

**THE COLLEGE ATHLETE PROTECTION GUARANTEE:
ANOTHER FLAWED FIX FOR THE BROKEN SYSTEM OF
ATHLETIC RECRUITMENT**

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INTRODUCTION

This paper addresses the potential impact of the College Athlete Protection Guarantee: the most recent attempt to substantially increase the amount of additional benefits and protections college athletes receive in exchange for their commitment to a specific institution. There are several serious issues with the current recruitment system—and, more specifically, the National Letter of Intent—which gives college athletes virtually the same amount of compensation they had 50 years ago, while schools generate millions of dollars in revenue from the athletes' abilities.

The College Athlete Protection Guarantee (introduced by the National College Player Association) is the latest attempt to balance the scales between schools and athletes. However, like previously touted "solutions," the College Athlete Protection Guarantee will need to make significant changes to replace the National Letter of Intent. The issues with the College Athlete Protection Guarantee are most apparent when we project its impact on college football recruits. When analyzing this group's socioeconomic background, it becomes clear that the College Athlete Protection Guarantee will only benefit (1) athletes with highly educated guardians and (2) the top 0.13% of recruits who have the leverage to force the schools to negotiate with them. The College Athlete Protection Guarantee is a much better option than the National Letter of Intent for this minute number of athletes.

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However, it is not the solution to providing adequate compensation to all college athletes.

I. THE CURRENT STATE OF COLLEGE ATHLETE RECRUITMENT

Over the last several years, college athletes have begun questioning the National Letter of Intent and the actual benefits and guarantees they receive from it. This binding document creates an imbalance of power between schools and athletes. Athletes often have little to no bargaining power because athletes are unable to amend the document (only the National Letter of Intent Committee can amend it) before the athletes sign it¹ or after the athletes commit to a school.

This lack of power is apparent in situations where athletes have signed National Letters of Intent and then feel powerless, even as athletes on scholarship. For example, the Northwestern University football team attempted to unionize to negotiate their benefits, rather than accepting the limited protections offered to them by the National Letter of Intent.² Their appeal was denied.³ This power imbalance is also apparent in situations like Kyle Hardrick's, who injured his knee while playing for the University of Oklahoma.⁴ The school prevented Hardrick from transferring even after Hardrick had to pay for his treatment out-of-pocket, because Hardrick signed the National Letter of Intent with the school.⁵ The school ultimately terminated Hardrick's scholarship.⁶ After seeing so many athletes denied promised benefits or being locked into a team with an unwanted coaching staff, many high-profile college recruits such as Stephon Marbury

¹ Michelle Brutlag Hosick, *History of the National Letter of Intent*, NCAA.COM, <http://www.ncaa.com/news/ncaa/2011-02-02/history-national-letter-intent> (last updated Feb. 2, 2011).

² Ben Strauss, *N.L.R.B. Rejects Northwestern Football Players' Union Bid*, N.Y. TIMES (Aug. 17, 2015), <https://www.nytimes.com/2015/08/18/sports/ncaafotball/nlrb-says-northwestern-football-players-cannot-unionize.html>.

³ *Id.*

⁴ National College Players Association, *The Kyle Hardrick Story – College Athletes Need Legal Protections*, YOUTUBE (2017), <https://www.youtube.com/watch?v=IB6Pla9Yx2I&t=193s> (last visited Feb. 23, 2018).

⁵ *Id.*

⁶ *Id.*

and Roquan Smith are choosing not to sign a National Letter of Intent.⁷ These are only a few of a countless number of cases where the National Letter of Intent has caused problems for college athletes and illustrates the need for reforming the current recruiting system.

II. THE COST OF COLLEGE ATHLETES

As of the 2014-2015 year, the average cost for students to attend a four-year college was \$25,409.00, and if the last 30 years are any indication, the cost will continue to rise.⁸ In 2014-2015, colleges in the United States spent over \$3 billion in athletic scholarships for varsity athletes, with approximately \$2.2 billion of that amount spent on National Collegiate Athletic Association (NCAA) Division I schools.⁹ The average athletic scholarship for an NCAA Division I male athlete (per athlete, over all sports sponsored by the schools) is \$14,941.¹⁰ As of 2016, athletic scholarships averaged \$38,246 for male basketball players and \$36,070 for Division I Football Bowl Subdivision (FBS) football players.¹¹ Female athletes playing ice hockey and gymnastics averaged over \$40,000 in athletic scholarships per athlete.¹² The most highly compensated individual NCAA Division I athlete received over \$63,000 in athletic scholarships in 2016.¹³ Based on these figures, some NCAA Division I schools pay over \$3.1

⁷ Kevin Scarbinsky, *Scarbinsky: Knight's 'Precautionary' Move May be Revolutionary, too*, AL.COM (May 9, 2012, 5:30 AM), http://blog.al.com/kevin-scarbinsky/2010/05/scarbinsky_knights_precautiona.html; Michael Carvell, *Roquan Smith Won't Sign LOI with New School, Per Coach*, AJC.COM, <http://recruiting.blog.ajc.com/2015/02/09/new-roquan-smith-wont-sign-loi-with-new-school-per-coach/> (last updated Feb. 10, 2015).

⁸ *Tuition Costs of Colleges and Universities*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=76> (last visited Feb. 21, 2018) (taking into account public and private institutions, and also accounts for decreased tuition for instate residents).

⁹ *Average Athletic Scholarship per Varsity Athlete*, SCHOLARSHIPSTATS.COM <http://www.scholarshipstats.com/average-per-athlete.html> (last visited Feb. 21, 2018).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

million in athletic scholarships every year for their football team alone.¹⁴

Each party has their eyes set on different amounts—students want more compensation; institutions want to pay less, but still attract the top talent.¹⁵ This rigid dichotomy leads to the question: how can aspiring student-athletes get more benefit from their athletic scholarships without causing institutions to see a dramatic increase in their athletic scholarship costs?

III. COMPENSATING COLLEGE ATHLETES: A BRIEF HISTORY

After the formation of the NCAA in the early 1900s, schools regularly recruited and paid athletes to play.¹⁶ In some instances, athletes who represented the schools were not students but paid professionals such as lawyers and blacksmiths.¹⁷ Schools gave some of the other athletes representing a school high-paying jobs for which the athletes performed little to no work.¹⁸ The first major shift that limited student-athlete compensation was in 1948 with the NCAA's adoption of the "Sanity Codes," which limited financial compensation to tuition and fees, and required any other compensation to be given based on the needs of the athletes.¹⁹ These new limitations on athlete compensation only lasted two years.²⁰ After numerous southern schools threatened to leave the NCAA in 1950, the code was updated to allow athletic scholarships to include a living stipend.²¹

The next major shift occurred approximately five years later when several schools (now comprising the Ivy League) sought to preserve the ideal of amateurism in college athletics and emphasize the importance of higher education.²² They decided to

¹⁴ *Id.*

¹⁵ This statement is based on the inherent self-interest of people and the simple business principle of trying to pay less for equal or greater value.

¹⁶ Dennis A. Johnson, Ed.D. & John Acquaviva, Ph.D., *Point/Counterpoint: Paying College Athletes*, THE SPORTS J. (June 15, 2012), <http://thesportjournal.org/article/pointcounterpoint-paying-college-athletes/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

no longer provide athletic scholarships.²³ Even now, with the revenues of the NCAA reaching \$871 million, these schools stand fast in their determination to focus on the “student” portion of the label “student-athletes.”²⁴ The strenuous relationship between the NCAA’s continuous emphasis on amateurism in college athletics while constantly trying to generate such incredible revenues has caused some athletes to voice their displeasure with the current compensation system because the amateur designation means no compensation.²⁵ The National Letter of Intent is just another tool that reinforces this “no pay for play” system.

IV. THE NATIONAL LETTER OF INTENT

The National Letter of Intent “is a binding agreement between a prospective student-athlete and [a] [National Letter of Intent] member institution.”²⁶ Seven college athletic conferences created the National Letter of Intent in 1964 in an effort to stop schools from luring away athletes who were already enrolled and committed to play for another institution.²⁷ The purpose of this document is to certify that a student-athlete voluntarily agrees to be bound to an institution for one academic year.²⁸ In exchange for this binding commitment from the student-athletes, the institutions agree to provide an award of financial aid for one academic year.²⁹ If a student-athlete violates the recruiting rules and fails to uphold their end of the deal, their eligibility is compromised.³⁰ For example: if a recruit changes their mind about the institution they signed with, the basic penalty requires them to

²³ *Id.*

²⁴ *Id.*; *Revenue*, NCAA, <http://www.ncaa.org/about/resources/finances/revenue> (last visited Feb. 21, 2018).

²⁵ See Johnson & Acquiviva, *supra* note 16.

²⁶ *About the National Letter of Intent*, NAT’L LETTER OF INTENT, <http://www.nationalletter.org/aboutTheNli/index.html> (last visited Feb. 21, 2018).

²⁷ Hosick, *supra* note 1.

²⁸ *Id.*; see also *About the National Letter of Intent*, *supra* note 26; NCAA, *What is the National Letter of Intent?*, <http://www.ncaa.org/student-athletes/future/eligibility-center/what-national-letter-intent> (last visited Feb. 21, 2018).

²⁹ Hosick, *supra* note 1; see also *About the National Letter of Intent*, *supra* note 26; National Collegiate Athletic Association, *supra* note 28.

³⁰ Hosick, *supra* note 1.

lose one year of competition at the next institution they sign a National Letter of Intent with.³¹ The original rules of the National Letter of Intent remain, although some additional rules have been added by the National Letter of Intent program and NCAA administrators as coaches and institutions try to side-step their obligations to these newly signed recruits.³²

New rules surrounding the National Letter of Intent include when recruits can sign the letter and limitations on the amount of contact coaches can have with recruits during the “signing period.”³³ The most notable addition to the rules of the National Letter of Intent came in 2008, when the NCAA and National Letter of Intent Committee received reports that some schools were including “out clauses” in their National Letter of Intent Agreements.³⁴ These out clauses gave the schools the power to rescind their commitment to the student-athletes in the event of a coaching change before the start of the school year.³⁵ Coaches who verbally promise benefits to recruits and who are subsequently fired after the recruit’s commitment cause student-athletes to commit to a school in hopes of benefits they will never receive.³⁶ Because these agreements are between student-athletes and the institution (not the coaches), the National Letter of Intent committee stepped in, reiterating its position that additional conditions placed within the agreement “made the National Letter of Intent null and void.”³⁷ The committee also cited “competitive-equity” issues by only allowing some schools to offer such releases.³⁸ Undoubtedly the committee saw problems with allowing certain schools to entice athletes to play for them by including additional elements in their National Letter of Intent agreements. Allowing these institutions to modify the standard agreement would be a slippery slope. Where would the modification end?

The National Letter of Intent is a voluntary program; a student-athlete is not required to sign the document to compete in

³¹ *Id.*; *About the National Letter of Intent*, *supra* note 26.

³² *See* Hosick, *supra* note 1.

³³ *Id.*

³⁴ *Id.*

³⁵ *See id.*

³⁶ *See* National College Players Association, *CAP Guarantee*, <https://www.ncpanow.org/capa> (last visited Feb. 21, 2018).

³⁷ Hosick, *supra* note 1.

³⁸ *Id.*

collegiate athletics and the school is not required to have their recruits commit to their program by signing the document.³⁹ However, to the typical sports fan without recruitment experience, the National Letter of Intent appears to be required. Perhaps it is because of the increased attention that high-profile recruits have received from ESPN—whose never-ending coverage of popular recruits’ seasons has fueled the hype machine that “National Signing Day” has become. Thousands tune in as the recruits tease several schools with a fine selection of baseball caps. In reality though, these institutions have no obligation to guarantee athletic financial aid to prospective athletes, and these student-athletes are not obligated to commit themselves to play for only one institution.⁴⁰ This creates openings for alternative means of acquiring benefits without being subjected to the absurd imbalance of power underneath the National Letter of Intent.

V. ALTERNATIVE APPROACHES TO THE NATIONAL LETTER OF INTENT

Signing a National Letter of Intent has become customary, which means that most athletes do not see any other options. However, some athletes and their families are seeking to combat the power imbalance created by the National Letter of Intent by using one of three alternative methods: unionization, less restrictive agreements, and the College Athlete Protection Guarantee.

A. UNIONIZATION

The most recent and notable effort by college athletes to receive additional compensation is that of the Northwestern Division I football team seeking unionization. In the Spring of 2013, Northwestern Wildcats quarterback Kain Colter reached out to the president of the College Athletes Players Association, Ramogi Huma—whose new proposal is the focus of this article—to inquire about the rights that college athletes have.⁴¹ After

³⁹ *About the National Letter of Intent*, *supra* note 26.

⁴⁰ *See id.*

⁴¹ *Northwestern Football Union Timeline*, ESPN (Aug. 17, 2015), http://www.espn.com/college-football/story/_/id/13456482/northwestern-football-union-line.

meeting with Huma, Colter and several of his teammates, as well as athletes from other schools, wore black wristbands during games with the phrase “All Players United” as a symbol of their desire to unionize.⁴² This demonstration was the spark that illuminated the power struggle between the NCAA (and its member institutions) and college athletes over additional compensation. The imbalance of power was on full display as Northwestern opposed its football player’s decisions every step of the way.⁴³ The struggle began in earnest in January 2014, when Northwestern football players formally asked to be represented by a labor union.⁴⁴

To have a chance at unionizing, the Northwestern football players would have to qualify as employees under the National Labor Relations Act (NLRA).⁴⁵ Such employees “are afforded certain rights to join together to improve their wages and working conditions” and “have the right to form a union where none currently exists.”⁴⁶ The NLRA is administered and enforced by the National Labor Relations Board (NLRB) which consists of five members, who together decide cases involving charges of unfair labor practices and determine representative election questions that come before the NLRB.⁴⁷ If a group of employees is eligible to unionize, and therefore collectively bargain, Section 8(d) of the NLRA requires an employer and the representatives of its employees to meet in good faith to discuss to wages, hours, and other terms or conditions of employment.⁴⁸ Furthermore, the NLRA requires that an employer bargain with its employees’ representative, who is most often selected by a secret-ballot election.⁴⁹ The NLRB conducts this secret-ballot election only after a petition for “certification of representatives” is filed by a

⁴² *Id.*

⁴³ *See id.*

⁴⁴ *Id.*

⁴⁵ *Employees Rights*, NAT’L LAB. REL. BOARD <https://www.nlr.gov/rights-we-protect/employee-rights> (last visited April. 13, 2018).

⁴⁶ *Id.*

⁴⁷ Office of the General Counsel, *General Principles of Law Under the Statute and Procedures of the National Labor Relations Board*, NAT’L LAB. REL. BOARD, <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf> (last visited Apr. 13, 2018).

⁴⁸ 29 U.S.C. § 158(d) (2012).

⁴⁹ *General Principles*, *supra* note 47.

group of employees.⁵⁰ The Northwestern University football players tried to go through this process.⁵¹

The NLRB held hearings on the players' "certification of representation."⁵² The Chicago district of the NLRB concluded that the Northwestern football players were employees of the university and could unionize.⁵³ Soon after the ruling by the Chicago district of the NLRB, Northwestern football coach Pat Fitzgerald encouraged his players to vote against forming a union.⁵⁴ Further, Northwestern University appealed the ruling of the NLRB's regional director with a motion opposing the players' ability to form a union, and eventually petitioned the NLRB's Board Members to overturn the ruling.⁵⁵ While waiting for the Board Members to review Northwestern's petition, The Big Ten conference, undoubtedly in an effort to show the athletes that they had heard their complaints, announced plans to improve medical insurance and to guarantee multi-year scholarships for its athletes.⁵⁶ On August 17, 2015, the NLRB, in a unanimous decision, declined to assert jurisdiction in the case and overturned the previous decision to allow Northwestern's football players to form a union.⁵⁷ Because the Board exercised its discretion not to assert jurisdiction, they did not have the authority to allow the athletes of this specific institution to unionize because of the structure of the NCAA Division I FBS.⁵⁸ The Board does not have jurisdiction over state-run institutions, which comprise over 85 percent of FBS teams, and every Big Ten school except for Northwestern.⁵⁹ Although the NLRB declined the Northwestern players' rights to unionize, they did not rule on whether the athletes were statutory employees, leaving the door open for future reconsideration of this issue.⁶⁰

⁵⁰ *Id.*

⁵¹ *Northwestern football union timeline, supra* note 40.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*; Office of Public Affairs, *Board Unanimously Decides to Decline Jurisdiction in Northwestern Case*, NAT'L LAB. REL. BOARD (Aug. 17, 2015), <https://www.nlr.gov/news-outreach/news-story/board-unanimously-decides-decline-jurisdiction-northwestern-case>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

The complications associated with trying to get approval for unionization have left many student-athletes wondering what their next avenue might be for obtaining additional compensation. According to Ramogi Huma, the best option is to change the process of how prospective student-athletes' compensation is determined during the recruitment period.⁶¹

B. FINANCIAL AID AND LESS RESTRICTIVE AGREEMENTS

While choosing not to sign a National Letter of Intent is becoming more common among high-profile basketball recruits than other athletes (for instance, five-star recruits Brandon Knight and Stephon Marbury),⁶² there is an increasing number of highly talented high school football stars who are choosing not to sign National Letters of Intent.⁶³ Roquan Smith, a heavily recruited linebacker from Montezuma, Georgia, started the trend of FBS football players not signing the National Letter of Intent.⁶⁴ Smith, who had originally agreed to sign a National Letter of Intent to bind himself to the University of California, Los Angeles (UCLA), refused to sign the letter when ESPN reported that UCLA's defensive coordinator (who had recruited Smith) had accepted a job with the Atlanta Falcons of the National Football League (NFL).⁶⁵ Smith, now a standout All-American linebacker for the University of Georgia, informed the University of Georgia that he would not sign a National Letter of Intent because he wanted more flexibility in case something unexpected (like a coaching change) happened again.⁶⁶ The school agreed to allow Smith to sign a financial aid agreement which set out the parameters of his scholarship.⁶⁷

The decline in the use of the National Letter of Intent seems to be spurred by one thing—athletes' desire for flexibility. This flexibility includes the right to transfer schools after a

⁶¹ *Northwestern football union timeline*, *supra* note 41.

⁶² Scarbinsky, *supra* note 7.

⁶³ Carvell, *supra* note 7.

⁶⁴ See *id.*

⁶⁵ *Id.*; Ray Glier, *High School Recruits Think Twice About Signing Letter of Intent*, N.Y. TIMES (Feb. 13, 2015), <https://www.nytimes.com/2015/02/15/sports/ncaafootball/high-school-recruits-think-twice-about-signing-letters-of-intent.html>.

⁶⁶ Glier, *supra* note 65.

⁶⁷ *Id.*

coaching change and has been a topic of discussion since 2003.⁶⁸ Andy Katz, a columnist for ESPN, documented how the National Letter of Intent Committee refused to make a change to the wording of the National Letter of Intent after several high-profile coaching changes occurred at many of the nation's top schools including UCLA, North Carolina, Kansas, Georgia, and Clemson.⁶⁹ After hearing opinions from many coaches, the committee decided that a change in the language of the National Letter of Intent was not warranted because a high-profile coach can be replaced, but the school's loss of its recruits "would devastate the program."⁷⁰ The wording of the National Letter of Intent has not changed since this discussion in 2003 (and the many discussions since), and while proposed alternatives for athletes have been suggested (such as simply signing a non-binding scholarship agreement with the coach⁷¹), it appears that the National Letter of Intent unequally favors schools over athletes.

The power that schools have over these National Letter of Intent signees has prompted much discussion about the fairness of this contract. In 2015, *Sports Illustrated's* Andy Staples wrote a compelling article in which he pointedly remarked that the National Letter of Intent is the "worst contract in American sports."⁷² Staples called it such because:

It requires players to sign away their right to be recruited by other schools. If they don't enroll at the school with which they signed, they forfeit a year of eligibility. Not a redshirt year, but one of their four years to play. In return, the NLI guarantees the player nothing. Sure, the NLI claims to guarantee a scholarship, but that simply isn't true. That is contingent on the player being admitted to the school and on the football

⁶⁸ Andy Katz, *Less-Binding NLI May Give Recruits More Options*, ESPN.COM, http://assets.espn.go.com/ncb/columns/katz_andy/1542395.html (last visited Feb. 21, 2018).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Andy Staples, *Why Prized Recruits Should Refuse to Sign the NLI; More Punt, Pass & Pork*, SPORTS ILLUSTRATED (Feb. 9, 2015), <https://www.si.com/college-football/2015/02/09/national-letter-intent-punt-pass-pork>.

program staying below the 85-scholarship limit. A school can dump the player at any point between Signing Day and preseason camp, and he would have no recourse. This guarantee is no different than the one on a conference-approved financial aid form, but it costs the player something the financial aid agreement does not.⁷³

Staples' statement supports the idea that other options are available to high school recruits who desire more flexibility than the National Letter of Intent can offer. But with other, more flexible, options available (such as a financial aid agreement), why should any high-profile recruit sign a National Letter of Intent? The truth is: high-profile athletes should not.⁷⁴ The athletes who benefit from signing the National Letter of intent are those athletes who have no leverage to negotiate, *i.e.* less talented recruits.⁷⁵

According to Staples, "almost every football recruit *should* sign the National Letter of Intent."⁷⁶ Again, these recruits should sign the National Letter of Intent because of the lack of leverage that non-star athletes have.⁷⁷ For example, it is in the best interests of the twentieth player in a school's recruiting class to sign a National Letter of Intent because he may lack other attractive options for a free education.⁷⁸ On the other hand, top prospects have much more leverage because there are typically multiple schools that are competing for the athlete's commitment.⁷⁹ Wanting to win will typically override a school's desire to maintain the status quo of forcing a top prospect to sign a National Letter of Intent.⁸⁰ These schools know that if they do not acquiesce to the athlete's request not to sign the binding agreement, another school will, thus hurting the denying school's chances of winning.⁸¹

⁷³ *Id.*

⁷⁴ *Id.* See Patrick Hruby, *Why Top NCAA Recruits Shouldn't Sign National Letters of Intent*, VICE SPORTS (Feb. 1, 2017), https://sports.vice.com/en_us/article/pgn38z/why-top-ncaa-recruits-shouldnt-sign-national-letters-of-intent.

⁷⁵ Staples, *supra* note 72.

⁷⁶ *Id.* (emphasis added).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Hruby, *supra* note 74.

⁸⁰ *See id.*

⁸¹ *Id.*

The inherent leverage that comes with being a high-profile recruit seems to be one of the main factors that could finally spur a change to the current system of lopsided binding agreements between athletes and schools. The College Athlete Protection Guarantee is the latest attempt to rectify this imbalance.

C. THE COLLEGE ATHLETE PROTECTION GUARANTEE

Romagi Huma, the president of the National College Players Association, has been working on new ways to help student-athletes receive additional compensation for their commitment to play sports for these revenue-generating institutions. After the NLRB Board rejected Huma's and the Northwestern football players' petition for unionization, it appears Huma continued working on new ways to secure more compensation for college athletes. Huma's attempt to get more compensation for the Northwestern football players through unionization was an attempt to create more benefits *after* the athletes had already committed to play at a specific institution.⁸² Huma's new strategy is to try and secure more compensation *before* the student-athletes commit to play by changing the way prospective student-athletes sign with schools.⁸³

The National College Players Association website provides a blatant warning to student-athletes: "Warning: A [National] Letter of Intent provides no protection for a player—it only protects the school. Coaches too often use their advantage by breaking verbal promises to recruits after they have gained their trust during the recruiting process."⁸⁴ But if signing the National Letter of Intent has become the only way that recruits commit to schools, and the National Letter of Intent Committee will not allow additional conditions to be placed in this binding document, what then can the athletes do to protect themselves? Enter the College Athlete Protection Guarantee.

The College Athlete Protection Guarantee is a binding document that prospective student-athletes can use either to

⁸² See Strauss, *supra* note 2.

⁸³ See Dennis Dodd, *Inside the First Legally Binding Contract Between a College Athlete and a School*, CBS SPORTS (June 14, 2017), <https://www.cbssports.com/college-football/news/inside-the-first-legally-binding-contract-between-a-college-athlete-and-a-school/>.

⁸⁴ *CAP Guarantee*, *supra* note 36.

replace the National Letter of Intent or sign in conjunction with the National Letter of Intent as an additional layer of protection for the student-athletes.⁸⁵ Huma and the National College Players Association claim that both legal experts and NCAA experts such as Tim Nevius, a former NCAA enforcement official, have thoroughly vetted the document.⁸⁶ The College Athlete Protection Guarantee states that student-athletes “can request and secure legally binding protections/benefits worth over \$100,000 dollars [sic] beyond a minimum scholarship *without breaking NCAA rules.*”⁸⁷ Student-athletes are encouraged to use the College Athlete Protection Guarantee to obtain additional physical, academic, and financial protections from a school *before* they commit to attending.⁸⁸ According to Huma and the National College Players Association, the College Athlete Protection Guarantee is all about transparency.⁸⁹ The document allows prospective student-athletes to navigate through the “overly restrictive NCAA rules” to receive additional protections by helping the athletes know what to ask for from schools.⁹⁰

The College Athlete Protection Guarantee lists some possible protections or benefits that may be available to prospective student-athletes.⁹¹ While most prospective student-athletes would like to obtain all of the additional protections or benefits listed in the College Athlete Protection Guarantee, the document only makes these protections or benefits negotiable between the school, the athlete, and the athlete’s family.⁹²

The additional protections and benefits that may be available to student-athletes include guaranteed scholarship money, stipend money, reimbursement money, medical expenses, transfer release, off-season and free time activities, and disability insurance.⁹³ Since 2012, the NCAA has allowed schools to provide multi-year scholarships to their athletes instead of the

⁸⁵ Dodd, *supra* note 83.

⁸⁶ *Id.*

⁸⁷ National College Players Association, *College Athlete Protection Guarantee*, <https://sports.cbsimg.net/images/collegefootball/College-Athlete-Guarantee-CBS-Sports.pdf> (last visited Feb. 21, 2018).

⁸⁸ *Id.*

⁸⁹ Dodd, *supra* note 83.

⁹⁰ *CAP Guarantee*, *supra* note 36.

⁹¹ *College Athlete Protection Guarantee*, *supra* note 87.

⁹² Dodd, *supra* note 83.

⁹³ *College Athlete Protection Guarantee*, *supra* note 87.

year-to-year renewal scholarships created by the National Letter of Intent.⁹⁴ However, Huma contends that while many schools and several conferences “guarantee” multi-year scholarships, the absence of penalties for schools that violate this guarantee make it a mere policy.⁹⁵ The College Athlete Protection Guarantee goes far beyond the simple terms of the agreement of the National Letter of Intent.⁹⁶ The College Athlete Protection Guarantee will allow prospective athletes to bind the school to a multi-year scholarship that may also include summer school scholarships, degree completion scholarships for athletes who turn pro before receiving their degree, and graduate school scholarships beyond athletic eligibility.⁹⁷ Prospective athletes may also negotiate for stipend and reimbursement money to cover out-of-pocket education-related expenses and other out-of-pocket costs such as phone bills and parking fees that a traditional “full” athletic scholarship would not cover.⁹⁸

Besides negotiating for additional funds, the College Athlete Protection Guarantee will allow prospective student-athletes to negotiate what medical expenses will be covered by the school and the athlete’s ability to transfer schools, if necessary.⁹⁹ The National Collegiate Players Association has specifically focused on educating prospective student-athletes about these two important items to avoid the unfortunate situations that athletes such as Cameron Johnson, Corey Sutton, and Kyle Hardrick went through to with their respective programs.¹⁰⁰ Cameron Johnson was prevented from transferring from the University of Pittsburgh basketball program after graduating in three years.¹⁰¹ The

⁹⁴ Dodd, *supra* note 83.

⁹⁵ *Id.*

⁹⁶ *College Athlete Protection Guarantee, supra* note 87.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Alex Kirshner, *The Cameron Johnson Transfer Saga Shows Where the Real Power is in College Sports*, SBNATION (June 6, 2017, 1:40 PM), <https://www.sbnation.com/college-basketball/2017/6/6/15746986/cameron-johnson-transfer-unc-pitt>; Morgan Moriarty, *Bill Snyder Blocked a Player’s Transfer List of 35 Schools, then Relented*, SBNATION, <https://www.sbnation.com/college-football/2017/6/1/15727046/bill-snyder-blocking-kansas-state-corey-sutton-transfer-release-35-schools> (last updated June 2, 2017); *CAP Guarantee, supra* note 35.

¹⁰¹ Kirshner, *supra* note 100.

University of Pittsburgh held the right to prevent Johnson from transferring to another school within the Atlantic Coast Conference (ACC) unless Pittsburgh declined to renew his scholarship—which they did not, causing Johnson to lose a year of eligibility if he transferred from Pittsburgh to the University of North Carolina.¹⁰² In Corey Sutton’s case, Kansas State’s head football coach (Bill Snyder) blocked Sutton’s request for transfer to thirty-five different schools, including schools outside of the conference, schools never appearing on Kansas State’s schedule, and even Division II schools.¹⁰³ Similar to Cameron Johnson, Kansas State would allow Sutton to leave, but would not release him from his scholarship, meaning that Sutton would have to sit out the mandatory year of his eligibility before he would be able to receive athletic financial aid from another institution.¹⁰⁴

Finally, the National College Players Association produced a short video of Kyle Hardrick’s trouble with Oklahoma State University regarding his medical coverage and inability to transfer, which illustrates the problems which can arise under the National Letter of Intent recruiting system.¹⁰⁵ While playing for Oklahoma State University, Kyle Hardrick was injured during a basketball practice at the beginning of the year.¹⁰⁶ After sending Kyle for x-rays of his injured knee, the coach and training staff informed Kyle and Kyle’s mother that Kyle would be fine and that Kyle would be back in a week.¹⁰⁷ The University forced Kyle to continue participating in drills during practice and workouts after he was told by the coaching staff that he had only suffered a pulled quadriceps muscle.¹⁰⁸ After an entire year of suffering pain in his knee, Kyle’s mother finally took him to a specialist where doctors informed them that Kyle had actually suffered a significant tear in his meniscus that would need to be surgically repaired.¹⁰⁹ Further, the wear and tear on his knee since the injury has caused degeneration in Kyle’s knee comparable to a sixty-year-old.¹¹⁰

¹⁰² *Id.*

¹⁰³ Moriarty, *supra* note 100.

¹⁰⁴ *Id.*

¹⁰⁵ See *CAP Guarantee*, *supra* note 36; THE KYLE HARDRICK STORY, *supra* note 4.

¹⁰⁶ THE KYLE HARDRICK STORY, *supra* note 4.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Following this consultation, Kyle's mother received a phone call from Oklahoma's Athletic Director who notified her that the school would not pay for Kyle's surgery because they went outside of the university for a medical evaluation.¹¹¹

The following fall, the University terminated Kyle's scholarship—something that neither Kyle nor his mother knew the University could do.¹¹² In an interview with the National College Players Association, Kyle stated that he “went to [the] NCAA camp [where they] tell[] [athletes] what[] [will] happen before you go to college, and they never mentioned [that your scholarship is] not a guaranteed four [years].”¹¹³ Unfortunately, because Kyle only signed the National Letter of Intent, which guarantees the school's commitment to the student-athlete for one year, the school had no obligation to renew his athletic financial aid.¹¹⁴ The situation worsened when the University of Oklahoma refused to allow Kyle to transfer to another school, leaving him as “a captive” at the University without any of his athletic financial aid to help him complete his degree.¹¹⁵ The University agreed to allow Kyle to transfer from the school on the condition that Kyle's mother sign a waiver mandating that none of Kyle's relatives would ever be able to attend the University of Oklahoma and that Kyle could not sue the school over the handling of his injuries.¹¹⁶ These stories are blatant examples of the unbalanced power dynamic between prospective student-athletes and the schools that they want to attend.

What does the College Athlete Protection Guarantee allow student-athletes and their families to negotiate for in terms of medical coverage? With this new document, student-athletes can request that recruiting schools cover up to 100 percent of sports-related medical expenses, including deductibles and copays.¹¹⁷ Currently, the NCAA does not require schools to pay for the medical expenses associated with these injuries.¹¹⁸ Student-athletes can also request that recruiting schools cover up

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *College Athlete Protection Guarantee, supra* note 87.

¹¹⁸ *Id.*

to 100 percent of the medical insurance premiums paid by either the student-athlete or their parent(s) for their college's student health insurance.¹¹⁹ Finally, student-athletes can request disability insurance, which can pay the student-athlete a predetermined amount if they have a high chance of playing in professional leagues and are injured while playing college sports.¹²⁰

Disability insurance acts as a safety-net for high-profile athletes who have a chance of earning money in professional leagues, but who must attend college for a certain number of years while risking injuries.¹²¹ The practice of obtaining such disability insurance has become increasingly popular over the last several years, with the likes of top NFL draft picks Marquis Lee, Leonard Fournette, and Jameis Winston each obtaining up to \$20 million in coverage.¹²² While these insurance policies may be negotiated for by the student-athlete, they are much more intricate than this discussion warrants, and both the student-athletes and the school should inform themselves of the more minute details before agreeing to this type of coverage in a contract.¹²³

Finally, the College Athlete Protection Guarantee aims to resolve the transfer issues experienced by countless student-athletes by having schools agree to allow "transfer freedom without college-imposed conditions or restrictions on which schools can contact [the athlete] and provide [the athlete] with athletic scholarship should [the athlete] wish to transfer."¹²⁴ However, the College Athlete Protection Guarantee cannot overcome the NCAA or Conference rules that may still require an athlete to sit out for the mandatory "year in residence" at the school that the athlete transfers to, even if the original school agrees to allow freedom to transfer.¹²⁵ The athlete can appeal to

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Jill Wieber Lens & Joshua Lens, *Insurance Coverage for Elite Student-Athletes*, 84 MISS. L. J. 128, 151 (2015); Dennis Dodd, *Leonard Fournette's \$10M Policies and the Unregulated World of Player Protection*, CBS SPORTS (May 12, 2016), <https://www.cbssports.com/college-football/news/leonard-fournettes-10m-policies-and-the-unregulated-world-of-player-protection/>.

¹²³ *See id.*

¹²⁴ *College Athlete Protection Guarantee*, *supra* note 87.

¹²⁵ *Id.*

the NCAA or the Conference to waive this requirement, but that is definitely not a guarantee.¹²⁶

VI. USING THE COLLEGE ATHLETE PROTECTION GUARANTEE

Student-athletes may use the College Athlete Protection Guarantee either in conjunction with the National Letter of Intent or to replace the National Letter of Intent.¹²⁷ Huma and the National College Players Association have provided instructions on how to use the College Athlete Protection Agreement directly on the document.¹²⁸ Initially, they give an important preface discussing how to use the document.¹²⁹ The prospective student-athlete and their parent(s) or guardian(s) are told that they can negotiate for various protections and benefits directly with prospective colleges instead of accepting the boilerplate language used by the National Letter of Intent.¹³⁰ However, they have also issued a warning that if they allow a third party to negotiate with a school on their behalf, the prospective student-athlete's eligibility and scholarship opportunities could be jeopardized because of potential NCAA rule violations.¹³¹ Huma and the National College Players Association then provide five "Steps" the prospective student-athlete and their parent(s)/guardian(s) should follow.¹³²

First, the National College Players Association encourages prospective student-athletes to use the College Athlete Protection Guarantee *instead* of the National Letter of Intent.¹³³ But if the school that the prospective student-athlete wants to play at insists that the recruit sign the National Letter of Intent, the

¹²⁶ *Id.*

¹²⁷ Gregg E. Clifton & John G. Long, *National College Players Association Urges Prospective Student-Athletes to Negotiate Scholarship Terms with Colleges*, JACKSON LEWIS (June 16, 2017), <https://www.collegeandprosportslaw.com/uncategorized/national-college-players-association-urges-prospective-student-athletes-to-negotiate-scholarship-terms-with-colleges/>.

¹²⁸ *College Athlete Protection Guarantee*, *supra* note 87.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

National College Players Association urges prospective student-athletes to use the College Athlete Protection Guarantee as well.¹³⁴ Huma and the National College Players Association are clearly trying to limit a school's ability to bind the player to their institution, and in turn placing more power in the hands of the prospective student-athlete.

Second, the National College Players Association encourages prospective student-athletes that are using the document to edit the document and to complete it with the protections and benefits they want from the school.¹³⁵ The document has been described as “sort of a contract Mad Libs” because the document is set up as a template which the prospective student-athlete fills in before submitting it to recruiting schools for review.¹³⁶ Again, a warning is given to those using the document: if the language of the document is changed, the prospective student-athlete may limit the number of benefits and protections available to them and affect the legal enforceability of the agreement.¹³⁷

Third, the prospective student-athlete should send their completed document to each college that is recruiting the student-athlete.¹³⁸ Because this document is meant to be used as a negotiating tool, the athlete should send the document without their signature.¹³⁹ This allows each school to accept or reject the document or ask to modify various parts of the agreement.¹⁴⁰ By allowing each school the opportunity to review the document without the athlete's signature, the athlete cannot be bound to a certain school without reviewing each school's modifications to the agreement. The athlete is then able to see which schools are willing to provide more benefits and protections to the athlete and allows the athlete to decide what benefits and protections they

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Paul Wiley, *Three Big Questions About the National College Players Association's College Athlete Protection Guarantee*, SBNATION (June 15, 2017), <https://www.streakingthelawn.com/2017/6/15/15807830/national-letter-intent-cap-guarantee-scholarship-contract-ncaa-football-ea-sports-virginia-cavaliers>.

¹³⁷ *College Athlete Protection Guarantee*, *supra* note 87.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

want the most.¹⁴¹ This is where the power struggle between the prospective student-athlete and the school begins to even out.

The fourth step instructs the prospective student-athlete to ask each school to make their best offer as early as August 1 of the athlete's senior year of high school.¹⁴² Each school should supply the prospective student-athlete with a PDF copy of the completed College Athlete Protection Guarantee as a "written scholarship offer" to the athlete.¹⁴³ Although the offer can be received as early as August 1, NCAA rules stipulate that the offer cannot be signed until the designated signing day.¹⁴⁴

Finally, on National Signing Day, the prospective student-athlete should request a signed and dated copy of the final College Athlete Protection Guarantee from the school as its official scholarship offer from step four.¹⁴⁵ After reading this document carefully to ensure that it offers the same benefits and protections as the original offer, the student-athlete should sign, date, and return the official College Athlete Protection Agreement to the school.¹⁴⁶ Huma and the National College Players Association warn any prospective student-athletes who may be required by a school to sign a National Letter of Intent alongside the College Athlete Protection agreement to not sign and submit the National Letter of Intent until they have received a signed and dated copy of the official College Athlete Protection Guarantee from the school.¹⁴⁷ Failure to follow this warning may lead to the prospective student-athlete having no additional benefits or protections provided to them through the College Athlete Protection Guarantee.¹⁴⁸

In theory, this document will level the power struggle between prospective student-athletes and the schools who recruit them, but the warnings that riddle its instructions are reminders of all of the things that could go wrong while attempting to use the document.

¹⁴¹ *See id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

VII. POTENTIAL PROBLEMS WITH THE COLLEGE ATHLETE PROTECTION GUARANTEE

Upon analyzing the College Athlete Protection Guarantee, it has become apparent that while the document aims to create an equal footing for athletes when negotiating with schools, there are still many problems with the NCAA recruitment process that the Guarantee cannot remedy.

A. LACK OF NEGOTIATION EXPERIENCE

As discussed above, the College Athlete Protection Guarantee gives the athlete the power to request certain additional benefits from the school, benefits that are not provided under the National Letter of Intent.¹⁴⁹ However, a disclaimer at the end of the Guarantee states that “[w]hile current or prospective college athletes may directly secure written guarantees from colleges, they may lose their athletic eligibility if they secure an attorney, agent, or another third party to negotiate individual guarantees with a college.”¹⁵⁰ Without being able to receive advice from an outside party, the College Athlete Protection Guarantee appears to do little to shift the recruiting power from the school back to the athlete.

In February 2017, only a few months before the unveiling of the College Athlete Protection Guarantee, Patrick Hruby wrote an article encouraging top prospects not to sign a National Letter of Intent.¹⁵¹ In his article, Hruby discussed the NCAA’s extremely negative attitude toward expanding rights and benefits available for athletes.¹⁵² He stated: “The NCAA fights tooth and nail for amateurism, an arguably illegal system of inarguable economic control; player-friendly reforms such as cost-of-living stipends and the ability to even offer four-year scholarships have come only as a result of legal defeats and public shamings.”¹⁵³

Although “player-friendly reform” has come about in a less than efficient manner, it would seem as if athletes today have more power in the negotiation process than before. Warren Zola, a sports law expert and professor at Boston College, disagrees

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Hruby, *supra* note 74.

¹⁵² *Id.*

¹⁵³ *Id.*

Zola explained that the biggest problem with the entire negotiation process between athletes and schools is that "[s]chools have lawyers and conferences and all sorts of people looking out for their best interests. Meanwhile, you have an unsophisticated consumer base of athletes who are ill-prepared to enter this multimillion-dollar business."¹⁵⁴ Zola elaborated that these athletes are at an extreme disadvantage in the negotiation process because they are not allowed to have any guidance from third parties and that "any level of guidance [the athletes] get may be deemed to be 'improper benefits.'"¹⁵⁵

These "improper benefits" are what Huma and the National College Players Association warn athletes about within the College Athlete Protection Guarantee, and can lead to a loss of eligibility.¹⁵⁶ While some athletes may have the resources to competently handle negotiations with these schools and their attorneys (*i.e.* a highly educated or skilled negotiator as their legal guardian), many eligible athletes will not. This will lead to two outcomes: either the athletes will continue to be at a large disadvantage, or the athletes will need to risk their eligibility to ensure that they are getting the best deal available to them. Without proper negotiating leverage, athletes will continue to end up with these take-it-or-leave-it contracts."¹⁵⁷

The lack of negotiation power available among recruits can be seen through an analysis of the economic or geographical backgrounds of the players who are being highly recruited by the top schools in the country.

B. RACIAL AND ECONOMIC IMPLICATIONS

This analysis will focus on the sport of football. While other sports are certain to feel the impact of the forthcoming discussion, football will best illustrate the effects that the College Athlete Protection Agreement may have on individuals who come from lower-income or less educated backgrounds.

To begin, it is important to understand the demographics of college athletes. In 2013, a study performed by the University of Pennsylvania determined that African-American men

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *College Athlete Protection Guarantee, supra* note 87.

¹⁵⁷ *See* Hruby, *supra* note 74.

comprised only 2.8 percent of undergraduate students.¹⁵⁸ However, when looking at athletics, African-Americans make up 57 percent of football teams on average, and approximately 64 percent of men's basketball players.¹⁵⁹ The percentage of African-American athletes varies from conference to conference, with the South Eastern Conference (SEC) claiming the highest percentage of African-American football players at approximately 70 percent.¹⁶⁰ These percentages translate to the National Football League (NFL), where African-Americans comprise nearly 70 percent of the league's players.¹⁶¹ In contrast, African-American men only make up approximately 6 percent of the United States population.¹⁶²

The high number of African-American football players may come from the societal belief that playing professional sports is “the only way out” for many underprivileged young men. There are many examples of high-profile athletes who believed this ideology to be true; including LeBron James, who began playing football at a young age.¹⁶³ In an interview in 2014, James was asked why he will not allow his sons to play football.¹⁶⁴ LeBron, who grew up in a single-parent household, said “I needed a way out [of poverty],” but “my kids don't.”¹⁶⁵ This statement from one of the world's best athletes reinforces the belief that those who

¹⁵⁸ See Shaun R. Harper, *Black College Football and Basketball Players are the Most Powerful People of Color on Campus*, THE WASHINGTON POST (Nov. 11, 2015), https://www.washingtonpost.com/posteverything/wp/2015/11/11/black-college-football-and-basketball-players-are-the-most-powerful-people-of-color-on-campus/?utm_term=.580aee08f5ba; Diane Roberts, *College Football's Big Problem with Race*, TIME (Nov. 12, 2015), <http://time.com/4110443/college-football-race-problem/> (The sample taken was representative of the institutions of the six major NCAA Division I athletic conferences).

¹⁵⁹ See Harper, *supra* note 158; Roberts, *supra* note 158.

¹⁶⁰ Harper, *supra* note 158.

¹⁶¹ Antonio Moore, *Football's War in the Minds of Black Men*, VICE SPORTS (Dec. 24, 2015, 8:05 AM), https://sports.vice.com/en_us/article/eze4gj/footballs-war-on-the-minds-of-black-men.

¹⁶² *Id.*

¹⁶³ *Lebron on Football Ban for His Kids: They Don't Need a Way Out of Poverty*, SPORTS ILLUSTRATED (Nov. 13, 2014), <https://www.si.com/nba/2014/11/13/lebron-james-kids-football-ban>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

live in poverty are more likely to use athletics (especially football) as “a way out.”

Another source which feeds this seemingly pervasive idea among low-income and African-American communities comes directly from the abundant athlete-specific advertising that aspiring young athletes see every day. For example, one of Nike’s recent commercials begins with a young African-American boy standing on the street outside his home in a less-affluent neighborhood holding a basketball.¹⁶⁶ His mother, wearing modest clothing, asks “what are you looking at?” The audience is then taken through this boy’s daydream.¹⁶⁷

The boy progresses from playing on a street court surrounded by run-down apartment buildings, to a teenager at a basketball camp instructed by James.¹⁶⁸ Next, the teenager is dribbling his basketball in his home while he longingly watches James play on television.¹⁶⁹ After signing with Duke University to play basketball (his mother and father standing beside him, still dressed in modest clothing), he is shown to work harder and harder until he is eventually drafted by the Cleveland Cavaliers of the National Basketball Association (NBA).¹⁷⁰ The young man’s hard work appears to pay off as he plays with his idol (James) and he scores an incredible basket against the Golden State Warriors while his family (now wearing expensive clothing) watch with pride.¹⁷¹ The commercial ends by flashing back through the daydream to the boy standing in the rundown neighborhood with his basketball; the slogan “Want It All” appearing on the screen.¹⁷² With the slogan “Want It All” and its subtle images of improving the lives of your family, this advertisement from one of the world’s largest sporting brands continues to instill the idea that sports are “a way out” for low-income communities. As alluring as this path may seem, it may not be as easy as it appears.

Many journalists and scholars have found that a substantial number of scholarship athletes are from low-income

¹⁶⁶ eukicks, *Nike Basketball 2017-2018 NBA Commercial*, YOUTUBE (Oct. 17, 2017), <https://www.youtube.com/watch?v=Tn70NxIMk2Q>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

families.¹⁷³ For example, Dr. Harry Edwards, a sociology professor at the University of California, Berkeley, who is also an expert on African-American athletes and consultant to the San Francisco 49ers and several universities, has stated that “a large number of college football players are already from minority and disadvantaged backgrounds.”¹⁷⁴ Furthermore, after analyzing the current state of athletic scholarships, Dr. Boyce Watkins, a finance professor at Syracuse University, said: “the system disproportionately hurts players from lower-income areas, and the African-American community.”¹⁷⁵ While the athletic scholarship system which Dr. Watkins analyzed did not include the College Athlete Protection Guarantee,¹⁷⁶ it appears that the proposed system which would contain this new legally binding document would perpetuate the same disparity. Huma and the National College Players Association present the College Athlete Protection Guarantee as a document which will benefit everyone who chooses to use it;¹⁷⁷ however, only athletes with a legal guardian who can competently negotiate with the school’s lawyers will truly benefit from the new contract.

As stated above, this analysis focuses on African-American athletes who play football because the majority of the athletes who participate in Division I college football are African-American.¹⁷⁸ However, this analysis applies to all athletes who are similarly situated, regardless of the color of their skin.

¹⁷³ See e.g., Armstrong Williams, *WILLIAMS: The Exploitation of College Athletes*, THE WASHINGTON TIMES (Apr. 6, 2014), <https://www.washingtontimes.com/news/2014/apr/6/williams-the-exploitation-of-college-athletes/>; April Fulton, *Hunger Games: College Athletes Make Play for Collective Bargaining*, NPR (Apr. 21, 2014, 12:37 PM), <https://www.npr.org/sections/thesalt/2014/04/21/304196202/hunger-games-college-athletes-make-play-for-collective-bargaining>.

¹⁷⁴ Lekan Oguntoyinbo, *Game Changer: Experts Say Health Risks to Put Football in Hands of Low-Income, Minority Players*, DIVERSE (Jan. 26, 2014), <http://diverseeducation.com/article/60354/>.

¹⁷⁵ Kai Ryssdal, *NCAA Policy Hits Poor, Minority Neighborhoods Hardest*, MARKETPLACE, (July 8, 2013), <https://www.marketplace.org/2013/07/08/wealth-poverty/ncaa-policy-hits-poor-minority-neighborhoods-hardest>.

¹⁷⁶ *Id.*

¹⁷⁷ *College Athlete Protection Guarantee*, *supra* note 87.

¹⁷⁸ Harper, *supra* note 158.

Several studies have linked socioeconomic status and educational achievement.¹⁷⁹ These studies imply that there is a strong correlation between economic status and a student's ability to perform in the classroom, partially because poorer areas lack the necessary resources to achieve high performance in academics.¹⁸⁰ A 2011 study illustrates the differences in achievement on standardized reading tests between students from different economic classes.¹⁸¹ This study determined that, on average, low-income students scored around the 30th percentile, middle-income students scored around the 45th percentile, and upper-income students scored around the 70th percentile.¹⁸² Another study that looked at the effects of economic status and education determined that "the root cause of poverty is a lack of education."¹⁸³ These socioeconomic factors will become important as we analyze the demographics of the student-athletes who will be using the College Athlete Protection Guarantee, and whether they will actually benefit from its use in the recruiting process.

The three demographics we will consider for this analysis are: (1) which states have the most football recruits, (2) which states have the most African-American citizens, and (3) which states have the highest levels of poverty. First, it must be determined which states have the largest number of high school football players who are recruited by Division I FBS schools. According to NCAA Research, in 2016, the states that had the highest percentage of high school football players recruited included: Florida, Georgia, Louisiana, the District of Columbia (DC), Maryland, Tennessee, and Alabama.¹⁸⁴ The states with the

¹⁷⁹ See, e.g., Misty Lacour & Laura D. Tissington, *The Effects of Poverty on Academic Achievement*, 6 EDUC. RES. & REV. 522 (2011); Pamela E. Davis-Kean, *The Influence of Parent Education and Family Income on Child Achievement: The Indirect Role of Parental Expectations and the Home Environment*, 19 J. FAM. PSYCHOL. 294 (2005).

¹⁸⁰ Lacour & Tissington, *supra* note 179, at 527.

¹⁸¹ *Id.* at 522.

¹⁸² *Id.*

¹⁸³ Bryan Hickman, *Lack of Education is Root Cause of Poverty*, ROCHESTER BUS. J., (Mar. 13, 2015), <https://rbj.net/2015/03/13/lack-of-education-is-root-cause-of-poverty/>.

¹⁸⁴ Alex Kirshner, *NCAA Map Ranks States by How Many Football Players Become DI Recruits*, SB NATION (Apr. 18, 2017, 11:39 AM), <https://www.sbnation.com/college-football-recruiting/2017/4/18/15340728/recruits-per-state-ncaa-map>.

most per capita four- and five-star recruits (those recruits who are highly sought after by the best football schools and, for the purposes of this paper, will have the most leverage because of their special talents) included: DC, Louisiana, Georgia, Mississippi, Alabama, and Florida.¹⁸⁵ Almost all of these states have at least one SEC football school within its borders,¹⁸⁶ where over 70 percent of the student-athletes are African-American.¹⁸⁷

Next, our analysis uses United States Census Bureau data from 2016 to see which state populations have the largest percentage of African-American citizens. The states with the largest percentage of African Americans are: DC, Mississippi, Louisiana, Georgia, Maryland, South Carolina, and Alabama.¹⁸⁸ This reflects the statistics showing that the majority of SEC schools' football players are African-American and the states with the highest percentage of African-American citizens produce the highest number of four- and five-star football recruits.

Finally, it is important to look at the states with the highest levels of poverty. According to data from the United States Census Bureau for 2016, approximately fourteen percent of all American citizens live below the federal poverty line.¹⁸⁹ Delving deeper into this data reveals that the states with the highest poverty levels include: Mississippi, Louisiana, Kentucky, Arkansas, Alabama, and Georgia.¹⁹⁰ Coincidentally, four of these states are among the top five for the highest percentage of high school football recruits. Combining the data from the three demographics just discussed paints a picture of the average recruits who are likely to attempt negotiations using the College Athlete Protection Guarantee.

¹⁸⁵ SB Nation College News, *These 10 Maps and Charts Show Where College Football Players Come From*, SB NATION, <https://www.sbnation.com/college-football/2016/8/23/12607342/recruits-states-rankings> (last updated May 11, 2017).

¹⁸⁶ *2017 Standings*, SEC SPORTS, <http://www.secsports.com/standings/football> (last visited Feb. 24, 2018).

¹⁸⁷ *African American Population by State*, BLACK DEMOGRAPHICS, <http://blackdemographics.com/population/black-state-population/> (last visited Feb. 24, 2018).

¹⁸⁸ *Id.*

¹⁸⁹ Claire Hansen, *States with the Highest Poverty Rate*, U.S. NEWS (Sept. 26, 2017, 4:33 PM), <https://www.usnews.com/news/best-states/slideshows/the-10-states-with-the-highest-poverty-rate?slide=1>.

¹⁹⁰ *Id.* at slides 2–11.

If lack of education truly is the root cause of poverty,¹⁹¹ those athletes who come from poverty-stricken areas are less likely to be able to adequately negotiate (or have their legal guardian negotiate for them) with these universities' highly educated lawyers. For example, Mississippi, Louisiana, Alabama, and Georgia are the first, second, seventh, and tenth most poverty-stricken states, respectively.¹⁹² These same states also have the fourth, second, fifth, and third most four- and five-star football recruits in the nation, respectively.¹⁹³ These states also have the second, third, seventh, and fourth highest percentage African-American citizens, respectively.¹⁹⁴

This data (1) indicates that many of these highly recruited football players may come from lower-income areas, and (2) is consistent with the fact that the majority of college football players are African-American and will continue to be so. And if those who will benefit most from using the College Athlete Protection Guarantee are the highly recruited athletes,¹⁹⁵ it follows that, so long as the studies on economic status and education are true, a substantial portion of these top prospects will not have the academic background to negotiate with a highly trained lawyer from these schools. This essentially eliminates any leverage the prospective student-athlete may have in the recruitment process. Thus, implied in this data is the fact that the College Athlete Protection Agreement, while useful to a handful of athletes, does little to nothing to fix the recruiting system that disproportionately hurts African-American athletes and athletes from low-income areas, as Dr. Watkins suggested.¹⁹⁶

Further evidence suggests that individuals from low-income and African-American backgrounds will continue to be heavily recruited as more highly educated individuals and those who do not need "a way out" prohibit their children from playing football, just like LeBron James has.¹⁹⁷ In 2015, Antonio Moore, writing for Vice Sports, asked why so many African-American

¹⁹¹ See, e.g., Lacour & Tissington, *supra* note 179; Davis-Kean, *supra* note 179.

¹⁹² Hansen, *supra* note 189.

¹⁹³ SB Nation College News, *supra* note 185.

¹⁹⁴ *African American Population by State*, *supra* note 187.

¹⁹⁵ See Hruby, *supra* note 74.

¹⁹⁶ Ryssdal, *supra* note 175.

¹⁹⁷ See Moore, *supra* note 161.

families have been “tricked” into willingly allowing their sons to play the dangerous game of football.¹⁹⁸ Moore also notes that while 70 percent of NFL players are African-American, that percentage substantially rises when the highest collision positions are isolated, and noting that nearly 30 percent of all Caucasian NFL players play low-impact positions such as kickers and quarterback.¹⁹⁹ These percentages become more important when analyzing the future makeup of both college football and the NFL because of the recent revelations on the effects football-related concussions have on the brain.²⁰⁰

In 2002, Dr. Bennett Omalu and Julian Bailes diagnosed the first professional football player with Chronic Traumatic Encephalopathy, more commonly known as CTE.²⁰¹ Arguably the most notable cases of former professional athletes having CTE are the NFL’s Junior Seau and professional wrestler Chris Benoit, each of whom committed suicide after struggling with depression and anger issues—common symptoms of CTE.²⁰² After many years of medical reports and congressional hearings on the connection of concussions and mental illness,²⁰³ the issue of concussions has become a widely discussed concern by the sports community after the release of “Concussion,” the 2015 film adaptation of Dr. Omalu’s and Dr. Bailes’ discovery of CTE.²⁰⁴

The increased knowledge of the effects of concussions is a large reason for reduced participation in youth football at various age levels.²⁰⁵ However, as noted by Antonio Moore, while the

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *What Is CTE?*, BRAIN INJ. RES. INST., <http://www.protectthebrain.org/Brain-Injury-Research/What-is-CTE-.aspx> (last visited Feb. 24, 2018).

²⁰² *Id.*

²⁰³ Steve Fainaru & Mark Fainaru-Wada, *Youth Football Participation Drops*, ESPN (Nov. 14, 2013), http://www.espn.com/espn/otl/story/_/page/popwarner/pop-warner-youth-football-participation-drops-nfl-concussion-crisis-seen-causal-factor.

²⁰⁴ *Concussion*, IMDB, http://www.imdb.com/title/tt3322364/?ref_=ttrel_rel_tt (last visited April 14, 2018).

²⁰⁵ *Youth Football Participation Increases in 2015; Teen Involvement Down, Data Shows*, ESPN (Apr. 17, 2016), http://www.espn.com/espn/otl/story/_/id/15210245/slight-one-year-increase-

concussion issue reaches far beyond the African-American community, the “rags-to-riches promise of the sport” is still extremely enticing for young African-American boys.²⁰⁶ Moore goes on to note that, even though awareness that football substantially increases the chances of brain injuries, “[f]or too many, this is their answer to debilitating poverty,” and that the NFL careers that these young men long for become hopes for economic security not only for themselves, but also for their family and friends.²⁰⁷ This cycle of low-income and African-American athletes signing up at younger ages is not surprising as the amount of money professional athletes make continues to rise.²⁰⁸ With the increased knowledge of concussions, we may see football become a sport that is mostly played “by those that either don't fully grasp the damage the sport will do to their bodies . . . or, worse yet, are desperate enough to take that risk” despite this knowledge.²⁰⁹

To exacerbate this apparent cycle, it appears that participation in youth football is going down because the children of higher educated and higher earning individuals are not playing anymore.²¹⁰ According to Dr. Keith Strudler, Director of the Marist College Center for Sports Communication, the information on concussions “is reaching a lot of people, but it is reaching those who have higher incomes.”²¹¹ Dr. Coakley, a professor of sociology at the University of Colorado, postulates that parents who have attended college or graduate school are more apt to see science as a credible source of information, and thus are most likely to know more about head injuries than parents who did not go to college.²¹² These theories lead to the conclusion that, while an *increase* in the number of low-income or minority football-playing youth may not be seen, it is possible that the number of Caucasian players (and implied in Dr. Coakley's remarks, economically stable players) will decrease, leaving more

number-youth-playing-football-data-shows; *see* Fainaru & Fainaru-Wade, *supra* note 203.

²⁰⁶ Moore, *supra* note 161.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *See* Oguntoyinbo, *supra* note 174.

²¹¹ *Id.*

²¹² *Id.*

opportunities for underprivileged athletes to play at higher levels such as college.²¹³

C. ATHLETIC SCHOLARSHIPS DO NOT ELIMINATE POVERTY

Another problem with the current system of recruiting that the College Athlete Player Guarantee will not resolve is the high number of athletes still living below the federal poverty line. In 2013, Huma, the National College Players Association, and Drexel University released a report entitled “The Price of Poverty in Big Time College Sport.”²¹⁴ This report concluded that 86 percent of college athletes playing for FBS schools on “full” athletic scholarships live the below the poverty line.²¹⁵ Huma’s interest in the rights of college athletes dates back to 1995 when his roommate at the University of California, Los Angeles, star football player Donnie Edwards, was suspended by the NCAA for accepting anonymously donated groceries after Edwards had said he did not have food in his refrigerator on a local radio program.²¹⁶ A year later, Huma formed a student-athletes association that eventually morphed into the National College Players Association.²¹⁷ Huma’s cause was thrust into the mainstream media in 2014 when basketball star Shabazz Napier, seated in his locker immediately after winning the NCAA Division I men’s basketball national championship, stated that he sometimes went to bed hungry.²¹⁸ Because an athletic scholarship cannot cover everything, Huma attempts to remedy these issues by trying to help student-athletes negotiate for additional benefits.²¹⁹

There is a substantial gap between what an athletic scholarship covers and what student-athletes are required to pay to maintain an acceptable standard of living. “The Price of Poverty in Big Time College Sport” report revealed that, as of 2012, out-of-pocket cost for a “full” scholarship student-athlete attending an

²¹³ *See id.*

²¹⁴ Ramogi Huma & Ellen J. Staurowsky, *The Price of Poverty in Big Time College Sport*, NAT’L C. PLAYERS ASS’N, <http://assets.usw.org/ncpa/The-Price-of-Poverty-in-Big-Time-College-Sport.pdf> (last visited Apr. 10, 2018).

²¹⁵ *Id.* at 4.

²¹⁶ Fulton, *supra* note 173.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

FBS school is \$3,222 per year on average.²²⁰ It is likely that much of these costs go uncovered because many of these students on “full” scholarship “come from low-income families who would otherwise not be able to pay for college, and the NCAA restricts a student-athletes’ ability to get a job.”²²¹ As of 2014, the NCAA has probably lowered these out-of-pocket costs by making new rules which allow student-athletes to receive unlimited snacks and meals, but this is only one of the many contributing factors to this gap.²²²

Without other major changes to the current system of college athletics recruiting, the trend of student-athletes living below the federal poverty line will not be remedied. While the College Athlete Protection Guarantee is something new, is not sufficient to bring about those changes. With many college football players currently coming from minority and disadvantaged backgrounds²²³ it appears that Huma’s plan to have athletes negotiate their way over the poverty line will have little effect if the athletes do not know how to adequately negotiate for those additional protections. If these underprivileged athletes use the College Athlete Protection Guarantee, they will have to choose between attempting to negotiate with the school’s highly educated lawyers on their own, or risking their eligibility by having a third party assist them. In this situation, the schools still have all the power when it comes to recruiting, just as they did when only the National Letter of Intent existed.

The College Athlete Protection Guarantee seems to only benefit athletes who come from highly-educated or wealthier backgrounds, and who are the children of parents that can probably afford to keep them above the poverty line by covering these necessary out-of-pocket costs. This new document fails to assist athletes from low-income and African-American communities while providing even greater opportunities for athletes who come from different social and economic classes.

Finally, the College Athlete Protection Guarantee does not decrease the school’s leverage in situations where an athlete

²²⁰ Huma & Staurowsky, *supra* note 214, at 4.

²²¹ Fulton, *supra* note 173; *see also* Williams, *supra* note 173 (stating that “[m]any of these college athletes [receiving “full-ride” scholarships] are black and come from poverty-stricken communities”).

²²² Fulton, *supra* note 173.

²²³ Oguntoyinbo, *supra* note 174.

wants to play at a specific school. For example, Marc Isenberg, a California-based athlete advocate and author on the subject of succeeding in life and business as an athlete, has given an account of what happens when a recruit wants to play for a certain school.²²⁴ Before the time of the College Athlete Protection Guarantee, Isenberg recalled an athlete with professional potential whose family was uncomfortable with the National Letter of Intent and tried negotiating with some of the nation's top programs for additional protections such as a guaranteed four-year scholarship and the ability to change schools in the event of a coaching change for the athlete's commitment.²²⁵

The young man had one top school that he wanted to play for, and he and his family presented their alternate offer to the coach. According to Isenberg, this coach "listened" while the alternate offer was presented to him.²²⁶ However, the coach told the athlete and his family: "Look, I'm going to the press conference [to announce our recruiting class] tomorrow, and I want to name everybody. If you don't sign [a regular NLI], I might have somebody else waiting in the wings."²²⁷ The amount of pressure this puts on young athletes who envision a professional future and potential life-changing circumstances "is too great."²²⁸ In cases where a school will require an athlete to sign a National Letter of Intent or risk his chance at playing college athletics, the school still holds all the negotiating power. This issue will be more common among underprivileged athletes who view a scholarship to participate in college athletics as their chance for "a way out."

CONCLUSION

Huma and the National College Players Association present the College Athlete Protection Guarantee as a document that can benefit all athletes who are being recruited to play college sports, and even athletes who "walk-on" to a college team.²²⁹ However, the College Athlete Protection Guarantee will only assist athletes who are highly recruited by the nation's top

²²⁴ Hruby, *supra* note 74.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ National College Players Association, *supra* note 87.

programs, not the athletes who are being recruited by fewer or smaller schools.²³⁰ According to a study by SB Nation, the odds of being a four- or five-star recruit are about 432 out of 300,000—or 0.14 percent.²³¹ The chances of being a five-star recruit (and having the most leverage when it comes to negotiating) are approximately 1 one-hundredth of a percent or 1 in every 10,000 players.²³² Using the approximation of 300,000 high school seniors who play football each year, this means that 299,568, or 99.86 percent of all high school seniors will *not* benefit from using the College Athlete Protection Guarantee.²³³

The number of athletes who will benefit from the College Athlete Protection Guarantee is further limited after applying the socioeconomic analysis discussed above. As athletes of highly educated parents participate in football less, the number of recruits who come from low-income and African-American communities will continue to rise. This increase means that the 387 recruits who have the leverage necessary to utilize the College Athlete Protection Guarantee will be reduced because of the inability of many of these recruits to adequately negotiate with the schools' lawyers.

While the College Athlete Protection Guarantee seems good in theory, it will have little effect in remedying the current system of recruitment, which disproportionately disadvantages low-income and African-American communities. If Huma and the College Athletes Players Association want to help student-athletes receive fair compensation, they need to find a more effective solution than the College Athlete Protection Guarantee.

²³⁰ See Hruby, *supra* note 74.

²³¹ Alex Kirshner, *This Is How Rare It Is to Be a Blue-chip College Football Recruit*, SB NATION (Jan. 26, 2018, 12:20 PM), <https://www.sbnation.com/college-football-recruiting/2016/2/2/10879624/recruiting-stars-rankings-high-school-football>.

²³² *Id.*

²³³ *Id.*
