

---

## The Importance of NCAA Student-Athletes' Financial Literacy and Mental Health in Anticipation of the Historic Fair Pay to Play Act

R.J. Curington

Follow this and additional works at: <https://via.library.depaul.edu/jslcp>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

---

### Recommended Citation

R.J. Curington, *The Importance of NCAA Student-Athletes' Financial Literacy and Mental Health in Anticipation of the Historic Fair Pay to Play Act*, 16 DePaul J. Sports L. & Contemp. Probs. (2020)  
Available at: <https://via.library.depaul.edu/jslcp/vol16/iss1/5>

This Notes and Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Sports Law by an authorized editor of Via Sapientiae. For more information, please contact [digitalservices@depaul.edu](mailto:digitalservices@depaul.edu).

## I. INTRODUCTION

Sports fans praise athletic abilities and sensational games, especially during championship play. However, extreme criticism and judgment arises when athletes fall into financial and/or mental pitfalls after college. We all have heard horror stories of student-athletes being exploited by outside influences that result in suspensions to the student-athlete and even penalties on their athletic program. The exploitation of the nation's top student-athletes can even begin in the early stages of high-school. These young student-athletes, who may not have the financial resources or the proper guidance, are often misled by self-interested outside sources. Dreams of financial stability are thought to be student-athletes' only way to support their families and to escape the "trenches" of tough neighborhoods. With hard-work, significant time-commitment, and dedication to reach their dreams, athletic scholarships are earned to play their sport in college. The goal of becoming a professional athlete still persists and leads student-athletes to a path of mental and financial anguish. The hard-work to become a professional and the pressure to win competitions for their university with certain disparate collegiate regulations can take a toll on student-athletes' mental health. Further, the focus on becoming a professional athlete takes time away from learning the tools needed to survive in an economically driven society, regardless of whether or not the student-athlete makes it to the professional leagues.

Student-athletes are ostensibly learning the subject matter taught in their courses for their respective majors. However, they are not necessarily learning the importance of financial management and mental health, which is an issue formed by strict bylaws that should be enforced by legislation, especially in a new era which allows student-athletes to profit from their name, image, and likeness.

### A. An Unfortunate Story of an NBA Legend

Allen Iverson, a collegiate icon from Georgetown University, is one of the most recognizable players in the National Basketball Association's ("NBA") history, and was one of the highest paid players in his time, earning \$154 million in the NBA.<sup>1</sup> However, when Iverson's wife filed for divorce in 2010 after eight years of marriage, a different financial picture came to light.<sup>2</sup> Iverson was apparently broke, in debt, and incurring monthly expenses—rumored to include the cost of buying new clothes when he traveled to avoid carrying luggage—that greatly exceeded his earnings.<sup>3</sup> At a 2012 divorce proceeding, Iverson reportedly pulled out his pant pockets and shouted at his wife, "I don't even have money for a cheeseburger!"<sup>4</sup> To add insult to injury, a judge recently ordered Iverson to pay a jeweler \$860,000. And once he revealed that he could not pay, the judge ordered that his bank account be seized.<sup>5</sup> A plausible argument exists that Iverson was not properly prepared for these unfortunate events – which also included prison sentences and bouts with drug/alcohol abuse – before he entered his name in the 1996 NBA Draft after two years at Georgetown. His upbringing, like many other student-athletes', was an environment that

---

<sup>1</sup> Parker, Tim. *Why Athletes Go Broke*. Investopedia, (Nov. 18, 2019), [www.investopedia.com/financial-edge/0312/why-athletes-go-broke.aspx](http://www.investopedia.com/financial-edge/0312/why-athletes-go-broke.aspx).

<sup>2</sup> Osborn, Katy. *10 Pro Athletes Who've Hit Financial Rock Bottom*. Money, (Aug. 13, 2015), 10:28, [money.com/money/3983997/famous-athletes-bankruptcy/](http://money.com/money/3983997/famous-athletes-bankruptcy/).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Parker, Tim. *Why Athletes Go Broke*. Investopedia, (Nov. 18, 2019), [www.investopedia.com/financial-edge/0312/why-athletes-go-broke.aspx](http://www.investopedia.com/financial-edge/0312/why-athletes-go-broke.aspx).

promoted crime, racial prejudice, and hardship, rather than academics, financial literacy, and emotional stability. Iverson's story should not only recognize his success as an athlete, but also his avoidable losses off the court. The financial pitfalls of student-athletes persist today and legislation allowing student-athletes to profit from their name, image, and likeness ("NIL") will make matters worse if legislation is not properly regulated.

## **B. The Hard Fight Against Mental Health Troubles**

Financial management is just one area that significantly affects athletes' careers after college; mental health is another factor that contributes to personal struggles after their time on campus. Student-athletes are taught that "mental toughness" wins championships. Luckily more athletes are speaking out about dealing with mental health issues than ever before. For those aged 16 to 22, the march toward adulthood, with its academic and social expectations, is further complicated by behavioral expectations when one is tired, overwhelmed or down.<sup>6</sup> Most are taught or silently encouraged to fight through it. This stigma has sometimes led student-athletes to transfer schools for reasons of depression. Coaches are not typically aware of the depression, as student-athletes are not disclosing the struggles they are dealing with, in the hopes of displaying "mental toughness."<sup>7</sup> The "severity" the depression has even resulted in suicides.

Further, the National Collegiate Athletic Association's, ("NCAA"), facially neutral rules have an unjustified adverse impact on a particular group can be challenged as discriminatory.<sup>8</sup> The adverse impact is a factor that contributes to the mental health concerns of student-athletes. While the NCAA's intent is color-blind, the impact of amateurism is anything but.<sup>9</sup> The amateurism rules restrain student-athletes, not student musicians or student writers, from earning whatever money, goods, or services someone else wants to give them.<sup>10</sup> Statistics have shown that the two sports with the largest concentrations of black male athletes are football and basketball which bring in some of the largest streams of revenue for many universities.<sup>11</sup> This restraint is an example of the dissatisfaction of the NCAA system that can lead to mental health concerns. Further, complications for the quarantine period due to the Coronavirus, have also created mental health concerns of student-athletes by cancelling or postponing their potentially-promising season and locking down college campus housing and athletic facilities that may have been protecting them from hardships and distractions at home. These mental health concerns lead to poor financial decisions, like over-buying items, buying glamorous items that student-athletes may not have

---

<sup>6</sup> Barnhouse, Wendell. *NCAA Faces Uphill Battle Getting Mental Health Care to Student Athletes*. GlobalSport Matters, (Aug. 21, 2019), [globalsportmatters.com/health/2019/08/21/ncaa-faces-uphill-battle-getting-mental-health-care-to-student-athletes/](https://globalsportmatters.com/health/2019/08/21/ncaa-faces-uphill-battle-getting-mental-health-care-to-student-athletes/).

<sup>7</sup> *Id.*

<sup>8</sup> Hruby, Patrick. *Four Years A Student-Athlete: The Racial Injustice of Big-Time College Sports*. (Apr. 4, 2016), [www.vice.com/en\\_us/article/ezexjp/four-years-a-student-athlete-the-racial-injustice-of-big-time-college-sports](https://www.vice.com/en_us/article/ezexjp/four-years-a-student-athlete-the-racial-injustice-of-big-time-college-sports).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; *Berger v. NCAA*, 843 F.3d 285 (College students who participate in activities generally recognized as **extracurricular** are generally not considered to be employees within the meaning of the FLSA, however, students who participate in a work study program and, for example, "work at food service counters or sell programs or usher at athletic events, or who wait on tables or wash dishes in dormitories in anticipation of some compensation" are "generally considered employees under the FLSA." Because NCAA-regulated sports are extracurricular, the court did not believe that the Department of Labor intended the FLSA to apply to student athletes).

<sup>11</sup> Garcia, Sara, and Maxwell, Connor. "*The Madness Doesn't End in March.*" *Center for American Progress*, (Mar. 28, 2019), [www.americanprogress.org/issues/education-postsecondary/reports/2019/03/28/466892/madness-doesnt-end-march/](https://www.americanprogress.org/issues/education-postsecondary/reports/2019/03/28/466892/madness-doesnt-end-march/).

been able to afford, and drugs and alcohol to cope with mental health issues, that may lead to worse problems, like abuse or addiction. The NCAA and the Government must come up with regulations that will prevent issues by being proactive, in midst of the new Fair Pay to Play Act.

### C. Overview of the Note

This Note will begin by discussing the origin of the NCAA and its amateurism rules including eligibility, scholarships, and cost of attendance, as well as how the rules relate to the financial management and mental health concerns that put pressure on students-athletes. The Note will discuss the background and development of anti-trust and interstate commerce arguments with laws and cases as they relate to the NCAA.

Further, this Note will focus on the NCAA's current financial and mental health stance by discussing current financial and mental health platforms for student-athletes, unionization, and the impact of the Fair Pay to Play Act initiated by California Governor Gavin Newsom, who recently signed Senate Bill 206 into law. The bill will allow college athletes in their respective state where they attend college to profit off their NIL and be protected from eligibility sanctions by the NCAA, beginning Jan. 1, 2023.<sup>12</sup> Over 12 states have begun proposing similar acts, and the number is increasing.<sup>13</sup> Rep. Anthony Gonzalez, R-OH, a former Ohio State wide receiver, wants to bring about change at the federal level as well.<sup>14</sup> Rep. Gonzalez wants to introduce a bill that would not only apply to college athletes across the country, but one with an aggressive timeline for activation.<sup>15</sup> This aggressive timeline gives the NCAA little time to implement new practices that will prepare student-athletes for this historic change.

Lastly, the Note will conclude with suggested improvements and proposals to implement financial and mental health programs to current legislation or new legislation as well as an outline of the inherent issues.

## II. BACKGROUND

### A. The NCAA and its Origins

The NCAA is an organization in the United States that administers intercollegiate athletics.<sup>16</sup> It was formed in 1906 as the Intercollegiate Athletic Association, in order to draw up competition and create eligibility rules for gridiron football and other intercollegiate sports.<sup>17</sup> The NCAA adopted its current name in 1910.<sup>18</sup> In 1921, it conducted its first national championship event, the National College Track and Field Championship, and it gradually extended its jurisdiction over intercollegiate competition in other sports and their college associations, or

---

<sup>12</sup> Norlander, Matt. *Fair Pay to Play Act: States Bucking NCAA to Let Athletes Be Paid for Name, Image, Likeness*. *CBSSports.com*, (Oct. 4, 2019), [www.cbssports.com/college-football/news/fair-pay-to-play-actstates-bucking-ncaa-to-let-athletes-be-paid-for-name-image-likeness/](http://www.cbssports.com/college-football/news/fair-pay-to-play-actstates-bucking-ncaa-to-let-athletes-be-paid-for-name-image-likeness/).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> The Editors of Encyclopedia Britannica. *National Collegiate Athletic Association*. *Encyclopedia Britannica*, (May 19, 2016), [www.britannica.com/topic/National-Collegiate-Athletic-Association](http://www.britannica.com/topic/National-Collegiate-Athletic-Association).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

“conferences.”<sup>19</sup> The NCAA did not acquire significant powers to enforce its rules until 1942, however.<sup>20</sup> In 1952, it began regulating live, televised coverage of college football.<sup>21</sup>

The NCAA functions as a general legislative and administrative authority for men’s and women’s intercollegiate athletics.<sup>22</sup> It formulates and enforces the rules of play for various sports and the eligibility criteria for athletes.<sup>23</sup> It supervises both regional and national intercollegiate athletic contests, and it conducts nearly 90 national championships in some two dozen sports.<sup>24</sup> In 1973, the NCAA reorganized into three divisions, each representing a different level of competition, with each member college being allowed to select the division it belongs to.<sup>25</sup> Each division holds national championship competitions in various sports.<sup>26</sup>

The NCAA compiles statistics on about a dozen college sports, including gridiron football, baseball, men’s and women’s basketball, soccer, ice hockey, and lacrosse.<sup>27</sup> It also publishes rule books and guides on these sports, as well as on skiing, swimming, diving, track and field, and wrestling, among others.<sup>28</sup> The NCAA’s membership in the early 21st century included more than 1,000 educational institutions.<sup>29</sup> Its headquarters and museum, the NCAA Hall of Champions, are in Indianapolis, Indiana.<sup>30</sup>

## **B. Eligibility of a Student-Athlete to Participate in their Sport and its Affect**

Eligibility is one of the key reasons for financial and mental health issues. The athletic performance is essential and requires a lot of time and hard work. However, grades are equally as important because, without the required grade point average, the player cannot participate, thus resulting in academic probation or even dismissal from the university. Low grades can result from mental health concerns stemming from not having the ability to pay for necessary items, like food. The consequences of low grades can extremely interfere with a student-athlete’s psychological state of mind.

Incoming student-athletes in Divisions I and II are subject to academic initial-eligibility standards, which take into account standardized test scores, number of core courses taken in high school, and the grades earned in those core courses.<sup>31</sup> In addition to NCAA requirements, student-athletes also must also meet the unique acceptance requirements of the university they plan to attend (those requirements may exceed NCAA standards).<sup>32</sup> Division I student-athletes are also subject to progress-toward-degree rules that require them to advance toward graduation each

---

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> The Editors of Encyclopedia Britannica. *National Collegiate Athletic Association*. *Encyclopedia Britannica*, (May 19, 2016), [www.britannica.com/topic/National-Collegiate-Athletic-Association](http://www.britannica.com/topic/National-Collegiate-Athletic-Association).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Student-Athlete Eligibility*, *NCAA.org - The Official Site of the NCAA*, (Mar. 13, 2015), [www.ncaa.org/about/student-athlete-eligibility](http://www.ncaa.org/about/student-athlete-eligibility).

<sup>32</sup> *Id.*

year.<sup>33</sup> Division III institutions hold student-athletes to the same overall standards for the institution in which the student-athlete is enrolling.<sup>34</sup> The NCAA determines a student-athlete's eligibility based on their academic preparedness and amateurism status.<sup>35</sup> Additionally, student-athletes are prohibited from delaying their full-time collegiate enrollment to compete in organized sports.<sup>36</sup> The eligibility requirements add pressure on the student-athlete to perform not only on their respective team, but in the classroom as well. Understandably, this pressure can lead to mental health concerns that can cause low grades that fundamentally result in not learning the tools needed to thrive in an economically driven society.

### C. Overview of NCAA Scholarships and its Importance to Student-Athletes

Earning an athletic scholarship is an extremely important step for student-athletes to achieve their dream to play professionally. If a student-athlete is lucky enough to become a professional athlete and signs a large contract, one would think that they would be set for life. Often, contracts guarantee a payment exceeding eight figures, sometimes more. That being said, 60 percent of NBA players file for bankruptcy five years after retirement.<sup>37</sup>

Student-athletes that do not make it to the professional leagues, also commit significant amounts of their life to their sport and, at best, may only get a scholarship for their efforts. These scholarships, however, may not even lead to graduation or future employment. For example, signing an agent and leaving the collegiate ranks for a professional league's draft would make a student-athlete ineligible under the NCAA's by-laws.<sup>38</sup> The common trend is student-athletes graduating with a major that has no application with the student-athlete's career interests and rather choose a major that will give them little stress on top of their athletic responsibilities.<sup>39</sup>

Full scholarships cover tuition and fees, room, board and course-related books. Most student-athletes who receive athletic scholarships receive an amount covering a portion of these costs, but not all.<sup>40</sup> Many student-athletes also benefit from academic scholarships, NCAA

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *NCAA Eligibility Requirements for Student-Athletes. NCAA Eligibility Requirements and Academic Eligibility Rules*, [www.ncsasports.org/ncaa-eligibility-center/eligibility-requirements](http://www.ncsasports.org/ncaa-eligibility-center/eligibility-requirements). (Academic eligibility is determined using a combination of their SAT/ACT test scores, high school course work and their GPA as calculated using what are called the "NCAA Core Courses." Amateurism status is determined based on the answers to your amateurism certificate. In extreme cases, the NCAA will investigate amateurism status. The cornerstone of the amateurism rules is that student-athletes are not allowed to have received prize money (beyond the reimbursement for participation); they cannot have signed a contract with or receive benefits from an agent; they cannot receive money for promotion of products or services; and they are not allowed to make money by use of their athletic ability or fame).

<sup>36</sup> *Id.*

<sup>37</sup> Khatchaturian, Andre. *The 9 Most Financially Irresponsible Players in NBA History. Bleacher Report*, Bleacher Report, (Oct. 3, 2017), [bleacherreport.com/articles/1085063-the-9-most-financially-irresponsible-players-in-nba-history](http://bleacherreport.com/articles/1085063-the-9-most-financially-irresponsible-players-in-nba-history).

<sup>38</sup> *NCAA Bylaw 12.1.2 Amateur Status* states that an individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual (f) after initial full-time collegiate enrollment, enters into a professional draft; or (g) enters into an agreement with an agent.

<sup>39</sup> Khatchaturian, Andre. *The 9 Most Financially Irresponsible Players in NBA History. Bleacher Report*, Bleacher Report, (Oct. 3, 2017), [bleacherreport.com/articles/1085063-the-9-most-financially-irresponsible-players-in-nba-history](http://bleacherreport.com/articles/1085063-the-9-most-financially-irresponsible-players-in-nba-history).

<sup>40</sup> *Scholarships. NCAA.org - The Official Site of the NCAA*, (Mar. 10, 2017), [www.ncaa.org/student-athletes/future/scholarships](http://www.ncaa.org/student-athletes/future/scholarships).

financial-aid programs, such as the NCAA Division I Student-Athlete Opportunity Fund, and need-based aid, such as Federal Pell Grants.<sup>41</sup> Division I schools may provide student-athletes with multiyear scholarships.<sup>42</sup> Additionally, Division I schools may pay for student-athletes to finish their bachelor's or master's degrees after they finish playing NCAA sports.<sup>43</sup>

If a school plans to reduce or not renew a student-athlete's financial aid, the school must notify the student-athlete in writing by July 1 and provide an opportunity to appeal.<sup>44</sup> In most cases, coaches decide who receives a scholarship, the scholarship amount and whether it will be renewed.<sup>45</sup> NCAA Divisions I and II schools provide more than \$2.9 billion in athletics scholarships annually to more than 150,000 student-athletes.<sup>46</sup> Division III schools do not award athletic scholarships, but they do grant other forms of financial aid.<sup>47</sup> Only about 1% to 2% of undergraduate students in bachelor's degree programs receive sports scholarships.<sup>48</sup> Of the student-athletes participating in sports with professional leagues, very few become professional athletes. In NCAA football, only 1.6% of the more than 70,000 players who participate yearly will go to their sport's top pro league.<sup>49</sup> And that number is even lower for men's basketball (1.1%) and men's soccer (1.4%).<sup>50</sup> The journey of a student-athlete to become a professional athlete can cause a severe amount of anxiety resulting in mental health concerns due to the low percentages of actually becoming a professional. Additionally, if the student-athlete does make it to the professional leagues, they are often not equipped to handle the pressures involved, which could result in more severe mental health concerns, drug and/or alcohol abuse, and poor financial decisions. In fact, according to the Global Organization of Stress, 75% of the U.S. adult population is living with this condition of chronic stress.<sup>51</sup> This condition of "stress brain" is proven to be the culprit for not only mental and physical illness, but also for poor judgment when it comes to financial decision-making.<sup>52</sup> The NCAA has a duty to promote mental health initiatives and to prepare student-athletes for the economically driven society that awaits them when they step off of their campus.

#### **D. Cost of Attendance, One of the Only Ways to Pay Student-Athletes**

As this Note will address later, the Power 5 conferences (ACC, Big 12, Big Ten, SEC and Pac-12) have passed legislation guaranteeing the full cost of attendance for scholarship student-

---

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Soriano, Deborah Ziff, and Emma Kerr. *5 Myths About Athletic Scholarships, Debunked*. *U.S. News & World Report*, U.S. News & World Report, (Mar. 9, 2020), [www.usnews.com/education/best-colleges/paying-for-college/articles/myths-about-athletic-scholarships](http://www.usnews.com/education/best-colleges/paying-for-college/articles/myths-about-athletic-scholarships).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Goethals, Sophie. *Broke College Athletes*, *The Daily Californian*, (Oct. 20, 2016), [www.dailycal.org/2016/10/19/broke-college-athletes/](http://www.dailycal.org/2016/10/19/broke-college-athletes/).

<sup>50</sup> *Id.*

<sup>51</sup> Diamond, Ava. *If You Are Suffering from 'Stress Brain,' You Might Be Making Some Bad Financial Decisions*. *CNBC*, (Nov. 20, 2018) [www.cnbc.com/2018/11/19/stress-brain-can-lead-to-you-making-some-bad-financial-decisions.html](http://www.cnbc.com/2018/11/19/stress-brain-can-lead-to-you-making-some-bad-financial-decisions.html).

<sup>52</sup> *Id.*

athletes.<sup>53</sup> Currently, in addition to a tuition-free education, student-athletes receive yearly stipends of \$2,000 to \$4,000, intended to cover cost-of-living expenses.<sup>54</sup> The measure passed with near unanimous support, 79-1, from the 65 schools and 15 student-athlete representatives, three from each conference.<sup>55</sup> Boston College was the only school to vote against it, according to NCAA tabulations.<sup>56</sup>

The cash flow was born of good intentions and guilt.<sup>57</sup> Athletic departments padded budgets mostly through hefty media rights contracts but without a means to distribute these earnings to student-athletes.<sup>58</sup> “There’s tons of money out there and the ones who are actually doing the work that people are coming to see, they’re not being properly compensated for it,” said Ian Simon, a three-year football starter at Missouri.<sup>59</sup> “I know we’re getting an education, but it’s not really free when you’re putting in 40 or 50 hours a week on your sport.<sup>60</sup> There’s a lot that goes into that scholarship that’s not really free.”<sup>61</sup>

### E. The NCAA By-Law’s Effect on Lives of Student-Athletes

Intense athletic competition hinders athletes from being able to find time to commit themselves fully to their schoolwork or to outside jobs that could provide them with some much-needed cash. Taking into account that many athletes commit close to 40 or more hours per week to their sport, it is almost inconceivable that one could keep up with their schoolwork, let alone generate a life-sustaining income for themselves.<sup>62</sup> In many sports, though, scholarships are few and far between. In NCAA baseball, teams can offer 11.7 scholarships to rosters that average 35 players, limiting the amount of members who can attend and receive an education worth their athletic commitment.<sup>63</sup> These are issues that lead student athletes to mental and financial instability, when a college education is what the NCAA’s supposed biggest promise to athletes when scholarships are offered.

## III. LEGAL BACKGROUND

### A. NCAA Competition in a Different Court

Because of the rapid commercial success of Division I men’s basketball and football programs and the NCAA’s regulatory positioning, the NCAA has frequently run into federal antitrust lawsuits concerning its regulations. In *In Re: NCAA Grant-in-Aid Cap Antitrust*

---

<sup>53</sup> *NCAA Colleges To Cover Attendance Expenses For Scholarship Athletes.*, [www.athleticscholarships.net/cost-of-attendance-spending-money.htm](http://www.athleticscholarships.net/cost-of-attendance-spending-money.htm).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Goethals, Sophie. *Broke College Athletes.* *The Daily Californian*, (Oct. 20, 2016), [www.dailycal.org/2016/10/19/broke-college-athletes/](http://www.dailycal.org/2016/10/19/broke-college-athletes/).

<sup>63</sup> *Id.*



*Litigation*,<sup>64</sup> better known as the Alston case, named after one of the athletes who initially filed the case, former West Virginia running back Shawne Alston.<sup>65</sup> There, the Court ruled that the NCAA can no longer “limit compensation benefits related to education.”<sup>66</sup> The ruling also mandated that the NCAA allow conferences to create their own rules and policies for scholarships.<sup>67</sup>

Essentially, the ruling allows student-athletes to potentially receive a scholarship valued at greater than a “full ride” to college.<sup>68</sup> Alston had challenged the NCAA’s cap on athletic financial aid packages as an unlawful agreement to restrain trade, in violation of Section 1 of the Sherman Antitrust Act of 1890.<sup>69</sup> Although the Association had lifted the cap in recent years, in response to legal pressure to include not only tuition and room and board, but also additional annual stipends ranging from \$3,000 to \$6,000 to pay for “full cost of attendance” at college, the athletes’ lawyers contended that the NCAA’s actions are no different from any agreement by employers competing for the same talent – say, graduates coming out of law school – on salary caps.<sup>70</sup>

The central reason for Judge Wilken’s decision in the case was the determination that NCAA grant-in-aid rules constitute an unreasonable restraint on trade.<sup>71</sup> The case turned on Judge Wilken’s application of Section 1 of the Sherman Act.<sup>72</sup> Generally speaking, Section 1 forbids competing businesses from conspiring to restrain competition in ways that cause more economic harm than good.<sup>73</sup> While colleges might not seem like competing businesses given their educational missions, they are very much economic competitors.<sup>74</sup> They compete over students, athletes, professors, administrators, staff, media attention, tuition dollars, donations, grants and many other finite resources.<sup>75</sup> Judge Wilken agreed with the players’ reasoning that grant-in-aid rules amount to illegal price-fixing.<sup>76</sup> The relevant competitors—the NCAA and its member schools and conferences—conspired to fix the maximum dollar amount allowable under a grant-in-aid.<sup>77</sup> On their own, NCAA member schools can’t disregard grant-in-aid rules.<sup>78</sup> These rules are mandatory.<sup>79</sup> Should a school breach them, the school would accept the risk of expulsion from the NCAA—an untenable position for virtually every major university.<sup>80</sup> This means that even if schools wish to offer a coveted recruit more than the grant-in-aid, they can’t within the boundaries

---

<sup>64</sup> *Alston v. NCAA (In re NCAA Ath. Grant-in-Aid Cap Antitrust Litig.)*, 768 F. App’x 651 (9th Cir. 2019)

<sup>65</sup> Litan, Robert E. *College Sports Joins the Marketplace, with Limits*. *Brookings*, (Mar. 19, 2019), [www.brookings.edu/blog/up-front/2019/03/19/college-sports-joins-the-marketplace-with-limits/](http://www.brookings.edu/blog/up-front/2019/03/19/college-sports-joins-the-marketplace-with-limits/).

<sup>66</sup> Ramsey, Cassandra. *Alston v. NCAA: Judge Rules for Plaintiffs But NCAA Keeps Amateurism*. *Unafraid Show*, (Sept. 19, 2019), [unafraidshow.com/alston-ncaa-ruling-amateur-college-sports/](http://unafraidshow.com/alston-ncaa-ruling-amateur-college-sports/).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Litan, Robert E. *College Sports Joins the Marketplace, with Limits*. *Brookings*, *Brookings*, (Jan. 6, 2020), [www.brookings.edu/blog/up-front/2019/03/19/college-sports-joins-the-marketplace-with-limits/](http://www.brookings.edu/blog/up-front/2019/03/19/college-sports-joins-the-marketplace-with-limits/).

<sup>70</sup> *Id.*

<sup>71</sup> McCann, Michael. *Why the NCAA Lost Another Landmark Antitrust Case*. *Sports Illustrated*, (Mar. 9, 2019), [www.si.com/college/2019/03/09/ncaa-antitrust-lawsuit-claudia-wilken-alston-jenkins](http://www.si.com/college/2019/03/09/ncaa-antitrust-lawsuit-claudia-wilken-alston-jenkins).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

of NCAA rules.<sup>81</sup> As a result, they and their rivals can only offer the same basic package of tuition, fees, room, board, course-related books and other expenses up to the value of the full cost of attendance.<sup>82</sup> By explicitly preventing competition, then, NCAA rules run afoul of antitrust law.<sup>83</sup>

## B. Interstate Commerce Tie to the NCAA

There is an importance that proposed legislation (later discussed in this Note) is subject to the Commerce Clause. Article I, Section 8, Clause 3 of the U.S. Constitution grants Congress the authority to regulate Commerce among States.<sup>84</sup> Generally, courts have routinely accepted congressional intervention into traditional state activities through the use of the Commerce Clause. The rapid and constantly changing development of "tests" related to the Commerce Clause makes it difficult to definitively say whether regulating NCAA resources dedicated to mental health and financial literacy would be subject to the Commerce Clause. However, because of the nature of the modern NCAA and its student-athletes, the Commerce Clause analysis becomes clearer.

*United States v Miller* answered the threshold inquiry of whether regulatory activities of the NCAA involve interstate commerce for the purposes of Commerce Clause protection in light of the educational objectives of the NCAA.<sup>85</sup> A principal purpose of the NCAA is to promote amateurism in intercollegiate athletics and to ensure that athletics are an integral part of the academic process through the cooperative and collective efforts of the member institutions.<sup>86</sup> The Fifth Circuit observed that, "while the participating athletics may be amateurs, intercollegiate athletics in its management is clearly business and big business at that."<sup>87</sup> The NCAA and its member institutions are "significantly involved in interstate commerce in the conduct of the athletic programs."<sup>88</sup> The NCAA conducts seventy-six (76) annual NCAA championship events throughout the United States involving member teams and individual student athletes from across the country.<sup>89</sup> The games and tournaments scheduled by the NCAA necessitate the transportation of teams across state lines.<sup>90</sup> In addition, the NCAA controls bids involving hundreds of millions of dollars for interstate television broadcasting of intercollegiate sports events.<sup>91</sup> Finally, collegiate recruiting of perspective team members takes place on a national and even international scale and the NCAA strictly regulates this recruiting activity.<sup>92</sup> As the Supreme Court has held in the context of an antitrust case involving the NCAA, the "product" marketed by the NCAA is

---

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Nat'l Collegiate Athletic Ass'n v. Miller*, 795 F. Supp. 1476, 1482 (D. Nev. 1992) (As jurisprudence stands today, Congress can (1) regulate the "channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) regulate economic or commercial activities that "substantially affect interstate commerce.")

<sup>85</sup> *Id.* at 1476.

<sup>86</sup> NCAA Bylaw Art. 1 § 1.2.

<sup>87</sup> *Hennessey v. NCAA*, 564 F.2d 1136, 1150 (5th Cir. 1977)

<sup>88</sup> *Nat'l Collegiate Athletic Ass'n v. Miller*, 795 F. Supp. 1476, 1482 (D. Nev. 1992); *See also Banks v. NCAA*, 746 F. Supp. 850, 857 (N.D. Ind. 1990).

<sup>89</sup> *Miller*, 795 F. Supp. at 1482.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

intercollegiate competition.<sup>93</sup> Therefore, the national scope of the NCAA's activities are sufficient to establish the requisite interstate involvement under the Commerce Clause.

In *NCAA v. Bd. of Regents of the Univ. of Oklahoma*, the United States Supreme Court struck down a "television plan" of the NCAA, which was designed to limit the total television broadcasts of college football games and the number of appearances of individual schools, as well as fix the compensation received by individual schools.<sup>94</sup> *Board of Regents* was a case of first impression<sup>95</sup> that triggered all subsequent litigation. The case gave a new cause of action for litigants against the NCAA that existed before this case. Although the Supreme Court held that the plan must be evaluated under the rule of reason<sup>96</sup>, rather than the per se rule<sup>97</sup>, the court found the NCAA television plan on its face constituted a restraint upon the operation of a free market.<sup>98</sup> The court further found that the NCAA television plans had raised prices and reduced output, both of which were unresponsive to consumer preference.<sup>99</sup> In response to this showing, the NCAA failed to establish any procompetitive efficiencies that might justify the television plan.<sup>100</sup> Accordingly, the Supreme Court affirmed the judgment of the lower courts, holding the NCAA's television plan violated Section 1 of the Sherman Act.<sup>101</sup>

The NCAA's television plan had severely restricted the number of broadcasts of college football games.<sup>102</sup> Further, the plan had frequently prevented networks from airing the most desirable games and essentially forced them to air less desirable games.<sup>103</sup> Freed from the plan, the market responded to consumer demand with a massive increase in the number of broadcasts of college football games.<sup>104</sup> Rather than reducing live attendance, these broadcasts have increased

---

<sup>93</sup> *Id.*

<sup>94</sup> Myers, D. Kent, and Mary H. Tolbert. *The Lasting Impact of NCAA vs. Board of Regents of the University of Oklahoma: The Football Fan Wins*. Crowe & Dunlevy, (Oct 24, 2018), [www.crowedunlevy.com/news/the-lasting-impact-of-ncaa-vs-bd-of-regents-of-the-university-of-oklahoma-the-football-fan-wins/](http://www.crowedunlevy.com/news/the-lasting-impact-of-ncaa-vs-bd-of-regents-of-the-university-of-oklahoma-the-football-fan-wins/).

<sup>95</sup> (A new legal issue or interpretation that is brought before a court. In a case of first impression, the exact issue before the court has not been addressed by that court, or within that court's jurisdiction, thus there is no binding authority on that matter. Cases of first impression often occur in connection with recently passed legislation, or when that issue has been addressed by other jurisdictions, but not in the jurisdiction of the presented court. Courts may seek guidance from other jurisdictions, or by making analogies to related or similar issues.) [https://www.law.cornell.edu/wex/first\\_impression](https://www.law.cornell.edu/wex/first_impression)

<sup>96</sup> (Rule of reason is a judicial doctrine of antitrust law which says a trade practice violates the Sherman Act only if the practice is an unreasonable restraint of trade, based on economic factors. In order to determine whether there is unreasonable restraint the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable.) <https://definitions.uslegal.com/r/rule-of-reason/>

<sup>97</sup> (A per se violation requires no further inquiry into the practice's actual effect on the market or the intentions of those individuals who engaged in the practice. Some business practices, however, at times constitute anticompetitive behavior and at other times encourage competition within the market. For these cases, the court applies a "totality of the circumstances test" and asks whether the challenged practice promotes or suppresses market competition.) <https://www.law.cornell.edu/wex/antitrust>

<sup>98</sup> Tolbert, Mary H., and D. Kent Myers. *NCAA v. Bd. of Regents of The University of Oklahoma*. *Oklahoma Bar Association*, (Mar. 28, 2019), [www.okbar.org/barjournal/oct2018/obj8926tolbertmeyers/](http://www.okbar.org/barjournal/oct2018/obj8926tolbertmeyers/).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

national interest in college football, leading to “increased” live attendance.<sup>105</sup> As one would expect, in light of the competition among networks to air college football games (rather than just two networks) the revenues to colleges and universities from television contracts have increased dramatically. In 1982, the plan called for member institutions to receive approximately \$130,000 in revenue from television appearances.<sup>106</sup> Around the 2017-18 season, an athletic department budget for the University of Michigan indicated that that school will receive approximately \$51 million in 2018 in television revenue, which includes both football and basketball.<sup>107</sup>

The NCAA is often said to be running its own business, and universities certainly benefit from the revenue gains of its large sports, such as men's football and basketball.<sup>108</sup> For example, *USA Today* reported that, "the NCAA had close to \$1.1 billion in annual revenue during its 2017 fiscal year."<sup>109</sup> “A little more than half of the growth from 2016 came from increases in TV and marketing fees that totaled \$821 million, revenue from championship events and investment income..”<sup>110</sup> Regulating the support and resources provided to the athletes who bring in floods of revenue to a university and to the NCAA, who cross state lines in order to compete, would plausibly fall under the Commerce Clause. The regulation and any legislative proposal would seemingly be subjected to the Commerce Clause because the NCAA and university athletic departments are instruments of interstate commerce and/or because the athletes are in interstate commerce. If not, then the regulation and legislative proposal would potentially be subject to the Commerce Clause because college sports are a commercial activity that substantially affects interstate commerce.

#### IV. CURRENT FINANCIAL AND MENTAL HEALTH POSITIONS, RELATED NCAA PROGRAMS, AND THEIR EFFECTIVENESS

##### A. Financial Aspects of the NCAA Relating to Student-Athletes

###### 1. Current Financial Platforms the NCAA Offers its Member Institution’s Student-Athletes.

NCAA student-athletes now have an online financial awareness platform, iGrad, that provides them with tips on how to be more fiscally responsible while in college, while also preparing them for financial decisions that may impact them after graduation.<sup>111</sup> The platform will provide more than 450,000 NCAA student-athletes with access to video-based interactive

---

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> ARTICLE: National Protection of Student-Athlete Mental Health: The Case for Federal Regulation over the National Collegiate Athletic Association, 92 Ind. L.J. 1221, 1241-1242

<sup>109</sup> Berkowitz, Steve. “NCAA Reports Revenues of More than \$1 Billion in 2017.” *USA Today, Gannett Satellite Information Network*, (March 8, 2018) [www.usatoday.com/story/sports/college/2018/03/07/ncaa-reports-revenues-more-than-1-billion-2017/402486002/](http://www.usatoday.com/story/sports/college/2018/03/07/ncaa-reports-revenues-more-than-1-billion-2017/402486002/).

<sup>110</sup> *Id.*

<sup>111</sup> *Online Platform Offers Financial Tips for College Athletes. NCAA.org - The Official Site of the NCAA*, (Sept. 7, 2017), [www.ncaa.org/about/resources/media-center/news/online-platform-offers-financial-tips-college-athletes](http://www.ncaa.org/about/resources/media-center/news/online-platform-offers-financial-tips-college-athletes).

modules, offering instruction for money and personal business management.<sup>112</sup> The nine modules have information on budgeting, saving, the different types of banking institutions, short- and long-term expenses and income, credit scores and how to avoid debt, taxes, investment portfolios and risks, lending, borrowing and interest rates; and various types of insurance.<sup>113</sup> Former NCAA student-athletes present the video messaging, with each module running around three to five minutes in length.<sup>114</sup> The online education is a direct tie to the Division I Student-Athlete Advisory Committee's priority to provide financial education resources, positioning college athletes for success in college and long after graduation.<sup>115</sup>

## 2. Fair Pay to Play Act

The NCAA will now permit athletes to be compensated for their NIL, the NCAA Board of Governors (the "Board") said in October 2019.<sup>116</sup> This new legislation is vital due to the long span of time where student-athletes were not allowed to profit from their NIL. The NCAA's top governing Board voted unanimously to permit students participating in athletics the opportunity to benefit from the use of their NIL in a manner consistent with the collegiate model.<sup>117</sup> Michael V. Drake, Chair of the Board and President of The Ohio State University, stated that the Board's action directs each of the NCAA's three divisions to immediately consider updates to relevant bylaws and policies for the 21st century.<sup>118</sup> "We must embrace change to provide the best possible experience for college athletes," Drake said.<sup>119</sup> "Additional flexibility in this area can and must continue to support college sports as a part of higher education. This modernization for the future is a natural extension of the numerous steps NCAA members have taken in recent years to improve support for student-athletes, including full cost of attendance and guaranteed scholarships."<sup>120</sup>

The modernization of the legislation is proposed to occur within a specific set of principles and guidelines, which start with assuring that student-athletes are treated similarly to non-athlete students, unless a compelling reason exists to differentiate.<sup>121</sup> The Board agrees that the guidelines need to make clear the distinction between collegiate and professional opportunities, as well as make clear that compensation for athletic performance or participation is impermissible, among other principles.<sup>122</sup> The Board's action was based on comprehensive recommendations from the NCAA Board of Governors Federal and State Legislation Working Group, which includes presidents, commissioners, athletic directors, administrators and student-athletes.<sup>123</sup> Ohio State athletic director Gene Smith and Big East Conference Commissioner, Val Ackerman, are leading the working group.<sup>124</sup> The Board also asked each NCAA division to create any new rules

---

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Lieu, Amy. *NCAA Will Permit Athletes to Be Compensated for Their Names, Images, Likenesses, Board of Governors Says*. FOX 9 Minneapolis-St. Paul, (Oct. 29, 2019) [www.fox9.com/news/ncaa-will-permit-athletes-to-be-compensated-for-their-names-images-likenesses-board-of-governors-says](http://www.fox9.com/news/ncaa-will-permit-athletes-to-be-compensated-for-their-names-images-likenesses-board-of-governors-says).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

beginning immediately, but no later than January 2021.<sup>125</sup> In April 2020, the Board supported rule changes to allow student-athletes to receive compensation for third-party endorsements both related to and separate from athletics.<sup>126</sup> It also supports compensation for other student-athlete opportunities, such as social media, businesses they have started and personal appearances within the guiding principles originally outlined by the Board in October 2019.

NCAA rules have long barred players from hiring agents and the association has steadfastly refused to allow players to be paid by their schools, with some exceptions.<sup>127</sup> A California law set to take effect in 2023 would prevent athletes from losing their scholarships or being kicked off their teams for signing endorsement deals. Other states could put laws in place earlier than that.<sup>128</sup> This new legislation is vital due to the long span of time where student-athletes were not allowed to profit from their NIL. In the new era of social media, student-athletes have garnered hundreds of thousands of followers, which would indirectly make them master marketers. With the new legislation, the NCAA and its member institutions have the opportunity to educate these highly valued student-athletes with courses directly focused various marketing practices along with financial practices to better monetize their NIL.

### 3. Unionization

More than seven months after the death of a Maryland football player who collapsed after suffering exertional heatstroke at a conditioning workout in May, Maryland state lawmakers proposed a bill that would upend the college athletics model across the state and give athletes the right to unionize and collectively bargain over issues related to health and safety, as well as compensation.<sup>129</sup> Brooke E. Lierman, Maryland State Delegate, proposed the measure and said recent events on college campuses have highlighted a growing need for an independent advocate who can work on behalf of athletes.<sup>130</sup>

The bill would cover all of the universities in Maryland that field athletic teams and highlights four primary areas that would be open to collective bargaining: scholarship terms, insurance benefits, use of an athlete's image or likeness and the establishment of an independent advocate to work on behalf of athletes.<sup>131</sup> The proposal challenges the NCAA's lucrative and time-honored model of amateurism that governs college athletics.<sup>132</sup> Student leaders are working with the current power structure in collegiate athletics and across the NCAA, which makes it difficult

---

<sup>125</sup> *Id.*

<sup>126</sup> Osburn, Stacey. *Board of Governors Moves toward Allowing Student-Athlete Compensation for Endorsements and Promotions*. *NCAA.org - The Official Site of the NCAA*, (April 29, 2020) [www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions](http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions).

<sup>127</sup> *Id.*

<sup>128</sup> Tucker, Eric, et al. *Athlete Compensation Comes Front and Center for NCAA*. <https://www.keyc.com>, (Oct. 29, 2019), [www.keyc.com/2019/10/29/athlete-compensation-comes-front-center-ncaa/](http://www.keyc.com/2019/10/29/athlete-compensation-comes-front-center-ncaa/).

<sup>129</sup> Maese, Rick. *Proposed Legislation Would Give Maryland College Athletes The Right To Unionize*. *The Washington Post*, (Feb. 9, 2019), [www.washingtonpost.com/sports/colleges/proposed-legislation-would-give-maryland-college-athletes-the-right-to-unionize/2019/02/07/d3f80368-2b0c-11e9-984d-9b8fba003e81\\_story.html](http://www.washingtonpost.com/sports/colleges/proposed-legislation-would-give-maryland-college-athletes-the-right-to-unionize/2019/02/07/d3f80368-2b0c-11e9-984d-9b8fba003e81_story.html).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

for these athletes to speak out against the status quo.<sup>133</sup> Student leaders fear that speaking out may impact their scholarship, education and their future.”<sup>134</sup>

“Many student-athletes are provided scholarships and many other benefits for their participation. There is no employment relationship between the NCAA, its affiliated institutions or student-athletes,” Donald Remy, the NCAA’s chief legal officer, said when a group of Northwestern University football players sought collective bargaining rights in 2014.<sup>135</sup> The National Labor Relations Board (“NLRB”) blocked those unionization efforts a year later.<sup>136</sup> That Board only oversees private entities; students at public institutions would be subject to state labor laws.<sup>137</sup>

The Maryland proposal is a novel one for state houses.<sup>138</sup> Lawmakers in Ohio and Michigan passed bills in 2014 that specifically stated college athletes are not university employees and therefore could not unionize.<sup>139</sup> North Carolina, on the other hand, passed a bill in 2017 that established a Legislative Commission on the Fair Treatment of College Student-Athletes, which was charged with exploring several issues, including health and compensation.<sup>140</sup> The body is expected to issue a report by the end of the month that calls for the creation of a protection commission for athletes but stops short of demanding compensation or collective bargaining rights, according to a draft of the report reviewed by *The Washington Post*.<sup>141</sup> Student leaders see how governing bodies can prioritize profits over the interests of college athletes and how the interests of college athletes don’t always align with financial and political interests of these institutions.<sup>142</sup>

As is often the case with complicated legislation, the proposal might not make it out of committee and go before the full body for a vote for a year or two.<sup>143</sup> But Lierman is hopeful that state lawmakers can begin the debate now, while McNair’s death and the ensuing controversy remain in the public conversation.<sup>144</sup> “It’s time to ensure there’s somebody standing up for these kids,” she said, “and making sure they’re safe and healthy, making sure they’re getting a good education, not being assaulted, not being retaliated against when they ask for safe playing conditions.<sup>145</sup> I think it’s time for legislatures around the country to step in and do something because the universities and the NCAA is certainly not doing it themselves.”<sup>146</sup> Existing state or federal laws could be used to force change, as student athletes attempted to do when they petitioned the NLRB for the ability to unionize. Indeed, if unionization were ever to occur, it would give student athletes the bargaining power to ask their private colleges and universities for greater mental health support and resources

---

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

## **B. Current Mental Health Programs the NCAA Offers its Member Institution's Student-Athletes and its Effectiveness.**

The Sports Science Institute (“SSI”), works closely with the Committee on Competitive Safeguards and Medical Aspects of Sports and is committed to serving and educating student-athletes and our membership, according to its website.<sup>147</sup> The SSI aims to provide college athletes with the best environment for safety, excellence and wellness through research, education, best practices, and collaboration with member schools, national governing bodies, key medical and youth sport organizations, and the public and private sectors.<sup>148</sup> The SSI believes mental health is “a part of”, not “apart from” athlete health.<sup>149</sup> The program’s website explains that mental health exists on a continuum, with resilience and thriving on one end of the spectrum and mental health disorders that disrupt a college athlete’s functioning and performance at the other.<sup>150</sup> The program seemingly strives to improve access to quality mental healthcare with the goal of creating a culture where care seeking for mental health issues is as normative as care seeking for physical injuries.<sup>151</sup>

Collaborating with the NCAA Student-Athlete Advisory Committees, as well as the most established medical, mental health and sports medicine organizations in the country, the SSI provides educational resources and inter-association best practices and tools which offer a model of care for student-athletes mental health.<sup>152</sup> This guidance encourages athletic environments that support help-seeking and facilitate early identification through appropriate referral and care.<sup>153</sup> Establishing protocols for care means more equitable care across sports and within schools in support of college athlete mental health and well-being.<sup>154</sup>

There is an ongoing “stigma” within sports that tend to minimize mental disorders or psychological distress because of the expectations of strength, stability and mental toughness inherent in the sports culture.<sup>155</sup> As a result, student-athletes often avoid disclosing a mental health concern, especially if the perceived negative consequence includes being rejected by teammates or coaches due to the disclosure.<sup>156</sup> In many ways, this stigma further exacerbates the problem of student-athlete mental health as it inhibits effective dialogue, education and development of resources to address these issues.<sup>157</sup> SSI has implemented mental best practices including:

- (1) clinical licensure of practitioner providing mental health
- (2) procedures for identification and referral of student-athletes to qualified practitioners;
- (3) pre-

---

<sup>147</sup> *Sport Science Institute, NCAA.org - The Official Site of the NCAA*, [www.ncaa.org/sport-science-institute](http://www.ncaa.org/sport-science-institute).

<sup>148</sup> *Id.*

<sup>149</sup> *Mental Health. NCAA.org - The Official Site of the NCAA*, [www.ncaa.org/sport-science-institute/mental-health](http://www.ncaa.org/sport-science-institute/mental-health).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Carr, Chris, and Davidson, Jamie. *Mind, Body and Sport: The Psychologist Perspective.* NCAA.org - The Official Site of the NCAA, (July 18, 2017), [www.ncaa.org/sport-science-institute/mind-body-and-sport-psychologist-perspective](http://www.ncaa.org/sport-science-institute/mind-body-and-sport-psychologist-perspective).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*



participation mental health screening; and (4) health-promoting environments that support mental well-being and resilience.<sup>158</sup>

However, schools are *encouraged*, not required to adhere to these mental health best practices.

Student-athletes, coaches, and faculty athletics representatives play a critical role in creating an environment that supports the mental health and well-being of college athletes.<sup>159</sup> That is why SSI developed web-based educational modules to help normalize and destigmatize mental health help seeking for college athletes.<sup>160</sup> For NCAA student-athletes, coaches, or faculty athletics representatives, the interactive modules will provide information to help you promote mental wellness and resiliency on your campus and to encourage and destigmatize help-seeking for mental health concerns.<sup>161</sup>

## V. AN EFFECTIVE MENTAL HEALTH AND FINANCIAL SERVICES PROPOSAL AIMED AT IMPROVING THE RELATIONSHIP BETWEEN STUDENT-ATHLETES AND THE NCAA

With the Fair Pay to Play Act coming into effect, it is vitally important to begin implementing practices that will educate student-athletes on how to manage their money. Further, with student-athletes being able to profit off their NIL comes athletic pressure that is likely to cause mental health issues. Therefore, it is equally important for mental health practices to be mandatorily implemented as well. There are three courses of action that any potential legislation should propose. First, financial management courses should be mandatory at all levels of intercollegiate athletics. Second, mental health sessions with professional psychiatrists should be mandatory for student-athletes. Third, mentorship programs should be incorporated into the athletic programs to allow student-athletes to have relationships with former student-athletes that have a career outside of sports.

### A. Mandatory Financial Management Courses

Federal legislation should focus on increasing education for athletes. The preexisting manual distributed by the NCAA should continue to be utilized. The focus of the regulation should be geared towards enhancing financial literacy among student athletes requiring them to take courses in their first year. Financial management, in the new era of “paying student athletes”, has made it vital for amateurs to learn how money works. Otherwise, the money earned often will be spent quickly on assisting the student athletes’ families that are in need of money. Further, the student athletes must be aware of how taxes work and how the money they earn in college or post-graduation is taxed. Most student-athletes coming from their high school programs aren’t taught about the basics of how money is handled, rather, they are learning social studies, basic and advanced mathematics, and other standard classes in high school along with preparing for the

---

<sup>158</sup> *Mental Health Best Practices*. NCAA.org - The Official Site of the NCAA, (Feb. 7, 2020), [www.ncaa.org/sport-science-institute/mental-health-best-practices](http://www.ncaa.org/sport-science-institute/mental-health-best-practices).

<sup>159</sup> *Supporting Student-Athlete Mental Wellness*. NCAA.org - The Official Site of the NCAA, [www.ncaa.org/sport-science-institute/supporting-student-athlete-mental-wellness](http://www.ncaa.org/sport-science-institute/supporting-student-athlete-mental-wellness).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

SAT/ACT. Making financial management courses mandatory will allow students to become more familiar with the basics of accounting and finance that will allow them to make sound decisions with the money they earn, after graduation, if they play professionally, or while in college, after the implementation of the Fair Pay to Play Act. These basic financial courses will also give student-athletes' who do not know what major to choose the ability to find an interest in something other than a major that is less difficult and allows them to remain eligible.

The NCAA recently conducted a study to determine how student-athletes at two NCAA institutions, Kansas State University and The University of Texas at Austin, budgeted and spent their money and discovered their preferred modes of receiving financial education. Using data collected from a variety of methods, a pilot financial literacy education program geared specifically for student-athletes was developed.<sup>162</sup> The pilot program was implemented at both institutions and aimed to measure students' financial literacy after participation in the pilot.<sup>163</sup> The study found that of 21% who had a monthly budget, 92% followed it, 47% experience anxiety when managing money, and when monthly spending was tracked, over 46% of transactions were food related.<sup>164</sup> The study also found a 7.26 out of 10 average ranking of interest in financial literacy, 60% did not receive any financial education in high school, and 65% did not receive any financial education during college orientation.<sup>165</sup> The pilot implicates what this Note proposes, that Peer Financial Counseling with one on one sessions, utilizing on-campus resources along with spending logs and offering cooking classes to help decrease amount of money spent eating out.<sup>166</sup> The NCAA, having learned this, should take action with legislation. The member institutions should be required to implement the proposed basic financial courses to the student-athletes curriculum or apart of the athletic program's duties in the NCAA by-laws.

## **B. Mandatory Psychiatric Sessions to Monitor the Mental Health of Student-Athletes**

The other federal legislative regulation should require the NCAA to provide mandatory and regularly conducted mental health sessions with psychiatrists with an athletic specialization for its member institutions' student-athletes. This regulation should be implemented because the pressures of competition at a high level, not only for championships for their schools, but with the opportunity to actually earn off their NIL, creates added pressure, not only physically, but mentally as well. Racial-ethnic minority student athletes' symptoms of distress, mental health, and factors that influence mental health usage have been examined. Statistics from the American College Health Association gathered 241 varsity athletes, 108 African Americans, 66 Latinos, 67 Asian Americans.<sup>167</sup> The Fall 2015 data set showed that 78% of racial-ethnic minority students reported some form of mental health need and only 11% of these athletes reported using mental health

---

<sup>162</sup> Smeyers@ncaa.org. *Enhancing Financial Literacy Among Student-Athletes*. NCAA.org - The Official Site of the NCAA, (Feb. 1, 2019), [www.ncaa.org/about/resources/enhancing-financial-literacy-among-student-athletes](http://www.ncaa.org/about/resources/enhancing-financial-literacy-among-student-athletes).

<sup>163</sup> *Id.*

<sup>164</sup> Rubin, Lisa M., et al. *Enhancing Financial Literacy Among Student-Athletes: 2018 NCAA Innovations in Research and Practice Grant Final Report*. NCAA.org, [https://ncaaorg.s3.amazonaws.com/research/grants/innovations/2018/2018RES\\_InnoGrant\\_FinancialLitKSU\\_FinalReport.pdf](https://ncaaorg.s3.amazonaws.com/research/grants/innovations/2018/2018RES_InnoGrant_FinancialLitKSU_FinalReport.pdf)

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Ballesteros, Jorge. *Under the Face Mask: Racial-Ethnic Minority Student-Athletes and Mental Health Use*. (Dec. 17, 2018), <https://www.tandfonline.com/doi/full/10.1080/07448481.2018.1536663>

services in the past year.<sup>168</sup> This alarming statistic shows that there is a lack of awareness of the high mental health need for student-athletes, especially minority student-athletes.

It is vital for students to have an unbiased professional to converse with on matters that are difficult to discuss with family members, coaches, teammates, friends, or outside influences. Increasing the awareness of the mental health services is not enough because student-athletes have demanding schedules. Also, it is often the case that the culture of athletics finds opening up on mental health issues is a weakness. A basketball writer, Jackie MacMullan, had written for ESPN on NBA players' mental health problems including NBA All-Stars Kevin Love and Paul Pierce, among others, discussing their struggles with depression and anxiety.<sup>169</sup> Other big names backed out at the last minute, concerned about the stigma of mental illness and whether it might hurt their ability to land a good contract in free agency, a point MacMullan emphasized when she spoke after the session ended describing the problem as "rampant."<sup>170</sup> Having student athletes participate in these mental health sessions, mandatorily, will potentially allow this weakness to transform into a strength. Being a student-athlete is similar to a job, with the time commitments and pressure to perform that leads to stress. These sessions will increase performance because being a student-athlete is more than performing at a high-level physically, but mentally as well.

Legislation was passed January 2019, requiring member schools to make mental health services and resources available to the NCAA's Power 5 conferences. The move came in wake of the death by suicide of former Washington State quarterback Tyler Hilinski, which both shocked and saddened the world of college athletics.<sup>171</sup> ESPN reported that Washington State Athletic Director, Pat Chun, spoke during the Division I Autonomy Forum and Business Session at the NCAA convention in support of the legislation, pointing out that suicide is the second-leading cause of death among college-aged people.<sup>172</sup> When the vote took place afterward, representatives from each of the Power 5 leagues, plus 15 student-athlete representatives, unanimously supported it.<sup>173</sup> Now, schools will distribute mental health education information and resources to student-athletes, coaches, administrators and other personnel within athletics departments.<sup>174</sup> This was one step taken to solving the mental health epidemic in collegiate sports. Legislation should not only require member institutions to make mental health services and resources available to their student-athletes, but legislation should demand the member schools, of each division level, to conduct mandatory sessions with psychiatrists with the student-athletes.

### C. Mentorship Program Incorporating Alumni

The last federal legislation should be to require legitimate mentors to meet with student-athletes. There have been independent mentorship programs in different states like the Apple Training Institute, that train upper-class student-athletes to match with underclassmen and focus

---

<sup>168</sup> *Id.*

<sup>169</sup> Affleck, John. *Athletes Talking About Their Mental Health And Why It Matters. Across America, US Patch*, (July 2, 2019, [patch.com/us/across-america/athletes-talking-their-mental-health-why-it-matters](http://patch.com/us/across-america/athletes-talking-their-mental-health-why-it-matters)).

<sup>170</sup> *Id.*

<sup>171</sup> Scott, Jason. *Power 5 Passes Legislation Supporting Mental Health*. (Jan. 2019), [www.athleticbusiness.com/college/power-5-passes-legislation-supporting-mental-health.html](http://www.athleticbusiness.com/college/power-5-passes-legislation-supporting-mental-health.html).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

on areas of health and wellness.<sup>175</sup> However, student-athletes would benefit more if the mentor was a recent alum rather than a teammate. The students-athletes are consumed with their sport and competing at a high-level. A mentor unrelated to the current team will give the student-athletes independence to speak freely amongst an unbiased mentor rather than an older teammate that may have their own mental or financial issues to handle. Building a relationship with an alum that has achieved success in something other than playing sports professionally would allow the student-athlete to find out what life is like outside of playing their sport. This proposal would allow the mentor to educate the student athletes on companies in the universities' state or city and the opportunities that are accessible to them after their time as an athlete. With the financial management courses and the mental health sessions, the student-athletes will be well-equipped to pursue corporate opportunities, as they will know how to manage their money and have the mental stability to take on corporate roles. This proposal is an opportunity for both the alum's company and the universities to build a relationship through the student-athletes that will increase community engage, alumni relations, donations from student-athletes after their time in this new system. Student-athletes will have the opportunity to have good paying jobs after college that will allow them to willingly give money to their university. The NCAA and its member institutions should require mentors to meet regularly with the student-athletes.

## VI. CONCLUSION

Student-athletes' growing distrust of the NCAA and its member institutions due to the adverse impact of its by-laws and regulations is a concern that will allow grow worse as students are able to earn on their name, image, and likeness. Professional athletes, coaches, doctors, and even student-athletes are voicing their opinions on the importance of mental health in collegiate athletics. The "mental toughness" aspect of sports is seen in a new light. Strengthen mental health by implementing these practices that allow student-athletes to express issues and personal complications is what will build toughness to win in sports as well as in life. In the midst of the cancellation of sports due to the Coronavirus, student-athletes who have dedicated their entire college career to participating in their respective sport have to stay home. Student-athletes with minimal resources have to return to low-income neighbors, without an operating facility to craft their athletic skills. Student-athletes that were or were expecting to have a promising season will not be able to increase their chances of going to the professional leagues. The consequences of the Coronavirus will lead students-athletes to a difficult, confusing and frustrating place mentally.

Further, the frustrations that arise from mental health concerns could potentially lead to poor financial decisions like over-buying, spending on glamorous items that student-athletes have not had the money to afford once the Fair Pay to Play Act is implemented. Just making student-athletes aware of the programs is ineffective when it comes to mental health and financial literacy. Instead, federal regulation should be passed making it mandatory for mentors and psychiatrists to mandatorily and regularly meet with students-athletes along with financial management courses. These practices will adequately prepare students-athletes to perform at their highest potential during their time in college and after.

---

<sup>175</sup>Apple Training Institute. *Student-Athlete Mentor Programs*.  
[www.ncaa.org/sites/default/files/2018SSI\\_Mental\\_Health\\_Best\\_Practice\\_1\\_Checklist\\_20180601.pdf](http://www.ncaa.org/sites/default/files/2018SSI_Mental_Health_Best_Practice_1_Checklist_20180601.pdf)2018SSI\_Stude  
ntAthlete\_Mentor\_Programs\_20180601.pdf.