

Beyond the Paycheck: Why Compensating NCAA Student-Athletes Does Not Mean Employing Them

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Sometimes the best lessons you learn are when you do have failings. You can always learn more when you don't do something exactly right.¹

—Nick Saban, Alabama Head Football Coach 2007–2024.²

Introduction

If the best lessons emerge from failure, the National Collegiate Athletic Association (NCAA) is learning a lot right now. The landscape of college athletics is rapidly and irreversibly changing. Riddled with costly lawsuits and congressional criticisms that threaten to dissolve the organization, the NCAA is being forced to confront a truth it has long avoided: College sports are a big business, and its workforce deserves to get compensated.

On June 6, 2025, the most important settlement in the history of college athletics was approved, opening the floodgates to a novel legal landscape in college athletics.³ The settlement has both a back pay component and an optional revenue-sharing element.⁴ The \$2.8 billion back pay agreement requires Division I (DI) athletic departments and the NCAA to spend \$2.8 billion over ten years to compensate former student-athletes for lost revenue they missed out on due to now-illegal restrictions on student-athlete NIL earnings and cost-of-living payments.⁵ Back pay for individual athletes is calculated using a formula that credits estimated loss of revenue,⁶ with the largest portion compensating former football and men's basketball players.⁷ The settlement also includes an optional revenue-sharing component, which allows schools to opt in to annual revenue-sharing with present and future student-athletes, beginning on July 1, 2025.⁸ While the settlement stops short

1. Ben Flanagan, *Nick Saban's 10 Best Quotes*, AL.COM (Jan. 30, 2024), <https://www.al.com/alabamafootball/2024/01/nick-sabans-10-best-quotes-including-make-his-ass-quit.html> [<https://perma.cc/F9QN-9KC5>].

2. *Coaches*, ALABAMA FOOTBALL, <https://rolltide.com/sports/football/roster/coaches/nick-saban/545> [<https://perma.cc/YFL7-93WH>].

3. See Dan Murphy, *Judge OK's \$2.8B Settlement, Paving Way for Colleges to Pay Athletes*, ESPN (June 6, 2025), https://www.espn.com/college-sports/story/_/id/45467505/judge-grants-final-approval-house-v-ncaa-settlement [<https://perma.cc/8LF8-UYZ6>] (detailing settlement conditions, timeline, and revenue-sharing features that make the agreement “a major milestone” in college athletics history).

4. Courtney Rickard, *The House v. NCAA Settlement Explained: What It Means for the Future of Pay for College Student-Athletes*, HONEST GAME (Sep. 23, 2025), <https://honestgame.com/blog/house-vs-the-ncaa/> [<https://perma.cc/SLV6-KM82>].

5. *Id.*; *Understanding the Settlements*, COLL. ATHLETE COMP., <https://www.collegeathleteteamcompensation.com/> [<https://perma.cc/H324-WPYZ>].

6. *In re: College Athlete NIL Litigation (House) Frequently Asked Questions*, COLL. ATHLETE COMP., <https://www.collegeathleteteamcompensation.com/house-frequently-asked-questions.aspx> [<https://perma.cc/H8LK-96NN>].

7. Rickard, *supra* note 4.

8. Murphy, *supra* note 3.

of legally classifying student-athletes as employees, student-athletes may be compensated directly by their institution based on performance and obligated to contractual terms,⁹ akin to employees. And though the settlement approval is a significant step towards athlete compensation, it will not mark the end of the NCAA's legal battles. Congress has threatened to federally regulate a number of related issues,¹⁰ and lawsuits are currently pending in courts, some of which argue that the NCAA student-athletes are in fact statutory employees and should be treated legally as such.¹¹

Proponents of classifying student-athletes as employees or revenue-sharing with them directly, both of which I argue are ultimately harmful to student-athletes, make two, somewhat individual arguments. The first is from student-athletes whose sports do not earn revenue, such as track athletes or rowers. They argue that their labor at the university is akin to employment—they are controlled and managed by their athletic departments and feel they are in an employee–employer relationship with their coaches, their institution, their conference, and even the NCAA. Although there is no revenue-sharing with these athletes, because their sports do not earn revenue, they argue that the obligations of being a student-athlete should afford them the protections and compensation of a university employee. The second argument is made by athletes whose sports earn revenue from ticket sales, promotional material, and television contracts—primarily football and men's basketball players. They argue that their labor—i.e., participation in the sport—creates millions of dollars of profit for universities, conferences, and the NCAA every year. Therefore, they claim, the NCAA is being unjustly enriched by their labor, and they deserve a cut of the profit.¹²

9. Shehan Jeyarajah, *How Athletes Will Be Paid as July 1 Ushers in New Era for College Sports: NIL Changes, Enforcement, Contracts*, CBS SPORTS (July 1, 2025), <https://www.cbssports.com/college-football/news/how-athletes-will-be-paid-as-july-1-ushers-in-new-era-for-college-sports-nil-changes-enforcement-contracts/> [https://perma.cc/5SS3-TNY3].

10. See Kristi Dosh, *4 New Federal NIL Bills Have Been Introduced In Congress*, FORBES (July 31, 2023), <https://www.forbes.com/sites/kristidosh/2023/07/29/4-new-federal-nil-bills-that-have-been-introduced-in-congress/> [https://perma.cc/R2LF-79WR] (discussing congressional bills introduced to regulate monetization of athletes' name, image, and likeness); Scott Dochterman, *Congress to Propose NIL Guidelines in New College Sports Compensation Bill*, THE ATHLETIC (July 11, 2025), <https://www.nytimes.com/athletic/6486795/2025/07/10/congress-nil-bill-college-sports-compensation-rules-guidelines/> [https://perma.cc/28Q7-495H] (“A bill designed to end ambiguity surrounding name, image, and likeness (NIL), establish professional guidelines for agents and protect collegiate leagues from antitrust lawsuits received a strong endorsement from a bipartisan group on nine congressional representatives.”).

11. See, e.g., *Johnson v. NCAA*, 108 F.4th 163, 167 (3d Cir. 2024) (remanding a case involving a claim that student-athletes are statutory employees for further proceedings).

12. See, e.g., Sean Gregory, *It's Time to Pay College Athletes*, TIME (Sep. 16, 2013), <https://time.com/archive/6644045/time-cover-story-its-time-to-pay-college-athletes/> [https://perma.cc/6NVR-M5RM] (explaining the inequity in not paying revenue-generating student-athletes); *O'Bannon v. NCAA*, 802 F.3d 1049, 1055 (9th Cir. 2015) (examining a claim that the NCAA should compensate collegiate football players for use of their image and likeness in profitable video games); Tom Farrey, *Northwestern Players Denied Request to Form First Union*

Although there is merit to each argument, this Note explains that revenue-sharing and classifying student-athletes as employees is unnecessary to fairly compensate them. Revenue-generating athletes are already earning significant compensation from Name, Image, and Likeness (NIL) endorsement opportunities, and will likely have the opportunity to turn professional, later profiting off of their athletic talents. For non-revenue athletes, the value of a student-athlete experience, including the opportunity to earn a college degree, greatly outweighs potential compensation. Therefore, any reform to college athletics should prioritize maintaining these valuable aspects of a collegiate athletic career, aspects that differentiate the experience from professional athletics.

This Note proceeds in four parts. First, it details the legal history of the NCAA that has led to the current landscape of college athletics. Next, it addresses the argument for employment made by non-revenue athletes, including discussion of the value of college sports to each athlete, the greater impact of college sports on society, and the role of Title IX in preserving student-athlete opportunities. Then, in turn, it examines the argument made by revenue-generators—a discussion of which requires consideration of the historical racism perpetrated by the NCAA—about why revenue-generating athletes deserve compensation. Finally, it suggests eliminating the revenue-sharing structure of the *House* settlement and any notion of classifying athletes as employees, proposing instead that institutions rely on NIL deals, *Alston* payments, and the services for student-athletes provided by athletic departments to justly compensate athletes while preserving the hundreds of thousands of opportunities for young men and women across the country to participate in a range of sports and to experience competing for their school while earning a degree.

I. The Commercialization of College Athletics: How an Amateur Sports Organization Became a Billion-Dollar Business

Those in favor of classifying student-athletes as employees correctly argue that the NCAA has surpassed any reasonable dispute that its model is anything but a billion-dollar big business machine. The Association today looms over 500,000 college athletes across three divisions,¹³ generating over \$1.2 billion in revenue in 2022–2023.¹⁴ Coaches' compensation packages are

for Athletes, ESPN (Aug. 17, 2015), https://www.espn.com/college-football/story/_/id/13455477/nlrb-says-northwestern-players-cannot-unionize [<https://perma.cc/C23T-BBVM>] (detailing college football players' push for union recognition and collective bargaining).

13. Overview, NCAA, <https://www.ncaa.org/sports/2021/2/16/overview.aspx> [<https://perma.cc/WM2K-J2LJ>].

14. NCAA Generates Nearly \$1.3 Billion in Revenue for 2022-23, ESPN (Feb. 1, 2024), https://www.espn.com/college-sports/story/_/id/39439274/ncaa-generates-nearly-13-billion-revenue-2022-23 [<https://perma.cc/CC89-M8Z3>].

larger than ever,¹⁵ and general managers and athletic directors make well into the high six figures.¹⁶ As of March 2025, nine college football coaches individually made over \$10 million annually.¹⁷ Additionally, nearly two million people *per game* tune into college football games.¹⁸ In its own words, the NCAA today exists “to regulate the rules of college sport and *protect* young athletes.”¹⁹ But the NCAA’s role as a governing body is under scrutiny as it becomes increasingly clear that the organization does far more than promulgate rules and set schedules. It also manages a commercial empire, within which member conferences and institutions profit enormously while athletes generating the revenue are paid nothing.

Understanding how the NCAA grew into this billion-dollar industry requires understanding how popular culture, legislative actions, and court decisions have shaped college sports over time. Following the 1904 college football season, which resulted in eighteen players’ deaths and 159 serious injuries, President Teddy Roosevelt gathered athletic leaders from Harvard, Princeton, and Yale to “clean up” football.²⁰ By 1906, the Intercollegiate Athletic Association of the United States was born, later renamed the NCAA.²¹ In 1948, the first semblance of an NCAA constitution passed, known as the Sanity Code.²² The Code governed financial aid, academic standards, and recruiting regulations,²³ all with the guiding principle of ensuring amateurism and fairness across member schools. A novel development in this code was to permit schools to award athletes with scholarships and jobs, so long as financial necessity was demonstrated.²⁴ Even with a code, disregard for recruiting rules persisted, with donors illegally providing athletes incentives to encourage their participation in

15. See Amanda Christovich, Doug Greenberg & Rodney Reeves, *Who Is Highest-Paid Coach in College Football?*, FRONT OFF. SPORTS (May 29, 2025), <https://frontofficesports.com/who-are-highest-paid-college-football-coaches/> [<https://perma.cc/B9T6-8MBW>] (listing the increase in football coaches’ salaries since 2023).

16. John Talty, *College Football’s 22 Best General Managers, According to Those Who Know*, CBS SPORTS (July 30, 2025), <https://www.cbssports.com/college-football/news/college-football-22-best-general-managers-according-to-those-who-know/> [<https://perma.cc/9RLC-35QM>].

17. Christovich et al., *supra* note 15.

18. *Ratings Roundup: College Football Sweeps Ratings Across All Networks*, SVG NEWS (Dec. 6, 2024), <https://www.sportsvideo.org/2024/12/06/ratings-roundup-college-football-sweeps-ratings-across-all-networks> [<https://perma.cc/A95K-AWYU>].

19. *History*, NCAA, <https://www.ncaa.org/sports/2021/5/4/history.aspx> [<https://perma.cc/C6N6-BW4S>] (emphasis added).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Ken Pendleton, *The Sanity Code*, SPORTS CONFLICT INST. (2025), <https://sportsconflict.org/the-sanity-code/> [<https://perma.cc/35US-F435>].

athletics at a particular school.²⁵ As a result, in 1951, the code was dropped.²⁶ Schools and conferences settled on a model that awarded scholarships in exchange for athletic participation, a model that was seen as consistent with amateurism.²⁷

In 1952, the era of big broadcast money entered college athletics when NBC and the NCAA signed a one-year deal worth \$1.1 million to televise college football games.²⁸ By 1970, the value of college sports broadcasting had skyrocketed: NBC would pay over \$500,000 for the rights to televise one single basketball game—the NCAA tournament championship.²⁹ While television contracts and media revenue surged, no changes were made to player compensation. Meanwhile, coaches' compensation steadily increased, as schools earned more revenue through these media contracts.³⁰ In the 1950s, Texas A&M football coach Bear Bryant was earning \$15,000 and a cut of ticket sales.³¹ By 1970, after being hired by Alabama, his salary had jumped to \$80,000 (~\$670,000 today), and he owned the rights to his own “Bama highlights” TV show, from which he earned at least \$3,000 per episode at its launch.³²

In 1984, the first lawsuit against the NCAA reached the Supreme Court. Prior to *NCAA v. Board of Regents of the University of Oklahoma*,³³ the NCAA maintained exclusive control over TV contract negotiations and threatened sanctions against any member schools that attempted to negotiate outside of the NCAA's contract.³⁴ In 1979, recognizing an opportunity for higher profit through individual negotiations, the University of Oklahoma and the University of Georgia—alongside other members of the “major football-playing schools” in the College Football Association—began negotiating an independent contract with NBC, one that would include more

25. Arash Afshar, *Collegiate Athletes: The Conflict Between NCAA Amateurism and a Student Athlete's Right of Publicity*, 51 WILLAMETTE L. REV. 101, 109 (2014).

26. Billy Witz & Mark Shimabukuro, *Big Money. College Athletes and the N.C.A.A.: A Timeline*, N.Y. TIMES (May 29, 2024), <https://www.nytimes.com/2024/05/29/us/ncaa-college-athletes-pay-history.html> [<https://perma.cc/6UJ4-YPZK>].

27. See Afshar, *supra* note 25, at 109 (outlining how the NCAA began accepting scholarships as being consistent with amateurism).

28. Witz & Shimabukuro, *supra* note 26.

29. *Id.*

30. Richard Johnson, *A History of Skyrocketing College Football Coach Salaries*, BANNER SOC'Y (Aug. 15, 2019), <https://www.bannersociety.com/2019/8/15/20732192/coach-salaries-history-highest> [<https://perma.cc/ES7K-2Z6N>].

31. *Id.*

32. *Id.*; *CPI Inflation Calculator*, <https://www.in2013dollars.com/us/inflation/1970?amount=80000> [<https://perma.cc/3AP4-E8JF>].

33. *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984).

34. See *id.* at 90, 95 (explaining that the NCAA exercised “complete control over the number of games that could be televised” and declared disciplinary “sanctions” against members that “complied with the CFA-NBC contract”).

televised games and higher revenue.³⁵ When the NCAA responded with threats of disciplinary action, the universities brought suit against the NCAA in federal district court, citing antitrust violations.³⁶ In a 7–2 decision, the Supreme Court ultimately held that the NCAA was attempting to artificially increase the value of live tickets, therefore violating the Sherman Antitrust Act.³⁷ This case opened the door to individual negotiations between conferences, member schools, and broadcasters. Despite the NCAA’s concern that allowing “too many” games to be broadcast would diminish the crowds in stadiums, this concern never reached fruition.³⁸ In fact, quite the opposite has proven true. Today, all conferences have lucrative television agreements,³⁹ and stadiums routinely sell out—many have even undergone major expansions to accommodate increasing crowds.⁴⁰ The Big Ten earns over \$1 billion annually in media rights; the SEC nearly \$563 million.⁴¹ Separate deals for the bowl games and the College Football Playoff add an additional \$1.3 billion per year as of February 2024.⁴²

The broadcasting debate marked the beginning of an onslaught of antitrust lawsuits against the NCAA. In 2009, former UCLA basketball player Ed O’Bannon sued the NCAA after he saw an avatar of himself in a popular sports video game.⁴³ He had neither consented to this use nor received any compensation from it.⁴⁴ O’Bannon brought claims against both

35. *Id.* at 88–89, 94–95.

36. *Id.* at 95.

37. *See id.* at 87, 99 (concluding that the NCAA placed “unreasonable restraints on trade” by limiting the supply of television rights).

38. Mike Whitty, *Tear College Football Down . . . And Build It Back Better*, FISH DUCK (Feb. 5, 2024), <https://fishduck.com/2024/02/tear-college-football-down/> [<https://perma.cc/LNR7-W48S>].

39. *See* Edwin A. Farley, *Breaking the Broadcast Huddle: How College Football Conferences’ Bundling of Broadcast Rights Could Harm Student Athletes*, J. SPORTS & ENT. LAW, June 19, 2024, at 3–5, 10.

40. *See* Anthony Chiusano, *The 25 Biggest College Football Stadiums in the Country*, NCAA (July 17, 2024), <https://www.ncaa.com/news/football/article/2018-07-30/25-biggest-college-football-stadiums-country> [<https://perma.cc/WCH3-L3YZ>] (noting that in 2022 “[c]rowds of 100,000-plus have become commonplace in college football”); Rodney Reeves, *The Most Expensive College Football Stadiums by Total Construction Cost*, FRONT OFF. SPORTS (May 29, 2025), <https://frontofficesports.com/most-expensive-college-football-stadiums/> [<https://perma.cc/2XUN-UPCS>].

41. Jared Bahir Browsh, *40 Years Ago, the Supreme Court Broke the NCAA’s Lock on TV Revenue, Reshaping College Sports to This Day*, THE CONVERSATION (Mar. 20, 2024), <https://theconversation.com/40-years-ago-the-supreme-court-broke-the-ncaas-lock-on-tv-revenue-reshaping-college-sports-to-this-day-222672> [<https://perma.cc/LNL7-37EZ>]; *SEC Distributed \$52.6M to Each of its 14 Members for 2023–24*, ESPN (Feb. 6, 2025), https://www.espn.com/college-football/story/_/id/43724055/sec-distributed-526m-14-members-2023-24 [<https://perma.cc/8EF5-427H>].

42. Browsh, *supra* note 41.

43. *O’Bannon v. NCAA*, 802 F.3d 1049, 1055 (9th Cir. 2015).

44. *Id.*

the NCAA and its trademark licensor, alleging violations of the Sherman Act by preventing student-athletes from being compensated for use of their NIL.⁴⁵ The Sherman Act prohibits anticompetitive agreements among direct competitors—in the NCAA’s case, the challenged practices included prohibiting student-athletes from receiving financial aid or any pay earned in relation to their athletic ability, including compensation from NIL.⁴⁶ O’Bannon argued for two less-restrictive alternatives: (1) allowing stipends that cover the full cost of attendance—not just tuition—and (2) allowing student-athletes to receive a portion of the revenue from their NIL, held by the school in trust until they graduate.⁴⁷ The Ninth Circuit ruled in favor of providing cost-of-attendance stipends to athletes, finding that doing so imposed no significant financial burden on member institutions and posed no threat to the NCAA’s amateurism model.⁴⁸ However, it upheld the NCAA’s rule prohibiting schools from paying student-athletes up to \$5,000 per year, deferred until graduation, for use of their NIL.⁴⁹ The court reasoned that these rules were necessary to preserve the unique “product” of amateur sports in the college sports market and maintain competitive balance.⁵⁰ Therefore, although the court found that the NCAA rules had significant anticompetitive effect, the only appropriate remedy was allowing full cost-of-attendance stipends rather than permitting a full open market for paying athletes.⁵¹ The decision marked a clear partial victory for the NCAA, which was able to retain its core amateurism framework that did not include allowing athletes to profit from a collegiate athletic career.

Nevertheless, as college sports grew increasingly popular and athletic department revenues soared, athletes continued to question the inequity inherent in the college athletics model.⁵² In 2014, Northwestern University football players petitioned the National Labor Relations Board (NLRB), demanding the right to unionize.⁵³ Rather than address whether the athletes qualified as statutory employees under federal labor law, the NLRB held that answering the question would not “promote labor stability,” and punted the

45. *Id.* at 1055.

46. *Id.* at 1052, 1054–55.

47. *Id.* at 1060–61.

48. *Id.* at 1074–75.

49. *Id.* at 1053.

50. *See id.* at 1076 (emphasizing that “not paying student-athletes is *precisely what makes them amateurs*”).

51. *Id.* at 1072, 1074–76.

52. *See* Sara Ganim, *UConn Guard on Unions: I go to Bed ‘Starving’*, CNN (Apr. 8, 2014), <https://www.cnn.com/2014/04/07/us/ncaa-basketball-finals-shabazz-napier-hungry> [<https://perma.cc/G3A3-Y44Q>] (reporting on a University of Connecticut basketball player’s statement that he cannot afford food and the public criticism that followed).

53. Alex Putterman, *Kain Colter Leading Effort to Get Players Represented by Union*, THE DAILY NORTHWESTERN (Jan. 28, 2014), <https://dailynorthwestern.com/2014/01/28/sports/football-colter-leading-effort-to-get-players-represented-by-union/> [<https://perma.cc/7LLU-6PA6>].

question on jurisdictional grounds.⁵⁴ Because the NLRB does not have jurisdiction over state-run institutions,⁵⁵ any decision made in this case would only apply to about 14% of schools, therefore destabilizing the college sports landscape.⁵⁶ The Board did take care, however, to note that the decision was “narrowly focused” to the players in that case, and the issue could be reconsidered in the future.⁵⁷

The following year brought another legal challenge to the NCAA’s amateurism model. In *Berger v. NCAA*,⁵⁸ two University of Pennsylvania track athletes sued the NCAA, claiming that they should be classified as employees under the Fair Labor Standards Act (FLSA) and therefore earn at least minimum wage from the university in exchange for their athletic participation.⁵⁹ The Seventh Circuit upheld the dismissal of the claim, reasoning that, despite an expansive definition of “employee” under the FLSA, no employer–employee relationship existed between the NCAA and the athletes.⁶⁰ The court pointed out that “[a] majority of courts have concluded . . . that student athletes are not employees,” and interpreted Department of Labor (DOL) guidelines to conclude that the DOL did not intend to classify student-athletes as employees.⁶¹ Judge Hamilton concurred in the judgment, noting in his analysis that these track athletes were not revenue-earning but that he might consider a claim from revenue-generating athletes differently.⁶²

Amid the ongoing legal disputes, public and legislative pressure on the NCAA continued to grow. In 2019, against the landscape of increasing public awareness, California passed the Fair Pay to Play Act despite vigorous opposition from the NCAA.⁶³ The Act permitted student-athletes to sign endorsement deals, hire agents, and profit from their NIL.⁶⁴ Shortly after this Act took effect in 2021, the NCAA, likely recognizing that NIL compensation was happening with or without them, adopted an interim policy that allowed student-athletes to “engage in NIL activities that are

54. *Id.*

55. *Id.*

56. *See id.* (“By statute the Board does not have jurisdiction over state-run colleges and universities, which constitute 108 of the roughly 125 FBS teams.”).

57. Press Release, NLRB, Board Unanimously Decides to Decline Jurisdiction in Northwestern Case (Aug. 17, 2015), <https://www.nlr.gov/news-outreach/news-story/board-unanimously-decides-to-decline-jurisdiction-in-northwestern-case> [<https://perma.cc/4YUW-HJSD>].

58. *Berger v. NCAA*, 843 F.3d 285 (7th Cir. 2016).

59. *Id.* at 289.

60. *Id.* at 290, 293.

61. *Id.* at 291–92.

62. *Id.* at 294 (Hamilton, J., concurring).

63. Michael Long, *Fair Pay to Play: Is the NCAA Learning an Expensive Lesson?*, SPORTS PRO (Oct. 18, 2019), <https://www.sportspro.com/sponsorship-marketing/sponsorship/ncaa-fair-pay-to-play-act-california-college-sports-larry-scott-newsom/> [<https://perma.cc/L58D-REBV>].

64. CAL. EDUC. CODE § 67456 (West 2025).

consistent with the law of the state where the school is located.”⁶⁵ This policy remains in effect today.⁶⁶ Currently, NIL is regulated by the states, conferences, and individual schools in a piecemeal fashion. Lawmakers and university administrators alike have since called on the NCAA or Congress to implement nationwide guidelines for NIL to ensure an even and competitive playing field.⁶⁷ Although the NCAA has released limited guidance regarding what is and is not allowed with respect to NIL,⁶⁸ it maintains that a permanent policy cannot be introduced until litigation concludes—likely a long road, given the quantity of litigation currently pending.⁶⁹

Importantly, the Fair Pay to Play Act did not go so far as to qualify athletes as employees. As a result, it is third-party collectives operating independently from athletic departments that connect student-athletes with NIL opportunities and facilitate money flowing directly between donors and athletes (although often in tandem with agents representing athletes).⁷⁰ Although these collectives portray themselves as a necessary aspect of an athletics department, the future of collectives is uncertain as the NCAA considers bringing the work of collectives in-house to maintain control of athletes by athletic departments and the NCAA.⁷¹ Currently, collectives facilitate deals with athletes ranging from free dinners at a local restaurant in exchange for an Instagram post, to deals worth millions of dollars. As of March 2025, redshirt sophomore University of Texas quarterback, Arch

65. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/NJ8T-6AWG>].

66. *NIL (Name, Image, Likeness)*, NCAA: STUDENT-ATHLETES, <https://www.ncaa.org/sports/2021/7/9/name-image-likeness.aspx> [<https://perma.cc/77C9-8266>].

67. Irwin A. Kishner, Daniel A. Etna & Justin Blass, *Why Federal Regulation Is Necessary to Level the NIL Playing Field*, SPORTICO (Sep. 6, 2023), <https://www.sportico.com/leagues/college-sports/2023/why-nil-needs-federal-legislation-ncaa-1234735926> [<https://perma.cc/4SDL-9FAU>].

68. See NCAA, *NIL (Name, Image, Likeness)*, *supra* note 66 (stating that “NCAA rules allow athletes to receive compensation for their NIL” but that regulations vary by jurisdiction).

69. See Hosick, *supra* note 65 (“The temporary policy will remain in place until federal legislation or new NCAA rules are adopted.”); see, e.g., *Explore Ongoing Cases in College Sports Litigation*, THE COLL. SPORTS LITIG. TRACKER (last updated Nov. 10, 2025), <https://www.collegesportslitigationtracker.com/tracker> [<https://perma.cc/FRS9-KTWS8C4A-K93A>] (listing over fifty pending cases with activity in 2025 involving a college athlete or the NCAA).

70. Pete Nakos, *What Are NIL Collectives and How Do They Operate?*, ON3 (July 6, 2022), <https://www.on3.com/nil/news/what-are-nil-collectives-and-how-do-they-operate/> [<https://perma.cc/RN4Y-3JGQ>].

71. See Brandon Marcello, *What’s Next for NCAA, NIL Collectives After House Settlement Talks Hit Roadblock From Federal Judge*, CBS SPORTS (Sep. 6, 2024), <https://www.cbssports.com/college-football/news/whats-next-for-ncaa-nil-collectives-after-house-settlement-talks-hit-roadblock-from-federal-judge/> [<https://perma.cc/86EB-C48V>] (detailing how the NCAA wants to control rosters and compensation, and how NIL collectives shift that control to boosters).

Manning, reportedly has the most valuable NIL of any college athlete.⁷² With a portfolio of brand deals that includes Uber, Red Bull, and EA Sports, Business Insider reports his total NIL valuation at \$6.5 million,⁷³ demonstrating how lucrative NIL compensation in college sports is.

While permitting NIL marked a significant shift in NCAA policy, it did not halt further legal scrutiny of the student-athlete model. In 2021, the NCAA appeared again before the Supreme Court seeking protection of the amateur student-athlete model in the form of an antitrust exception.⁷⁴ It was during oral argument before the Supreme Court that the NCAA finally articulated why it continued to cling to the amateurism ideal. The NCAA's lawyer suggested that fans *preferred* to spectate NCAA events knowing the athletes were unpaid amateurs.⁷⁵ His argument opened with the statement: "For more than a hundred years, the distinct character of college sports has been that it's played by students who are amateurs, which is to say that they are not paid for their play."⁷⁶ While watching unpaid athletes compete on domestic soil might have been attractive in the early 1900s when the United States' athletic landscape featured primarily professional baseball,⁷⁷ golf,⁷⁸ and track and field,⁷⁹ the claim that college football today would be somehow less enjoyable if the athletes were compensated fell on deaf ears at the Supreme Court. In questioning the NCAA's attorney, Justice Kavanaugh described the NCAA's argument as "entirely circular and even somewhat disturbing," noting that the argument "seems to blend back to the tradition argument, and all things circle back to this idea, . . . just don't worry about it, college athletics is different."⁸⁰ Although the *Alston* Court only evaluated antitrust implications of providing student-athletes with "education-related benefits" (e.g., monthly stipends), many consider Kavanaugh's line of

72. Mykenna Maniece, *The 10 Student-Athletes with the Highest NIL Valuations*, BUS. INSIDER (Mar. 13, 2025), <https://www.businessinsider.com/highest-paid-college-athletes-nil-deals-valuations> [https://perma.cc/6JDC-XDVV].

73. *Id.*

74. NCAA v. Alston, 141 S. Ct. 2141, 2147 (2021).

75. See Transcript of Oral Argument at 30, 35, NCAA v. Alston, 141 S. Ct. 2141 (2021) (No. 20-512) (discussing the value consumers place on spectating amateur as opposed to professional intercollegiate athletes).

76. *Id.* at 4.

77. *A Brief History and the Evolution of Sports in the United States*, BREWMINATE (July 28, 2022), <https://brewminate.com/a-brief-history-and-the-evolution-of-sports-in-the-united-states/> [https://perma.cc/HH6L-N8TE].

78. James Bolger, *The History of Professional Golf*, GOLF LINK (Nov. 26, 2024), <https://www.golfink.com/tour-golf/history-professional-golf> [https://perma.cc/564J-7GAF].

79. Jessica Todd, *The History of Track and Field*, FLOTRACK (May 21, 2020), <https://www.flotrack.org/articles/6747663-the-history-of-track-and-field> [https://perma.cc/9TR6-NWT3].

80. Transcript of Oral Argument at 33–34, NCAA v. Alston, 141 S. Ct. 2141 (2021) (No. 20-512).

questioning and resulting concurrence as foreshadowing how the Court might treat future issues regarding student-athlete employment.⁸¹

The decision in *Alston* was unanimous—the Court upheld an injunction prohibiting the NCAA from restricting education-related benefits, pointing to antitrust violations.⁸² This ruling freed schools to directly compensate athletes up to \$5,980 per year for “education-related” expenses, in addition to their scholarships.⁸³ Schools are free to individually determine how to allocate these funds. Many schools use these payments as an incentive to encourage athletes to maintain a minimum GPA, attend educational programming, or simply maintain eligibility.⁸⁴ For example, UCLA awards *Alston* payments to athletes on at least 10% scholarship and requires student-athletes to earn “points” through a system that factors eligibility, service, GPA, and development program attendance.⁸⁵ Conversely, at the University of Oregon, all but fifteen student-athletes received the maximum award, with the only criteria being eligibility.⁸⁶

Building on the momentum of *Alston* and the growing recognition of athlete’s rights, the Dartmouth men’s basketball team voted to unionize on March 5, 2024.⁸⁷ This decision followed a revisited NLRB decision holding that college athletes are in fact employees.⁸⁸ The Board found that the basketball shoes and complimentary family-and-friends tickets given to players were compensation, and therefore, the athletes were sufficiently under the school’s control to qualify as employees.⁸⁹ Although this decision

81. See Sean Gregory, *Why the NCAA Should Be Terrified of Supreme Court Justice Kavanaugh’s Concurrence*, TIME (June 21, 2021), <https://time.com/6074583/ncaa-supreme-court-ruling/> [https://perma.cc/FDM9-GEC7] (“In his opinion, Kavanaugh seemed to invite more legal challenges to the NCAA’s caps on all forms of compensation for athletes, not just those tethered to education, which was the narrower focus of this particular Supreme Court case.”).

82. NCAA v. Alston, 141 S. Ct. 2141, 2147, 2152–53, 2166 (2021).

83. Gregory, *supra* note 81; Andy Wittry, *The On3 Guide to Alston Awards — Education-Related Compensation*, ON3 (Sep. 20, 2022) [hereinafter Wittry, *Alston Awards*], <https://www.on3.com/college/wisconsin-badgers/news/alston-awards-ncaa-v-alston-supreme-court-of-the-united-states-brett-kavanaugh/> [https://perma.cc/N2ZL-DSRQ].

84. Wittry, *Alston Awards*, *supra* note 83.

85. *Id.*

86. Andy Wittry, *Oregon Athletes Earn \$2.6 Million in Academic Financial Awards*, ON3 (July 11, 2022), <https://www.on3.com/news/university-oregon-ducks-academic-financial-awards-ncaa-v-alston-payments-compensation/> [https://perma.cc/79FU-65NY].

87. Nefertari Elshiekh, *Dartmouth Men’s Basketball Team Makes History as First College Team to Vote to Unionize*, HARV. J. SPORTS & ENT. L. ONLINE (Apr. 3, 2024), <https://journals.law.harvard.edu/jsel/2024/04/dartmouth-mens-basketball-team-makes-history-as-first-college-team-to-vote-to-unionize/> [https://perma.cc/Y932-KE3R].

88. Witz & Shimabukuro, *supra* note 26.

89. Billy Witz, ‘Scary and Daunting’: Dartmouth Players Detail How Union Plan Came Together, N.Y. TIMES (Mar. 5, 2024), <https://www.nytimes.com/2024/03/05/us/dartmouth-basketball-union-athletes-employees.html> [https://perma.cc/5TQL-METM].

is likely to face appeal, and only applies to around 14% of schools,⁹⁰ it signals a willingness for regulatory agencies and courts to start recognizing student-athletes as employees.

Currently, the most significant development in the compensation of college athletics is the recently approved settlement in *House v. NCAA*,⁹¹ a class action lawsuit challenging the NCAA's restriction on athlete compensation under antitrust law.⁹² There are three major components of the June 2025 settlement that fundamentally change the collegiate-athletic experience: (1) \$2.8 billion in back payments to compensate graduated student-athletes who were not NIL-eligible at the time they attended college (going back to athletes participating in 2016 because of the statute of limitations); (2) caps on roster sizes, but the elimination of scholarship limits, meaning that a school can fund up to as many scholarships as roster spots they have; and (3) some form of optional revenue-sharing with an annual cap (set initially at \$20.5 million) for all schools, with the majority of revenue proceeds going to football and basketball.⁹³ Although the settlement does not legally classify athletes as employees, it authorizes direct payments from universities to student-athletes in exchange for participation based on performance (assuming that schools with better-performing athletic teams generally bring in more revenue), thereby nudging student-athletes closer to functioning as performance-based employees.⁹⁴

Because it is primarily schools within the NCAA Power Four (formerly Five) conferences, the SEC, ACC, Big 10, Big 12 and formerly Pac 12, that can afford to entertain the concept of paying student-athletes, this Note will focus primarily on institutions within these conferences. Most athletic departments in the Power Four conferences enjoy significant revenue through television contracts and ticket sales, which allows them to provide the extensive student-athlete services discussed.⁹⁵ However, the focus on these conferences does not diminish the fact that large disparities exist

90. See *supra* text accompanying note 56.

91. Plaintiffs' Notice of Motion and Motion for Preliminary Settlement Approval, *In re Coll. Athlete NIL Litig.*, No. 4:20-cv-03919-CW (N.D. Cal. July 26, 2024).

92. *Id.* at 1, 3–4, 6–7.

93. See Murphy, *supra* note 3 (discussing portions of the *House* settlement related to damages, roster limits, and annual revenue-sharing cap); Ranjan Jindal, *Breaking Down the House v. NCAA Settlement and the Possible Future of Revenue Sharing in College Athletics*, DUKE CHRON. (May 27, 2024), <https://dukechronicle.com/article/duke-athletics-ncaa-house-settlement-nil-revenue-sharing-college-sports-hubbard-carter-20240528> [https://perma.cc/E25P-BC2W] (referencing portions of the settlement related to statute of limitations, elimination of scholarship limits, and revenue proceed allocations).

94. See Jindal, *supra* note 93 (explaining that the settlement allows schools to directly share their revenue with athletes, but that it “doesn’t address employment”).

95. Signing Day Sports, *What Is the Power 5?*, THE WIRE (June 9, 2023), <https://thewire.signingdaysports.com/articles/what-is-the-power-5/> [https://perma.cc/B3V2-C4XG].

between schools even within these conferences,⁹⁶ nor that excellent schools, both athletically and academically, exist outside of the Power Four and will also be impacted by changes to the student-athlete model.⁹⁷

II. Examining the Student-Athlete Experience: The Value Is Not Monetary

NCAA DI and DII schools provide nearly \$4 billion in athletic scholarships annually to student-athletes,⁹⁸ offsetting in full or in part the exorbitant price tag on college tuition for many student-athletes. In 2021, the NCAA, as required under *Alston*, permitted schools to pay student-athletes up to \$5,980 per year for “education-related” compensation on top of tuition and a fluctuating cost-of-attendance stipend.⁹⁹ Additionally, within the NCAA Power Four conferences, athletes enjoy the best of what college sports have to offer: comprehensive academic support,¹⁰⁰ all-inclusive nutrition centers,¹⁰¹ top-notch coaching,¹⁰² and state-of-the-art facilities.¹⁰³ Despite this, student-athletes on non-revenue generating teams (e.g., soccer, track & field, swimming, etc.), still argue that this is not enough.¹⁰⁴

96. See David Jones, *Which Are the Richest and Poorest Power Five College Football Programs?*, PENNLIVE (Mar. 14, 2019), <https://www.pennlive.com/pennstatefootball/2019/03/who-are-the-richest-and-poorest-power-five-college-football-programs-here-are-all-65-ranked-bottom-to-top.html> [<https://perma.cc/7NYP-JMZX>] (explaining how, in 2019, West Virginia ran at a football deficit of over \$400,000 while Texas enjoyed profits of over \$143 million).

97. For an example of a school outside of the power conferences that has excelled athletically, see *Extraordinary Athletics*, BOISE STATE UNIV.: ABOUT BOISE STATE ATHLETICS, <https://www.boisestate.edu/about/athletics/> [<https://perma.cc/GWK5-9NFZ>].

98. *Scholarships*, NCAA: STUDENT-ATHLETES, <https://www.ncaa.org/sports/2014/10/6/scholarships.aspx> [<https://perma.cc/UJJ8-EZ98>].

99. See *NCAA v. Alston*, 141 S. Ct. 2141, 2153, 2166 (2021) (affirming the district court’s injunction prohibiting the NCAA from limiting education-related compensation); Wittry, *Alston Awards*, *supra* note 83 (explaining that NCAA athletes recently began receiving education-related Alston awards, which can provide up to \$5,980 annually).

100. E.g., *Student Services*, UNIV. OF TEX. ATHLETICS, <https://texaslonghorns.com/sports/2018/8/25/academics-and-student-services.aspx> [<https://perma.cc/75F2-2SZT>]; UW ATHLETICS, *FB: Student-Athlete Academic Services* (YouTube, May 11, 2020), <https://www.youtube.com/watch?v=cMyW2G7n38k> [<https://perma.cc/4PKH-9LXE>].

101. E.g., BAYLOR LARIAT TV NEWS, *Take an Inside Look at Baylor’s Athletic Dining Hall* (YouTube, Sep. 16, 2021), <https://www.youtube.com/watch?v=0xcTnutDAag> [<https://perma.cc/SH8M-V9NB>]; *Sports Nutrition*, FLA. STATE UNIV., <https://seminoles.com/sports/2017/7/4/seminole-nutrition> [<https://perma.cc/46KF-BZ5W>].

102. See *Ranking the Top 10 Coaches in College Football for 2024*, ESPN (Apr. 5, 2024), https://www.espn.com/college-football/story/_/id/39868452/ranking-top-10-coaches-college-football-2024 [<https://perma.cc/6MKD-6R2V>] (listing the ten best coaches in the country, all of whom are at schools in the Power Four conferences).

103. E.g., SPORTS DISSECTED, *Inside the OREGON DUCKS’ \$68,000,000 FOOTBALL Facility* (YouTube, Dec. 20, 2018), <https://www.youtube.com/watch?v=fpbKM6qJ2Tc> [<https://perma.cc/229M-598S>]; *Facilities*, ARIZ. ATHLETICS, <https://arizonawildcats.com/facilities> [<https://perma.cc/9TEP-UWE3>].

104. E.g., *Berger v. NCAA*, 843 F.3d 285 (7th Cir. 2016).

The argument made by non-revenue-generating athletes in favor of employment is articulated by the track athletes in *Berger*: Student-athletes are employees and should be treated as such—earning hourly pay, receiving benefits, and limiting athletic participation to a set amount of “working hours.”¹⁰⁵ While this employment model is legally distinct from the revenue-sharing model in *House*, which provides athletes payments based on revenue that the athletic department earns,¹⁰⁶ the result is functionally the same: athletes are compensated directly by their institutions for their participation on the team.¹⁰⁷ And although non-revenue student-athletes do not actually earn revenue, both an employment model and the *House* revenue-sharing contemplate paying them. The unfortunate irony in this is that non-revenue student-athletes are the ones most harmed by such a collegiate athletic model.

Already, as of early 2025, in anticipation of revenue-sharing with student-athletes, schools around the country are significantly reorganizing their financial models, resultingly cutting entire sports and limited roster sizes, as well as reducing services for student-athletes. On March 7, 2025, California Polytechnic State (Cal Poly) University cut their swimming and diving team, citing “the rapidly evolving and changing NCAA Division I landscape” and explaining how the *House* settlement would result in a “loss of at least \$450,000 per year for our programs.”¹⁰⁸ The week of May 26, 2025, in response to the impending *House* settlement, the University of Washington abruptly cut thirteen baseball players from their roster.¹⁰⁹ And two days later, Grand Canyon University cut their highly successful men’s volleyball team, citing “a rapidly evolving college athletics landscape,” just one season after a final four berth.¹¹⁰ These cuts to rosters and programs are

105. The NCAA already places limits on in-season and out-of-season workout, practice, and competition hours. However, if athletes were to be classified as employees, these regulations would be subject to state and federal law, disrupting the uniform landscape of the NCAA rules, and potentially disrupting the current schedule and lifestyle of college athletes. *See supra* text accompanying notes 54–56.

106. *See* Plaintiffs’ Notice of Motion and Motion for Preliminary Settlement Approval, *In re* Coll. Athlete NIL Litig., No. 4:20-cv-03919-CW (N.D. Cal. July 26, 2024).

107. William Berry III, *Conference-Employees & Student-Athletes*, 104 TEXAS L. REV. 257, (2025) (“[I]f the athletes do receive revenue sharing, essentially a salary from the university for playing their sport, it will be difficult for the NCAA and its member institutions to claim that athletes are not employees of their universities.”).

108. Jeffrey D. Armstrong, *Cal Poly Discontinues Swimming & Diving*, CAL POLY ATHLETICS: SWIMMING & DIVING (Mar. 7, 2025), <https://gopoly.com/news/2025/3/7/swimming-and-diving-cal-poly-discontinues-swimming-diving-effective-immediately.aspx> [<https://perma.cc/FLG7-QGM6>].

109. Interview with anonymous, former University of Washington baseball student-athlete, in Seattle, Wash. (June 4, 2025).

110. Amanda Christovich, *‘What Just Happened’: Inside the Abrupt End of Grand Canyon Men’s Volleyball*, FRONT OFF. SPORTS (May 28, 2025), <https://frontofficesports.com/grand-canyon-mens-volleyball-discontinuation/> [<https://perma.cc/DCP3-85PK>].

widespread and increasingly frequent, and lawsuits regarding the legality of such actions are already pending across the country.¹¹¹

The reality is that directly paying non-revenue athletes is not financially feasible for most schools, creating a problem for schools in the wake of *House*. The solution is not payment of non-revenue student-athletes. While being an NCAA athlete in any sport at a DI school is akin to a full-time job in hours and commitment, the extensive student services provided for student-athletes and the value of an education later in life far outweigh the value of the minimum wage payments that non-revenue athletes would likely receive under both the *House* revenue-sharing model or an employment model.

A. *Quantifying the Value of the Student-Athlete Experience*

While there is no question that student-athletes enjoy the monetary opportunities available to them as a college athlete, there is measurable value in a student-athlete experience that is not reflected by examining only the dollars earned. To illustrate the value of the services that student-athletes currently benefit from, I will track the expenses to the school and the worth to the student-athlete using a hypothetical student-athlete attending the University of Southern California (USC) on a full scholarship for any given sport. While I use USC to assign specific costs to each service, this example is just a representation of one school, and costs vary by school. Costs incurred by the university for every scholarship athlete over four years, regardless of sport, include tuition (\$293,040),¹¹² housing (~\$50,000),¹¹³ *Alston* payments (\$23,920),¹¹⁴ food provided at the athletics dining hall and during travel

111. *E.g.*, Myers v. Stephen F. Austin State Univ., No. 9:25-CV-00187, 2025 WL 2254006 (E.D. Tex. Aug. 1, 2025) (order granting preliminary injunction) (alleging Title IX violations against their University after plaintiffs were notified via a ten-minute Zoom meeting that their sports were cut); Anders v. Cal. State Univ., Fresno, No. 1:21-cv-00179-AWI-BAM, 2022 WL 3371600 at *1 (E.D. Cal. Aug. 16, 2022) (alleging Title IX violations after Fresno cut men's wrestling, men's tennis, and women's lacrosse).

112. *Cost of Attendance*, USC: FIN. AID, <https://financialaid.usc.edu/undergraduate-financial-aid/cost-of-attendance/> [https://perma.cc/AYN4-7NG5].

113. *Id.*

114. Wittry, *Alston Awards*, *supra* note 83.

(~\$50,800),¹¹⁵ and gear (~\$10,000).¹¹⁶ If an athlete suffers any athletically related injury during their college career, they receive comprehensive medical treatment free of cost.¹¹⁷ This treatment can range from daily massages, chiropractic services, and physical therapy, to intensive surgeries, treatments for illness, and long-term therapy. Further, most athletic departments have state-of-the-art training facilities for student-athletes to receive physical treatment regardless of injury, including daily consultation with team athletic trainers and on-site physicians to consult for ordinary illness.¹¹⁸ One insurance company stated in 2022 that “the average insurance premium across all divisions is \$200,000” to cover between 135 and 1400 athletes.¹¹⁹ Often, schools pay for injuries, general healthcare, prescriptions, vision care, and dental care for athletes.¹²⁰ If an athlete catches a cold on campus, the team physician can prescribe a Z-Pak. If an athlete’s annual eye test performed in the athletic training room reveals that they need glasses,

115. This amount was estimated by totaling an athlete eating in the athletic dining hall twice a day for 240 days of the year at \$45 per day, a monthly meeting with a certified nutritionist at \$100 per session (USC nutrition coaches hold B.A.s and M.A.s in Nutrition Sciences), and a full body composition scan twice yearly at \$100 per scan. *Sports Dietitians*, USC STUDENT HEALTH, <https://sites.usc.edu/athleticmedicine/sports-nutrition/> [<https://perma.cc/W4DH-4WX9>]. \$500 was added to this \$12,200 total to account for meals out with the team (which often run over \$100 per athlete), meals on the road, and snacks and supplements that are left in locker rooms and other common spaces in the athletic facilities. See Daesha Harper, *Meal Differences While Traveling as a Division I, II, and III Athlete*, 2ADAYS (May 21, 2025), <https://www.2adays.com/blog/meal-differences-while-traveling-as-a-division-i-ii-and-iii-athlete/> [<https://perma.cc/4KT4-V8UB>] (explaining that NCAA rules require that DI and DII athletes receive “unlimited meals and snacks in conjunction with their athletic participation,” including meal plans, travel provisions, and per diem amounts); Tim Newcomb, *Universities Spend Millions of Dollars Annually to Fuel Their Football Players – Here’s How It All Comes Together*, FOOD & WINE (Dec. 22, 2024), <https://www.foodandwine.com/how-schools-feed-elite-college-football-players-8761443> [<https://perma.cc/73PD-H9M3>] (discussing the volume of food required to feed teams of student-athletes and the high quality meals provided by athletic departments).

116. See, e.g., David Fletcher, *Gear Day – Christmas in August!*, ATHLETICACADEMIX (Aug. 3, 2022), <https://athleticademix.com/gear-day-christmas-in-august/> [<https://perma.cc/CUB5-X94N>] (listing the total gear given to a single student-athlete in a single year and the name brands that typically sponsor team apparel).

117. See *Student-Athlete Core Guarantees*, NCAA: STUDENT-ATHLETES, <https://www.ncaa.org/sports/2024/5/23/student-athlete-core-guarantees.aspx> [<https://perma.cc/874X-D3EC>] (explaining that under the NCAA’s “core guarantees” for student-athletes, all DI schools are required to cover medical expenses for athletically related injuries for a designated period of time).

118. See, e.g., *Sports Medicine Facilities*, UNIV. OF TEX. ATHLETICS, https://texaslonghorns.com/sports/2015/9/1/GEN_0901150431 [<https://perma.cc/V9TZ-2QTM>] (showcasing sports medicine facilities with “state-of-the-art equipment” for student-athletes); *Athletic Training Treatment Facilities*, UNIV. OF OR. ATHLETICS, <https://goducks.com/news/2016/5/26/general-athletic-training-treatment-facilities> [<https://perma.cc/29MV-MJF4>] (describing the importance of having a “trained team of experts” to treat a wide variety of sports-related medical issues).

119. *Get a Sneak Peek at A-G’s Latest College Sports Insurance Survey Results*, A-G SPECIALTY INS. (Dec. 8, 2022), <https://agspecialtyinsurance.com/news/intercollegiate-sports-injury-report/> [<https://perma.cc/4YAS-M5KU>].

120. *Id.*

many departments cover the costs, or, at minimum, coordinate care for the athlete and help them navigate the process. If an athlete faces an injury, they will be walked through every step of the recovery process without cost, from diagnosis, to surgery, to post-surgery rehabilitation in state-of-the-art facilities, even after their time at the university ends. Even if an athlete must medically retire from a sport, this treatment remains available to them through their graduation so long as they remain on scholarship.¹²¹

Schools also provide extensive academic services, including weekly individual tutoring, academic facilities equipped with technology for athlete use, early registration for classes, and meticulous degree planning.¹²² Additionally, most athletics departments employ dedicated staff to help student-athletes plan effectively for life after college sports and to connect them with the vast alumni networks these universities boast.¹²³ Departments also employ at least one dedicated sports psychologist and additional therapists.¹²⁴ They also keep emergency funds available to athletes that can be used for anything from paying to replace a broken car window to flying in and providing housing for an athlete's parent in the instance of a medical emergency.¹²⁵

Totaling the services with assigned dollar values, the quantifiable cost per athlete over a four-year career at USC is over \$425,000, not including any allocation of overhead or shared resources. As additional context, note that the University of Texas spent \$320 million in operating expenses in

121. *Student-Athlete Core Guarantees*, *supra* note 117.

122. *See, e.g., Student-Athlete Academic Services*, UNIV. OF WASH. ATHLETICS, <https://gohuskies.com/sports/2019/8/12/saas-academic-services> [<https://perma.cc/8W3C-ZUDK>] (describing the provision of degree planning and one-on-one tutoring to student-athletes); *How We Support College Athletes*, NCAA, <https://www.ncaa.org/sports/2015/12/1/about-resources-media-center-ncaa-101-how-we-support-college-athletes.aspx> [<https://perma.cc/7YFX-M3E6>] (providing state-of-the-art technology to student-athletes); Caroline Cummings, *University Athletes Register Earlier than Nonathletes to Fit Classes with Practice Schedules*, THE DAILY TEXAN (May 3, 2019), <https://thedailytexan.com/2019/05/03/university-athletes-register-earlier-than-nonathletes-to-fit-classes-with-practice/> [<https://perma.cc/V4NB-CWEV>] (providing early registration for student-athletes).

123. *E.g., Gators Experience*, FLA. GATORS, <https://floridagators.com/sports/2023/5/1/gators-experience> [<https://perma.cc/Z4RE-C26A>]; *After the Final Whistle: Building a Career Beyond the Gridiron*, LSU ONLINE (Aug. 29, 2025), <https://online.lsu.edu/newsroom/articles/after-the-final-whistle-building-a-career-beyond-the-gridiron/> [<https://perma.cc/5BE4-93C6>].

124. *See, e.g., Sports Medicine Home*, UNIV. OF TEX. ATHLETICS, https://texaslonghorns.com/sports/2015/8/26/GEN_0826154259 [<https://perma.cc/9XDA-KFT4>] (discussing the availability of sports medicine providers for student-athletes, including psychology and psychiatry); *Sports Psychology*, UNIV. OF MIAMI ATHLETICS, <https://miamihurricanes.com/sports-psychology/> [<https://perma.cc/88EY-TDKC>] (listing sports psychology and mental health counseling resources for student-athletes).

125. *Student-Athlete Special Assistance Fund: Policy and Procedures*, UNIV. OF WASH., <https://static.gohuskies.com/pdf/genrel/special-assistance-fund-06.pdf> [<https://perma.cc/7MKV-79VR>] (explaining the allocation of emergency expenses through a special assistance fund for student-athletes).

2024.¹²⁶ Student-athlete meals accounted for \$5.22M of that, \$1.9M to medical expenses and insurance premiums, \$39.96M for competition expenses and travel, and \$16.13M towards athletic student aid, meaning scholarships and stipends.¹²⁷

At most schools, these extensive student services cannot be sustained when universities are required to start paying athletes directly. Revenue-generating football programs and men's basketball programs currently fund the entirety of athletic departments, meaning that women's sports and non-revenue-generating men's sports rely on the revenue from football and men's basketball to sponsor their programs.¹²⁸ Once *House* revenue-sharing begins, or if the NCAA instead classifies athletes as employees and therefore requires schools to pay football and basketball players hundreds of thousands of dollars or more every year, the funding for other sports will be diminished or eliminated.¹²⁹ Non-revenue sports are a huge cost to a university, requiring money from the revenue-generating programs, or, at non-revenue schools, funding from the institution itself. The biggest cost-saver to any university may be to cut these sports, which could allow it to invest even more money back into its football program.¹³⁰ Investing back into football and men's basketball would allow teams to increase the competitive advantage over other schools and engage in spending to hire better coaches, recruit better athletes, and make any expenditures necessary to fill more seats and gain more viewers of games, all fueling the profit of revenue-generating sports. Under this model, there would be no need or ability to sustain non-revenue sports at all.

B. *The Higher Purpose of College Sports*

College sports benefit society in measurable ways far beyond feeding into professional sports leagues. There is an argument to be made that professional-esque leagues might not be a bad thing—after all, an industry generating over \$1 billion in revenue is clearly adored by many, and fans might continue to tune in to college sports to witness the revenue-generating teams compete even without the backing of a college athletic department. In

126. KNIGHT-NEWHOUSE COLL. ATHLETICS DATABASE, *Univ. of Tex. at Austin*, <https://knightnewhousedata.org/fbs/big-12/university-texas-austin>, [https://perma.cc/JR5T-33RR].

127. *Id.*

128. Kristi Dosh, *Does Football Fund Other Sports at College Level?*, FORBES (July 30, 2012), <https://www.forbes.com/sites/sportsmoney/2011/05/05/does-football-fund-other-sports-at-college-level/> [https://perma.cc/F8F4-YQR3].

129. See *supra* notes 108–11 and accompanying text.

130. See Theo Kahler, *Seismic Changes Are Coming to College Sports. Track Coaches Are Bracing for Cuts*, RUNNER'S WORLD (Oct. 31, 2024), <https://www.runnersworld.com/news/a62570727/ncaa-house-settlement-track-cross-country/> [https://perma.cc/YA82-WQS2] (interviewing college track and field coaches who fear their program budgets may be trimmed to create more available funds for football programs).

fact, a fan who is only tuned into men's basketball and football might already perceive the NCAA as a stepping-stone professional league. However, colleges are not institutions focused solely on corporate profit. The professionalization of sports leads institutions into areas in which they lack expertise and alters their fundamental purpose. Colleges and their athletic departments ultimately serve a higher purpose than to simply act as a semi-professional league.

Less than 2% of all college athletes will play professional sports as a full-time career after college.¹³¹ Even when only considering college football, a mere 1.5% of DI college players make it to the NFL.¹³² For 98% of athletes, college sports represent the epitome of competition and opportunity. In an experience not replicable elsewhere, college athletes learn the invaluable skills of time management, how to compete within a high-intensity environment, and how to effectively work with others. Sports provide countless opportunities for learning and personal growth; from a young age, kids involved in sports learn the value of dedication, teamwork, and overcoming losses to benefit their mental and physical health. According to the Women's Sports Foundation founded by Billie Jean King, there are immeasurable benefits of women's participation in sports: "High school girls who play sports are less likely to be involved in an unintended pregnancy; more likely to get better grades in school and more likely to graduate than girls who do not play sports."¹³³ Participation in women's sports is proven to decrease levels of depression and increase the chance that women will seek and retain high-level corporate jobs, as compared to women who do not participate in sports.¹³⁴

If the sociological, societal, and psychological benefits of women's sports alone are not enough, Congress guaranteed women and men equal opportunity based on sex in schools by passing Title IX in 1972.¹³⁵ Specific to an athletic department, the NCAA outlines Title IX as requiring:

1. Participation: Title IX requires that women and men be provided equitable opportunities to participate in sports. Title IX does not require institutions to offer identical sports but an equal opportunity to play;

131. *Estimated Probability of Competing in Professional Athletics*, NCAA (Apr. 1, 2024), <https://www.ncaa.org/sports/2015/3/6/estimated-probability-of-competing-in-professional-athletics.aspx> [<https://perma.cc/HQ8K-3F3P>]; Bruce Capers, *How Many NCAA Players Actually Go Pro*, EXACT SPORTS (Feb. 15, 2023), <https://exactsports.com/how-many-ncaa-players-actually-go-pro/> [<https://perma.cc/ZY5E-XCRA>].

132. NCAA, *Estimated Probability of Competing*, *supra* note 131.

133. *Benefits – Why Sports Participation for Girls and Women*, WOMEN'S SPORTS FOUND. (Aug. 30, 2016), <https://www.womenssportsfoundation.org/advocacy/benefits-sports-participation-girls-women/> [<https://perma.cc/D65T-UC3Y>].

134. *Id.*

135. Title IX, Education Amendments of 1972, 20 U.S.C. §§ 1681–88.

2. Scholarships: Title IX requires that female and male student-athletes receive athletics scholarship dollars proportional to their participation; and
3. Other benefits: Title IX requires the equal treatment of female and male student-athletes in the provisions of: (a) equipment and supplies; (b) scheduling of games and practice times; (c) travel and daily allowance/per diem; (d) access to tutoring; (e) coaching; (f) locker rooms; practice and competitive facilities; (g) medical and training facilities and services; (h) housing and dining facilities and services; (i) publicity and promotions; (j) support services and (k) recruitment of student-athletes.¹³⁶

Notably, Title IX was not addressed at all in the *House* settlement, despite the fact that the settlement will completely disrupt the implementation of Title IX within athletic departments by eliminating scholarship caps.¹³⁷ Further, there is no indication that the revenue-sharing model proposed in *House* considered how Title IX might be implemented within the framework to ensure that men and women continue to receive *equal* opportunity, including equal opportunity to earn revenue. As demonstrated by the effect of women's basketball star, Caitlin Clark,¹³⁸ there is a market for women's sports—a market that requires fostering an equal opportunity to access resources to promote and grow the sport. In the 2023 season, women's basketball viewership in general hit an all-time high, peaking in the national championship with an average viewing of 10 million people and reflecting a 103% increase from 2022.¹³⁹ According to the NCAA, “[t]he sport’s rising viewership numbers made it a coveted part of ESPN’s new eight-year media rights deal with the NCAA for 40 championships. With the significant increase in value of the new agreement, NCAA members will explore revenue distribution units for the women’s basketball tournament.”¹⁴⁰ Although women's basketball is currently included in discussions of revenue distribution, many other women's sports will never have the chance. From the youth level to the

136. *Title IX Frequently Asked Questions*, NCAA, <https://www.ncaa.org/sports/2014/1/27/title-ix-frequently-asked-questions.aspx> [<https://perma.cc/QA5M-LQLX>].

137. Plaintiffs’ Notice of Motion and Motion for Preliminary Settlement Approval at 27, *In re Coll. Athlete NIL Litig.*, No. 4:20-cv-03919-CW (N.D. Cal. July 26, 2024).

138. See Corbin McGuire, *The Caitlin Clark Effect: How Caitlin Clark Has Captivated the Country and Rewritten the NCAA Record Books One Bucket at a Time*, NCAA (Feb. 15, 2024), <https://www.ncaa.org/news/2024/2/15/media-center-the-caitlin-clark-effect.aspx> [<https://perma.cc/6DBA-EM9Q>] (describing how Clark has fueled “a rocketlike rise in popularity” in women’s basketball).

139. *Id.*

140. *Id.*

professional level, women's sports are growing.¹⁴¹ However, with drastic changes to the college structure unfolding, athletic departments need to adjust quickly. One simple solution is to cut women's sports that might have otherwise had the chance to continue to grow and eventually become revenue-earning. For example, the University of Utah cut their women's beach volleyball team in May 2025,¹⁴² despite beach volleyball being one of the fastest-growing NCAA sports in the country¹⁴³ and Utah breaking into the top-25 national rankings in the 2025 season.¹⁴⁴ Although the press release does not reference NIL, the Utah athletic director has stated being "all-in" to revenue-sharing, meaning Utah will somehow need to divert \$20–22 million annually of athletic department funding directly towards compensating athletes.¹⁴⁵ Given that Utah only operated at a \$1.8 million surplus in 2023,¹⁴⁶ that additional funding needs to come from somewhere, and the most straightforward solution is to cut some sports and limit expenses in others.¹⁴⁷

There is a common misconception about equal opportunity for women's sports worth addressing, namely that Title IX is responsible for the downfall of men's non-revenue sports. While it is true that at the outset of Title IX, many schools contemplated cutting and actually did cut men's sports to make way for more women's sports, this was done solely at the discretion of those programs. In fact, "participation rates for male athletes have increased consistently since Title IX's passage. A special report issued for Title IX's 40th anniversary in 2012 found that NCAA member institutions saw a net gain of nearly 1,000 men's sports teams from 1988–2011."¹⁴⁸ Schools are in

141. See generally *The Growth of Women's Sports*, TOGETHXR, <https://www.togethxr.com/blogs/guides/the-growth-of-womens-sports> [https://perma.cc/G8QA-CZD9] (documenting the growth of women's participation in sports and increasing revenue since 2023).

142. *Utah Athletics to Discontinue Beach Volleyball Program at Conclusion of Academic Year*, UNIV. OF UTAH ATHLETICS (Apr. 29, 2025), <https://utahutes.com/news/2025/4/29/utah-athletics-to-discontinue-beach-volleyball-program-at-conclusion-of-academic-year> [https://perma.cc/L7N7-5738].

143. See *NCAA Champions Powering Team USA Beach Volleyball at Paris Games*, NCAA (Aug. 2, 2024), <https://www.ncaa.org/news/2024/8/2/olympics-ncaa-champions-powering-team-usa-beach-volleyball-at-paris-games.aspx> [https://perma.cc/PF3H-RWZ7] (explaining the rapid growth in women's college beach volleyball team across the country).

144. Brandon Judd, *University of Utah Is Eliminating its Beach Volleyball Program. Here's Why*, DESERET NEWS (Apr. 29, 2025), <https://www.deseret.com/sports/2025/04/29/utah-athletics-cutting-beach-volleyball-ncaa/> [https://perma.cc/DB4C-NJE2].

145. Matthew Postins, *Utah AD Says Utes 'All-In' on Revenue Sharing In Future*, SPORTS ILLUSTRATED: NIL DAILY (July 12, 2024), <https://www.si.com/fannation/name-image-likeness/nil-news/utah-ad-says-utes-all-in-on-revenue-sharing-in-future-matt> [https://perma.cc/MNF9-P4JP].

146. *Id.*

147. Cf. *Utah Athletics to Discontinue Beach Volleyball Program*, *supra* note 142 ("Scholarship funds previously dedicated to the beach volleyball program will be redirected to our other women's sports programs.").

148. Sarah Pruitt, *How Title IX Transformed Women's Sports*, HISTORY (Mar. 2, 2025), <https://www.history.com/articles/title-nine-womens-sports> [https://perma.cc/SCA9-GE4L].

no way required by Title IX to cut or defund men's sports, so long as men and women are given equal opportunity to participate and be funded relative to each gender's population at the school. It is actually the enormous funds spent on football and basketball that are to blame for the lack of funding for smaller men's sports. For example, in 2006, Rutgers cut their men's tennis team, a program with a \$175,000 budget.¹⁴⁹ In that same year, Rutgers spent around the same \$175,000 on hotel rooms for football players for their home games—a common practice among other schools in their conference (schools with much larger donor bases).¹⁵⁰ This distribution of funds reflects the priorities of an athletic department in a way that has nothing to do with Title IX. Of course, Rutgers likely felt that it needed to fund the hotels to remain competitive with other schools willing to do so. And in a world without Title IX, maybe all \$175,000 gets distributed to men's sports.

Equal opportunity does not always mean the exact same sports, services, or benefits. I do not suggest that everything between men and women, or between revenue and non-revenue athletes, should be the same, but rather that opportunities for all should be preserved. Currently, football and men's basketball programs often enjoy their own facilities and dining halls, while non-revenue sports share resources, a structure that reflects the fact that revenue-generating sports subsidize other sports. That implores the question: Why should the few fund the many? The answer is straightforward: Opportunities from sport provide valuable benefit to our society, and every effort should be made to ensure that these opportunities are sustained as compensating student-athletes becomes a reality. Employing athletes at the expense of extinction to women's and non-revenue college sports is not worth the loss of so many opportunities for young adults to earn a degree, enjoy free student-athlete services, and benefit from the intrinsic values of participating in sport.

III. Unjust Enrichment of the NCAA by Revenue-Generating Student-Athletes

The argument for compensation of revenue-generating student athletes, namely football and men's basketball players, is different. Despite the financial success of the college athletics model, there is no glossing over the fact that a billion-dollar industry was built on the backs of athletes—particularly athletes of color—who, until recently, did not receive a cent beyond education-related payments, even for third-party use of their NIL. Therefore, the second argument made for characterizing student athletes as

149. Angell Wescott, *False Assumptions: Why Title IX Is Not to Blame for Changes in Men's Athletics*, 3 PEOPLE, IDEAS, AND THINGS J. (2012), <https://pitjournal.unc.edu/2023/01/20/false-assumptions-why-title-ix-is-not-to-blame-for-changes-in-mens-athletics/> [https://perma.cc/V557-UL7M].

150. *Id.*

employees or sharing revenue is this: Coaches, administrators, and institutions make millions of dollars every year from the labor of student athletes, and profits are put in the pockets of everyone but the athletes. Beyond the positive impact on an athletic department's bottom line, there are countless benefits to an athletic department with profitable sports teams. Take the Saban effect, for example: Between Coach Saban's hiring in 2007 and one of his final seasons in 2022, enrollment at the University of Alabama rose over 50%, the university's endowment more than tripled, and Alabama's brand, both athletically and academically, became a national phenomenon.¹⁵¹ Yet while institutions thrived financially in large part due to their athletic success, many of the student-athletes generating this revenue struggled financially throughout their college careers.

A 2011 study by the National College Players Association (NCPA) and Drexel University Department of Sport Management laid out the economic disparity between what athletes generated and what they received by "calculat[ing] athletes' out-of-pocket educational related expenses associated with a 'full' scholarship."¹⁵² Using data from NFL and NBA collective bargaining agreements, the study also "estimate[d] the fair market value of FBS football and basketball players" and "compare[d] the room and board portion of players' scholarships to the federal poverty line and coaches' and athletic administrators' salaries."¹⁵³ The results of the study were stark:

University of Texas football players' fair market value was \$513,922 in 2010 but they lived \$778 below the federal poverty line and had a \$3,624 scholarship shortfall. Duke basketball players were valued at \$1,025,656 while living just \$732 above the poverty line and a scholarship shortfall of \$1,995. The University of Florida had the highest combined football and basketball revenues while its football and basketball players' scholarships left them living \$2,250 below the federal poverty line and a \$3190 scholarship shortfall.¹⁵⁴

While public perception often paints college athletes as privileged and destined for professional success, the data revealed a different reality: Many

151. Rebecca Griesbach, *Nick Saban's Lasting Impact on Alabama's Campus, Students: 'That Pride Shows'*, AL.COM (Feb. 2, 2024), <https://www.al.com/educationlab/2024/02/nick-sabans-lasting-impact-on-alabamas-campus-students-that-pride-shows.html> [https://perma.cc/5QGV-QX3C]; see also Signing Day Sports, *The Influence of Football on University Admissions and Campus Culture*, THE WIRE (Sep. 18, 2024), <https://thewire.signingdaysports.com/articles/the-influence-of-football-on-university-admissions-and-campus-culture/> [https://perma.cc/35KW-FH4N] (noting that universities with successful football programs "advertis[e] it as one of the best things about their school").

152. *Study College Athletes Worth Six Figures Live Below Federal Poverty Line*, DREXEL NEWS (Sep. 13, 2011), <https://drexel.edu/news/archive/2011/September/Study-College-Athletes-Worth-Six-Figures-Live-Below-Federal-Poverty-Line/> [https://perma.cc/G3KQ-5Z9F].

153. *Id.*

154. *Id.*

athletes, despite fueling a billion-dollar industry, were living in financially precarious positions.¹⁵⁵ This disconnect is particularly troubling when viewed in light of the multimillion-dollar salaries of coaches and administrators—those benefiting most from athletes' labor.

And if the plain inequality in failing to compensate revenue-generating athletes was not enough, the argument for compensating the players directly is further strengthened when examining the inequity through the lens of race. Black athletes are disproportionately represented on revenue-generating teams, yet they graduate college at lower rates than their white peers and have historically been subject to disparate treatment on athletic teams and at school. Sociologist Billy Hawkins dubbed the NCAA “the intercollegiate athletic industrial complex” in his discussion of historic and present exploitation of Black athletes, explaining how the economic model of the NCAA relies on Black athletes to enrich the lives of those profiting (coaches, merchandisers, and network executives).¹⁵⁶ As of 2018, Black men accounted for 2.4% of undergraduate students at sixty-five universities but comprised 55% and 56% of football and basketball teams, respectively, at those same universities.¹⁵⁷ At only four schools did Black male student-athletes graduate at rates higher than or equal to all student-athletes.¹⁵⁸

This present-day disparity is rooted in a long history of racial exclusion and unequal treatment. For much of the twentieth century, Black student-athletes were categorically excluded from participation in college athletics. Through the 1950s, Jim Crow laws were enacted in several states, requiring schools to segregate athletes by race.¹⁵⁹ College sports teams wouldn't integrate until late into the 1960s, after a Louisiana District Court held in 1958 that separating athletes violated the Equal Protection Clause, prompting gradual desegregation.¹⁶⁰ Even in the 1960s and 1970s, Black student-

155. *Id.*

156. BILLY HAWKINS, *THE NEW PLANTATION* 81–83 (2010).

157. SHAUN R. HARPER, USC RACE & EQUITY CTR., *BLACK MALE STUDENT-ATHLETES AND RACIAL INEQUITIES IN NCAA DIVISION I COLLEGE SPORTS* 3 (2018), <https://race.usc.edu/wp-content/uploads/2020/08/Pub-2-Harper-Sports-Report.pdf> [<https://perma.cc/Q5TY-KG83>].

158. *Id.*

159. See Matthew S. Berry, *Leveling the Playing Field: African-Americans and Collegiate Athletics*, 13 EIU HISTORIA 113, 115, 117 (2004) (detailing the Southern backlash to *Brown v. Board of Education* and the athletic segregationist legislation passed in several Southern states in the 1950s). For example, in 1956, the Louisiana legislature passed a bill forbidding “integrated participation in athletic contests.” The NCAA made no comment on this rule, pointing to states’ enforcement of their own laws and claiming that NCAA regulations could have no effect on the issue. *Id.* at 116.

160. *Dorsey v. State Athletic Comm’n*, 168 F. Supp. 149, 153 (E.D. La. 1958). In *Dorsey*, a Black prizefighter was denied participation in a mixed prizefight under a Louisiana law that prohibited “interracial activities involving personal and social contacts,” including “games, sports or contests” such as mixed prizefighting. *Id.* at 150–51. Rejecting arguments that the law was a proper exercise of State police power, the Court held that “as to athletic contests, Act 579 of 1956

athletes continued to suffer disparate treatment. By that point, it was clear how valuable integration was to the success of athletic teams.¹⁶¹ Coaches were specifically recruiting Black student-athletes to fill their rosters and win games, yet these athletes faced tremendous racism by faculty and classmates alike.¹⁶² At predominantly white universities, coaches and teammates treated Black players with overt disrespect, even in the athletic spaces they were recruited to be in.¹⁶³ In 1965, the NCAA accused Illinois football coaches of telling players to “limit their coeducational social contacts to fellow Negroes.”¹⁶⁴ In the same year, a University of Kansas basketball coach is quoted saying, “of all my Negro players . . . only one . . . ever became completely integrated.”¹⁶⁵ Although sports history is often perceived as a history of opportunity, Black student-athletes have long fought an uphill battle for equitable treatment within the NCAA.

Even today, Black male athletes do not experience the same academic support and resulting success as their white peers, yet they remain overrepresented on revenue-generating DI teams.¹⁶⁶ While the NCAA has claimed in television commercials championing opportunity that DI Black male athletes graduate at rates higher than the student body, this is not true across the Power Conferences, i.e., the conferences that compete for championships and actually bring in the millions of dollars in revenue.¹⁶⁷ According to Dr. Shaun Harper, “[a]cross these 65 universities, Black male student-athletes graduate at nearly five percentage points lower than their same-race male peers who are not on intercollegiate sports teams. That an average of 44.8% of Black male student-athletes on these campuses do not graduate within six years is a major loss.”¹⁶⁸ Black athletes remain central to the revenue-producing machinery of college sports, yet they continue to be disproportionately undercompensated, under-supported academically, and

is unconstitutional on its face in that separation of Negroes and whites based solely on their being Negroes and whites is a violation of the Equal Protection Clause . . .” *Id.* at 152–53.

161. See HAWKINS, *supra* note 156, at 83 (noting how the “intercollegiate athletic industrial complex has emerged as a profitable economic investment that places a demand on Black athletic talent”).

162. See Berry, *supra* note 159, at 118–20 (arguing that Black athletes “were recruited for the sole purpose of winning games,” yet still faced racism from coaches, teammates, and institutions as a whole).

163. See *id.* at 119–20 (demonstrating the ways in which racism persisted within teams).

164. *N.A.A.C.P. Accuses Illinois U.*, N.Y. TIMES (Feb. 14, 1965), <https://timesmachine.nytimes.com/timesmachine/1965/02/14/97183999.html?pageNumber=62> [<https://perma.cc/6BS2-4R4M>].

165. Berry, *supra* note 159, at 119.

166. See HARPER, *supra* note 157, at 3, 15–17 (describing problems underlying the underrepresentation of black college students generally but the overrepresentation of black students on revenue-generating DI sports teams).

167. See *id.* at 4, 6 (examining racial representation and graduation rates across the ACC, Big Ten, Big 12, Pac 12, and SEC).

168. *Id.* at 6.

underrepresented in leadership positions within athletic departments. As impending reform sweeps the nation, it is important that proposed solutions are responsive not only to economic injustice but also to the racial dynamics that have long shaped the exploitation of college athletes.

The history of racism and disparate treatment between student-athletes requires that any solution to preserving educational opportunities for student athletes explicitly considers the impact to revenue generating, Black male athletes. It is with this history in mind that I suggest solutions to this inequity that prioritize educational opportunities and compensating these revenue-generating athletes through methods other than revenue-sharing or employment.

IV. Balancing Opportunities for all Student-Athletes with Fair Compensation for Revenue-Generators

As stated, revenue-generating athletes undoubtedly deserve to earn compensation for their success and the success they bring to their institutions. However, priorities in reforming the current model must include preserving the opportunity to earn a degree and creating a system within which student-athletes can continue to enjoy the extensive services provided by their athletic departments. If the NCAA had allowed the use of NIL ten years ago, altogether preventing the *House* case, I contend there would be far less suggestion today that student-athletes should be employees, or that athletic departments should be directly paying athletes. Revenue-generating athletes would have been handsomely compensated by endorsement deals, diminishing the perception that everyone except the athletes were profiting, and athletic departments could have continued to fund and facilitate participation of all athletes. Unfortunately, the NCAA chose not to act, and the *House* settlement has opened the floodgates of revenue-sharing. Already, the country is witnessing the consequences of a collegiate athletic model that prioritizes profit at the expense of the educational and societal benefits of fostering participation in a range of sports, beyond football and men's basketball.¹⁶⁹ Diminishing opportunities for young student-athletes to earn a degree and reap the benefits of the student-athlete experience cannot be the solution. And neither is the impending next step of classifying student-athletes as university employees, thereby subjecting them to labor laws, including contractual obligation and risk of termination.

169. *See supra* Part II.

A. *Preserving the Opportunity to Earn an Education*

While revenue-sharing under the *House* settlement will put student-athletes and their institutions in a relationship akin to an employer–employee one, it does not subject them to federal labor standards. Instead, student-athletes are subject to internal NCAA policies designed to maintain competitiveness while protecting them. Currently, under these internal policies, student-athletes enjoy the equivalent of indefinite paid leave if they experience an injury,¹⁷⁰ the ability to terminate their contract at will,¹⁷¹ the right to change schools and teams without penalty,¹⁷² and a tax-free array of valuable student services, as previously discussed.¹⁷³ Most importantly, student-athletes can continue to attend school even if they decide to stop pursuing their sport, and as mentioned, they often retain their athletic scholarship past their participation on the team if they are injured.¹⁷⁴ Shifting to an employment model leaves important questions about the application of federal labor law to college athletic departments, “workplaces” that are unlike even professional sports teams.

The contours of applying the Fair Labor Standards Act, which sets federal standards for minimum wage and overtime pay,¹⁷⁵ are unclear. How does the prospect of paid overtime interact with the current structure that expects student-athletes to attend practice, class, and a certain number of film, training, or psychology sessions all in a day? Could time spent doing homework or watching film at home count towards the hours that go into calculating a salary or an annual rate? Could student-athletes or schools contract out of having attendance as a term of employment? Currently, staking the eligibility of athletes on their academic performance ensures that both student-athletes and their institutions invest significant time and resources into fostering a robust educational experience. If schools have to pay athletes for their time spent pursuing a degree, or if student-athletes miss out on potential paid time because they are doing homework, there is no financial incentive for schools to support the education of their athletes nor for athletes to invest time into their education.

There are also open questions regarding termination of a student-athlete’s athletic participation. What happens if a student-athlete lets down

170. See NCAA, 2024-25 DIVISION I MANUAL 184 (2024) (stating that financial aid “based in any degree on athletics ability may not be reduced or canceled during the period of its award” if an athlete suffers an injury).

171. See *id.* at 76 (noting that an athlete may withdraw from a sport “at any time for personal reasons”).

172. See *id.* at 75 (outlining the process for notification of transfer).

173. See *supra* subpart II(A).

174. NCAA, 2024-25 DIVISION I MANUAL, *supra* note 170, at 184.

175. *Wages and the Fair Labor Standards Act*, U.S. DEP’T OF LABOR, <https://www.dol.gov/agencies/whd/flsa> [<https://perma.cc/MA48-HQ77>].

their end of an employment contract by under-performing on the field? Or what if they simply lose interest in sacrificing other college experiences and want to quit while still attending college? Even if a student-athlete does not want to quit, employees in the United States are usually terminable by employers at-will, meaning coaches or administrators (*who* may fire athletes is another open question) could fire a student-athlete at any time.¹⁷⁶ Currently, the enrollment of student-athletes in their institution has no legal connection to their performance on a sports team. However, if attendance in school becomes part of an employment contract, student-athletes that quit or are subject to termination might be precluded from attending their university.

The primary value of college athletics that distinguishes it from professional sports is the opportunity to earn a meaningful college degree. Diminishing this should be an unacceptable choice. In the United States, a college degree provides significant value to an individual—higher future earning potential,¹⁷⁷ potential for better healthcare and benefits,¹⁷⁸ and a unique environment for socialization and personal growth.¹⁷⁹ However, as discussed, it is unclear if enrolling in school at all would be a feature of an employee-athlete model. Making student-athletes into employee-athletes would force student-athletes to decide at eighteen years old (or earlier, as most athletes are recruited in middle or high school) that they are nothing more than a professional athlete and will not choose to pursue any college education. While acknowledging that some of the highest paid athletes do in fact turn professional, most student-athletes still get immense value from being a student-athlete simply by having the opportunity to attend college and earn a degree. There are plenty of eighteen-year-old athletes who come into college certain that they will be in the NFL by twenty. For better or worse, most will not make it. Injury, newly discovered interests, and harsh lack of talent keep all but 1.5% of college football players from reaching the professional level.¹⁸⁰ Although it is easy to focus on the few high-net-worth athletes and argue that they should be getting paid directly by the school, that

176. *At-Will Employment - Overview*, NCSL (Apr. 15, 2008), <https://www.ncsl.org/labor-and-employment/at-will-employment-overview> [<https://perma.cc/FX5B-DYKM>].

177. News Release, NYU, Study of 5.8 Million Americans Finds that a College Degree Yields a Significant Return on Investment (Mar. 13, 2024), <https://www.nyu.edu/about/news-publications/news/2024/march/study-of-5-8-million-americans-finds-that-a-college-degree-yield.html> [<https://perma.cc/DKV3-SFH3>].

178. Philip Trostel, *It's Not Just the Money: The Benefits of College Education to Individuals and Society*, LUMINA FOUND. 17–18 (Oct. 14, 2015), <https://www.luminafoundation.org/files/resources/its-not-just-the-money.pdf> [<https://perma.cc/ZN6W-P6WS>].

179. PEW RSCH. CTR., THE STATE OF AMERICAN JOBS 16 (2016), https://www.pewresearch.org/wp-content/uploads/sites/20/2016/10/ST_2016.10.06_Future-of-Work_FINAL4-1.pdf [<https://perma.cc/944A-XZ4D>].

180. *Estimated Probability of Competing*, *supra* note 131.

diminishes the value that 98.5% of college football players and 99% of all college athletes get, including the opportunity to pursue a college degree.

B. Student-Athletes Are Making Plenty of Money

If employment is not the answer, what is? One solution is to rely exclusively on NIL, *Alston* payments, and extensive student-athlete services to compensate student-athletes, eliminating both the revenue-sharing component of the *House* settlement and the prospect of employing student-athletes. As the NIL marketplace has developed in the past three years, many college athletes have earned well into six-figure sums, lessening the perception that everybody but the student-athletes are profiting. At the University of Texas (UT), student-athletes are estimated to have earned over \$15.6 million in combined NIL revenue from 2021 to 2023.¹⁸¹ UT football players alone made around \$6.1 million in just four months in 2024.¹⁸² Although much of this was earned by two individuals, Quinn Ewers and Arch Manning, both of whom had major deals and alone earned in the millions,¹⁸³ it is arguable that they would be at the top of an employment pay scale anyway, making the NIL earnings proportional to their contributions to the school. At all major schools across the nation, the highest-profile athletes are earning millions of dollars from endorsements.¹⁸⁴ This solution also benefits non-revenue-generating athletes, who have the opportunity to earn NIL endorsements worth more than shared revenue or estimated employee wages. For example, gymnast Livvy Dunne's NIL is estimated to be worth \$4 million, thanks to social media fame and accompanying major brand deals.¹⁸⁵ Across the nation, non-revenue student-athletes are taking advantage of earning thousands of dollars from deals with their favorite restaurant or protein shake brands, or from compensation in exchange for appearing at charity events. Although they are not employees of the school, they are absolutely earning revenue in exchange for athletic participation,

181. Joseph Hoyt, *Texas Longhorn Athletes Have Made Over \$15 Million in NIL, Per Report*, DALLAS NEWS (July 11, 2023), <https://www.dallasnews.com/sports/college-sports/2023/07/11/texas-longhorns-athletes-have-made-over-15-million-in-nil-per-report/> [https://perma.cc/264H-ZPZW].

182. Asher Price, *UT Football Players' NIL Deals Soar*, AXIOS AUSTIN (Oct. 10, 2024), <https://www.axios.com/local/austin/2024/10/10/university-texas-football-nil-deals-longhorns> [https://perma.cc/45CV-BF5A].

183. *Id.*

184. See Nate Cunningham, *Highest Paid College Athletes via NIL Deals in 2025-26*, SPORTS ILLUSTRATED (July 14, 2025), <https://www.si.com/college-basketball/highest-paid-college-athletes-via-nil-deals> [https://perma.cc/V9M7-6ATB] (listing the highest earning college athletes in the 2024–2025 and 2025–2026 seasons).

185. George Gordillo, *Olivia Dunne's \$9.5 Million Fortune Skyrockets with New Jake Paul Deal at Billionaire's Mansion*, MARCA (Oct. 26, 2024), <https://www.marca.com/en/ncaa/2024/10/26/671d0942268e3eb00e8b4579.html> [https://perma.cc/J8JW-5NCB].

and they are able to capitalize on these opportunities *because* they are student-athletes.

The argument remains that revenue-generating student-athletes deserve additional direct compensation from the school. I argue that paying these few individuals is not worth the sacrifice of a collegiate athletic model that provides valuable opportunities and resources to so many young adults at institutions across the country. Relying on NIL is the closest the NCAA and lawmakers can get to addressing all of the concerns raised in this Note: preserving the opportunity to earn a degree, justly compensating revenue-generating athletes, providing student-athletes with robust student services, and maintaining a range of collegiate sports, including women's sports, across the country.

Conclusion

College sports are the experience of a lifetime for student-athletes and a major source of revenue for many schools around the country. The range of interests at stake in college athletics is broad. The collegiate model aims to serve everyone from the quarterback who will become an NFL household name, to the walk-on athlete studying biochemistry, to the coaches, administrators, and employees who rely on athletic department jobs to earn a living. The truth that college sports have grown into a business can no longer be avoided. While clear that schools and the NCAA have long profited from this system at the expense of student-athletes, the solution is not to classify student-athletes as employees or impose a revenue-sharing model that risks unraveling the collegiate structure entirely. Instead, reforms should preserve the educational and developmental mission of college athletics, while giving athletes meaningful access to the growing economic opportunities their talents attract.

No matter the athlete or their sport, every student-athlete has the opportunity to earn staggering amounts of money through endorsement deals and receive up to \$23,900 over their college career via *Alston* payments. Importantly, even within a system that does not require institutions to directly pay athletes, student-athletes are able to benefit from these additional dollars without sacrificing their opportunity to earn a valuable college degree, enjoy the extensive range of free student services in athletics, and be part of a college athletics landscape that sponsors women's and Olympic sports. The athletes that want to play professionally will do so; while in college, they can improve their game, mature into more experienced young adults, and enjoy million-dollar endorsement opportunities as compensation, all while being part of a system that fosters learning and growth opportunities in a manner that professional sports do not.