

“Amateur Athletics”: Exploring the Rights of Student-Athletes in America

It is illegal in the United States for college athletes to accept money for the use of their name, image, and likeness; however, other college students are permitted to do so. Many current and former amateur athletes believe it is unfair for student-athletes to play a college sport without this right (Moore, 2016). The National Collegiate Athletic Association (NCAA) is registered as a nonprofit organization and is the dominant governing body of college sports. California’s Fair Pay to Play Act, which officially takes effect in 2023, binds California colleges to grant this right to college athletes to earn money for the use of their name, image, and likeness, despite NCAA regulations (Stadium, 2014). Though the NCAA presides over many different sports and divisions, this paper will primarily discuss sports that generate a lot of revenue for their schools, largely including football and basketball. The paper addresses all NCAA sports and divisions but will include some research and ideas tailored to the aforementioned categories.

Fair play advocates, including some regulators, believe that schools in states where a bill like California’s is passed will have an unfair advantage over other schools (Letterman Row, 2019). State legislatures can force the NCAA to respond to new policy, for example, through laws that would jeopardize the NCAA’s status as a nonprofit organization (Kang, 2019). Advocates of athletes’ rights see name, image, and likeness as a civil rights and unfair labor issue (Murphy, 2019). Fairness is a key word amongst stakeholders involved, and is described differently. For fair play advocates, fairness is about the quality of the game and maintaining the status quo of amateurism as defined by the NCAA. For athletes’ rights supporters, fairness is about the athletes; they believe student-athletes should be afforded the same rights as everyone else.

According to Maureen Weston, college programs typically generate more than \$6 billion in revenue from “ticket sales, radio and television receipts, alumni contributions, guarantees, royalties and NCAA distributions” (2014). Before California’s law, no legislation entitled players to any of the profit they generate for institutions. During the September 2016-August 2017 school year, the NCAA generated over 1 billion dollars in revenue (Rovell, 2018). College athletes deserve the same rights to profit off of their name, image, likeness, and talents as their fellow students. National attention on the human rights violations of the NCAA, combined with the money it will lose from California and other potential states directly opposing its system, will force the NCAA to change its policies.

On October 29, 2019, the NCAA Board of Governors “started the process to enhance name, image and likeness opportunities” (NCAA). In a press release, it stated that “modernization should occur.” Student-athletes should have the same rights as other students, and maintaining education and the collegiate experience are priorities. According to the statement, collegiate and professional opportunities should be distinguished, student athletics should remain uncompensated, and the recruiting environment must be protected. The NCAA Board of Governors Federal and State Legislation Working Group, which includes university presidents, commissioners, athletics directors, administrators, and student-athletes, is credited for the “comprehensive recommendations” that led to the board’s action. Yet, the NCAA has still made no policy changes. The inequity persists and the NCAA risks massive revenue loss from California’s law.

Review of Research

There are many sides to the human rights battles of amateurism, providing valuable research from seemingly independent industries. The most valuable explorations of amateur athletes are contributed by documentary films that display the personal lives of high school,

college and professional athletes and their families, as well as their opinions on how NCAA rules affect their everyday lives and potential earnings. These films often attempt to cover the NCAA and college administrators' sides, however, the latter couple tend to be hesitant in accepting interview inquiries. Research exploring revenues from institutions, coaches, and companies provides insight into who benefits from the current system and who does not, displaying an iron triangle effect between the NCAA, colleges (its member institutions), and commercial companies such as television and shoe brands. Each entity has something to offer the other, and student-athletes are vital to all three. This phenomenon has led to a slew of legal battles over the recent decades.

Ed O'Bannon's case against the NCAA over it profiting from his likeness even years after he left UCLA fell short of the Supreme Court (McCann, 2016). The court ruled that "by allowing colleges to offer student-athletes additional compensation up to the full cost of attendance, the NCAA cures the antitrust harm caused by its otherwise unlawful amateurism rules." The case left ambiguity in amateurism debates. Vice's *Why College Athletes Don't Get Paid*, a documentary on high school and college athletics, covered how shoe companies influence amateur sports, reasons for and against the NCAA compensating players more, the amount of money institutions and coaches make, and the life of various student-athletes and their belief that college sports is a full-time job (2019). Another vital film, *One & Done*, follows Ben Simmons during his lone season at Louisiana State University before entering the NBA draft and being selected as the Number 1 overall pick. In the film, he discussed his frustrations for his obligations as a student-athlete that he was not paid for along with his obligations as a student though he only stayed in college for 6 months (2016). Mark Hollis, Michigan State University's Athletic Director, claims that players are compensated for obligations like these as well as their participation in TV and shoe deals via their education, apparel, travel, medical, and food (VICE News, 2019).

Analytical research also has a large role in the discussion of the rights and ethics of American amateur athletics. Economist Rodney Fort claims that all schools can afford to pay players, but choose to allocate the money elsewhere, and calls the system an “outright exploitation” (Vice Sports, 2019). USA Today revealed how much student-athletes are paid in scholarships which is trumped by the money spent on other things in college programs’ budgets (2019). Some leaders in the college sports industry have agreed with a need for change but note that there is a lot of work to be done to draft a system as Gene Smith, Ohio State’s Athletic Director noted (Letterman Row, 2019). The Pac-12, a west coast athletics conference, conducted a ground-breaking study on the health of their student athletes, showing that most players considered their sacrifices as student-athletes to be “worth it,” while also showing that most students missed class or felt they could not take full advantage of their academic or social experience at college due to their athletic participation (2015).

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A fundamental claim of fair play advocates on student-athletes’ rights to be compensated for the use of their name, image, and likeness, echoed by former Heisman Trophy Winner and Florida athlete Tim Tebow, is that it will end the amateur nature of college sports and ruin the integrity of the game (ESPN College Football, 2019). However, big time collegiate athletics is already professional by nature. A student-athlete’s scholarship is predicated not only on academic performance, but also athletic participation. At most colleges, like Rollins College, a scholarship can be stripped “because an injury prevents the student-athlete from participating; or for any other athletics reason.” A student-athlete, much like a professional athlete, earns his or her compensation for athletic competitiveness. Not only do athletic programs determine if an athlete continues to receive a scholarship based on the student-athlete’s performance, they also make a lot of money off of the student-athletes.

As previously mentioned, according to Maureen Weston, college programs as a whole typically generate more than \$6 billion in revenue from “ticket sales, radio and television receipts, alumni contributions, guarantees, royalties and NCAA distributions” (2014). During the September 2016 - August 2017 school year, the NCAA itself generated over 1 billion dollars in revenue (Rovell, 2018). According to Deadspin, in about 40 U.S. states, the highest-paid public servants are college football and basketball coaches (2013). In a contract between the University of Virginia and Nike, obtained by the Business Journal via a public records request, UVa Football is set to get a \$10,000 bonus for a Tier 1 Bowl Game appearance, \$25,000 bonus for playing in a College Football Playoff Semi-finals game, \$50,000 bonus for playing in the National Championship Game, and a \$100,000 bonus for winning the National Championship Game. The contract was signed in 2015 and is set to compensate the University with approximately 3 million dollars annually for the next 10 years. The University football program will make money if the athletes perform well enough, however, the athletes will not.

NCAA and fair play advocates argue that amateurism is fair because the students are compensated with a free education and the cost of attendance for school. When asked if student-athletes are really getting the opportunity to get an education, Mark Hollis, the athletic director for Michigan State University, answers, “Can you guarantee a degree? No. Can you guarantee that they’re getting the right education? No. You can give them the ingredients and the opportunity for success” (VICE News, 2019). Unfortunately, student-athletes are typically not given all of the ingredients they need to take advantage of their education because of their athletic participation. A study of 409 student-athletes in the Pac-12 athletic conference uncovered that “on average, Pac-12 athletes are spending 50 hours a week on athletics during the season.” 80 percent of athletes said that they missed class for competition during the 2014-2015 school year, while 54 percent said they didn’t have enough

time to study for tests (Penn Schoen Berland, 2015). Given that the student-athletes are compensated by their education, athletic participation being the reason they do not get to appropriately experience that education shows that they are not adequately compensated. As long as the NCAA only permits cost of attendance and education to be the sole source of compensation for student-athletes, they will consistently receive inadequate compensation as they cannot fully partake in the education their college provides.

California's Fair Pay to Play law has forced the NCAA to either allow players to access their legal right to profit off of themselves or to exclude California from its competitions as it will be illegal for California-based colleges to comply with NCAA rules regarding name, image, and likeness. Jay Bilas, a former Duke basketball player and current ESPN analyst, noted how his daughter, an art major, could sell her art in college while student-athletes selling their items or abilities would lose their eligibility. He mentions that the treatment of the players is unethical, and that the only spending control in college athletics is the restrictions on athletes' abilities to profit off of themselves (ESPN, 2019). Bilas considers the talk of "unintended consequences" from opposers of the Fair Pay to Play Act to be excuses that have no factual backing given the amount of money currently changing hands in college sports between coaches, colleges, TV programs, and apparel companies, amounting to billions of dollars annually on the backs of students-athletes who are not allowed to get paid. Although the NCAA "started the process to enhance name, image and likeness opportunities," there was no specific pathway laid for its member institutions to follow (NCAA Press Release). Given the human rights violations that have been ingrained in the NCAA status quo, the NCAA's lack of urgency is trifling. Currently, if there were someone at a college offering a hundred dollars to anyone who beat him in a race, like Nick Symmonds did at the University of Oregon in fall of 2019, if a student-athlete won, regardless of the sport he or she played, it would be illegal to accept the money even though

it was rightfully earned (2019). A college coach could accept it, the college athletic director could accept it, a student could accept, any random person walking around could legally accept it, just not a student-athlete.

The NCAA even violates its own bylaws in the way it conducts business with student-athletes. Section 2.9 of the bylaws, “The Principle of Amateurism,” states: “Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises” (NCAA). Nike, a commercial enterprise, pays Tom Izzo, head coach of Michigan State University’s basketball team, \$400k a year (Kish, 2017). Sonny Vaccaro, the trailblazer for the modern day commercial athletic brand relationships with colleges states that Nike profits from making exclusive deals with coaches and schools because “the athletes, or the endorsers, sell the product” (VICE News, 20). Vaccaro continues to mention how the only issue that tarnishes the system he created is that “the athletes should’ve walked lockstep with the Universities and coaches.”

The NCAA itself, as previously mentioned, annually makes \$1 billion in revenue. These revenues, coupled with the nature of college sports as a “colossal commercial enterprise,” endanger the NCAA’s status as a nonprofit organization (Meghamez, 2015). It also displays how exploited student-athletes are in this system. The student-athletes receive apparel from brands that have paid the school for the athletes to exclusively wear their products when representing the school. The student-athletes are on television, in which schools and conferences profit millions from the athletes’ advertisement for Nike, Adidas, Under Armour, etc. as part of their schools’ deals. The student-athletes do not even have the right to sell their own merchandise without violating NCAA rules (NCAA Bylaws). As

mentioned in the bylaws, student-athletes should be protected from exploitation. The NCAA acts as a “commercial enterprise,” exploiting its athletes, and makes TV deals with commercial brands so they can do the same. There is no issue with commercialization of the sport - the exploitation comes when the athletes who endorse and market products are not allowed to be paid to do so.

The risky nature of sports is another reason that athletes should be allowed to be paid by sponsors. Dajuan Wagner played for coach John Calipari at the University of Memphis during the 2001-2002 college basketball season. He averaged 20 points a game his freshman season, putting him on the radar of NBA scouts as a national star. As told in ESPN’s 30 for 30 film, *One and Not Done*, Wagner entered into the NBA draft after Calipari told him he was not allowed to return as it was his time to turn pro (2017). Wagner would be paid \$7.4 million from his only NBA contract. After his first year, he was diagnosed with colitis, requiring doctors to take out half of his colon. His career was over by the time he was 21. Had he stayed in college, many companies would have wanted to pay him endorsement deals as he was a top talent in the state and the nation. However, he could not have legally received any money from the companies due to the NCAA bylaws. Though the University of Memphis would have made more revenue from increased TV exposure and fan attendance and the sponsor of Memphis basketball would be represented by Wagner wearing their uniform on television and on advertisements, Wagner would not be allowed to see a penny for himself. Many student-athletes will see their highest earning potential in college as they will not play professionally. These athletes consistently experience the financial alternative to Dajuan Wagner’s career as their potential endorsements will come and go as they are exploited for their talents in the aforementioned iron triangle that is modern day amateur athletics.

Though the ethical and legal issues with the NCAA are hotly debated, there is little consensus on what should be done to address it. In terms of the NCAA's relationship with athlete's and their eligibility, athletes should have their rights to profit on their names, images, and likenesses respected immediately, eliminating the NCAA's ban against these rights. This will save the NCAA from the financial losses of states signing this into law before the NCAA does, and is already precedented as a definition for amateurism by the Olympics (Connelly, 2017). For the phenomenon of student-athlete's being paid by their institutions, as Jeffrey Kessler said in a 2017 phone interview addressing his ongoing cases and legal battles with the NCAA, "No one is going to force a school to pay anything" (2017). Kessler is fighting for schools to have the choice to pay athletes what they want, if they want. Fair play advocate Will Cain, a talk show host for ESPN, asserts a free market structure will be a "rich get richer" scenario where the top schools will consistently sign the top talent because of student-athletes' hopes to become famous and maximize their profits (ESPN).

But schools' spending has increased with their revenues over the past 60 years, according to Rodney Fort; it appears there is money to pay players, but it is allocated to staff, facilities, and other expenses (Schwarz, 2016; Vice Sports, 2019). In an interview with Coiski, a group that tours athletic facilities, an Oregon Football Equipment Administrator Kenny Farr said Oregon's exclusive deal with Nike impacts recruiting: "It's another feather in our cap. You come to a place like Oregon and you're taking advantage of being the number one school for Nike" (2018). Top programs already bring in the top athlete's and spend money on the top facilities to continuously recruit top athletes. If a school allocates some of its money to pay the players that produce it, it will either maintain the power structure in college sports recruiting or rebalance it, but it will not give the premiere programs an advantage that they do not already have.

California's Fair Pay to Play law has allowed it and student-athletes' rights advocates to have leverage on the NCAA. After years of failed or settled litigation, antitrust suits, title removals, and so on, this is a rare feat. The NCAA is in danger of losing its status as a nonprofit organization as well as having the U.S. government interfere in reaction to its human rights violations. In wake of the coronavirus epidemic, where the lucrative NCAA March Madness tournament was canceled (albeit days after professional leagues canceled), the NCAA has experienced a glimpse of the financial losses that could come if its student-athletes strike, the government bans it, or states battle against it themselves. There is sufficient evidence of unlawfulness and wrongdoing, and it is time for the NCAA to proactively change before the change is no longer in their hands.

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