DON'T HATE THE PLAYER, HATE THE GAME: THE FUTURE OF COLLEGE ATHLETICS THROUGH THE LENS OF LABOR LAWS

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ABSTRACT

The economic landscape of collegiate athletics has undergone seismic shifts, yet the legal classification of student-athletes remains frozen in an amateur model increasingly divorced from reality. This article examines the trajectory of NCAA antitrust litigation, from Board of Regents (1984) through O'Bannon (2016) to Alston (2021), to argue that labor law frameworks offer a more coherent regulatory approach than continued reliance on antitrust doctrine. While the Board of Regents established NCAA rules for Division I college athletes as subject to antitrust scrutiny and Alston dismantled education-related compensation restrictions, these victories have merely chipped away at the amateur model without addressing the fundamental power imbalance between athletes and institutions. The article contends that student-athletes increasingly resemble employees under common law tests, performing services that generate billions in revenue while institutions exercise substantial control over their athletic labor. However, the NCAA's amateur classification shields this relationship from minimum wage laws, workers' compensation, and collective bargaining rights. By analyzing the employee/independent contractor distinction, joint employer doctrine, and potential NLRB jurisdiction, this article proposes a reimagined legal framework, recognizing student-athletes as employees entitled to labor law protections. This shift would not eliminate collegiate athletics but would establish transparent, equitable compensation structures and workplace protections. The current system's failure lies not with athletes seeking fair treatment, but with an exploitative model that courts have been reluctant to fully dismantle.

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I. Introduction: The Illusion of Amateurism

In 2023 alone, the NCAA, which is a nonprofit organization, and its conferences made over $1.3 billion in revenue, primarily stemming from television broadcasting rights deals, ticket sales, and sponsorships.[1] Yet the athletes, who create the economic boom for so many entities, were fiscally capped to the cost of attendance at their institution and were prohibited from accepting most forms of compensation.[2] The reality of the Division I collegiate athletic landscape has drastically changed in recent years. College sports used to be the premier training grounds for aspiring professionals. Yet, college athletics is currently transforming from a legally defined amateur league into a professional league in its own right. With Division I college athletes like Carson Beck having a $5.9 million NIL valuation and Arch Manning having a $6.8 million NIL valuation due to his deals with companies like Red Bull, EA Sports, and Warby Parker, Division I college athletes are getting paid the average NFL salary, which is sitting at about $5.2 million. Its amateur classification, however, restricts student-athletes from the employment protections they deserve. This disconnect creates a legally contentious relationship between the value the athletes create for the NCAA and both their institutions and the value the athletes receive in return. It is further exacerbated by the courts' unwillingness to abandon their outdated ideology regarding amateurism in college sports completely.[3]

The NCAA has historically defended amateurism in court by arguing that college athletes are students first, not employees, and that compensation beyond scholarships would blur the line between collegiate and professional sports. The organization has maintained that restricting athlete compensation preserves the "amateur" nature of college sports, which it

1 NCAA, REVENUES AND EXPENSES: 2004-2023 NCAA DIVISION I INTERCOLLEGIATE ATHLETICS PROGRAMS REPORT 15 (2024).

2 NCAA DIVISION I MANUAL §§ 12.1.2, 15.2.1 (2024).

3 *See* NCAA v. Alston, 141 S. Ct. 2141, 2155-58 (2021).

claims is essential to the product's appeal and educational mission. However, this definition has become increasingly outdated in an era where the NCAA and its member institutions generate billions of dollars annually from media rights, ticket sales, and merchandise, while the athletes themselves were historically barred from profiting from their own NIL. This notion of amateurism in regards to Division I athletics has grown increasingly outdated with the recent rise of NIL deals, transfer portal freedom, and ongoing legal challenges that further expose how the NCAA's amateurism framework fails to account for the modern commercial reality of college athletics, where coaches earn millions while athletes, who assume significant physical risk and time commitment, have only recently gained limited economic rights.

The nearly four-decade fight from the *Board of Regents* in 1984, which involved the NCAA's exclusive television rights, to *Alston* in 2021, which sought to challenge the NCAA's restrictions on education-related benefits, represents the tumultuous journey of antitrust litigation challenging the restrictions of the NCAA in regards to financially compensating the athletes.[4] Although these cases have gradually chipped away at the monopolistic chokehold that the NCAA has on college sports and the athletes, they have yet to reclassify student-athletes as employees rather than amateurs.[5] This reclassification would allow them collective bargaining rights, minimum wage protections, workers' compensation, and other vital rights that labor laws safeguard.[6]

This article will argue that litigating the NCAA through antitrust factors is only treating the symptoms and not the underlying cause itself. The problem isn't simply that the NCAA restrains trade, but that the legal relationship between athlete and institution is intrinsically

4 *Id.;* O'Bannon v. NCAA, 802 F.3d 1049 (9th Cir. 2015); Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85 (1984).

5 *See* Michael H. LeRoy & Jami L. Anderson, *Do Football Players Deserve Compensation?*, 28 MARQ. SPORTS L. REV. 617, 622-25 (2018).

6 *See* 29 U.S.C. § 206 (2018) (FLSA minimum wage); *id.* § 157 (NLRA collective bargaining); 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 1.01 (2024).

mischaracterized,[7] because the entire legal characterization of what student-athletes are in relation to their institutions is inaccurate. The NCAA and universities insist that student-athletes are primarily students who happen to play sports as an extracurricular activity, not workers providing valuable services. However, this defense ignores the economic reality of the relationship. Under any application of the Common-Law Employment Test, student-athletes would be recognized as employees.[8] They perform services under institutional control, generate a substantial revenue year after year, commit forty hours or more weekly to their sport, and face disciplinary measures for non-compliance.[9] The solution to this dilemma facing student-athletes does not just lie in incrementally expanding upon the benefits the athletes can receive, but in recognizing the employment-based relationship between athletes and their institutions and subjecting that relationship to the established labor law frameworks.[10]

II. The Antitrust Trilogy: The Cases That Shaped College Sports

A. Board of Regents (1984): Opening the Door to NCAA Scrutiny

The legal battle regarding athlete compensation within the NCAA started with the *National Collegiate Athletic Association v. Board of Regents of University of Oklahoma* in 1984,[11] which marked the beginning of major antitrust challenges to the NCAA's authority in collegiate sports. In this case, *Board of Regents* sought to rectify the association's exclusive television broadcasting rights contracts. The Supreme Court ruled that the NCAA's restrictions on televised football games constituted a horizontal restraint that created a competitive

7 *See* Alston, 141 S. Ct. at 2166 ("The NCAA's business model would be flatly illegal in almost any other industry in America.").

8 *See* Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992) (articulating common law test for employee status); RESTATEMENT (SECOND) OF AGENCY § 220(2) (AM. L. INST. 1958).

9 *See* ERIN HATTON ET AL., CTR. FOR COLL. WORKFORCE ISSUES, TIME SPENT ON ATHLETIC ACTIVITIES IN DIVISION I COLLEGE SPORTS 5-7 (2011); Marc Edelman, *The Future of Amateurism After Antitrust Scrutiny: Why a Win for the Plaintiffs in the* O'Bannon *Case Will Not Lead to the Demise of College Sports*, 92 OR. L. REV. 1019, 1029-30 (2014).

10 *See* LeRoy & Anderson, *supra* note 5, at 660-62.

11 Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85 (1984).

advantage for member schools over nonmember schools and were thus subject to antitrust scrutiny under the Sherman Antitrust Act of 1890.[12] Another crucial part of this case is that the court denied the NCAA's claim to blanket immunity, instead opting to apply the rule of reason analysis to determine whether the restrictions were justified by legitimate regulatory objectives.[13] In this case, blanket immunity refers to the NCAA's push to be completely shielded from antitrust litigation and scrutiny because of its amateur standing.

This court decision established two foundational principles that would go on to shape future litigation. The first principle was that the court recognized that NCAA rules could serve pro-competitive purposes, like maintaining competitive balance and preserving the amateur character of college sports, that could justify otherwise anti-competitive restrictions.[14] The second is that it acknowledged that "some play must be found between the joints" for NCAA rules, which suggests that certain restraints, like athlete compensation, were necessary for the product of college football to exist at all.[15] This means that practices that would in other cases be ruled as anti-competitive, the NCAA needed to have more leeway compared to other businesses to preserve the amateur characterization of college sports. However, the court found that the broadcasting restrictions far exceeded what was required for a competitive balance, as they limited output and fixed prices without corresponding pro-competitive benefits.[16]

Board of Regents might have opened the door for future litigation against the NCAA, but it simultaneously constructed guardrails that would end up limiting future challenges. By accepting amateurism as a foundationally legitimate justification for restraints, the court created doctrinal space for the NCAA to defend compensation restrictions that would be

12 *Id.* at 98-100.

13 *Id.* at 100-04.

14 *Id.* at 117.

15 *Id.* at 101.

16 *Id.* at 113-20.

otherwise illegal for any other industry. The inherent nature of college sports, where cooperation among all the competitors is called for to produce the product, became a shield against full antitrust liability.[17] The courts recognized that college athletics presents a unique situation in that the "product" itself cannot exist without extensive cooperation among competing institutions because, without coordination, there would be no coherent product to offer consumers. This recognition became a "shield" because courts applied the more lenient "rule of reason" analysis rather than finding NCAA restrictions automatically illegal. Under rule of reason, restraints can be justified if they're reasonably necessary to produce the product and their procompetitive benefits outweigh anticompetitive harms. This means that the NCAA just has to prove that the disputed restraint is a reasonable necessity that has benefits that supersede the perceived harms to the athletes.

B. O'Bannon (2016): Name, Image, and Likeness Rights

Three decades later, a new case would change the trajectory of college sports. Former UCLA basketball player Ed O'Bannon challenged NCAA rules that prohibit student-athletes from receiving compensation for use of their names, image, and likeness (NIL), like getting a percentage of their jersey sales.

The Ninth Circuit held that these restrictions violated antitrust law after finding that the NCAA's justifications of preserving amateurism and competitive balance could be achieved through less restrictive means.[18] The court permitted schools to provide athletes with compensation up to the full cost of attendance, thus providing a narrow but meaningful expansion beyond traditional athletic scholarships.[19]

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17 *See id.* at 101-02.

18 *O'Bannon v. NCAA, 802 F.3d 1049, 1073-74 (9th Cir. 2015).*

19 *Id.* at 1078-79.

However, the Ninth Circuit rejected the district court's finding that would have allowed schools to pay athletes unlimited NIL compensation held in a trust.[20] The appellate court concluded that permitting cash payments untethered to educational expenses would radically transform college sports into a professional enterprise, thus eliminating the very product consumers demanded.[21] This reasoning highlighted the paradox embedded in antitrust doctrine: courts could acknowledge that NCAA restrictions harmed athletes and violated antitrust principles, yet they deferred to the association's definition of amateurism as consumer preference rather than recognizing it as convenient legal fiction.

When the Supreme Court denied certiorari in 2016, it left *O'Bannon* as a legally binding precedent in the Ninth Circuit while allowing other circuits to potentially reach different conclusions.[22] The decision's practical impact proved to be limited. Although it theoretically permitted increased compensation, many schools declined to offer the full cost of attendance, and the underlying prohibition on pay-for-play remained intact. Athletes gained incremental benefits while the NCAA retained control over the employment relationship's basic terms.

C. Alston (2021): Striking Down Education-Related Compensation Caps

NCAA v. Alston[23] provided the most significant judicial blow to the NCAA's authority, and yet it too operated within antitrust's inherent limitations. This case challenged NCAA restrictions on education-related benefits such as computers, musical instruments, and post-eligibility scholarships for graduate or vocational school. The district court found these restrictions violated antitrust law and enjoined their enforcement.[24] This case violated antitrust

20 *Id.* at 1076.

21 *Id.* at 1076-78.

22 *NCAA v. O'Bannon, 137 S. Ct. 277 (2016).*

23 *NCAA v. Alston, 141 S. Ct. 2141 (2021).*

24 *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1104-05 (N.D. Cal. 2019).*

laws because competitors cannot collectively agree to suppress compensation in ways that harm competition. The Ninth Circuit affirmed,[25] and the Supreme Court unanimously upheld the decision in an opinion authored by Justice Gorsuch.[26]

The court applied the traditional rule of reason analysis, finding that NCAA restrictions on education-related compensation were anticompetitive restraints that harmed student-athletes by suppressing compensation below competitive levels.[27] The NCAA's proffered justifications of preserving amateurism and competitive balance failed because the association offered no evidence that modest education-related benefits would undermine consumer demand or competitive balance.[28] Justice Gorsuch emphasized that the NCAA operated as a cartel of buyers in the labor market for athletic services, noting that "the NCAA's business model would be flatly illegal in almost any other industry in America."[29]

Justice Kavanaugh's concurrence proved even more pointed, suggesting that all NCAA compensation restrictions likely violated antitrust law and that the association enjoyed "enormous popularity and profits" while denying athletes fair market compensation.[30] He goes on to question why college athletes were prohibited from earning compensation and argues that the NCAA's "proclamation of amateurism" could not justify what would otherwise constitute price-fixing.[31]

Despite its strong language, *Alston* was confined strictly to education-related benefits. The court explicitly declined to address whether restrictions on compensation that are not

25 *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig., 958 F.3d 1239, 1266 (9th Cir. 2020).*

26 *Alston*, 141 S. Ct. at 2147.

27 *Id.* at 2160-63.

28 *Id.* at 2164-66.

29 *Id.* at 2166.

30 *Id.* at 2167-68 (Kavanaugh, J., concurring).

31 *Id.* at 2168.

education-related, like actual wages for athletic services, would survive antitrust scrutiny.[32] This limitation meant that while athletes could now receive a laptop or graduate school tuition, they still could not be paid the revenue their performance generated.

D. The Limits of Antitrust: Why Market-Based Solutions Fall Short

These three cases demonstrate an abundantly clear trajectory: courts increasingly recognize that NCAA restrictions harm athletes and violate antitrust principles. Yet this litigation strategy suffers from three fundamental limitations that labor law would avoid.

First, antitrust doctrine requires plaintiffs to accept the NCAA's framing of amateurism as a legitimate product feature rather than challenging the employment relationship itself. Courts treat consumer preference for "amateur" sports as given, asking only whether specific restrictions are necessary to preserve that preference. This framework allows the NCAA to define the very concept courts then defer to, creating circular reasoning where exploitation is justified by tradition.

Second, antitrust remedies are necessarily incremental and rule-specific. Each case challenges particular restrictions, requiring new litigation to address each compensation category. The result is a piecemeal dismantling that takes decades and leaves athletes navigating a complex patchwork of permitted and prohibited benefits. Even after *Alston*, questions remain about what constitutes "education-related" benefits, whether certain stipends are permissible, and how NIL compensation interacts with traditional restrictions.

Third, and most fundamentally, antitrust law cannot affirmatively establish athlete rights or protections. It can only prohibit the most egregious anticompetitive restraints. Antitrust litigation cannot guarantee minimum wage, workers' compensation, collective

32 *Id.* at 2166.

bargaining rights, or workplace safety protections. It cannot create a regulatory framework ensuring equitable treatment across institutions and conferences. It addresses only whether the NCAA's restrictions unreasonably restrain trade, not whether athletes receive fair treatment as workers.

III. Student-Athletes as Employees: The Common Law Test

A. The Common Law Control Test

The Supreme Court has recognized that the common law "right to control" test is the foundational framework for determining employee status across various employment statutes.[33] This test examines whether the purported employer exercises control over the manner and means by which work is performed, not just the achieved result.[34] The Restatement of Agency articulates ten factors for evaluating this relationship, including the extent of control the employer exercised, whether the worker is engaged in a distinct occupation, the skill required, who supplies instrumentalities and tools, length of employment, method of payment, whether the work is part of the employer's regular business, the parties' beliefs about their relationship, and whether the principal is in business.[35] The "right to control" test is what is used to determine if a person is legally considered an employee, thus allowing them more rights and protections as a worker.

Student-athletes satisfy virtually every factor indicating employee status in the "right to control" test. Universities exercise comprehensive control over athletes' work. They dictate practice schedules, training regimens, dietary requirements, travel arrangements, and game

33 *See* Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992) (applying common law agency test to determine employee status under ERISA).

34 *Id.* at 323.

35 *RESTATEMENT (SECOND) OF AGENCY § 220(2) (AM. L. INST. 1958).*

strategies.[36] Athletes have to attend mandatory team meetings, film sessions, weight training, and conditioning sessions, often totaling forty to sixty hours per week during the season and twenty hours during the off-season.[37] Coaches determine playing time, positions, and tactical execution. Athletes who fail to comply with these requirements are subject to discipline ranging from reduced playing time to scholarship revocation.[38]

This level of control extends far beyond athletic performance to personal conduct. NCAA rules and institutional policies regulate athletes' social media presence, public appearances, and endorsement activities.[39] Many institutions require athletes to live in specific housing, maintain certain grade-point averages, and obtain permission before traveling during breaks.[40] This degree of supervision exceeds what universities impose on other students, including those receiving academic scholarships who face no comparable restrictions on their time, associations, or outside income.[41] The aforementioned requirements of the Common Law Control test proves that student-athletes meet the criteria to be deemed employees of their institutions.

Furthermore, universities also provide all instrumentalities necessary for athletic performance, like facilities, equipment, uniforms, medical care, coaching, and training staff.[42]

Athletes do not bring their own tools or work independently; they are integrated into a comprehensive institutional apparatus designed to maximize their athletic output. The athletic

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36 *See* Marc Edelman, *The Future of Amateurism After Antitrust Scrutiny: Why a Win for the Plaintiffs in the* O'Bannon *Case Will Not Lead to the Demise of College Sports*, 92 OR. L. REV. 1019, 1029-30 (2014).

37 *See* ERIN HATTON ET AL., CTR. FOR COLL. WORKFORCE ISSUES, TIME SPENT ON ATHLETIC ACTIVITIES IN DIVISION I COLLEGE SPORTS 5-7 (2011).

38 *See* NCAA DIVISION I MANUAL § 15.3.4 (2024) (addressing scholarship reduction and cancellation).

39 *See* NCAA DIVISION I MANUAL § 12.5 (2024) (promotional activities); *id.* § 11.1.6 (staff-student-athlete relationships).

40 *See* B. David Ridpath, *Perceptions of NCAA Division I Athletes on Motivations Concerning the Collegiate Model of Athletics*, 5 J. ISSUES IN INTERCOLLEGIATE ATHLETICS 149, 157-58 (2012).

41 *See* Michael H. LeRoy & Jami L. Anderson, *Do Football Players Deserve Compensation?*, 28 MARQ. SPORTS L. REV. 617, 636-37 (2018).

42 *See* Edelman, *supra* note 26, at 1030.

department operates as a business unit within the university, generating revenues through ticket sales, broadcasting rights, merchandise, and donations tied to team success.[43] Student-athletes are not engaged in a "distinct occupation" separate from the university's business; their athletic performances are the product of the university's business and from which it profits.[44] Therefore proving that the student-athletes rely on university facilities and equipment in order to consistently provide adequate performances week to week. This means that under the Common Law Control test, the university controls the process as well as the result.

B. Economic Realities: Revenue Generation Versus Compensation

Beyond formal control, courts increasingly apply an “economic realities” test that examines whether workers are economically dependent on the purported employer or are in business for themselves.[45] This test considers factors such as the degree of control exercised, the worker's opportunity for profit or loss, the worker's investment in equipment or materials, the permanence of the relationship, the degree of skill required, and whether the work is integral to the employer's business.[46]

Student-athletes are economically dependent on their institutions in every meaningful sense. They cannot market their athletic services elsewhere while enrolled; NCAA rules prohibit competing in professional leagues or for other universities without sitting out a year.[47] They make no independent business investment, as the university provides all necessary resources. Their relationship with the institution lasts for the duration of their eligibility, typically four to five years, demonstrating permanence comparable to any employment

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43 *See* Marc Edelman, *Why the "Surprise" Ninth Circuit O'Bannon Decision Was Entirely Predictable: An Anticipatory Response to Unanticipated Critiques*, 46 PEPP. L. REV. 1, 16-17 (2018).

44 See id.

45 *See* Rutherford Food Corp. v. McComb, 331 U.S. 722, 729 (1947) (articulating economic realities test for FLSA coverage).

46 *See* United States v. Silk, 331 U.S. 704, 716 (1947); *see also* Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 324 (1992).

47 *See* NCAA DIVISION I MANUAL § 14.5.1 (2024) (transfer residence requirements).

relationship.[48] The athletic performances they provide are not peripheral to the university's business but rather constitute a major revenue stream, particularly in high-profile sports like football and basketball.[49]

The compensation structure for Division I athletes further demonstrates economic dependence. While athletic scholarships cover tuition, room, and board, which are benefits valued at $50,000 to $80,000 annually at private institutions, this compensation is tied entirely to continued athletic performance.[50] Scholarships can be reduced or eliminated for poor athletic performance, injury, or voluntary departure from the team.[51] Athletes have no equity stake in the enterprise, no opportunity for profit beyond their fixed compensation, and no ability to negotiate terms individually or collectively.[52] They are wage workers whose compensation is capped at the subsistence level while the enterprise generates billions in revenue from their labor.[53] The scholarships provide the athletes a sense of economic dependence on their institution because gaining or losing the scholarship would affect the athlete's opportunity for profit or loss regarding their education.

C. Counterargument: Educational Opportunity and Scholarship Value

The NCAA's primary response to the employment argument emphasizes educational opportunity. Division I student-athletes receive valuable scholarships that provide access to higher education, develop transferable skills, and benefit from world-class facilities and

48 *See id.* § 14.2 (four-year eligibility periods).

49 *See* Michael McCann, *Antitrust, Governance, and Postseason College Football*, 52 B.C. L. REV. 517, 527-28 (2011).

50 *See* NCAA DIVISION I MANUAL § 15.2 (2024) (financial aid limitations).

51 *See id.* § 15.3.4.

52 *See* LeRoy & Anderson, *supra* note 31, at 640-42.

53 *See* Richard T. Karcher, *The Coaching Carousel in Big-Time Intercollegiate Athletics: Economic Implications and Legal Protections of Contracts for College*

coaching.[54] The scholarship itself, the NCAA argues, constitutes the compensation for athletic participation, and treating athletes as employees would transform the educational mission into mere professionalism.[55] This argument conflates compensation with employment status. The fact that workers receive valuable benefits does not negate their employee status; indeed, compensation is a hallmark of employment.[56] Graduate research assistants receive tuition waivers and stipends while performing research services, but they are nonetheless employees entitled to labor law protections, as the NLRB has recognized.[57] Teaching assistants receive tuition remission in exchange for educational services, and they, too, are employees with collective bargaining rights.[58] The form of compensation does not determine employment status; the economic relationship does.[59]

Moreover, the educational opportunity argument rings hollow for many student-athletes who are actively discouraged from pursuing demanding academic programs that might interfere with athletic commitments.[60]

Academic clustering, in which athletes are disproportionately concentrated in certain majors, suggests that educational choice is constrained by athletic demands.[61] High-profile academic scandals, such as the University of North Carolina's long-running scheme of fraudulent courses for athletes, demonstrate that educational primacy is sometimes rhetorical rather than real.[62] If education were truly primary, Division I college athletes would have the

54 *See* Brief for Petitioner, *supra* note 57, at 12-15.

55 *Id.*

56 *See* Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992).

57 *See* Columbia Univ., 364 N.L.R.B. No. 90 (Aug. 23, 2016) (graduate student assistants are employees under NLRA).

58 *See* id.

59 *See* Darden, 503 U.S. at 323-24.

60 *See* SACK & STAUROWSKY, *supra* note 66, at 112-15.

61 *See* Richard M. Southall et al., *SC-ARTS: A Ray of Hope in Addressing Runaway College Sports*, 23 J. INTERCOLLEGIATE SPORT 1, 4-6 (2010).

62 *See* JAY M. SMITH & MARY WILLINGHAM, CHEATED: THE UNC SCANDAL, THE EDUCATION OF ATHLETES, AND THE FUTURE OF BIG-TIME COLLEGE SPORTS (2015).

same freedom to prioritize academics over athletics that other students have to prioritize jobs over classes, but they do not.[63] Therefore proving that in Division I sports, athlete comes before student by disincentivising athletes from academically rigorous majors.

IV. Labor Law Frameworks and Collegiate Athletics

A. Fair Labor Standards Act: Minimum Wage and Overtime

Recognizing student-athletes as employees would not plunge collegiate athletics into chaos, as NCAA defenders often warn. Rather, it would subject this massive commercial enterprise to the same regulatory frameworks that govern every other American industry. The Fair Labor Standards Act (FLSA) establishes minimum wage and overtime compensation requirements for employees engaged in interstate commerce.[64] If student-athletes are employees, FLSA coverage would follow automatically for athletes in programs that generate revenue through interstate activities, like television broadcasts, merchandise sales, recruiting across state lines, and competition against out-of-state opponents.[65] The interstate commerce requirement poses no barrier; collegiate athletics is quintessentially interstate commerce, generating billions through national television contracts and multi-state conferences.[66] FLSA compliance would require institutions to pay student-athletes at least the federal minimum wage of $7.25 per hour or the applicable state minimum wage if higher for all hours worked.[67] Instituting a minimum wage would positively affect the lesser watched sports. Since college football and basketball are the most profitable for the schools, the other sports that schools provide are constantly at risk of being underfunded. A minimum wage would help

63 *See* Ridpath, *supra* note 30, at 158.

64 29 U.S.C. §§ 206-207 (2018).

65 *See id.* § 203(s)(1) (defining "enterprise engaged in commerce").

66 *See* McCann, *supra* note 39, at 527-29.

67 *29 U.S.C. § 206(a)(1) (2018).*

close the financial gap between sports, and give these athletes a way to get financial compensation that doesn't have to rely on donors and sponsorships. More significantly, FLSA would require overtime pay at time-and-a-half for hours exceeding forty per week.[68] Given that many athletes in revenue sports work fifty to sixty hours weekly during the season, overtime liability could substantially increase compensation for athletes playing less popular sports, where they would not get the lucrative NIL deals a football or basketball player receives.[69]

B. Workers' Compensation Coverage

Workers' compensation statutes provide medical benefits and wage replacement to employees injured in the course of employment, funded through employer-paid insurance premiums.[70] Most states define "employee" broadly to include anyone performing services for remuneration, with limited exceptions.[71] Student-athletes currently lack workers' compensation coverage in most jurisdictions. Courts have held that athletes receiving scholarships are not employees for workers' compensation purposes, leaving injured athletes without recourse when career-ending injuries occur during required athletic activities.[72] This gap produces unjust results. An athlete who suffers a catastrophic knee injury during a mandatory practice cannot obtain workers' compensation, while a student working part-time in the university bookstore would be covered for an identical injury sustained during work.[73]

Recognizing student-athletes as employees would automatically trigger workers' compensation coverage in most states. This would provide injured athletes with medical treatment for

68 *29 U.S.C. § 207(a)(1) (2018).*

69 *See* HATTON ET AL., *supra* note 27, at 5-7.

70 *See* 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 1.01 (2024).

71 *See id.* § 61.01.

72 *See* Waldrep v. Texas Emp'rs Ins. Ass'n, 21 S.W.3d 692, 702-03 (Tex. App. 2000).

73 *See* Timothy Davis, *What Is Sports Law?*, 11 MARQ. SPORTS L. REV. 211, 221-22 (2001).

work-related injuries and partial wage replacement for permanent disability.[74] For athletes whose professional prospects are eliminated by collegiate injuries, workers' compensation would offer some measure of security, though benefit levels would inadequately compensate for the loss of potential professional earnings.[75] Moreover, workers' compensation coverage would incentivize athletic departments to prioritize athlete safety. Because premiums increase with claim frequency, institutions would have financial motivation to implement better safety protocols, limit unnecessary contact in practice, and ensure adequate medical staffing.[76] The current system externalizes injury costs onto athletes and their families; workers' compensation would internalize these costs, aligning institutional incentives with athlete welfare.[77]

C. National Labor Relations Act: Collective Bargaining Rights

The National Labor Relations Act (NLRA) guarantees employees the right to organize unions and bargain collectively with employers over wages, hours, and working conditions.[78] NLRA coverage would provide student-athletes with the most powerful tool for addressing the power imbalance inherent in collegiate athletics: the ability to negotiate collectively rather than accept terms dictated unilaterally by the NCAA and its member institutions.[79] The NLRB has jurisdiction over employees of private employers engaged in interstate commerce.[80] Student-athletes at private universities would clearly fall within NLRB jurisdiction if recognized as employees, as these institutions engage extensively in interstate commerce through athletic competitions, broadcasts, and recruiting.[81] Athletes at public universities

74 *See* LARSON & LARSON, *supra* note 102, § 1.03.

75 *See id.* § 81.01.

76 *See* LARSON & LARSON, *supra* note 102, § 90.02.

77 *See* LeRoy & Anderson, *supra* note 31, at 652-53.

78 29 U.S.C. § 157 (2018).

79 *See* NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33-34 (1937).

80 29 U.S.C. § 152(2)-(3) (2018).

81 *See* McCann, *supra* note 39, at 527-29.

present a more complex question, as the NLRA excludes government employees.[82] However, many states have enacted public-sector collective bargaining statutes that would cover public university employees, providing similar organizing rights.[83]

Collective bargaining would transform the power dynamics of collegiate athletics. Rather than accepting NCAA rules imposed unilaterally, athletes could negotiate over compensation levels, practice hour limits, medical coverage, transfer restrictions, scholarship duration, revenue sharing, and countless other terms currently dictated without athlete input.[84] A collective bargaining agreement could establish minimum compensation floors while allowing individual athletes or teams to negotiate higher amounts based on revenue generation or market value.[85] It could create grievance procedures to challenge unfair discipline or scholarship termination,[86] while also establishing health and safety standards exceeding current NCAA requirements, protecting athletes from excessive practice hours or inadequate medical care.[87]

D. Joint Employer Doctrine: Universities and the NCAA

A critical question in applying labor law to collegiate athletics concerns the identity of the employer. Are universities the sole employers of student-athletes, or does the NCAA also function as a joint employer by virtue of its extensive regulation of athletic employment terms?[88] This distinction matters because joint employers share liability for labor law violations and must bargain jointly with employee representatives.[89] Joint employer status exists when

82 *29 U.S.C. § 152(2) (2018).*

83 *See* Joseph E. Slater, *Public Sector Labor in the Age of Obama*, 87 IND. L.J. 189, 194-96 (2012).

84 *See* LeRoy & Anderson, *supra* note 31, at 654-56.

85 *See id.* at 656.

86 *See* 29 U.S.C. § 159(a) (2018) (exclusive representation).

87 See LeRoy & Anderson, *supra* note 31, at 655.

88 *See* Columbia Univ., 364 N.L.R.B. No. 90 (Aug. 23, 2016).

89 See id.

two entities share or codetermine essential terms and conditions of employment.[90] The NLRB examines whether an entity possesses sufficient control over employment matters to permit meaningful collective bargaining, considering factors such as hiring and firing authority, supervision and discipline, wage setting, work assignment, and hours determination.[91] Under this framework, the NCAA plausibly qualifies as a joint employer alongside member universities.[92]

Recognizing the NCAA as a joint employer would have significant implications. The association could not unilaterally impose employment restrictions without bargaining with athlete representatives.[93] Compensation caps, transfer restrictions, and practice hour limits would become mandatory subjects of bargaining rather than rules imposed without discussion.[94]

The NCAA would share liability for wage and hour violations, workers' compensation costs, and unfair labor practices.[95] This would fundamentally alter the governance structure of collegiate athletics, shifting power from a self-appointed regulatory body to negotiate agreements between the parties actually affected by the rules.[96]

Universities might resist joint employer classification, preferring to negotiate with their own athletes rather than through NCAA-wide bargaining.[97] However, the functional reality is that individual universities cannot materially alter employment terms without NCAA acquiescence; a university that unilaterally decided to pay athletes wages or eliminate practice

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90 *See* LeRoy, *supra* note 125, at 509-11.

91 *See* ALVIN L. GOLDMAN ET AL., LABOR LAW: CASES, MATERIALS, AND PROBLEMS 781-85 (7th ed. 2009).

92 *See* PAUL C. WEILER & GARY R. ROBERTS, SPORTS AND THE LAW: TEXT, CASES, PROBLEMS 316-20 (4th ed. 2011).

93 *See* 29 U.S.C. § 158(a)(5) (2018) (duty to bargain).

94 *See* NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342, 349 (1958) (mandatory subjects of bargaining).

95 *See* Browning-Ferris Indus., 362 N.L.R.B. No. 186, at *2.

96 *See* LeRoy & Anderson, *supra* note 31, at 659-60.

97 *See* Brief for Petitioner, *supra* note 57, at 46-47.

hour limits would face sanctions, including postseason bans and loss of NCAA membership.[98] The NCAA's control is real and consequential, making joint employer status legally appropriate even if institutionally inconvenient.[99]

E. Title VII and Workplace Discrimination

Recognizing student-athletes as employees would extend Title VII of the Civil Rights Act protections against employment discrimination based on race, color, religion, sex, and national origin.[100] Title VII of the Civil Rights Act of 1964 specifically applies to employees and protects them from discrimination by employers based on race, color, religion, sex, and national origin. Currently, because student-athletes are classified as amateurs rather than employees, they fall outside Title VII's protections in their athletic roles. If student-athletes were legally recognized as employees of their universities or the NCAA, they would automatically gain these federal anti-discrimination protections. This would have significant practical implications: student-athletes could potentially file discrimination claims if they believed they were being treated unfairly in recruitment, playing time allocation, scholarship distribution, or other athletic opportunities based on protected characteristics. They could also invoke Title VII protections against hostile work environments or retaliation.

While athletes already possess some civil rights protections as students under Title VI and Title IX, employee status would provide additional remedies and theories of liability.[101] Title VII's application could address persistent racial disparities in collegiate athletics. African American athletes are overrepresented in revenue sports like football and basketball but dramatically underrepresented in coaching and administrative positions.[102] If athletic

98 *See* NCAA DIVISION I MANUAL § 19.5 (2024) (enforcement penalties).

99 *See* LeRoy & Anderson, *supra* note 31, at 660.

100 42 U.S.C. §§ 2000e to 2000e-17 (2018).

101 *See* 20 U.S.C. § 1681 (2018) (Title IX); 42 U.S.C. § 2000d (2018) (Title VI).

102 *See* Richard E. Lapchick, *The 2019 Racial and Gender Report Card: College Sport*, INST. FOR DIVERSITY & ETHICS IN SPORT 3-5 (2020).

departments are employers, their hiring and promotion practices would be subject to Title VII scrutiny, potentially addressing the "glass ceiling" that limits minority advancement into leadership roles.[103] Title VII would also provide remedies for discriminatory discipline or scholarship termination, giving athletes additional legal recourse beyond Title VI's limited remedies.[104]

Gender equity concerns might also benefit from Title VII coverage. While Title IX addresses sex discrimination in educational programs, Title VII's employment protections offer different remedies, including compensatory and punitive damages.[105] Female athletes facing sex-based harassment, unequal compensation, or discriminatory working conditions could pursue Title VII claims, providing more robust remedies than Title IX allows.[106]

F. Occupational Safety and Health Act

The Occupational Safety and Health Act (OSHA) requires employers to provide workplaces free from recognized hazards likely to cause death or serious physical harm.[107] Employee status would subject athletic programs to OSHA jurisdiction, mandating safety standards for practice facilities, equipment, and training protocols.[108]

OSHA coverage could address serious health and safety issues in collegiate athletics. Concussion protocols, heat illness prevention, sudden cardiac arrest response, and facility safety standards would become legally enforceable rather than merely NCAA recommendations.[109] Athletes could file OSHA complaints about unsafe conditions without fear

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103 *See id.* at 5-7.

104 *See* 42 U.S.C. § 2000e-5(g) (2018) (Title VII remedies).

105 *See id.* § 1981a (compensatory and punitive damages).

106 *See* Deborah Brake, *The Struggle for Sex Equality in Sport and the Theory Behind Title IX*, 34 U. MICH. J.L. REFORM 13, 70-75 (2001).

107 *See id.* at 75-80.

108 29 U.S.C. § 654(a)(1) (2018).

109 *See* Matthew J. Mitten, *Enhanced Risk of Harm to One's Self as a Justification for Exclusion from Athletics*, 8 MARQ. SPORTS L.J. 189, 210-15 (1998).

of retaliation, as the Act prohibits discrimination against employees who report safety concerns.[110] OSHA inspectors could investigate serious injuries or deaths occurring during athletic activities, potentially identifying systemic safety failures.[111] This is important because OSHA can give athletes a concrete way to make sure their schools are taking the necessary steps to ensure their safety.

V. Conclusion

We should not blame student-athletes for seeking fair compensation for their labor, but rather scrutinize and reform the exploitative system that profits from that labor while denying workers their legal rights. The game is the legal fiction of amateurism, a construct that allows a multi-billion-dollar commercial enterprise to operate outside the labor law frameworks governing every other American workplace.

This article has demonstrated that the current system rests on legally indefensible foundations. The antitrust trilogy from *Board of Regents* through *O'Bannon* to *Alston* has progressively undermined NCAA authority, yet these victories remain confined within a doctrinal framework that accepts amateurism as a premise rather than challenging the employment relationship itself. Antitrust litigation can prohibit the most egregious restraints on athlete compensation, but it cannot affirmatively establish worker rights or create comprehensive protections.

Applying the full range of labor law protections to student-athletes would not require creating new legal frameworks or special rules for collegiate athletics. The statutes exist; the enforcement mechanisms exist; the legal doctrines exist. What is missing is recognition of the

110 *29 U.S.C. § 660(c) (2018).*

111 *See id.* § 657 (inspection authority).

employment relationship that triggers these protections.[112] Labor law coverage would create a comprehensive system of athlete protections: minimum wage guarantees, overtime compensation for excessive hours, workers' compensation for injuries, collective bargaining rights to negotiate terms, anti-discrimination protections, and workplace safety standards.[113] This system would not destroy collegiate athletics but would subject it to the same legal framework governing every other American workplace.[114] Universities regularly employ students in various capacities without these employment relationships undermining the educational mission.[115] Student-athletes can likewise be both students and employees, receiving educational opportunities while also receiving fair compensation and legal protection for their labor.[116]

The question is not whether labor law can accommodate collegiate athletics, but whether collegiate athletics should continue to be exempted from labor law. Every legal principle, every statutory framework, and every policy justification support extending labor protections to student-athletes. The only argument against it is tradition. The claim that "this is how we've always done it." But tradition cannot justify exploitation, and longevity does not legitimize injustice. Labor law provides the tools to remedy the fundamental power imbalance in collegiate athletics. The question is whether courts and regulators will use them.

112 *See* Mitten, *supra* note 167, at 213-15.

113 *See* LeRoy & Anderson, *supra* note 31, at 653.

114 *See* Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992).

115 *See* LeRoy & Anderson, *supra* note 31, at 660-62.

116 *See* LeRoy, *supra* note 125, at 509-11.