that report a positive net generated revenue).

185. *College Athlete Compensation*, NAT'L COLL. PLAYERS, ASSOC. <https://www.ncpanow.org/legislation-policies-resources/college-athlete-compensation> (last visited Mar. 7, 2023).

186. *See Alston*, 141 S. Ct. at 2168 (Kavanaugh, J., concurring).

187. 20 U.S.C.S. § 1681 (LEXIS through Pub. L. No. 117-285).

sport's popularity, as that would lead some athletes to earn a significantly higher amount.¹⁸⁸ Although it is true that some sports or athletes may not generate an equivalent value to their universities compared to others, the amount these players would receive is personalized to them, and does not discriminate on any external factors.

The question of how a salary cap would be administered to promote competitive advantages is raised.¹⁸⁹ A salary cap is an agreement between a league and its players that limits the amount of money a team can spend on its players' salaries.¹⁹⁰ Some leagues, including the NFL use a "hard cap" which prohibits any team from exceeding this figure in a given season.¹⁹¹ For the 2022 season, the NFL's salary cap is fixed a \$208,200,000, meaning teams will be met with an excise penalty if they spend more than this amount.¹⁹² This cap is determined based off gross revenue, which includes money earned from contracts with television networks, ticket sales, merchandise, naming rights, and local advertisements.¹⁹³ Although universities have the ability to consider factors similar to those used by the NFL, administering trust accounts for these players would eliminate the need for a salary cap. This is because the amount that student athletes would be paid is a fixed lump sum amount that is derived from their recruiting grade and eligibility, not their university's ability to pay them.¹⁹⁴ Unlike the NFL, these colleges would not be given a cap amount and would not be allowed to negotiate the length,

188. See Chris Bumbaca, *NCAA's Men's, Women's Basketball Tournament Ratings Show Mixed Results*, USA TODAY (Apr. 2, 2021, 9:45 AM), <https://www.usatoday.com/story/sports/ncaaw/tourney/2021/04/02/ncaa-tournament-ratings-show-mixed-results/4822670001/> (assuming that athletes who participate in more popular sports would receive higher compensation as compared to other athletes participating in less popular sports).

189. *Alston*, 141 S. Ct. at 2168 (Kavanaugh, J., concurring).

190. Tyler Brooke, *How Does the Salary Cap Work in the NFL?*, BLEACHER REP. (June 10, 2013), <https://bleacherreport.com/articles/1665623-how-does-the-salary-cap-work-in-the-nfl>.

191. *Id.*

192. Chase Goodbread, *NFL Informs Clubs 2022 Salary Cap Projected to be \$208.2 Million*, NFL (Dec. 14, 2021, 5:19 PM), <https://www.nfl.com/news/nfl-informs-clubs-2022-salary-cap-projected-to-be-208-2-million>.

193. Brooke, *supra* note 190.

194. See Bergman & Logan, *supra* note 160, at 586.

amount, and terms of the contract.¹⁹⁵ Rather, the trust accounts would be funded through a uniform method of configuring the amount to be held in their account. Powerhouse schools such as the University of Texas or Pennsylvania State University could not simply offer prospective players absurd amounts of cash in an effort to lure them to their teams. Basing the value of these trust accounts on a player's estimated FMV would effectively place both a floor and a ceiling on the amount of money the players would be eligible for and the universities could distribute, effectively eliminating the need for a salary cap.

In saying this, however, universities would be subject to penalties if they violate the agreed upon terms of the deal, specifically if they under or over compensate the player. Such a scenario could arise if a university values a specific three-star recruit highly and decides to pay them at a four or five-star's value. Similarly, a university may want to avoid paying athletes their FMV and only pay their five-star athletes at the three-star rate. In order to prevent such exploitation, universities found in violation would need to pay a remedial tax to correct their noncompliance. The NCAA could use major league baseball's ("MLB") "Competitive Tax Balance"¹⁹⁶ ("CTB") as a framework for determining the severity of the tax. The CTB operates to punish teams that exceed the designated annual threshold amount.¹⁹⁷ "Those who carry payrolls above that threshold are taxed on each dollar above the threshold, with the tax rate increasing based on the number of consecutive years a club has exceeded the threshold."¹⁹⁸ First time offenders must pay a 20% tax on all overages; teams exceeding the threshold for a second consecutive year is subject to a 30% tax; three or more straight seasons results in a 50%

195. Anthony Holzman-Escareno, *2021 NFL Free Agency Glossary: All the Terms You Need to Know*, NFL (Mar. 12, 2021, 4:15 PM), <https://www.nfl.com/news/2021-nfl-free-agency-glossary-all-the-terms-you-need-to-know>.

196. *Competitive Balance Tax*, MLB, <https://www.mlb.com/glossary/transactions/competitive-balance-tax> (last visited Feb. 20, 2023).

197. *See id.* (explaining the threshold amount is determined by using the average annual value of each player's contract on the forty-man roster, plus any additional player benefits; every team's final CTB figure is calculated at the end of each season).

198. *Id.*

tax.¹⁹⁹ Once an offender does not exceed the threshold for a season, their tax level resets to 20% the next time they exceed that year's threshold.²⁰⁰ If the NCAA adopts a policy similar to the CTB, it could deter universities from trying to exploit their players and lessen the inequity that has burdened collegiate athletes since the NCAA's inception.

C. Deferred Trust Accounts v. Collective Bargaining Agreements

The proposed deferred trust accounts would offer student athletes a source of compensation. However, there are still questions that need further considerations, namely the efficacy in only compensating certain players on a team, but not others.²⁰¹ Despite these questions, the trust accounts offer a more refined policy than other compensatory schemes from the past. For example, the Northwestern football team attempted to unionize through a collective bargaining agreement ("CBA") in 2014.²⁰² Some of the players' demands included financial coverage for former players with sports-related medical expenses, the creation of an educational trust fund to help former players graduate, and commercial sponsorship for players.²⁰³ Additionally, they sought to negotiate over health and safety issues, but did not intend to discuss for "pay-for-play" wages.²⁰⁴ Although the trust account and Northwestern's CBA both push for more players' rights, the CBA had numerous concerns surrounding its implementation, which ultimately led the National Labor Relations Board ("NLRB") to

199. *See id.* (these tax percentages are based on the 2017-2021 Collective Bargaining Agreement. The MLB Players Association is currently on strike and the MLB is on lock out until further notice. These figures may be subject to change).

200. *See id.*

201. For instance, it is clear that a five-star wide receiver would have funds placed in his account, but what about an unranked player?

202. Matt Bonesteel, *In Unanimous Vote, NLRB Rejects Northwestern Football Team's Attempt to Unionize*, WASH. POST (Aug. 17, 2015, 12:07 PM), <https://www.washingtonpost.com/news/early-lead/wp/2015/08/17/in-unanimous-vote-nlr-rejects-northwestern-football-teams-attempt-to-unionize/>.

203. *Id.*

204. *Id.*

not rule on the matter.²⁰⁵ As a consequence, Northwestern's bid to unionize failed.²⁰⁶ CBAs are complicated when applied to college sports because each state has different labor laws.²⁰⁷ In addition, the impact on Title IX, workers' compensation, unemployment benefits and salaries are unclear as well.²⁰⁸ The deferred accounts, as previously noted, would fully comply with Title IX.²⁰⁹ Furthermore, this system would not run counter to states' laws, and therefore distributing funds to players would not present the same difficulties as a CBA. Overall, it would be a streamlined method that achieves the same goals of granting collegiate athletes newfound rights and shifting the balance of power between players, universities, and the NCAA.

D. The Deferred Trust Accounts' Impact on NCAA Athletics

If the deferred accounts are adopted and administered by the NCAA, the landscape of collegiate sports will change forever. The NCAA will have an unprecedentedly-low amount of authority over the players, not only because they will be required to engage in profit sharing with the players, but incoming NIL deals will also allow players to profit from their status as prominent athletes.²¹⁰ Importantly, this proposal could pave the way for more player rights in the future. Once players are compensated for their FMV, they could then seek other agreements that would give them more bargaining power and rights, similar to those outlined in Northwestern's CBA.²¹¹ The trust accounts would bring the equity players deserve into college sports, as the NCAA could no longer control

205. Joe Nocera & Ben Strauss, *Fate of the Union: How Northwestern Football Union Nearly Came to be*, SPORTS ILLUSTRATED (Feb. 24, 2016), <https://www.si.com/college/2016/02/24/northwestern-union-case-book-indentured>.

206. *Id.*

207. *See* Bonesteel, *supra* note 202 (explaining that while this CBA would uphold in Illinois, where Northwestern is located, some states such as Virginia do not have collective bargaining rights for public state employees. This would mean that college athletes in states as such would not be allowed to unionize, regardless of the NLRB's decision).

208. *See id.*

209. *See supra* Section V.B.

210. Hosick, *supra* note 130.

211. *See* Bonesteel, *supra* note 202.

compensation and exert unfettered control over them.²¹² Lastly, the deferred trust accounts would undoubtedly increase the livelihood and well-being of student athletes.²¹³ As echoed throughout this article, the NCAA has exploited student athletes for generations; however, once players receive their respective share in revenue, they will instantly have access to resources they never had before. Whether that is related to their education, physical or mental health, or life at home, these players' lives will be changed forever.²¹⁴

VI. CONCLUSION

The current NCAA rules limiting athletics-based compensation greatly disadvantage players and exploit them for their natural talents.²¹⁵ Recently, college sports have grown tremendously in popularity, as evidenced through the number of viewers during the college football playoffs,²¹⁶ and the massive broadcasting contracts the NCAA and CBS agreed to for the rights to broadcast the MBB March Madness tournament.²¹⁷ The Supreme Court in *NCAA v. Alston* dealt a major blow to the NCAA's ability to limit student-athletic compensation after striking down the NCAA's rules prohibiting education-based payments.²¹⁸ Despite this groundbreaking decision, *Alston* left the NCAA free to prohibit the players from receiving athletic compensation.²¹⁹ As proclaimed by Justice Kavanaugh, "[n]owhere else in America

212. See Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2161 (2021).

213. See *id.* at 2168 (Kavanaugh, J., concurring).

214. See generally Joseph D. Black, *Stopping the Exploitation of NCAA Athletes*, 4 WRIT: J. OF FIRST-YEAR WRITING 1 (2021) (discussing how the NCAA has exploited its athletes since its beginning in 1906. The NCAA exploits athletes by targeting athletes from poor communities that can't afford education by any other means and enforces unfair and unnecessary rules in order to maintain control over the athlete's freedoms).

215. *Id.*

216. Brooks, *supra* note 155.

217. Joe Reedy, *CBS, Turner Partnership on NCAA Tournament has Huge Benefits*, AP NEWS (Mar. 16, 2021), <https://apnews.com/article/nba-basketball-coronavirus-pandemic-mens-basketball-mens-college-basketball-9b76df3406b8e82cf31a109bcb298c4b> (the NCAA, CBS, and Turner Sports signed an eight-year extension in 2016 that gave them broadcasting rights through 2032. In 2025, the average annual value will be \$1.1 billion, which is an increase from the previous \$770 million annually prior to the extension).

218. See *Alston*, 141 S. Ct. 2141.

219. See *id.* at 2154.

can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate.²²⁰ The NCAA faces great challenges going forward, and as a result, may no longer be able to avoid paying the student athletes who generate millions of dollars annually.²²¹ The NCAA has long evaded the implications of antitrust principles by advocating for the preservation of innocence within college athletics.²²² Times change, however, and we are witnessing a new, more equitable era of college sports.

Table I. Total Estimated CFB Revenue for the Power 5 Conferences and Notre Dame (2022)²²³

Conference	Total Estimated Revenue
SEC	\$77,250,000.00
ACC	\$47,900,000.00
Big 12	\$40,600,000.00
Big 10	\$61,300,000.00
Pac-12	\$38,350,000.00
Notre Dame	\$6,550,000.00
Total Revenue	\$278,500,000.00

Table II. Total Estimated Revenue and Recruit Numbers for SEC College Football (2022)²²⁴

220. *Id.* at 2169 (Kavanaugh, J., concurring).

221. *See id.* at 2168.

222. *See id.*

223. I derived the figures in Tables I & VIII by first combining the estimated revenues from each conferences' respective schools. Next, I totaled the figures between the five conferences, plus the University of Notre Dame. Notre Dame is in the FBS Independent Conference. It is nevertheless included with other Power Five schools; *see also infra* note 224 and note 231 (explaining the method used to calculate revenues for each university).

224. I calculated the estimated revenues for Tables II-VII by multiplying each university's number of recruits by their respective fair market value of each star ranking, as determined by Stephen A. Bergman and Trevor D. Logan. *See Bergman & Logan, supra* note 160, at 586. Those two figures were then totaled (for example, Texas A&M's estimated revenue of \$9,400,000.00 would be calculated as follows: \$650,000*3 = \$1,950,000; \$350,000*20 = \$7,000,000; \$150,000*3 = \$450,000).

	Five	Four	Three	Two	One	Revenue
Alabama	3	20	1			\$9,100,000.00
Georgia	1	19	9			\$8,650,000.00
Ole Miss		6	11			\$3,750,000.00
Kentucky		9	11			\$4,800,000.00
Arkansas		3	16			\$3,450,000.00
Texas A&M	5	21	4			\$11,200,000.00
Tennessee		6	15			\$4,350,000.00
Mississippi State		6	14			\$4,200,000.00
South Carolina		6	15			\$4,350,000.00
Missouri	1	8	8			\$4,650,000.00
LSU	2	7	6			\$4,650,000.00
Auburn		10	8			\$4,700,000.00
Florida	1	7	10			\$4,600,000.00
Vanderbilt		3	25			\$4,800,000.00
Total Revenue						\$77,250,000.00

Table III. Total Estimated Revenue and Recruit Numbers for ACC College Football (2022)²²⁵

	Five	Four	Three	Two	One	Revenue
Pittsburgh		2	10			\$2,200,000.00
Wake Forest			13			\$1,950,000.00
Clemson		10	10			\$5,000,000.00
NC State		3	9			\$2,400,000.00
Miami		12	2			\$4,500,000.00
Virginia		2	14			\$2,800,000.00
Louisville		2	13			\$2,650,000.00
Virginia Tech		4	20			\$4,400,000.00
Florida State		11	6			\$4,600,000.00
North Carolina	1	9	7			\$4,850,000.00
Boston College		3	19			\$3,900,000.00
Syracuse		2	13			\$2,650,000.00
Duke		1	17			\$2,900,000.00
Georgia Tech		5	9			\$3,100,000.00

225. See *supra* note 224.

Total Revenue						\$47,900,000.00
----------------------	--	--	--	--	--	-----------------

Table IV. Total Estimated Revenue and Recruit Numbers for Big 12 College Football (2022)²²⁶

	Five	Four	Three	Two	One	Revenue
Oklahoma		16	4			\$6,350,000.00
Baylor		7	14			\$4,550,000.00
Iowa State		2	19			\$3,550,000.00
Kansas State			17			\$2,550,000.00
West Virginia		4	17			\$3,950,000.00
Texas Tech		4	12			\$3,200,000.00
Texas	1	21	5			\$8,750,000.00
TCU		4	8			\$2,600,000.00
Kansas			6			\$900,000.00
Oklahoma State		6	14			\$4,200,000.00
Total Revenue						\$40,600,000.00

Table V. Total Estimated Revenue and Recruit Numbers for Big 10 College Football (2022)²²⁷

	Five	Four	Three	Two	One	Revenue
Michigan		11	12			\$5,650,000.00
Ohio State	2	16	3			\$7,350,000.00
Michigan State		9	14			\$5,250,000.00
Iowa		2	16			\$3,100,000.00
Purdue		3	17			\$3,600,000.00
Minnesota		2	14			\$3,100,000.00
Wisconsin		3	12			\$2,850,000.00
Penn State		19	6			\$7,550,000.00
Illinois			24			\$3,600,000.00
Maryland		6	16			\$4,500,000.00
Rutgers		4	17			\$3,950,000.00
Nebraska		3	15			\$3,300,000.00
Northwestern		2	14			\$2,800,000.00
Indiana		7	15			\$4,700,000.00

226. See *supra* note 224.

227. See *supra* note 224.

Total Revenue						\$61,300,000.00
----------------------	--	--	--	--	--	-----------------

Table VI. Total Estimated Revenue and Recruit Numbers for Pac-12 College Football (2022)²²⁸

	Five	Four	Three	Two	One	Revenue
Oregon		9	6			\$4,050,000.00
UCLA		7	4			\$3,050,000.00
Arizona State		1	8			\$1,550,000.00
Washington		4	3			\$1,850,000.00
Oregon State		1	15			\$2,600,000.00
California		2	12			\$2,500,000.00
USC	1	4	3			\$2,500,000.00
Washington State		1	18			\$3,050,000.00
Colorado		1	24			\$3,950,000.00
Stanford		6	16			\$5,100,000.00
Arizona		4	17			\$4,500,000.00
Utah		3	15			\$3,650,000.00
Total Revenue						\$38,350,000.00

Table VII. Total Estimated Revenue and Recruit Numbers for Notre Dame College Football (2022)²²⁹

	Five	Four	Three	Two	One	Revenue
Notre Dame		17	4			\$6,550,000.00
Total Revenue						\$6,550,000.00

Table VIII. Total Estimated MBB Revenue for the Power 5 Conferences and Notre Dame (2022)²³⁰

Conference	Total Estimated Revenue
SEC	\$10,165,000.00
ACC	\$9,381,000.00

228. See *supra* note 224.

229. See *supra* note 224.

230. See *supra* note 223.

Big 12	\$6,200,000.00
Big 10	\$6,171,000.00
Pac-12	\$5,108,000.00
Notre Dame	\$945,000.00
Total Revenue	\$37,970,000.00

Table IX. Total Revenue and Recruit Numbers for SEC College Basketball (2022)²³¹

	Five	Four	Three	Two	One	Revenue
Alabama	2	2				\$1,558,000.00
Georgia		1				\$166,000.00
Ole Miss		4				\$664,000.00
Kentucky	2	2				\$1,558,000.00
Arkansas	3	3				\$2,337,000.00
Texas A&M			1			\$166,000.00
Tennessee	1	1				\$779,000.00
Mississippi State		1				\$332,000.00
South Carolina	1					\$613,000.00
Missouri		1				\$166,000.00
LSU		3				\$498,000.00
Auburn		3				\$498,000.00
Florida		2				\$332,000.00
Vanderbilt		4				\$664,000.00
Total Revenue						\$10,165,000.00

231. I calculated the estimated revenues for Tables IX-XIV by multiplying each university's number of recruits by their respective fair market value of each star ranking, as determined by Richard Borghesi. See Borghesi, *supra* note, 173. Those two figures were then totaled (for example, Kentucky's estimated revenue of \$2,005,000.00 would be calculated as follows: \$613,000*3 = \$1,839,000; \$166,000*1 = \$166,000).

Table X. Total Estimated Revenue and Recruit Numbers for ACC College Basketball (2022)²³²

	Five	Four	Three	Two	One	Revenue
Pittsburgh		1				\$166,000.00
Wake Forest		2				\$332,000.00
Clemson		3				\$498,000.00
NC State		3				\$498,000.00
Miami		4				\$664,000.00
Virginia		4				\$664,000.00
Louisville		2				\$332,000.00
Virginia Tech		2				\$514,000.00
Florida State		4				\$664,000.00
North Carolina		4				\$664,000.00
Boston College		3				\$498,000.00
Syracuse		4				\$846,000.00
Duke	4	3				\$2,950,000.00
Georgia Tech			1			\$91,000.00
Total Revenue						\$9,381,000.00

Table XI. Total Estimated Revenue and Recruit Numbers for Big 12 College Basketball (2022)²³³

	Five	Four	Three	Two	One	Revenue
Oklahoma		3				\$498,000.00
Baylor	1	1				\$779,000.00
Iowa State			2			\$182,000.00
Kansas State			1			\$91,000.00
West Virginia		2				\$332,000.00
Texas Tech	1	3				\$1,111,000.00
Texas	2	1	1			\$1,483,000.00
TCU		1				\$166,000.00
Kansas	2	2				\$1,558,000.00

232. See *supra* note 231.

233. See *supra* note 231.

Oklahoma State						—
Total Revenue						\$6,200,000.00

Table XII. Total Estimated Revenue and Recruit Numbers for Big 10 College Basketball (2022)²³⁴

	Five	Four	Three	Two	One	Revenue
Michigan		4				\$664,000.00
Ohio State		4	1			\$755,000.00
Michigan State		2				\$332,000.00
Iowa		1	1			\$257,000.00
Purdue		3				\$498,000.00
Minnesota		1	2			\$348,000.00
Wisconsin			1			\$91,000.00
Penn State		3	2			\$680,000.00
Illinois		4				\$664,000.00
Maryland		1				\$166,000.00
Rutgers			1			\$91,000.00
Nebraska		1	2			\$348,000.00
North-western		1				\$166,000.00
Indiana	1	3				\$1,111,000.00
Total Revenue						\$6,171,000.00

Table XIII. Total Estimated Revenue and Recruit Numbers for Pac-12 College Basketball (2022)²³⁵

	Five	Four	Three	Two	One	Revenue
Oregon	1					\$613,000.00
UCLA	2	1				\$1,392,000.00
Arizona State		2				\$332,000.00
Washington		2				\$332,000.00
Oregon State		1				\$166,000.00
California						—
USC		4				\$664,000.00

234. See *supra* note 231.

235. See *supra* note 231.

Washington State		1				\$166,000.00
Colorado		1				\$166,000.00
Stanford		2				\$332,000.00
Arizona	1	1				\$779,000.00
Utah		1				\$166,000.00
Total Revenue						\$5,108,000.00

Table XIV. Total Estimated Revenue and Recruit Numbers for Notre Dame College Basketball (2022)²³⁶

	Five	Four	Three	Two	One	Revenue
Notre Dame	1	2				\$945,000.00
Total Revenue						\$945,000.00

236. See *supra* note 231.