

*Creating an Equitable Playing Field:
Vital Protections for Male Athletes in Revenue-Generating
Sports who are predominantly African-American*

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Introduction

Cardale Jones recently declared on the online social networking service, Twitter, “Why should we have to go to class if we came here to play FOOTBALL, we ain’t come to play SCHOOL classes are POINTLESS.”¹ In that statement, Cardale Jones, a freshman at Ohio State University, who is also the third-string quarterback for the Buckeyes football team, and was rated the 33rd-best quarterback of his 2011 class by ESPN, made his feelings about attending classes publicly clear.² Shortly after “tweeting” his feelings, both the tweet and his entire account were deleted by Jones per Ohio State’s demand, not before the media was able to view what Jones had said. Ironically, in the same article about Jones’ tweet, Ohio State University was credited in both 2011 and 2012 for its multiyear Academic Progress Rate scores. The school was in the top 10 percent of all Division I football teams, which is between 120 and 123 institutions.

The Cardale Jones scenario is a prime example of a glaring problem in collegiate athletics that needs to be properly addressed. The problem identified is the following: student-athletes participating in revenue-generating sports, who are predominantly male African Americans, are exploited and treated unfairly on campus during both their collegiate careers and after college.

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¹ *Cardale Jones: Classes Pointless*, ESPN.COM, (Oct. 6, 2012, 12:27 AM), http://espn.go.com/college-football/story/_/id/8466428/ohio-state-buckeyes-cardale-jones-tweets-classes-pointless.

² *Id.*

Moreover, they are not informed on the importance of life skills, finance, and education overall for their futures, despite the few that do graduate. Male African-Americans who participate in football and men's basketball have helped fund the National Collegiate Athletic Association (NCAA), individual institutions, and many less-publicized sports, while being treated essentially as indentured servants.³

A brief history of the identified problem will be presented, followed by how the problem has been tackled today through various practices and proposals at the federal and association levels. Lastly, my proposal for solving the identified problem is then outlined.

I. History of the Problem Identified

Cardale Jones provides us with an illustration of the serious problem, with a longstanding history of the problem dating back to the 1920s. In the past, segregation was the primary problem, inhibiting minorities, predominantly African-Americans, from even getting the opportunity to participate in athletics on all levels. Professor Kenneth L. Shropshire states two reasons why segregation was so prominent and mainstream in sports: "The most obvious [reason] was simply the desire of whites not to associate with African-Americans. . . . Associated with this desire for separation was . . . the other broad explanation: a view that African-Americans were inferior."⁴ Sadly, the view finds its roots in slavery.

Informal Jim Crow laws existed throughout the United States in the late nineteenth and early twentieth

³ Doug Bandow, *End College Sports Indentured Servitude: Pay "Student Athletes"*, FORBES, (Feb. 21, 2012, 2:33 PM), <http://www.forbes.com/sites/dougbandow/2012/02/21/end-college-sports-indentured-servitude-pay-student-athletes/>.

⁴ Kenneth L. Shropshire, IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA 31 (1996).

centuries. These laws prohibited African-Americans from playing sports for the schools that admitted them.⁵ The University of Kansas had its own informal rules of discrimination, which essentially denied African-American students the right to participate in any of the school's mainstream social and extracurricular activities, including athletics. The situation at the University of Kansas highlights the lack of opportunity for African-American students, which set many colleges' attitudes and policies towards African-American students.⁶

Today, a popular argument for why many controversial racial decisions are made in athletics is because "it's all about the money."⁷ Apparently, that same argument was relevant in 1916 at Rutgers University. Paul Robeson, a member of Rutgers University's football team and All-American, was prohibited from play when Washington and Lee College threatened not to play in the game if Roberson was allowed to participate. Safety was not a concern because there were no threats of violence likely occurring if Roberson played.⁸ It can be inferred that money was a major factor taken into consideration in Rutgers' decision not to play Roberson because if Washington and Lee College did not play the game, Rutgers would inevitably lose potential revenue from playing one less game. While these ugly situations occurred at Kansas and Rutgers between 1916 and the 1930s, there is still an element of discrimination and racial inequity today.

⁵ MATTHEW MITTEL ET AL., *SPORTS LAW & REGULATION: COLLEGE EDITION* 738 (Aspen College, 2005).

⁶ Smith, *Racial Equity Issues in Athletics* at 3.

⁷ Matt Hayes, *Student-athletes' Best Interests? It's all About the (TV) Money*, SPORTING NEWS, (Sept. 20, 2011, 10:12 AM),

<http://www.sportingnews.com/ncaa-football/feed/2011-08/1stand10/story/student-athletes-best-interests-its-all-about-the-tv-money>

⁸ MATTHEW MITTEL ET AL., *supra* note 6, at 739.

Because many former college athletes, who are African-American males, are not provided with the proper benefits of life skills and financial advisement, they are often overlooked for coaching and administrative positions in the very sports that they participated in and excelled at. Opportunities for leadership roles allow people to grow, learn, and guide others. Unfortunately, there has been a common trend for male minorities to not have those opportunities for coaching and administrative roles in athletics.⁹ There have been indications of improvement, however. For example, in 2009, Oregon became the first state to enact “Rooney Rule-like legislation, requiring its seven public institutions “to interview minority candidates before hiring a head coach or athletic director.”¹⁰ The Rooney Rule is named after Pittsburgh Steelers owner Dan Rooney, who instilled the provision that at least one person of color should be interviewed as a candidate for consideration for all head coaching vacancies, with proof.

Nevertheless, the racial demographics still highlight a severe disparity within head coaching positions in all Division I men’s athletics. In the 2008-09 season, just four years ago, the demographics of head coaching positions were as follows: 89.3 percent whites; 6.6 percent African-Americans; 1.8 percent Latinos, 0.7 percent Asian Americans; and 0.3 percent Native Americans. Furthermore, in the same year, the percentages for minorities serving as Division I Directors of Athletics, Associate Director of Athletics, and Assistant Director Athletics, were the following: 11.1 percent, 11.5 percent,

⁹ *Lack of minority coaches reflects leadership*, ESPN.COM, (Nov. 18, 2004, 1:29 AM), <http://sports.espn.go.com/ncf/news/story?id=1924981>.

¹⁰ Jack Carey, *New Oregon law to require minority interviews for coaching positions*, USA TODAY, (July 24, 2009, 2:11 AM), http://usatoday30.usatoday.com/sports/college/football/2009-07-23-collegiate-rooney-rule_N.htm.

and 11.6 percent, respectively.¹¹ A reason why African-Americans have not been able to break into leadership roles in coaching and administration is the “good old boy” system of hiring, which is heavily influenced by the boosters.¹² While numbers have increased over roughly the last 15 years, the numbers are still despicably low compared to the number of male minorities who participate in sports.

II. The Problem Identified Today: Changes and Best Practices for Solutions

A. At the Federal Level

In 1972, 20 U.S.C.S. § 1681, which is more commonly known as Title IX, was passed to ensure equal opportunities for women. It provides as follows: Prohibition against discrimination; No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.¹³ While Title IX has helped solve gender inequity through increased participation and opportunities for females, it has also resulted in increasing racial inequity. For example, in 2008, the median NCAA Division I football and men’s basketball programs accounted for \$19.6 million in revenue, compared to \$490,000 from women’s basketball

¹¹ *Id.* Richard Lapchick et al., *The 2010 Racial and Gender Report Card: College Sport*, THE INSTITUTE FOR DIVERSITY AND ETHICS IN SPORT, (Mar. 3, 2011), at 42-43, available at

http://www.tidesport.org/rgrc/2010/2010_college_rgrc_final.pdf

¹² Dr. Fitzgerald Hill with Mark Purdy, *Crackback! How College Football Blindsides the Hopes of Black Coaches*, THEPOSTGAME, (June 25, 2012, 10:00 PM), <http://www.thepostgame.com/commentary/201206/fitz-hill-crackback-how-college-football-blindsides-black-coaches>.

¹³ 20 U.S.C. § 1681 (1986).

programs.¹⁴ Nevertheless, there were 492 more women's programs than men's in Division I, many of which are funded by the revenue generated from football and men's basketball.¹⁵ Reasons why institutions violate Title IX are due to roster mismanagement; disproportionality to enrollment; a lack of participation, opportunities, history, and continuing practice; and a lack of recognition from the NCAA due to deference.

In reality, while one should appreciate the increased participation opportunities and proportionality to enrollment for female students at the collegiate level, it is equally discouraging to realize that male students have lost participation opportunities and had athletic teams and scholarships cut, as a result. The fact that the number of opportunities and teams have decreased for male students, at a time when the number of men going to college has also decreased, is simply unacceptable. Congress should, but has yet to, provide some sort of protection for men's basketball and football from any "adverse racial implications with gender equity efforts" when dealing with Title IX issues.¹⁶

Proposal One – Litigation Seeking Compensation for IP Infringement

Several former athletes have sought to achieve two goals by bringing a class action in federal court against the NCAA: (1) seek compensation for the use of their names, images, and likeness, and (2) change the way the current collegiate athletes are compensated so that they are

¹⁴ Graham Watson, *Title IX puts schools in conundrum*, ESPN.COM, (July 14, 2009), <http://sports.espn.go.com/ncaa/news/story?id=4326021>

¹⁵ *Id.*

¹⁶ Rodney K. Smith, *When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics*, 61 Mo. L. Rev. 329, 370 (1996), available at <http://scholarship.law.missouri.edu/mlr/vol61/iss2/2/>

protected.¹⁷ These former collegiate athletes are filing this class action because many feel violated for not being advised about the revenue derived from television, video games, and other merchandise. Likewise, many are simply in financial constraints. Frankly, “Many athletes are sucked into bad decisions after years of living the high life.”¹⁸

Sources close to the lawsuit indicate that the current student-athletes could be paid anywhere from “tens of thousands” to “hundreds of thousands” of dollars each year to Division I football players and basketball players, respectively, all coming from the use of their images. Also, the monies could be temporarily held in trust until graduation to maintain the notions of amateur sports.¹⁹ Despite this lofty estimate, the NCAA feels confident that the case will be dismissed. NCAA Executive Vice President and General Counsel Donald Remy stated the following: . . . “Plaintiffs want the court to believe that student athletes are the same as professional athletes and unionized employees which is pure fiction. We are confident that plaintiffs will find no more success in this case than they have in past cases.”²⁰

The NCAA’s strong stance does not bode well for the former athletes, who seek significant financial relief for alleged intellectual property infringement, largely due to current financial problems. Recently, ESPN aired a short film titled “Broke” in its “30 for 30” series, which highlighted many former professional athletes who are facing serious financial troubles. Herman Edwards, current

¹⁷ Tom Farrey, *Change in compensation sought*, ESPN.COM, (Sept. 2, 2012, 8:36 AM) http://espn.go.com/college-sports/story/_/id/8324732/new-motion-lawsuit-ncaa-change-how-athletes-compensated.

¹⁸ Shannon Cross, *Athletes on being broke*, ESPN.COM, (Oct. 2, 2012, 6:10 PM), http://espn.go.com/espn/story/_/id/8436355/athletes-being-broke.

¹⁹ Farrey, *supra* note 17.

²⁰ *Id.*

ESPN NFL analyst and former NFL player and coach for over 10 seasons, talks about how rookies become the “breadwinner” for family members and friends who they feel they have an obligation to. Edwards states, “Many times half way through the season these guys tap out because they’ve over-extended themselves and it ends up affecting how they play. Typically after their third year, guys start to figure it all out.”²¹ But what if they do not figure out how to manage their money by their third season as a professional, especially since the average career is about three years?²² And why should it take them three years, after college?

Brad Daugherty, current ESPN NASCAR analyst and former 5-time NBA All-Star, states that “it’s a cultural thing” when many of the young athletes that end up broke are minorities. Daugherty advocates for the fact that young African-American men do not have the proper education or upbringing to make more savvy financial decisions, and that sometimes people who they should trust (agents or managers) end up taking advantage of them.²³ With both proper financial and life skills advisement through required courses during their four years in college, athletes will already have it figured out as they enter their rookie season, and they will not “tap out” half way through as a result.

Proposal Two – Litigation Seeking Compensation and Equal Protection for Racial Discrimination

It has been quite difficult for plaintiffs (African-American males) to convince courts that their racial

²¹ Cross, *supra*, note 18.

²² Russ Wiles, *Pro Athletes Fumble the Financial Ball*, USA TODAY, (Apr. 22, 2012, 2:12 AM), <http://usatoday30.usatoday.com/sports/story/2012-04-22/Pro-athletes-and-financial-trouble/54465664/1>

²³ *Id.*

discrimination or racial exploitation claims merit compensation and equal protection. In order to disprove discrimination on racial grounds, defendants (the government/the association/the individual institution) must pass the strict scrutiny test. The policy must further a “compelling” purpose, with means that are “narrowly tailored” to that purpose. Both *Pryor v. NCAA* and *Jackson v. University of New Haven* highlight this point, with opposing holdings from the court. In *Pryor*, one plaintiff was an African-American male student, Warren Spivey. Spivey signed a National Letter of Intent (NLI) to play football at the University of Connecticut, and received an athletic scholarship.²⁴ However, Spivey did not meet the NCAA’s newly adopted Proposition 16, which raised the academic eligibility criteria, did not receive athletically related financial aid, did not participate in football during his freshman year, and incurred “substantial debt” in order to pay for his own college tuition.²⁵ Spivey, along with another plaintiff, alleged that the NCAA intentionally discriminated against him with Proposition 16 because of his race, violating Title VI of the Civil Rights Act and 42 U.S.C. § 1981.²⁶

Spivey proved “purposeful discrimination” against the NCAA under Title VI by showing that the relevant decision maker (the NCAA) adopted the debated policy (Proposition 16) “‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”²⁷ Spivey also proved a right to relief under § 1981 by establishing the following against the NCAA: he belongs to a racial minority; the NCAA has an intent to discriminate on the basis of his race (the same standard under Title VI); and

²⁴ *Pryor v. NCAA*, 288 F.3d 548, 555 (3d Cir. 2002).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 562 (quoting *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979)).

discrimination concerning one or more of the activities under § 1981 existed, including the right to make and enforce contracts.²⁸ On the whole, Spivey was successful by proving that he was initially denied an athletic scholarship, and almost the opportunity to receive an education and college degree, all because of his race. The Court reversed the District Court's dismissal of Spivey's Title IV and §1982 claims.²⁹

James C. Jackson, a minor league football hall of fame coach and African-American, also alleged racial discrimination under 42 U.S.C. § 1982, Title VI, and Title VII against the University of New Haven and Athletic Director Deborah Chin.³⁰ Jackson brought suit when he was not considered for the head football coach vacant position at the University of New Haven.³¹ Jackson alleged both "disparate treatment" and "disparate impact," but he failed to meet either burden, resulting in the court granting summary judgment for the University of New Haven.³²

Jackson failed to show "disparate treatment," despite meeting nearly all of the following requirements: he was a member of a protected class; he was qualified for the employment; there was an adverse employment decision made; and circumstances existed to give rise to an inference of discrimination.³³ Even though Jackson was recognized as a minor league football hall of fame coach, he failed to meet the qualification requirement because, according to the University of New Haven, he did not have

²⁸ *Id.* at 569 (citing *Brown v. Philip Morris Inc.*, 250 F.3d 789, 797 (3d Cir. 2001)).

²⁹ *Id.* at 570.

³⁰ *Jackson v. University of New Haven*, 228 F. Supp. 2d 156, 157 (D. Conn. 2002).

³¹ *Id.* at 158-59.

³² *Id.* at 159.

³³ *Id.* at 160 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)).

prior NCAA coaching experience.³⁴ Jackson also failed to show “disparate impact.” Again, Jackson nearly met the following requirements: he must identify a policy, demonstrate that a disparity exists, and establish a causal relationship between the two.³⁵ Jackson provided statistical proof to support his claim, but the court held that the sample size was “too small to yield a statistically significant result.”³⁶

Both *Pryor* and *Jackson* simply highlight a domino effect of problems, with contrasting holdings. African-American students, because of their race, are not afforded the opportunity to participate in athletics, receive athletic scholarships, or educations. Those students then accumulate debt from student loans because they largely come from impoverished backgrounds, or are forced to drop out of college. Those same students become adults without receiving the proper, full education, life skills, or financial knowledge to be considered for leadership roles, particularly in athletics. It appears as if African-American males have extremely high burdens of proof to establish a prima facie case of racial discrimination before the burdens can even begin to shift to the defendant in order to offer a legitimate, nondiscriminatory rationale for his or her actions. As *Pryor* and *Jackson* indicate, courts make their findings on a case-by-case basis, which makes the plan inconsistent, costly, and sometimes unfavorable.

B. At the Association Level

Today, in collegiate athletics, there is simply more money generated by both the NCAA and the individual institutions. In fact, in the 2010-11 season, the NCAA’s revenue equaled roughly \$845.9 million, with the largest

³⁴ *Id.* at 161-62.

³⁵ *Id.* at 164 (quoting *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 159-160 (2d Cir. 2001)).

³⁶ *Id.* at 165.

sources coming from a media rights agreement with Turner/CBS Sports for coverage of the Division I men's Basketball Championship, and ticket and merchandising sales from championships.³⁷ Also, according to a study done by the NCAA research staff, college athletic programs generate about \$6.1 billion from media rights agreements, ticket sales, alumni contributions, guarantees, and royalties. An additional \$5.3 billion comes from student fees allocated to athletics, direct and indirect institutional support, and direct government support.³⁸ Simply put, there is a lot of money that is generated by collegiate athletics, specifically by men's basketball and football.

Proposal Three – The “cost-of-attendance” Stipend

One proposal offered to solve the problem by providing student-athletes with compensation was adding a \$2,000 cost-of-attendance stipend to scholarships, which NCAA President Mark Emmert initially supported.³⁹ However, the proposal has been halted because of the probability of creating an unequal playing field in Division I for athletic budgets.⁴⁰ In an interview with SportsBusiness Daily, recently elected NCAA Division I Board of Directors Chair Nathan Hatch stated that there is no broad support for the stipend.⁴¹ Hatch states that an enormous range from “\$10 million to \$150 million” for athletic budgets exists, and increased competition would

³⁷ Revenue, NCAA, (updated Feb. 13, 2013), <http://www.ncaa.org/about/resources/finances/revenue>

³⁸ *Id.*

³⁹ *NCAA D-I BOD Chair Talks College Athletics, Stipend Pay for Student-Athletes*, STREET & SMITH'S SPORTSBUSINESSDAILY, (Sept. 11, 2012), <http://www.sportsbusinessdaily.com/Daily/Issues/2012/09/11/Colleges/Hatch-Q-and-A.aspx>.

⁴⁰ *Id.*

⁴¹ *Id.*

increase not only between the schools within a given athletic conference, but also between schools in the major conferences and schools in the “mid-major” conferences.⁴² In other words, Wake Forest, where Hatch was previously President, and similar, smaller private schools would be limited in their funds, likely resulting in only certain athletes being able to receive stipends.

However, economist Jim Peach refutes the argument that competitive balance would be negatively affected. From 1950 to 2005 in college football, 50 percent of top eight finishes in the AP final poll were claimed by just 12 different schools, and the same holds true in basketball, baseball, and women’s softball.⁴³ Peach states, “In other words, the NCAA currently doesn’t have much competitive balance. And paying players is not going to change this reality.”⁴⁴

Moreover, the NCAA states that 96 percent of its annual revenue (roughly \$845 million revenue in 2010-11 coming largely from men’s basketball) is returned to its member institutions, and the other four percent (nearly \$31 million) is spent on its budget in the form of administrative expenses and staff salaries.⁴⁵ Money that is returned to the NCAA member institutions, it is distributed through the following allocations: academic enhancement (\$22.4 million for academic-support programs); basketball fund (\$180.5 million to the conferences of each institution participating in each game of the Division I men’s

⁴² *Id.*

⁴³ David Berri, *What Sports Illustrated Didn’t Tell You About Paying College Athletes*, HUFF POST SPORTS, (Nov. 11, 2011, 8:05 PM), http://www.huffingtonpost.com/david-berri/paying-college-athletes_b_1089102.html (quoting Jim Peach, *College Athletics, Universities, and the NCAA*, 44 Soc. Sci. J. 11 (2007)).

⁴⁴ *Id.*

⁴⁵ Mark Schlabach, *NCAA: Where Does the Money Go?*, ESPN.COM, (July 12, 2011), http://espn.go.com/college-sports/story/_/id/6756472/following-ncaa-money.

basketball tournament); conference grants (\$8 million for officiating programs, compliance and enforcement, diversity, and drug and gambling education); grants-in-aid (\$111 million, or \$256,304 to each institution that awarded 164.89 scholarships, based on the number of scholarships awarded by an institution the prior year); sports scholarships (\$55 million, or \$30,091 per each sport beginning with the fourteenth sport, based on the number of varsity sports each institution sponsored); and student assistance fund (\$40 million for special assistance and student-athlete opportunity funds when student-athletes exhaust their NCAA eligibility or unable to participate in sports because of medical reasons).⁴⁶ It is noted that academic enhancement, conference grants, and the student assistance fund, the three allocation categories that put a focus on assistance and/or education offered to the student-athletes, all receive far less than the other categories.

As far as the basketball fund, the NCAA has awarded all of its Final Four events to domed football stadiums through 2016 in order to sell more tickets.⁴⁷ While NCAA Executive Vice President Mark Lewis has casually addressed the issue of players playing in a non-traditional basketball arena, it appears that the decision is likely “all about the money.” The author suggests, “If Lewis really wants to make the game better for the players, the NCAA could use some of the Final Four ticket revenue from those 70,000-seat stadiums to help fund the \$2,000 stipends that once were promised to Division I athletes, then rescinded, or to bring the family members of Final Four participants to the event.”⁴⁸

⁴⁶ *Id.*

⁴⁷ Mike DeCourcy, *NCAA Out-of-bounds in Perhaps Moving Final Fours out of Domes*, SPORTING NEWS NCAAAB, (Sept. 7, 2012, 1:08 PM), <http://aol.sportingnews.com/ncaa-basketball/story/2012-09-07/ncaa-tournament-final-four-future-sites-move-to-arenas-domes>.

⁴⁸ *Id.*

What is interesting is that the NCAA study points to a portion of the \$5.3 billion coming from student fees that are allocated to athletics. This finding would likely lead the average person to assume that the money is being properly invested to benefit the student-athletes. However, that is simply not the case. Coaches' salaries and benefits continue to increase, and schools' marketing budgets continue to rise as well to fund raise, market, and promote athletics. Figure 1A and 1B indicate the top 10 institutions' revenues in 2008:

Figure 1A
2008 Top 10 Institutions' Revenues → 1st – 10th; Notre
Dame (14th); Duke (25th)

Institution	Ticket Sales	Students Fees	Away Games	Donations
Alabama	\$28,410,419	\$0	\$5,500	\$29,860,400
Texas	44,691,119	1,832,229	318,000	35,057,421
Ohio State	38,608,138	0	3,750,189	27,556,385
Florida	21,122,966	2,578,306	283,376	42,630,821
Tennessee	29,403,335	1,000,000	250,000	26,405,309
Michigan	40,258,325	0	245,178	15,138,000
Oklahoma State	17,528,662	1,934,812	755,765	54,923,758
Wisconsin	26,936,910	0	330,000	18,777,294
Texas A&M	30,144,815	0	305,500	28,341,873
Penn State	--	--	--	--
Notre	--	--	--	--

Dame

Duke	--	--	--	--
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Figure 1B⁴⁹

Institution	University Subsidy	Media Rights	Branding	Total
Alabama	\$4,101,515	\$8,825,964	\$4,506,056	\$123,769,841
Texas	0	191,690	16,639,171	120,288,370
Ohio State	0	15,799,713	5,015,349	115,737,022
Florida	0	3,907,635	10,184,021	106,607,895
Tennessee	0	6,650,000	4,154,643	101,806,196
Michigan	58,817	2,025,000	11,087,101	99,027,105
Oklahoma State	2,109,205	2,300,000	1,718,005	98,874,092
Wisconsin	3,356,669	5,660,555	2,705,018	95,118,124
Texas A&M	3,264,000	0	9,224,632	92,476,146
Penn State	--	--	--	\$91,570,233
Notre Dame	--	--	--	\$83,352,439
Duke	--	--	--	\$67,820,335

The numbers are publicly accessible from institutions' athletic departments' financials. To clarify, the "Away Games" category equals the money generated from playing at other institutions, the "Media Rights" category equals the money generated from television, radio and Internet broadcast deals, and the "Branding" category equals the money generated from sales of branded

⁴⁹ *College Athletics Revenues and Expenses – 2008*, ESPN: COLLEGE SPORTS, (2011), <http://espn.go.com/ncaa/revenue>.

novelties, other merchandise items, sponsorships, and advertisements.⁵⁰

Figure 2A and 2B indicate the top 10 institutions' expenses in 2008:

Figure 2A

2008 Top 10 Institutions' Expenses→1st–10th; Penn State (11th); Duke (21st); Notre Dame (33rd)

Institution	Students' Tuition	Visitors	Coaches' Pay	Recruiting
Alabama	\$8,824,492	\$2,193,500	\$13,118,559	\$1,029,523
Ohio State	13,184,957	6,248,917	14,108,419	1,137,016
Texas	6,993,766	2,599,256	17,810,365	1,291,852
Tennessee	9,780,350	2,250,000	16,655,628	1,789,301
Florida	6,482,515	2,803,232	13,574,263	1,468,044
Wisconsin	8,788,071	2,554,562	12,805,872	754,972
Oklahoma State	6,609,989	938,631	9,167,517	733,802
Michigan	13,584,477	1,905,538	13,561,605	1,333,040
Michigan State	8,901,044	5,669,052	10,527,226	1,067,088
LSU	7,779,905	1,843,292	12,810,268	1,078,187
Penn State	10,596,768	--	--	935,014
Duke	13,043,010	--	--	1,560,829
Notre Dame	14,527,119	--	--	2,287,619

Figure 2B

⁵⁰ *Id.*

Institution	Team Travel	Games	Marketing	Total
Alabama	\$3,580,868	\$1,345,797	\$3,460,518	\$123,370,004
Ohio State	5,225,694	10,364,206	2,602,886	114,264,848
Texas	6,991,985	16,230,167	6,687,642	110,996,365
Tennessee	5,611,586	2,126,101	5,632,325	100,507,146
Florida	6,162,438	4,801,014	5,941,289	98,775,583
Wisconsin	8,189,121	6,960,819	2,569,796	93,008,125
Oklahoma State	4,208,548	1,788,463	1,438,376	89,801,118
Michigan	6,914,132	2,524,741	2,174,835	85,496,004
Michigan State	4,478,011	3,617,147	1,110,438	83,444,368
LSU	4,142,660	4,039,261	846,694	81,150,829
Penn State	--	--	--	79,275,354
Duke	--	--	--	\$67,820,334
Notre Dame	--	--	--	60,117,476

Again, the numbers are publicly accessible from institutions' athletic departments' financials. To clarify, the "Tuition" category refers to only the student-athletes' tuition and fees, including textbooks and food. The "Visitors" category refers to money paid to visiting teams. The "Coaches' Pay" category refers to both the coaches' salaries and benefits. The "Marketing"

⁵¹ *College Athletics Revenues and Expenses – 2008*, ESPN: COLLEGE SPORTS, (2008), http://espn.go.com/ncaa/revenue/_/type/expenses.

category refers to the costs to fund raise, market, and promote athletics.⁵²

Alabama, Florida, Michigan, Ohio State, Oklahoma State, Tennessee, Texas, and Wisconsin are eight schools in the top 10 for largest revenues and largest expenses in 2008. None of these schools in either Figure 1 or Figure 2, all of which have great influence among the NCAA Division I institutions, have expressly objected to Emmert's initial stipend proposal.⁵³ What is clear from Figure 1 is that ticket sales, donations, media rights, and branding are the largest sources of revenue, by far. The male student-athletes in football and men's basketball directly impact all four money categories because their participation in their respective sports create such large revenue categories. Likewise, what is evident from Figure 2 is that coaches' pay, tuition, and marketing are the largest expenses for institutions. As was previously stated, coaches' salaries and benefits continue to be a growing expense for institutions, and institutions' marketing budgets also continue to rise for fundraising, marketing, and promoting the athletic programs. Because tuition is also one of the largest expenses for institutions, enabling the cost-of-attendance stipend is a step forward in protecting the student-athletes.

Proposal Four – Status Quo

Many experts, writers, and economists argue that the NCAA's current governance is the best solution, so paying student-athletes would not work.⁵⁴ Those who

⁵² *Id.*

⁵³ Associated Press, *Multiple Schools Oppose NCAA Scholarship Proposal*, THE WORLD, (Dec. 28, 2011, 11:00 AM) http://theworldlink.com/sports/multiple-schools-oppose-ncaa-scholarship-proposal/article_5c452630-0be4-51ab-8abf-5cdac2ced391.html.

⁵⁴ Seth Davis, *Should College Athletes be Paid? Why They Already Are*, SI.COM, (updated Sept. 21, 2011, 1:23 PM)

argue for a status quo advocate the importance of amateurism in collegiate athletics. However, those same people cannot be naïve to think that pure amateurism in collegiate athletics still exists today, as it did when collegiate athletics first began nearly a hundred years ago. According to sports management professor Dr. Ellen Staurowsky, “What college sports did was take that amateur concept, which was so class-based, and broaden and democratize it. But they ultimately still made it favorable to the power-elite people who are running colleges and universities. It's created an exploitative system.”⁵⁵ Staurowsky further states, “The rules have been set up in such a way to avoid a public understanding that athletes are already paid. It's just a matter of whether they are paid their value.”⁵⁶

As far as the large expense of student-athletes' tuition, it is often argued that covering their tuition and fees is enough. Sports Illustrated writer and men's college basketball analyst Seth Davis claims, “. . . [F]ree tuition over the course of four years can exceed \$200,000. They are also provided with housing, textbooks, food, and academic tutoring. When they travel to road games, they are given per diems for meals. They also get coaching, training, and game experience and media exposure they ‘earn’ in their respective crafts.”⁵⁷ That all is very true, but, as Ms. Staurowsky stated, are the athletes “paid their value”? Ramogi Huma, a former University of California, Los Angeles linebacker who currently heads the National

http://sportsillustrated.cnn.com/2011/writers/seth_davis/09/21/Branch.rebuttal/index.html.

⁵⁵ Mechelle Voepel, *College Athletes Are Already Getting Paid*, ESPN: COLLEGE SPORTS, (July 18, 2011),

http://sports.espn.go.com/ncaa/columns/story?columnist=voepel_mechelle&id=6739971.

⁵⁶ *Id.*

⁵⁷ Davis, *supra* note 54.

College Players Association, was forced to take toilet paper and soap from hotels, accumulated excessive debt on a credit card during and after graduation, and did not eat the recommended five or six meals a day based on the calories he burned playing football.⁵⁸ Not paying the student-athletes a salary, but having their full scholarships equaling the cost of attendance would likely prevent many existing problems.

Although it is argued that student-athletes current scholarships are adequate and fair compensation, coaches' salaries continue to rise. The following five reasons are why coaches' salaries do not reflect free market forces: (1) no monetary compensation is paid to the workforce, the student-athletes; (2) intercollegiate sports benefit from substantial tax exemptions or benefits; (3) there are no shareholders demanding dividend distributions or boards demanding higher profits; (4) athletic departments are backed by university and state financial support; and (5) coaches' salaries are negotiated by athletic directors, whose own salaries increase with the salaries of their employees, the coaches.⁵⁹ The most obvious reason why college coaches are paid far more than the reasonable expectation of the revenue they generate is reason (1), "no monetary compensation is paid to the workforce, the student-athletes."⁶⁰ According to the Sports Illustrated article, "College football and basketball coaches earn, on average, almost the same amount as their NFL and NBA peers, although college programs generate a fraction of the revenue of professional teams."⁶¹

⁵⁸ Associated Press, *Report Makes Case for Paying Players*, ESPN: COLLEGE SPORTS, (updated Sept. 12, 2011, 4:41 PM), http://espn.go.com/college-sports/story/_/id/6962151/advocacy-group-says-top-college-athletes-worth-six-figures.

⁵⁹ Berri, *supra* note 43.

⁶⁰ Berri, *supra* note 43..

⁶¹ Berri, *supra* note 43..

The amateurism argument is that student-athletes play for the willingness to perform, hone their craft, and prepare for an opportunity to play their respective sport professionally, so they should not be treated like professionals and receive similar financial compensation. The same argument can be made for college coaches. While they obviously need to be financially compensated for their work as employees of their individual institutions, they are also honing their craft and tending to prepare for an opportunity to coach their respective sport professionally as well. While there is a market for top-tier college coaches, there is no reason for college football and basketball coaches to earn, on average, nearly the same amount of salary as their professional peers. Nonetheless, their salaries, and benefits continue to rise, while nothing has changed to adequately aid and protect the “workforce,” or student-athletes. These necessary protections include being able to eat properly and healthily, have assurance of a guaranteed scholarship, and receive vital education on finance and professional development.

Proposal Five – Student-Athlete/Agent Education

Collegiate Sports Advisors (CSA) is the only proposal examined that offers no financial compensation, and is solely based on education and academic advising for student-athletes’ professional careers. NCAA Bylaw 12.3 governs the lack of any relationship between athletes and agents, who are defined as actual agents, runners, and financial advisors.⁶² Under 12.3, a student-athlete may not

⁶² Overview of NCAA Bylaws Governing Athlete Agents, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/Overview+of+NCAA+bylaws+governing+athlete+agents>. THIS LINK DOES NOT WORK.

accept transportation or other benefits from an athlete agent. . . . appl[ying] to the student-athlete and his or her relatives or friends.⁶³ 12.3 also states, it is not a violation of NCAA rules if a student-athlete merely talks to an agent (as long as an agreement for agent representation is not established) or socializes with an agent.⁶⁴

CSA was established to provide compliance workshops and an agent day on campuses of individual institutions willing to pay for its services.⁶⁵ It is ultimately in place to benefit not only the student-athletes, but also the institutions, to be properly educated about compliance and the agent process.⁶⁶ The University of Memphis embraced CSA by having Dontari Poe, the 11th overall in the 2012 NFL Draft by the Kansas City Chiefs, Will Barton, the 40th overall in the 2012 NBA Draft by the Portland Trail Blazers, and 11 other student-athletes attend the agent day.⁶⁷ According to co-founders Darren Heitner and Jason Belzer, who carefully examined all agents present, “The attending agents chose with whom they wished to meet, and the individual student-athletes retained final veto power over all meeting proposals.”⁶⁸ The agent day at the University of Memphis resulted in an increase of 10 percent for Tennessee’s agent registration, and more than \$10,000 of generated revenue to the state as well.⁶⁹

On the other hand, the University of Miami prohibits all communication, including via telephone and

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Paul Steinbach, *Memphis Outsourcing Student-Athlete Agent Education*, ATHLETIC BUSINESS (Aug. 2012), <http://www.athleticbusiness.com/memphis-outsourcing-student-athlete-agent-education.html>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

via e-mail, between agents and student-athletes, regardless of the student-athletes' class.⁷⁰ Heitner states that the University of Miami's overprotective approach is counter-productive. "[I]t effectively inhibits the player from getting any good information. So, if the player follows the rule, that player will go through three or four years at the school and then be thrown into this sea of swarming agents and not really have enough time to effectively vet them and figure out which one is the best fit."⁷¹

Overall, while CSA is a progressive plan that helps educate student-athletes and institutions on the issues involving relationships between agents and student-athletes, and encourages proper conduct for all players involved, it does not help those student-athletes who will not play their sport professionally. Likewise, as was previously mentioned, CSA does not help address the concern for compensating the student-athletes with a cost-of-attendance stipend.

Proposal Six – California Senate Bill 1525

California's recent approved Senate Bill 1525 (SB 1525), known as the "Student-Athlete Bill of Rights," requires California universities that generate an average of more than \$10 million in media revenues a year to provide specific protections for student-athletes.⁷² State Senator Alex Padilla, who authored the bill, included the following protections: (1) equivalent academic scholarships to student-athletes who get injured and lose their athletic scholarships; (2) coverage of health-care premiums and

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Neotrope National News Desk, California State Assembly Approves Padilla's 'Student-Athlete Bill of Rights' – Senate Bill 1525, CALIFORNIA NEWswire, (Aug. 20, 2012), californianewswire.com/2012/08/20/CNW12266_173748.php/california-state-assembly-approves-padillas-student-athlete-bill-of-rights/.

deductibles, specifically for low-income student-athletes, those who have exhausted their NCAA eligibility but have not received their degree, or those who sustain injuries related to their athletic participation; (3) financial and life skills workshops for all first and third year student-athletes; (4) the same disciplinary due process for all students; and (5) adoption and implementation of exercise and supervision, and health and injury guidelines focusing on sports related concussions, dehydration, and potentially life-threatening health conditions.⁷³

The bill will apply to the University of Southern California, Stanford University, the University of California, Los Angeles, and the University of California, Berkeley, regardless of public or private status because they are all chartered in California and offer students both state and federal scholarships.⁷⁴ Although it is not explicitly clear, the bill is likely aimed at student-athletes who participate in football and men's basketball, those of which are predominantly African-American. Padilla's reasoning for implementing the bill is based on increasing medical costs for injured student-athletes, and decreasing graduation rates at California institutions as a result: "Athletes on scholarship who suffer season or career ending injuries are often saddled with medical bills and are at risk of losing their scholarship. . . . This lack of support contributes to low graduation rates among student-athletes."⁷⁵

For example, the University of California, Berkeley men's basketball graduation rate is an embarrassing 33

⁷³ *Id.*

⁷⁴ Don Thompson, *Student Athlete Bill Approved By CA Legislature: SB 1525 Would Compel Universities To Cover Injured Students*, HUFF POST: LOS ANGELES, (Aug. 22, 2012, 7:20 PM), http://www.huffingtonpost.com/2012/08/22/student-athlete-bill-ca_n_1823420.html.

⁷⁵ Neotrope National News Desk, *supra* note 72.

percent; the University of California, Los Angeles football's graduation rate is 40 percent; and, the University of Southern California men's basketball graduation rate is 38 percent.⁷⁶ Senator Alex Padilla stated his reasons for SB 1525: "Neither personal injury nor poverty should dim the dreams of a student-athlete pursuing a college degree, particularly when their performance has enriched their college."⁷⁷ Senator Padilla clearly has the right intentions and proposes a legitimate, sound plan with some of the necessary protections for student-athletes. Nonetheless, SB 1525 is limited in its application because media revenue is the only source of funding for the bill, and it only applies to four of the 23 Division I institutions in California as a result.

III. Efficient Plan for Solving the Problem Identified

A. Overview

Similar to California Senate Bill 1525, I recommend an efficient plan for protecting and compensating male student-athletes, who are primarily African-American, participating in revenue-generating sports. They should be provided with the following benefits: (1) fair compensation in the form of a guaranteed annual "cost-of-attendance" stipend, with the option to keep money in a secure bank account, that can be accessed during school; (2) a guaranteed athletic/financial aid scholarship, ensuring student-athletes the ability to stay in school and receive an education; and (3) financial and life skills training through required courses during their collegiate careers in order to prepare them for their post-collegiate careers in any profession, particularly professional sports.

Additionally, in order to provide benefits to remaining student-athletes in sports other than football and

⁷⁶ Neotrope National News Desk, *supra* note 72

⁷⁷ Thompson, *supra* note 74.

basketball, the NCAA institutions should provide adequate compensation in the form of “cost-of-attendance” stipends as well. The stipends must be distributed equally to the remaining men’s and women’s student-athletes to avoid any Title IX or Equal Protection legal claims.⁷⁸

Amending the applicable NCAA Bylaw, 15.02.5: Full Grant-in-Aid, would institute uniformity for its institutions, but the individual institutions must take necessary action as well. By amending 15.02.5, the “Full Grant-in Aid” offered to student-athletes will equal the full “cost-of-attendance,” which includes the stipend. The NCPA report found that the cost of attendance not covered ranges from \$952 to \$6,127. Currently, NCAA Bylaw 15.02.5 reads, “A full grant-in-aid is financial aid that consists of tuition and fees, room and board, and required course-related books.”⁷⁹ I propose that it should read, “A full grant-in-aid is financial aid that consists of tuition and fees, room, and board, required course-related books, and a stipend of at least \$950.00 to meet the full cost of attendance.” Because scholarships would also be guaranteed, institutions cannot revoke it for any reason, including athletic performance. However, according to the Associated Press article, “[s]cholarships could still be pulled for reasons such as poor grades, academic misconduct or other forms of improper behavior.”⁸⁰

B. Funding and Planning

According to NCPA report by Ramogi Huma and

⁷⁸ Associated Press, *NCAA Panel Approves Major Changes*, ESPN: COLLEGE SPORTS, (updated Oct. 27, 2011, 11:03 PM), http://espn.go.com/college-sports/story/_/id/7156548/ncaa-panel-approves-major-scholarship-rules-changes.

⁷⁹ 2011-2012 NCAA Division I Manual, NCAA PUBLI’NS, (Aug. 1, 2009) available at <http://www.ncaapublications.com/productdownloads/D110.pdf>.

⁸⁰ Associated Press, *supra* note 78.

Drexel University professor Ellen J. Staurowsky, the cost of attendance not covered by the current scholarship ranges from \$952 to \$6,127, depending on the institution.⁸¹ The National College Players Association (NCPA), which serves as a national independent voice for college athletes, conducted a report that found Football Bowl Series institutions offer the average full scholarship, minus over \$3,200 in educational expenses, which include parking fees, utilities charges, clothing, emergency trips home, etc.⁸² The NCPA stated that adding this amount to make a true, full scholarship for players would likely “reduce their vulnerability to breaking NCAA rules.”⁸³ As far as granting the student-athletes access to their secure bank accounts, student-athletes will be rewarded for not violating NCAA rules by granting them access “in their pursuit of or upon achieving their degree,” while those who violate rules lose their money. Huma feels that graduation rates will increase, while violations will decrease.⁸⁴ Figure 1 highlights, *supra*, how ticket sales, donations, media rights, and marketing are the largest sources of revenue at NCAA member institutions, and Figure 2 emphasizes how coaches’ pay, tuition, and marketing are the largest expenses. Ohio State University, an NCAA institution that has been highlighted in this paper, has recently used \$1.1 million from boosters and donations to fund a stricter

⁸¹ Associated Press, *supra* note 58.

⁸² Ben Cohen, *The Case for Paying College Athletes*, THE WALL STREET JOURNAL: LIFE & CULTURE, (Sept. 16, 2011), <http://online.wsj.com/article/SB10001424053111904060604576572752351110850.html>.

⁸³ *Id.*

⁸⁴ Ramogi Huma, “How to Pay College Athletes: A Three-Part Plan”, THE ATLANTIC, (Sept. 21, 2011, 8:00 AM), <http://www.theatlantic.com/entertainment/archive/2011/09/how-to-pay-college-athletes-a-three-part-plan/245387/>; accord Associated Press, *supra* note 58.

compliance and financial plan.⁸⁵ The university is ensuring that its compliance heads are educating the student-athletes, primarily in football and basketball, about gambling, alcohol and drugs, and life after football.⁸⁶ Additionally, the coaches are being held accountable for their players, with additional duties to go along with their increasing salaries. The article states, “Starting this season, each assistant football coach is responsible for ensuring that every player has a checking account and a personal budget (players can’t suit up otherwise). The coaches are required to monitor players’ spending habits to make sure they don’t get in financial trouble.”⁸⁷ The precedent set at Ohio State University sets forth the need for a coalition to be formed by the NCAA institutions’ leaders, including the coaches, athletic directors, and compliance directors. Together, they can better allocate these major revenues and expenses, taking into account the minimum stipend amount with a secure bank account, and the athletic/financial aid scholarship. While both the stipend and scholarship will be guaranteed, both can be accounted for and allocated on an annual basis because institutions’ financial statements are subject to change from year to year.

With regard to the financial and life skills education, institutions should revise their curricula for all student-athletes, specifically those who participate in football and men’s basketball. Required courses during their collegiate careers should include, but are not limited to, the following individual courses: accounting; finance; financial planning; money and banking; investments; presentational speaking; public advocacy; and interviewing.

⁸⁵ Brad Wolverton, *Can \$1-Million Keep Ohio State’s Sports Program Clean?*, THE CHRONICLE, (Dec. 11, 2012, 11:47 AM), <http://chronicle.com/blogs/players/can-1-million-keep-ohio-states-sports-program-clean/32125>.

⁸⁶ *Id.*

⁸⁷ *Id.*

Likewise, tutors provide an additional educational aid for the football and men's basketball student-athletes on campus and during travel. Tutors like those at the Center for Academic & Tutorial Services at the University of Kentucky can provide added assistance, specifically in the courses above.⁸⁸

C. Conclusion

In the aforementioned ESPN short film titled "Broke," the director notes two staggering statistics: 78 percent of retired NFL players are bankrupt within two years; and 60 percent of retired NBA players are broke within five years.⁸⁹ The NBA and NFL both enforce educational rookie programs. However, the fundamental elements of finance and life skills are presumed to already have been learned by the athletes in college. There needs to be a high level of accountability set at the individual institutions that derive the benefits from these former student-athletes. By setting their student-athletes up to succeed, as opposed to fail, an equitable playing field is created.

⁸⁸ Audrey Smith, CATS Offers Tutoring to UK Student-athletes, KENTUCKY KERNEL, (Nov. 16, 2010), <http://kykernel.com/2010/11/16/cats-offers-tutoring-to-uk-student-athletes/>.

⁸⁹ Cross, *supra* note 18.