THE PROSPECT OF PAY-FOR-PLAY IN COLLEGIATE ATHLETICS: IS THIS THE END OF THE NCAA?

By

KENNEDY ANNE SHULMAN

A Thesis Submitted to The Honors College

In Partial Fulfillment of the Bachelor of Science in Business Administration (BSBA)

With Honors in

Finance

THE UNIVERSITY OF ARIZONA

D E C E M B E R 2 0 2 1

Approved By:

Dr. Ryan Johnson
Department of Economics

Table of Contents

Acknowledgments……1

Abstract……2

The Formation of the NCAA…….……...3-4

A Timeline of the NCAA's History...…….…....4-9

The Commercialization of Intercollegiate Athletics ……..….....9-11

NCAA Regulations and Lash Back……..……..……..11-13

O'Bannon vs. NCAA……13-17

Aftermath of O'Bannon Case……...…....17-18

NCAA v. Alston & The Aftermath …….....…..18-19

What Comes Next: The Question Everyone is Asking……19-21

NIL Financial Ramifications……21-23

Potential Solutions……....23-24

References……25-29

Acknowledgments

I would like to acknowledge all individuals who have supported me throughout this process. I would like to extend my sincere gratitude to my family for their encouragement and unconditional belief in me. Specifically, I would like to thank my dad for inspiring me to write this thesis.

I would also like to acknowledge and sincerely thank my thesis advisor, Dr. Ryan Johnson. His support and guidance have helped me tremendously throughout this journey. The time and effort he has put into my thesis does not go unnoticed.

Abstract

The NCAA, previously known as the IAA until 1910, was developed to regulate intercollegiate athletics. In response to the increasing commercialization of college athletics and public pressures, the NCAA implemented more stringent regulatory systems to govern student-athletes. In doing so, they limited the financial and opportunistic benefits athletes were allowed to receive and backed their governing structure on the ideal of amateurism. Until recently, NCAA rules prohibited student-athletes from being compensated for their names, images, and likenesses in any form. This includes financial aid exceeding the cost of attendance at their respective schools, contracts with any professional team, endorsements, and any other pay based on athletic ability.

The NCAA's amateurism model has come under attack for the exploitation of student-athletes. In several major cases, concerns were raised that the NCAA's stringent rules were subject to antitrust laws and created unlawful restraints of trade. Through heavy litigation in cases such as O'Bannon v. NCAA and NCAA v. Alston, these concerns were confirmed. Using the Rule of Reason to interpret the Sherman Antitrust Act, it was held that the NCAA's rules restricting education-related benefits violated federal antitrust laws. This ruling did not concern restrictions untethered to education, but in response to state laws being passed regarding such matters, the NCAA opened up existing constraints.

This study aims to look at the implications of this ruling and its impact on student-athletes and NCAA member schools. These implications include how NIL activities will proceed without a federal law, how competitive balance will be preserved between bigger and smaller schools, and how student-athletes and member schools alike will be financially impacted.

The Formation of the NCAA

The game we all know and love, football, is a much different game today than it was at the start of the 20th century. In the early 1900s, football was lethally brutal. Helmets were not yet regulated, the forward pass was illegal, mass formations were utilized, and gang tackling was encouraged. It was reported that during the 1904 season alone, the gruesomeness of this sport resulted in 18 deaths and 159 serious injuries.

As the death and injury toll grew, public outcry for the banishment of football became louder. At one point, newspaper editorials compared the sport to the gladiator combats in Ancient Rome. President Theodore Roosevelt, one of football's biggest fans, knew something had to be done. In October of 1905, he convened a meeting with the highest-ups from the major football powerhouses: Harvard, Princeton, and Yale. He urged them to restructure the game to both appease the public and protect the players.

This meeting, while set with good intentions, did little to change the football environment. The 1905 season, commonly referred to as a "death harvest", was met with more fatalities and increasing serious injuries. In December of 1905, Chancellor Henry M. MacCracken from NYU stepped forward and organized a meeting with 13 major intercollegiate football programs. He called this meeting for the purpose of determining whether football could be reformed and saved, or if it was time to abolish the game.

On December 28th, 1905, shortly after MacCracken's meeting, 62 colleges and universities established and joined the Intercollegiate Athletic Association of the United States. They worked to reform the game of football by establishing new safety measures and prohibiting dangerous

techniques. Their efforts proved to be worthwhile as player deaths and injuries declined in both the 1906 and 1907 seasons.

While death and injuries tolls were on the decline, the dangers of football were far from eliminated. More reform was needed and the IAAUS was ready to take on the challenge. On March 31st, 1906, the IAAUS was formally constituted and granted the authority to make rules, and in 1910, the association was renamed the National Collegiate Athletic Association.

A Timeline of the NCAA's History

This timeline will outline all events in the NCAA's history that are relevant to this study. These events will showcase the NCAA's record of rule-setting and how these rules have impacted collegiate athletes.

December 29th, 1910: The IAAUS was formally retitled as the National Collegiate Athletic Association (NCAA).

December 18th, 1922: The NCAA adopted a Ten Point Code of Eligibility. This code both revised rules previously set and adopted new regulations. Pertaining to eligibility, the following restrictions were established: (1) graduate student participation was forbade, (2) collegiate athletes were limited to three years of play, (3) college teams could not compete against non-college teams, and (4) players were disallowed from playing on any team outside of their institution. In addition, control of collegiate sports programs was handed entirely to institution faculty and pay to collegiate athletes for their participation in sports was strictly prohibited (Falla, 1981). Aside from eligibility, this code was meant to uphold the principles of amateurism.

July 22nd-23rd, 1946: Following World War II, the NCAA adopted the Sanity Code (formally adopted in 1948). The Sanity Code regulated what collegiate athletes could receive from their respective colleges. Simply put, the code restricted compensation to need-based scholarships, meal plans, and jobs. It was designed to "alleviate the proliferation of exploitive practices in the recruitment of student-athletes" (Smith, 1987). The Constitutional Compliance Committee was created to enforce this code.

June 12th, 1951: The Sanity Code was repealed and interchanged with the Committee on Infractions. This committee took the place of the Constitutional Compliance Committee and was given higher authority to investigate violations and enforce regulations.

October 1st, 1951: Walter Byers was named executive director of the NCAA. Under his supervision, programs were employed to manage the televising of live football games. He also aided in the foundation of more legitimate systems for examining violations and administering penalties.

August 6th, 1973: The NCAA decided to split its member schools into three divisions: DI, DII, and DIII. This is largely due to how rapidly collegiate athletics was growing. The gap between small and big schools was quickly expanding. With the commercialization of sports, bigger schools had the ability to invest resources into their sports programs, while smaller schools struggled to keep pace.

January 14th-17th, 1976: At the third Special Convention, a proposal concerning need-based financial aid for student-athletes was rejected. The NCAA did not want student-athletes to receive aid both based on need and athletic ability, as it could potentially exceed the cost of attendance.

January 11th-13th, 1978: D1 football programs split into two subdivisions: I-A and I-AA. The I-A was later renamed the Football Bowl Subdivision, while the I-AA was retitled the Football Championship Division.

March 1979: The NCAA signed a two-year television deal with ESPN. This further proliferated the commercialization of collegiate athletics.

January 13th, 1981: Influenced by Title IX, the NCAA approved a new structure to include women's programs within their association. This led to the expansion of women's collegiate sports. DII and DIII women's championships in select sports were quickly established. Shortly after, D1 championships were also launched.

March 4th, 1981: The NCAA and CBS signed a three-year deal that gave CBS the exclusive rights to the D1 Men's Basketball Championship.

January 10th-12th, 1983: Proposal No. 48 was adopted by Division I. This proposal intensified the academic requirements for incoming student-athletes. Prospective athletes were disallowed

from participating in collegiate sports programs if they did not meet minimum grade points averages and standardized test scores.

June 27th, 1984: NCAA vs. Board of Regents of the University of Oklahoma. In 1977, the College Football Association was formed, in part, to challenge the NCAA for football television rights. The CFA attempted to overpower the NCAA's televising agreements by formulating contracts with different commercial broadcasting companies. In response, the NCAA threatened penalties against all member schools who agreed to partake in the deals set forth by the CFA. Members of the CFA, specifically the University of Oklahoma and University of Georgia, filed suit and it was taken all the way to the U.S. Supreme Court. It was held that the NCAA Football Television Plan infringed on the Sherman Antitrust Act.

January 8th-12th, 1989: The NCAA adopted Proposal No. 42. This proposal mandated that universities and colleges could not award athletic scholarships to student-athletes who only partially met academic standards. Proposal No. 42 was heavily opposed and overturned in 1990.

November 22nd, 1989: The NCAA agreed to a $1 billion televising deal with CBS. This deal was valid from 1991-1997.

January 10th, 1990: During the NCAA Convention, the association discussed the demanding expectations of collegiate athletes. The time demands for participation in sports programs were debated at length.

January 10th, 1992: Proposal No. 16 was adopted, replacing Proposal No. 48. In short, the new proposal was a stricter version of the former provisions. Proposal No. 48 required students to obtain a 700 or higher on the SAT or a 17 out of 36 on the ACT. It also required prospective athletes to maintain a 2.0 grade point average in 11 core classes. In comparison, Proposal No. 16 required students with a 2.0 GPA to obtain a 1010 or higher on the SAT or a combined 86 on the ACT. Students with a 2.5 GPA were required to obtain at least an 820 on the SAT or a combined 68 on the ACT. (Rosen, 2000)

December 1994: The NCAA and CBS negotiated another contract and agreed to a $1.7 billion deal. This contract was set to last 8 years. At the same time, ESPN expanded their televising rights to broadcast the D1 Women's Basketball Championship.

November 18th, 1999: The NCAA and CBS televising agreement was renewed. The new contract price was set at $6 billion, lasting for 11 years. This deal gave CBS the exclusive rights to several DI Championships, including D1 Men's Basketball.

2003: The Playing Rules Oversight Panel was established. This panel served as the overarching authority over the committees within the NCAA. They assess new playing rules being proposed and evaluate any playing rules modifications and/or problems.

2010: The NCAA and CBS Sports and Turner Broadcasting System signed a televising, Internet, and wireless rights contract. This $10.8 billion contract was set to last for 14 years and significantly increased the viewers of the DI Men's Basketball Championship.

August 8th, 2014: O'Bannon vs. NCAA. This case is expanded upon below.

April 12th, 2016: The 2010 deal with CBS Sports and Turner Broadcasting System was renewed and extended until the year 2032. This extension was priced at $8.8 billion.

June 21st, 2021: NCAA vs. Alston. After heavy litigation, the U.S. Supreme Court ruled that the NCAA could no longer restrict the educational benefits collegiate athletes could receive from their respective schools. This ruling did not concern non-educational benefits. This case is further expanded upon below.

June 30th, 2021: Although the previous ruling did not concern non-educational benefits, states began passing laws that overrode existing NCAA constraints regarding such matters. In response, the NCAA suspended their restrictions related to name, image, and likeness.

The Commercialization of Intercollegiate Athletics

Dating back to the early 1900s, prior to the televising of collegiate athletics, the consequences of commercialization became apparent. As college sports grew in popularity, the desire to win matches grew as well. Teams became willing to do anything to display their dominance, including cheating and/or resorting to violence. The president of Harvard at the time, Charles Eliot, was reported stating "Lofty gate receipts from college athletics has turned amateur contests into major commercial spectacles" (Horton, n.d.). Attendance at college sporting events grew rapidly, and with this, college athletics turned from friendly competitions to dangerous displays of power.

As collegiate programs grew more successful, public interest only continued to intensify. This held true as more students and talented young athletes gained access to higher education. However, as audiences increased in numbers and became more exposed to the dangerous competitions taking place, public cheering turned to public outcry. This led directly to the establishment of the NCAA in 1910. In an effort to both appease the public and protect young athletics, the NCAA attempted to restructure the game. They instituted new rules, abolished dangerous techniques, and founded committees to enforce penalties. Despite their efforts, the NCAA's regulations were insufficient against the ever-growing commercialization of collegiate athletics. This became especially apparent with the advent of media. With televisions and radios becoming a staple in American households, the popularity of college sports rose to new heights and the NCAA struggled to keep pace. In response to the challenges commercialization posed, the Carnegie Foundation for the Advancement of Education released a 1929 Carnegie Report on College Athletics declaring the following:

> A change of values is needed in a field that is sodden with the commercial and the material and the vested interests that these forces have created. Commercialism in college athletics must be diminished and college sport must rise to a point where it is esteemed primarily and sincerely for the opportunities it affords to mature youth. (Carnegie Report, 1929)

While commercialization did bring in higher revenues, it also led to worsening safety outcomes that needed to be addressed. Consequently, the NCAA set out on a path of stringent rule setting. They implemented more rigorous regulatory systems to govern student-athletes, and backed doing so on the ideal of amateurism.

As the NCAA enhanced their authority, they were widely criticized for unfairly limiting the financial and opportunistic benefits athletes were allowed to receive. College athletics were bringing in all-time high revenues, and student-athletes were not reaping the benefits. This became even more controversial following the U.S. Supreme Court Case, NCAA v. Board of Regents. Through this litigation, the NCAA was reprimanded for violating antitrust laws and colleges were now allowed to receive all revenues from the televising of their sporting events. While this ruling proved beneficial to colleges and universities, it heightened criticisms claiming student-athletes were exploited for their talents.

NCAA Regulations and Lash Back

The NCAA has backed their governing structure on the ideal of amateurism since their inauguration in 1910. In the context that the NCAA utilizes it, an amateur is "someone who does not have a written or verbal agreement with an agent, has not profited above his/her actual and necessary expenses or gained a competitive advantage in his/her sport" ("What is Amateurism?", 2019). These regulations are largely due to the belief that education should be the primary focus while in college. Professionalizing collegiate sports through pay, in the NCAA's opinion, would take away from a student's educational experience.

Per the Amateur Code in the NCAA Constitution, the following can impact a student-athlete's ability to qualify as an amateur:

- Taking a break between high school/secondary school and full-time collegiate enrollment and continuing to participate in your sport(s).
- Using a recruiting agency, scholarship agent or a scouting service.

- Receiving payment from a sports team to participate
- Receiving funds or money to offset training expenses
- Accepting prize money based on performance/finish at a competition
- Being represented or marketed by a professional sports agent
- Promoting or endorsing a commercial product or service. ("Amateurism," n.d.)

With these regulations in place, student-athletes are extremely limited in their ability to earn money off of their names, images, and likenesses (NILs). In fact, the only financial benefits athletes are permitted to accept is money in the form of scholarships.

These limitations have led to various criticisms by student-athletes themselves and the public. For starters, both the NCAA and colleges are making significant amounts of money off of talented student-athletes. Nonetheless, the athletes themselves are receiving next to nothing in return. Critics claim that this practice leads to the exploitation of young talent, advocating that student-athletes are entitled to the money they are bringing in.

Additionally, the scholarships being offered to collegiate athletes are insufficient compared to the time and effort they are dedicating to their teams. According to original NCAA guidelines, scholarships based on athletic ability could not surpass the value of a grant-in-aid, and scholarships unrelated to athletic ability could not be greater than the cost of institution attendance. In 2014, the NCAA revised restrictions to allow for athletic-based scholarships up to the full cost of attendance. Opponents of amateurism question why student-athletes are expected to put in similar dedication to that of professionals without reaping comparable benefits. In an effort to establish a well-defined delineation between collegiate and professional players, the

NCAA slowly but surely stripped the rights away from student-athletes. Criticisms of this became more widespread and those impacted started asking if the rules in place created unlawful restraints of trade and/or if they were subject to antitrust laws.

O'Bannon vs NCAA

In 2008, Ed O'Bannon was featured in a college basketball video game produced by Electronic Arts (EA). O'Bannon, a former All-American basketball player at UCLA, was neither aware that he was going to be starred nor compensated for his likeness. As a result, in 2009, O'Bannon sued the NCAA claiming that their restrictions inhibiting pay for an athlete's name, image, and likeness violated Section 1 of the Sherman Act.

The Sherman Antitrust of 1890 "Prohibits every contract, combination, or conspiracy, in restraint of trade or commerce". Pertaining to Ed O'Bannon, the antitrust claims in question were presented before the District Court. Trailing a bench trial, the District Court maintained that the NCAA's restrictions did, in fact, violate antitrust laws. They backed this verdict with a claim that the NCAA was restraining trade in both the college education market and group licensing market.

The college education market is the platform that DI football and basketball programs utilize to recruit potential athletes to their respective colleges and universities. However, to align with NCAA restrictions, programs cannot use the enticement of money to attract young talent. Instead, they utilize a loophole in the rules by attracting athletes with goods and services. The District Court held that the NCAA was restraining trade within this market because of the lack of substitutes for the goods and services being offered.

The group licensing market, if not for the NCAA's restrictions, would provide student-athletes with a platform to license their names, images, and likeness for compensation. The District Court determined that the NCAA was also restraining trade in this market because of the high demand for collegiate athletes' names, images, and likenesses. They demonstrated this demand by illustrating how live game telecasts, video games, game rebroadcasts, and advertisements would all seek to work with student-athletes.

When attempting to prove violations of the Sherman Antitrust Act, courts use the Rule of Reason. The Rule of Reason obliges courts to look at both the pro- and anti-competitive effects of the claim at hand before reaching a verdict. In this case, the District Court was required to analyze the pro- and anti-competitive effects of the NCAA's restrictions regarding names, images, and likenesses.

Using this legal doctrine, the District Court's verdict was reformed. The court determined that the NCAA's restrictions did indeed have an anti-competitive effect in the college education market. However, they modified their previous holding and determined that the respective restrictions did not have the same effect on the group licensing market. The District Court also acknowledged that the rules in place exhibited some pro-competitive effects, but that similar effects could be achieved without violating antitrust laws.

Pertaining to the anti-competitive effects, the court found that if the NCAA's compensation rules were abolished, student-athletes would pay less for the colleges and universities they were attending. This is because these schools would have the ability to offer collegiate athletes'

compensations that surpassed the cost of attendance. Essentially, but for the restrictions in place, colleges and universities would compete with one another to recruit young talent with the incentive of money.

On the contrary, the District Court also demonstrated the pro-competitive purposes that the NCAA's compensation rules serve. To begin, the court held that the rules in question worked to uphold the ideal of amateurism. Nonetheless, the District Court maintained a different definition of amateurism that the one backing NCAA restrictions. Although they found that amateurism sustains the popularity of intercollegiate athletics, they also concluded that there is a need for reform due to inconsistencies. For example, student-athletes can accept Pell grants that cause compensation to exceed the cost of attendance. This directly contradicts NCAA's restrictions regarding such matters.

The second pro-competitive effect concerns competitive balance. In an effort to justify restrictions in place, the NCAA argued that compensation rules prevented bigger schools from gaining an unfair advantage over smaller schools. Without these rules in place, bigger schools would have the resources to recruit incoming athletes with large sums of money. Smaller schools do not have the luxury of similar resources, and hence, would not have the ability to recruit on the same playing field. The District Court, while acknowledging the credibility of the NCAA's argument, ultimately determined that the restrictions did not promote competitive balance. This is largely because while bigger schools are limited in the compensation they can offer to incoming athletes, they are not limited in what they can spend on other features of their sports

programs. For example, there are no rules in place concerning the amount coaches can be paid or how much can be spent on training facilities.

An additional pro-competitive effect that surfaced amid the trial was the integration of academics and athletics. In response to the District Court ruling, the NCAA argued that the restrictions in place provided athletes with higher quality educational services. Again, while acknowledging that the integration of academics and athletics served procompetitive purposes, the District Court claimed that this integration was not due to compensation rules. Rather, it was a result of alternative NCAA rules, such as requiring student-athletes to attend class or limiting the amount of time coaches can demand players practice for.

The final pro-competitive effect disputed in court concerned the increasing of output. The NCAA claimed that their compensation rules directly increased output in the college education market by enabling more schools to compete in D1. As more schools competed, more athletes had opportunities to be recruited. According to the NCAA, without these rules in place, smaller D1 schools would not have the resources to keep pace with what bigger D1 schools could offer incoming athletes. As a result, they would be forced to leave the division. While this argument was good in theory, the District Court discarded it when they discovered that even the smaller schools in question had petitioned for a change in compensation restrictions.

At the conclusion of the trial, the District Court ordered that the NCAA revise their rules to allow for the compensation of player's names, images, and likenesses. They additionally enjoined that

the NCAA allow NIL payment of up to $5000 per year in deferred payment. This compensation was to be held in trust funds until the respective student-athletes left their schools.

Aftermath of O'Bannon Case

In response to the District Court verdict, the NCAA went on to appeal. They did so under the premises that (1) their compensation rules did not concern commercial activity, and (2) the plaintiffs impacted had not suffered antitrust injury. The Appeals Court found that per the current definition of "commerce", a student-athlete does indeed engage in commercial activity when they trade their talent and NIL rights for scholarships at their corresponding schools. Additionally, the court determined that the plaintiffs did suffer injury. The Appeals Court reasoned that, NCAA restrictions aside, entities such as video game makers would seek to exchange student-athletes' names, images, and likenesses for compensation. This satisfies the qualifications of antitrust injury.

Following trial, the Appeals Court affirmed in part and vacated in part. They affirmed that the restrictions in place were far too rigid and required revision. However, they vacated the District Court's verdicts that required the NCAA to allow for compensation of NIL and payment of up to $5,000 per year. Instead, the Appeals Court ruled that the NCAA only has to allow for compensations up to the cost of attendance.

Soon after the District Court's verdicts were vacated, several lawsuits were filed by angered collegiate athletes against the NCAA. In March of 2019, these lawsuits were all merged into one and heard by U.S. District Judge Claudia Wilken.

After a long and tedious trial, Judge Wilken declared that the NCAA was, in fact, violating antitrust laws. She determined that by limiting the amount of compensation student-athletes can earn, the NCAA was undoubtedly restraining trade. Consequently, Judge Wilken took a stand and for the first time in history, ordered that the NCAA revise rules to allow for schools and conferences to adopt their own policies for compensation. Unhappy with this verdict, the NCAA appealed, and the case made its way all the way to the U.S. Supreme Court. On June 21st, 2021, the Supreme Court affirmed Judge Wilken's ruling after the monumental NCAA v. Alston trial.

NCAA vs Alston & The Aftermath

In this landmark case, the U.S. Supreme Court addressed the NCAA's appeal regarding their ability to restrict student-athlete compensation. While many have questioned the NCAA's ability to limit grants untethered to education, this case only concerned non-cash, education-related benefits.

Ultimately, the Supreme Court backed Judge Wilken and, for the last time, ruled that the NCAA's compensation restrictions violated federal antitrust law. The Rule of Reason was utilized to reach this verdict. While this is not what the NCAA had hoped for, there was nothing left for them to do but accept that they would have to revise their restrictions. The amateurism model that had backed their governing structure since 1910 was no longer adequate enough to shield them from the law. Starting in August of 2021, colleges and universities were permitted to compensate their student-athletes however they saw fit. The only limitation in place is that this compensation has to somehow connect to education.

This verdict was only the start. While the NCAA could no longer restrict education-related benefits, the fight for fairness was not yet over. Over the past two years, prior to this ruling, state politicians had been working to pass laws that overrode NCAA restrictions disallowing non-educational benefits. This included legalizing third-party endorsements and the monetizing of student-athlete NILs. On July 1st, 2021, only a couple days after the U.S. Supreme Court decision, 8 state laws went into effect. With this, student-athletes attending colleges and universities in those jurisdictions could now be compensated for their names, images, and likenesses. Before more states could follow, the NCAA waved the white flag and opened up existing NIL constraints. They wanted to avoid more costly litigation that would surely result.

What Comes Next: The Question Everyone is Asking

Although currently sailing in unprecedented waters, these revolutionary rule changes have been a long time coming. In 1985, an article titled "Compensation for Collegiate Athletes: A Run for More than the Roses?" was published in the San Diego Law Review. This article, written over 35 years ago, predicted exactly what is happening today. Leonard M. Shulman is quoted stating the following:

> Realistically, college athletes receive compensation, and this compensation should be recognized as legitimate. An athlete is an "employee" of his or her university, as the term is defined under worker's compensation statutes. The NCAA's regulation of compensation of student athletes is a violation of both federal antitrust laws and the equal protection clause of the fourteenth amendment. In calling for greater accountability, the question is how much deference should be given to NCAA rules which attempt to

> regulate a student-athlete's economic opportunities in the name of amateurism. (Shulman, 1985)

The million dollar question is what happens next. One D1 athletics director referred to these unique times as the "Wild West" stating, "The next couple years will be fascinating and messy" (Wolken, 2021). Without a federal law governing the outside compensation collegiate athletes can earn, we can only assume that anything goes, and that the NCAA will be able to do very little to stop it.

So, where do we go from here? It seems everyone is unsure of how to answer this question. Some conferences propose allowing each individual school to develop their own rules regarding non-educational related benefits. The incentive to do so is to ensure that antitrust laws remain unviolated. Gabe Feldman, head of the Tulane Sports Law Program, believes he has the answer and proposes that, "The safest way to proceed for the NCAA is to allow the conferences or schools to make their own rules. And regardless of how restrictive the conference or school rules are, they are unlikely to violate antitrust law because no individual conference or school has sufficient power in the market to harm competition" (Berkowitz, 2021). Essentially, the only limitation to NIL transactions would be laws of the state the school resides in. If your state does not have laws regarding such matters, student-athletes are unlimited in the NIL activities they can engage in. While this might seem like a beneficial solution, as you will see below, schools will have a tendency to compete against one another to attract the most talented students. They will adopt rules that will facilitate the revenue earning of student-athletes, which will ultimately harm competitive balance.

Other proponents of NIL activities are proposing that schools and their athletes take part in collective bargaining. Collective bargaining would, in its simplest form, render student-athletes' employees of their colleges and universities. As employees, collegiate athletes would have the ability to unionize and negotiate for the compensation they are earning. Advocates of collective bargaining claim that this method would provide student-athletes with the opportunity to earn a more reasonable share of the revenues they are bringing in.

Currently, the NCAA is working with Congress to modernize NIL rules and formulate a federal law that will govern all member schools and student-athletes. In the meantime, colleges and universities are saddled with several challenges that will not be easily overcome.

NIL Financial Ramifications

Regardless of the above methods employed, players and universities alike will bear the financial impact from the decision in NCAA v. Alston. With respect to players, the financial impacts are directly linked to the educational benefits they can now receive. Specifically, the amount of financial aid, namely in the form of Pell grants, that players can receive will be affected. In the 2015-2016 school year, 48.5% collegiate athletes that received athletic scholarships also received need-based aid through FAFSA. Of this need-based aid, 31.3% was in the form of Pell grants. (Fritz, 2021).

As a result of the abolishment of NIL rules, any profits now made of a student-athletes' name, image, or likeness will be treated as taxable income. All taxable income must, under federal law, be reported to FAFSA when applying for need-based aid. Problems will arise if students' capitalizing on their NIL exceed the threshold of eligibility for need-based aid. The taxes they

are paying on their NIL transactions coupled with the cost of attendance at their respective schools could ultimately outweigh the benefits they are receiving. As a result, the profits on NIL will prove to be unworthwhile. To be eligible for a Pell grant, one must have a total family net income of $50,000 or less. The average grant totals $4,000 per year. While students do receive an income protection allowance of $6,000, earning more than that will result in the reduction of their need-based aid by roughly half. Additionally, they will have to pay taxes on every dollar that exceeds the income protection allowance (Caron, 2021). This will pose challenges as student-athletes are projected to earn a total of $1.5 billion. The amount each individual athlete can earn ranges based on talent and school. Josh Schafer states, “Division 1 players have been earning $471 on average, according to Opendorse data, while some of these NCAA athletes earned more money just in the month of July than their yearly tuition” (Schafer, 2021).

Universities will also be forced to manage the financial fallout from the NCAA v. Alston verdict. Because NIL profits will be treated as taxable income, the student-athlete enrollment at schools will be impacted. For example, it is expected that schools in Florida will experience an increase in their attendance due to their low-income tax rate. On the contrary, schools in California and Texas will likely see a decrease as a direct result of their high-income tax rates. These consequences will be seen in smaller and less popular colleges more so than the powerhouses. This is because bigger, well-known schools can offset the high-taxes of their states with their ability to offer student-athletes more revenue earning opportunities. Unfortunately, it is too soon to tell how much student-athlete enrollment will be impacted.

Additionally, there will be challenges preserving competitive balance. Bigger sports schools, who have established relationships with endorsement brands, will have an even easier time recruiting young talent to their institutions. Student-athletes will be attracted to colleges and universities that can help them boost their NILs. On the other hand, smaller sports schools will struggle to keep pace as they do not have these existing relationships.

Looking forward, colleges and universities need to determine how they will mediate these financial ramifications. How will competitive balance be preserved? Will NIL profits be worthwhile? The answers to these questions are up in the air, but solutions need to be found if schools and student-athletes are going to benefit from the NCAA v. Alston decision.

Potential Solutions

There is little information available on how colleges and universities will manage the oncoming challenges. Perhaps the most pressing issue is preserving competitive balance amongst bigger DI schools and smaller lower-division institutions. Smaller schools do not have access to the same resources' powerhouses are using to attract young talent. For example, D1 schools in Nebraska and Tennessee have prepared themselves for these unprecedented times by hiring NIL specialists. They have programs in place to teach student-athletes financial literacy, brand developing, and more. This will prove beneficial to athletes who are trying to determine how to capitalize off NIL and still remain eligible for need-based aid.

Smaller schools do not have the ability to fund similar resources. While they could charge students for these services, this would only incentivize athletes to attend schools that offer them

at no cost. This creates challenges because student-athletes at these smaller institutions are not properly learning how to profit from their NILs. Without proper NIL education, student-athletes are subject to violating state laws. As a result, these athletes are choosing to attend universities that can give them the resources to be successful.

To solve this pressing issue, smaller schools will have to get creative and start establishing relationships with endorsement brands. This will provide athletes with similar resources and opportunities that they would be getting at bigger sports programs. For example, in June of this year, East Texas Baptist University signed a deal with Opendorse. In doing so, they became the first non-DI school to collaborate with this company.

Moving forward, smaller schools will have to find room in their budgets to provide athletes with NIL resources. This could include educating their own staff on NIL resources, rather than looking to outside help. Additionally, smaller schools could turn to sponsorships to help fund the resources that are needed.

While it is likely that competitive balance will not be perfectly preserved, smaller schools can keep pace by effectively budgeting and building relationships with brands, sponsorships, and funders. The challenges will remain with well-established programs naturally attracting the best athletes, but there is room for federal policy creation that will close the divide between bigger and smaller institutions. This will remain true as the NCAA works with Congress, and moves towards releasing federal legislation that will more effectively solve the challenges at hand.

References

A brief history of the national collegiate athletic . (n.d.). Retrieved December 2, 2021, from https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1393&context=sportslaw.

A review of the NCAA's business model, amateurism, and paying the players. The Sport Journal. (2016, December 23). Retrieved December 2, 2021, from https://thesportjournal.org/article/a-review-of-the-ncaas-business-model-amateurism-and-paying-the-players/.

(WTSP), A. A. Q. (2021, August 24). *Cashing in: How the NCAA's Nil Rules Could Impact College recruiting*. wtsp.com. Retrieved December 2, 2021, from https://www.wtsp.com/article/sports/ncaa-nil-rule-college-recruiting/67-1bf6fbde-ba48-4df5-9999-9166c6fae91c.

AbigailJHess. (2021, July 1). *Here's how college athletes can now make money, according to the NCAA's new policy*. CNBC. Retrieved December 2, 2021, from https://www.cnbc.com/2021/07/01/how-college-athletes-can-make-money-according-to-new-ncaa-nil-policy.html.

Amateurism. NCAA.org - the official site of the NCAA. (n.d.). Retrieved December 2, 2021, from https://www.ncaa.org/student-athletes/future/amateurism.

Beer, T. (2021, June 29). *NCAA athletes could make $2 million a year if paid equitably, study suggests*. Forbes. Retrieved December 2, 2021, from https://www.forbes.com/sites/tommybeer/2020/09/01/ncaa-athletes-could-make-2-million-a-year-if-paid-equitably-study-suggests/?sh=4dbf29e05499.

Berkowitz, S. (2021, June 21). *Supreme Court rules against NCAA in antitrust case in unanimous decision*. USA Today. Retrieved December 2, 2021, from https://www.usatoday.com/story/sports/2021/06/21/shawne-alston-vs-ncaa-case-supreme-court-ruling/5237656001/.

Berkowitz, S. (2021, June 23). *Supreme Court ruling scrambling NCAA's consideration of new name, image and likeness rules*. USA Today. Retrieved December 2, 2021, from https://www.usatoday.com/story/sports/college/2021/06/23/why-supreme-court-ruling-has-ncaa-council-scrambling-nil-vote/5313214001/.

California becomes first state to allow college athletes. (n.d.). Retrieved December 2, 2021, from https://www.usnews.com/news/education-news/articles/2019-09-30/california-becomes-first-state-to-allow-college-athletes-to-be-compensated.

Caron, E. (2021, July 6). *NCAA athlete pay confounds financial aid forms and pell grant awards*. Sportico.com. Retrieved December 7, 2021, from

https://www.sportico.com/leagues/college-sports/2021/nil-earnings-muddle-financial-aid-1234633515/.

Conrad, M. (n.d.). *NCAA v. Alston - why the NCAA lost & what the future holds*. LawInSport. Retrieved December 2, 2021, from https://www.lawinsport.com/topics/item/ncaa-v-alston-why-the-ncaa-lost-what-the-future-holds.

Dosh, K. (2012, July 30). *The problems with paying college athletes*. Forbes. Retrieved December 2, 2021, from https://www.forbes.com/sites/sportsmoney/2011/06/09/the-problems-with-paying-college-athletes/?sh=10f73f265f7c.

Fritz, B. (2021, July 6). *Schools, athletes figuring out financial details of nil*. Athletic Business. Retrieved December 2, 2021, from https://www.athleticbusiness.com/operations/programming/article/15161747/schools-athletes-figuring-out-financial-details-of-nil.

Google. (n.d.). *The National Collegiate Athletic Association*. Google Books. Retrieved December 2, 2021, from https://books.google.com/books?id=Cmv5YNVTVCYC&pg=PA44&lpg=PA44&dq=ncaa%2Bten%2Bpoint%2Bcode%2Bof%2Beligibility%2B1922&source=bl&ots=z7gDWVz7K9&sig=ACfU3U2G6N8ZrfwJDD3IlAt3iX5N7cbP8g&hl=en&sa=X&ved=2ahUKEwjputLNzaP0AhXpoFsKHbIkD5kQ6AF6BAgMEAM#v=onepage&q=ncaa%20ten%20point%20code%20of%20eligibility%201922&f=false.

Higgins, L. (2020, March 11). *What happens when College Athletes Get Paid*. The Wall Street Journal. Retrieved December 2, 2021, from https://www.wsj.com/articles/what-happens-when-college-athletes-get-paid-11583879855.

Horton, T. (n.d.). *Addressing the current crisis in NCAA Athletics: Where is Congress?* Retrieved December 2, 2021, from https://core.ac.uk/download/pdf/148696677.pdf.

Important NCAA lawsuits. history of lawsuits against the NCAA. O'Bannon vs NCAA. Find College Athletic Scholarships and Get Recruited with Athnet Sports Recruiting. (n.d.). Retrieved December 2, 2021, from https://www.athleticscholarships.net/important-ncaa-lawsuits.htm.

Klein, C. (2012, September 6). *How Teddy Roosevelt Saved Football*. History.com. Retrieved December 2, 2021, from https://www.history.com/news/how-teddy-roosevelt-saved-football.

LawInSport. (n.d.). *A full review of the O'Bannon v. NCAA judgment*. LawInSport. Retrieved December 2, 2021, from https://www.lawinsport.com/topics/item/your-full-review-of-the-o-bannon-v-ncaa-judgment.

Libit, D. (2021, July 20). *Alston case turns spotlight onto NCAA's Student Assistance Fund*. Sportico.com. Retrieved December 2, 2021, from

https://www.sportico.com/leagues/college-sports/2021/ncaa-student-assistance-fund-1234634735/.

McCann, M. (2019, March 9). *Why the NCAA lost another landmark antitrust case*. Sports Illustrated. Retrieved December 2, 2021, from https://www.si.com/college/2019/03/09/ncaa-antitrust-lawsuit-claudia-wilken-alston-jenkins.

Mirandabradshaw. (2019, January 29). *What is amateurism? and why does the NCAA care about it?* Breakout sports. Retrieved December 2, 2021, from https://breakoutsports.net/2019/01/29/what-is-amateurism-and-why-does-the-ncaa-care-about-it/.

Murphy, D. (2021, June 20). *College conference commissioners pushing minimalist plan to regulate nil*. ESPN. Retrieved December 2, 2021, from https://www.espn.com/college-sports/story/_/id/31675595/college-conference-commissioners-pushing-minimalist-plan-regulate-nil.

Murphy, D. (2021, September 1). *Everything you need to know about the NCAA's Nil Debate*. ESPN. Retrieved December 2, 2021, from https://www.espn.com/college-sports/story/_/id/31086019/everything-need-know-ncaa-nil-debate.

Murphy, D. (2021, June 21). *Supreme Court unanimously sides with former college players in dispute with NCAA about compensation*. ESPN. Retrieved December 2, 2021, from https://www.espn.com/college-sports/story/_/id/31679946/supreme-court-sides-former-players-dispute-ncaa-compensation.

Murphy, D. (2021, May 27). *Congressional bill introduced would allow college athletes to form unions, become employees*. ESPN. Retrieved December 2, 2021, from https://www.espn.com/college-sports/story/_/id/31521100/congressional-bill-introduced-allow-college-athletes-form-unions-become-employees.

Murphy, D. (2021, September 1). *Everything you need to know about the NCAA's Nil Debate*. ESPN. Retrieved December 2, 2021, from https://www.espn.com/college-sports/story/_/id/31086019/everything-need-know-ncaa-nil-debate.

Myerberg, P. (2021, June 22). *NCAA Supreme Court ruling: What it means for college sports, athletes*. USA Today. Retrieved December 2, 2021, from https://www.usatoday.com/story/sports/college/2021/06/21/supreme-court-ncaa-ruling-means-college-athletes/7770592002/.

NCAA and the movement to reform college football: Topics in Chronicling America: Introduction. Research Guides. (n.d.). Retrieved December 2, 2021, from https://guides.loc.gov/chronicling-america-ncaa-college-football-reform.

National Collegiate Athletic Association v. Alston . (n.d.). Retrieved December 2, 2021, from https://www.supremecourt.gov/opinions/20pdf/20-512_gfbh.pdf.

National Collegiate Athletic Association v. Alston. Oyez. (n.d.). Retrieved December 2, 2021, from https://www.oyez.org/cases/2020/20-512.

NCAA v. Board of Regents, 468 U.S. 85 (1984). Justia Law. (n.d.). Retrieved December 2, 2021, from https://supreme.justia.com/cases/federal/us/468/85/.

NCAA.org - the official site of the NCAA. NCAA.org - The Official Site of the NCAA. (n.d.). Retrieved December 2, 2021, from https://www.ncaa.org/.

Paying Collegiate Athletes. The impact on college sports programs if athletes are paid (opinion). (n.d.). Retrieved December 2, 2021, from https://www.insidehighered.com/views/2018/02/12/impact-college-sports-programs-if-athletes-are-paid-opinion.

Roos, M. (2021, July 14). *26 states now allow college athletes to be compensated for image, likeness*. Newsweek. Retrieved December 2, 2021, from https://www.newsweek.com/26-states-now-allow-college-athletes-compensated-image-likeness-1609744.

Rosen, L. (n.d.). *Catholic University Law Review*. Retrieved December 7, 2021, from https://scholarship.law.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1385&context=lawreview.

Sanderson, A. R., & Siegfried, J. J. (n.d.). *The case for paying college athletes*. Journal of Economic Perspectives. Retrieved December 2, 2021, from https://www.aeaweb.org/articles?id=10.1257%2Fjep.29.1.115.

Schafer, J. (2021, August 30). *College athletes are making endorsement money 'at a clip much higher than we expected,' Opendorse CEO says*. Yahoo! News. Retrieved December 7, 2021, from https://news.yahoo.com/college-athletes-endorsement-money-113925937.html.

Shulman, L. M. (1985). *Compensation for Collegiate Athletes: A Run for More Than the Roses*. Retrieved December 2, 2021, from https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1647&context=sdlr.

Smith, R. K. (1987). The National Collegiate Athletic Association's Death Penalty: How Educators Punish Themselves and Others. *Indiana Law Journal*.

The history behind the debate overpaying NCAA athletes. The Aspen Institute. (2020, February 11). Retrieved December 2, 2021, from https://www.aspeninstitute.org/blog-posts/history-behind-debate-paying-ncaa-athletes/.

Timmullaney. (2021, June 23). *Supreme Court NCAA ruling and the New Future of paying college athletes*. CNBC. Retrieved December 2, 2021, from

https://www.cnbc.com/2021/06/21/supreme-court-ncaa-decision-how-college-athletes-plan-to-cash-in.html.

US Supreme Court says NCAA cannot limit athlete education compensation. Quintilone & Associates. (2021, July 13). Retrieved December 2, 2021, from https://www.quintlaw.com/us-supreme-court-says-ncaa-cannot-limit-athlete-education-compensation.

US Supreme Court says NCAA cannot limit athlete education compensation. Quintilone & Associates. (2021, July 13). Retrieved December 2, 2021, from https://www.quintlaw.com/us-supreme-court-says-ncaa-cannot-limit-athlete-education-compensation.

Vint, P. (2014, March 20). *Ranking the NCAA's 5 biggest legal battles, from least to most threatening*. SBNation.com. Retrieved December 2, 2021, from https://www.sbnation.com/college-football/2014/3/20/5528032/ncaa-lawsuits-obannon-kessler-union.

Vogue, A. de, & Duster, C. (2021, June 21). *Supreme Court rules against NCAA, opening door to significant increase in compensation for student athletes*. CNN. Retrieved December 2, 2021, from https://www.cnn.com/2021/06/21/politics/ncaa-supreme-court/index.html.

While some NCAA athletes cash in on Nil, others lose out. While some NCAA athletes cash in on NIL, others lose out. (n.d.). Retrieved December 2, 2021, from https://www.insidehighered.com/news/2021/10/12/while-some-ncaa-athletes-cash-nil-others-lose-out.

Wolken, D. (2021, June 18). *Opinion: With new nil rules on horizon in some states, NCAA will experience messy, chaotic transition*. USA Today. Retrieved December 2, 2021, from https://www.usatoday.com/story/sports/columnist/dan-wolken/2021/06/18/ncaa-experience-messy-chaotic-period-dealing-new-nil-rules/7746376002/.