

# LITERATURE REVIEW OF DIVISION I ATHLETICS REFORM

## Prepared for the Knight Commission on Intercollegiate Athletics<sup>1</sup> © 2020

Note: This research was completed with support from the Knight Commission on Intercollegiate Athletics to compile and assess relevant proposals about reform of Division I athletics over the last decade. The views expressed are those of the authors; the Knight Commission does not take any position on those views or on the content or findings of this research.

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<sup>2</sup> Appendix A includes those works which the review team found to be most useful or illustrative, with a brief of summary of each work. Appendix B lists all works which the review team examined, including those in Appendix A.

## **EXECUTIVE SUMMARY**

### **Literature Review Conclusions**

#### **Prepared for the Knight Commission on Intercollegiate Athletics**

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The research team was engaged to “compile and assess relevant proposals about reform of Division I athletics, over the last decade, and provide a summary of those proposals which can inform the Knight Commission’s work in assessing the NCAA and Division I organizational, regulatory and governance structure and in developing possible new alternative models.”

To compile this report, the research team scanned dozens of electronic databases, and analyzed over 80 scholarly and popular press articles published between 2011-2020, plus relevant judicial decisions and state and federal legislative proposals and enactments, and nearly a dozen Knight Commission reports and letters.

The consultants recognize the following in light of preparing this report:

- Higher Education was faced with challenging times prior to the Covid-19 pandemic and the racial justice protests; therefore, the researchers were challenged to assess an *acute situation* layered on top of *chronic problems* facing Division I college athletics;
- When examining the previous decade’s commentary, it was clear that the majority of the writers were targeting an athletics focused audience, not a higher education focused audience.

In summary, there was both expected and unexpected commentary available in the literature we reviewed -- expected as to financial change, unexpected (in the sense that our initial focus was on financially based proposals) as to student-athlete welfare. And since the emergence of Covid-19, the number of proposals to *leverage the moment* in college athletics has exploded, including speculation on the future of the Autonomous 5 conferences, a renewed financial focus (often for the short-term), and an intense focus on athlete welfare, with a new emphasis on race. (Scholars do mention the importance of Title IX compliance, but without great specificity.)

Commission members should keep in mind the questions that were not answered in the literature, including (in no particular order): How to define the *public good* that would be offered in exchange for a partial antitrust exemption; how to manage the external political pressure from the states and the Federal government regarding athletes’ rights, educational and medical benefits; how to create a governance structure that has appropriate checks and balances which can mitigate self-interest; and maintaining broad based opportunities within Title IX compliance.

In general, in this recent period, athletes, parents and others have voiced strong support for more inclusion and representation by athletes in decision-making. Substantive health and safety procedures also have been emphasized, along with financial assurances and wider access to educational benefits. Perhaps most importantly, there is a sense of an opportunity and a willingness for dialogue and change at this moment that has not appeared before. As Winston Churchill said, “Never let a good crisis go to waste.”

Under the areas of **finance and governance**, academic scholars, financial and legal minds have listed notable (but repeated) emphasis in the following ideas:

All agree the College Football Playoff monies should come under the NCAA umbrella; most agree that those monies should *not* be redirected to coaches' salary increases, or financing debt on athletic villages. Instead, they should be redirected to some of the *Duty of Care* ideas discussed below, including educational, financial, insurance and health resources.

Many bemoaned the lack of financial transparency (and cheered the KCIA financial database that allows for more transparency in the public universities) and argue that, as part of a new governance model, clearly demonstrating how money is spent on athletics at a university should be more easily available to all. However, a few noted that the new NCAA portal called the Division I Institutional Performance Program (IPP), a dashboard metric presented to the KCIA a few years ago as a benchmarking tool, may in fact, be encouraging spending to *keep up with your conference peers*.

Over the past decade, there have been several proposals about restructuring (or federation) of sports within NCAA Division I programs as a viable alternative to the spending arms race. Many commentators also have spoken out about the impacts of conference realignment, and the unintended consequence it has had on increasing travel time and costs. Originally, decisions were made primarily by TV/football concerns, these changes have left all FBS conferences, especially those outside of the Autonomous Five, with conference footprints stretched over multiple states (and time zones), frequently requiring mid-week air travel and ground transportation costs.

Other voices have advocated for a stricter classification standard to join Division I in order to curb the intentions of schools to become Division I programs "in name only." These schools are spending far more institutional funds and student fees on their athletic programs than the top tier programs with whom they are trying to keep up.

Almost all who addressed the financial issues mentioned the explosion of coaching salaries, additional staffing, and lavish facilities as targets of their displeasure. And a side effect of that spending is the disproportionate impact on non-revenue sports, sometimes leading to cuts and program discontinuations, not in the salaries and staffing of football and men's basketball, but in the sports that "cost money." The reality is that all sports cost money: it's *the inability to say no to football and men's basketball* that is the central thesis in their arguments.

The emergence of the Names, Images and Likenesses (NIL) legislation, as well as the continued advocacy by some writers that athletes share in the revenues generated by them, has brought clear discord. Some scholars advocate that in addition to NIL rights, athletes also share in the institutional revenues their programs produce, whether via an Olympic-style trust fund or some other indirect mechanism, or as a straight deposit to their student accounts. Others, while in agreement with the NIL discussions, see the need for reinvestment in the "non-revenue" sports referenced above. While there is much discussion, pro and con, about "paying athletes," there is no clear-cut opinion as to what constitutes doing that.

While all commentators seem to agree on the need to have some uniform national resolution of this issue, rather than many conflicting state laws, it's not clear this can happen quickly, and there are multiple opinions as to the right form of any Congressional intervention and/or

independent oversight. There is, however, consensus that there must be political will from the Congress to take on this decision if it is to happen. There are many political battles being waged at the national level in 2020: whether there is the desire to expend political capital in “bailing out” intercollegiate athletics, thus allowing institutions and conferences to avoid addressing these issues “at home,” is up for debate.

A number of writers have noted that a conditional antitrust exemption might be the best path to follow to strengthen integrity guardrails, operate in an efficient and cost-effective manner, while prioritizing the athlete’s collegiate experience. There is some precedent in higher education for advocating for this type of oversight, but few scholars have linked such an exemption to what institutions would have to provide, in return, to serve the *public interest*; i.e., promising specific benefits for college athletes which would serve their interests, while also serving the general public’s understanding of a distinction between amateur and professional athletics. Such dedicated funding for athletes could include enhanced athlete health and safety measures and educational benefits, allowing for institutions to more effectively allocate resources in other areas, instead of in spiraling salaries and unnecessary facility enhancements.

While embracing *spending restraints* is widely popular among scholars, to combat the never-ending arms race, a few also describe the impact it has on the revenue race, as Division I programs try to make up the spending gaps created by the current landscape. This trade-off is mostly bad for athletes, teams and fans: rather than addressing the spending problem, the athletics modus operandi has been to try to find ways to make more money, which adds more stress to the athlete experience -- as by receiving more television revenues for “time shifting” games (and travel) to weekday nights.

A conditional antitrust exemption would almost assuredly require some sort of oversight or reporting mechanism to ensure the promised trade-offs/benefits are met. Scholars are not in agreement when it comes to this area—some feel there is a need for Congressional oversight and annual reporting, some believe there is a need for an agency approach (like the Federal Trade Commission), and some believe the entire supervisory board should be comprised of people currently outside of higher education, but with deep knowledge of the infrastructure.

All agree as to the need for regular reporting and/or oversight: some feel tying in a “hammer” type of approach (like removing Federal funding for non-compliance) would best achieve the goals, articulating the need for robust penalties for non-compliance (or even non-cooperation) if higher education is to move effectively towards organizational integrity in Division I athletics.

There are also issues around whether both athletic scholarships and “UBIT Income (Unrelated Business Income Tax)” could be treated as taxable income to athletes and institutions, respectively, with current holes in the Internal Revenue Code (that could be modified at any time). Any movement towards an antitrust exemption would be wise to settle these issues definitively.

Similarly, there has been much discussion of how Title IX would be applied under various “antitrust” and/or NIL approaches, and any federal legislation in either area should provide a clear answer in this regard.

And especially recently, there have been several scholars and commentators who have recommended or speculated on the separation of the Autonomous 5 conferences from the rest of Division I, thereby potentially creating educational (as to the definition of a student-athlete), and commercial separations. All who wrote of this concept advocated for it to apply to all of Division I sports, not just to particular sports. Beyond that, there was not much discussion of what this would mean or how it would work.

Even prior to Covid-19, we noted a strong research emphasis addressing a perceived void in **athlete health and well-being** substance, planning and execution. The researchers found substantial agreement throughout the following areas:

The overarching theme of athletic departments' responsibility to the *Duty of Care* was highlighted by many observers. Simply, when it comes to promises made by coaches to recruits and their parents, there often is a disconnect between what coaches say and what then is perceived as the actual athletic, academic and personal experience, especially in the big-time programs and sports. This writing also has shown frustration around the NCAA issuing *best practices* instead of actual mandates for the Division I membership, with some noting the disconnect between strict rules and regulations surrounding recruiting and competition, and the relatively relaxed guidelines on how to safely take care of athletes.

Thus, there was agreement that injury and medical coverage lasting beyond athletic eligibility, particularly for injuries identified and sustained during the college career, should be made available. This includes both physical and financial injury, the expansion of covering out of pocket expenses for things like physical and mental outpatient services, and for a broader protection of athlete financial insurance premiums.

There also was strong advocacy for a wider range of mental health support services that stretch beyond sport psychology and performance enhancement. Many expressed concerns about the lack of comprehensive mental health access across all Division I programs, not just football and men's basketball. Issues identified include racial and economic disparities, sexual assault and/or harassment, coaching pressures that exceed professional standards, and managing academic and athletic time demands, were some of the most cited examples.

There was strong agreement in the area of increasing the number of educational benefits during and after an athlete's career. While Student-Athlete Assistance Funds, cost of attendance stipends, and other stop-gap measures have been implemented, the writers agree there is a larger list of benefits that could be included, such as paying for graduate school, paying for internships, paying for micro-credentials, networking, and professional seminars. There is some agreement that these concepts should be implemented across all Division I programs.

There also has been a consistent, and recently increased, focus on the employment disparities of black staff in college athletic departments, both compared to employment of white staff and, in some sports, in comparison to the presence of black athletes. Studies have indicated the vast differences between the composition of Division I football and men's basketball teams (over 50% black) as compared to the head coaches and athletic administrators (over 80% white).

Finally, and importantly, there recently has been increased attention to the lack of athlete representation (beyond a token one or two students) at conference and/or national levels, as well as noting that such groups may be disproportionately white. Unfortunately, little reference was made about the actual effectiveness of Student-Athlete Advisory Committees at the institutional, conference or national levels. All who mentioned this topic strongly encouraged more opportunities for athlete input and representation (including some who advocated for athletes having access to arbitration); recent actions by some Autonomous 5 student-athletes have intensified this issue.

## PREFACE

### Charge

The Knight Commission on Intercollegiate Athletics commissioned this work to:

Compile and assess relevant proposals about reform of Division I athletics, over the last decade, and provide a summary of those proposals which can inform the Knight Commission's work in assessing the NCAA and Division I organizational, regulatory and governance structure and in developing possible new alternative models.

The Commission noted in its February 17, 2020 RFP for this work that the need for new models

. . . reflects . . . the conclusion that after almost three decades of the current [NCAA and College Football Playoff] structure, new structures must be considered to better identify and solve problems, focus more clearly on student-athlete well-being, and keep athletic decision-making within higher education as conditions change – that is, to create a decision-making and structure that will be sustainable even as conditions change and new problems arise.

An important element in this work is to determine what kinds of “reform” proposals might need to be accompanied by structural/governance change in order to actually work: e.g., whether a proposed “antitrust” exemption that would cover only certain institutions and/or sports might require a change in how those institutions or sports are grouped, and thus make decisions, in order to implement the exemption and be responsive to its federal oversight and reporting.

The call for some type of *NCAA reform* has been constant almost since the most recent NCAA *restructuring* in the 1990s, which moved from one-institution/one-vote governance to conference-based governance with effective control centralized in the Division I-A/Football Bowl Subdivision conferences. Today, after more than two decades of changes in finances, recruiting and competition, the media rights and sponsorship environment, and student-athlete-initiated litigation, there is a compelling need to offer potential solutions for the large structural weaknesses that have developed in NCAA governance and oversight – especially the NCAA's frequent slowness to consider or decide on change, and often only after being forced to through litigation. The report includes the National Labor Relations Board decision because rulings define the legal environment from which the Commission needs to work.

### Methodology

The research team scanned electronic databases such as Lexis and Westlaw; popular and academic books, journals and media including areas of law, economics and intercollegiate sports; federal legal cases and agency actions at all levels; and proposed and enacted state and federal legislation -- in total, hundreds of documents and thousands of pages -- to provide a foundation for this document. An excerpted set of annotated references in Appendix A are those we considered most valuable, judged by the topics addressed and the solutions offered or framed; each item in that list contains a brief description of the article's key points (these items are



bolded in Appendix B). The full reference list that ultimately was considered to be relevant is in Appendix B.

Broadly speaking, the general content breakdown of the references in Appendix A was:

- Financial/Covid-19: 43% (of this, 23% were generated in the Covid-19 period)
- Athletes' Rights: 24%
- Governance: 20%
- Other: 12%

Many of these articles straddled multiple areas; i.e., offered cost cutting solutions and redirected funding to athlete welfare. At times, it became difficult to attribute solutions to just one area.

### Methods

The research team was assigned specific areas to investigate. Those included:

- Public documents from the Knight Commission (Haagen, Weight);<sup>3</sup>
- Sports law and antitrust law journals and conferences (Haagen, Osborne);
- Proposals from faculty and other higher education groups (Osborne, Weight);
- Other relevant academic/higher education, legal, and media (print, television, online) publications, programs, and conferences (Osborne);
- On the recommendation of KCIA staff, government actions (judicial decisions, enacted or proposed federal and state legislation, agency actions) that could or did cause significant changes in the financial arrangements of college athletics (NIL, etc.) (Broome);
- Specific Tax Policy as applied (Schmalbeck).

Once submitted, and in consultation with Jeffrey Orleans of the Knight Commission staff as to scope of research considered, the working research submissions came to Karen Weaver, who prepared the first draft. It was then reviewed by Ken Shropshire and Brad Bates.

### Format

After considering a number of possible formats, we ultimately decided to present our material grouped into three key areas, each with several subsections. As might be expected, many sources straddled multiple areas – e.g., offered cost cutting solutions and redirected funding to athlete welfare – and each such source is considered in what seems to be its main content area.

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<sup>3</sup> Since 1973, the NCAA has been sued 174 times. Most of the lawsuits fall into three categories: constitutional law (free speech, due process and equal protection prior to 1988); antitrust law; and eligibility issues. Since 2006, the lawsuit categories are mainly antitrust; name, image and likeness; tort (concussion) litigation; and student-athletes as employees (unionization, Fair Labor Standards Act) (Epstein, 2006; Osborne, 2020).

### Part One: Governance Overview

- Maintaining Opportunities-College Football Revenues
- Antitrust Exemptions
- Independent Oversight/Federal Charter/Congressional Oversight
- Elimination of Conflict of Interest
- Separate Division I into Two Classifications-Education and Commercial

### Part Two: Finances

- Financial Transparency
- College Football Playoff
- Alternative Financial Structures-Regionalization, Tiering and Multi-Divisional Classifications
- Non-Profit Status, Taxation and Debt Ratings
- Paying Athletes: NIL\*/Olympic Style Reform/Revenue Sharing

### Part Three: Athlete Rights

- Physical/Mental Health/Athlete Medical Coverage
- Racial Equity and Justice
- Academic Success
- Coaching Standards

## PART ONE: GOVERNANCE OVERVIEW

Over the past decade and a half, much has been written about the battle between external intervention via an oversight authority (i.e. Congress, the judiciary or another agency of the federal government), or whether internal reform would/could be a successful effort. There have been countless panels, law review articles, broadcast and print journalists, scholars, authors and others who have weighed in on the pros and cons of each.

Some have looked for paths forward via the various judicial decision handed down over the past decades. From *Oklahoma v NCAA* in 1984, to the restricted earnings coaches' lawsuits, to the decisions in individual cases like *O'Bannon* and *Alston*, scholars have been trying to discern a way forward for Division I athletics. While the judicial and legal actions continue to this day, so has the accelerating revenue growth (and by extension, spending) that has consumed big time college sports.

The debate between commercial versus educational needs to be settled in order to find a way forward. The fundamental model of not paying salaries to college athletes allows for unrelenting spending in other areas, including salaries, staffing, facilities, etc. The model also benefits greatly from its current tax-exempt status, differentiating it from professional sports. Inadvertently, this governance model does not contain any disincentives to voluntarily limit spending. It creates an unlevel playing field, allowing only the top football schools to consistently benefit.

Whether the college athletics governing apparatus should continue to be tax exempt so that higher education and athletics continue to reap all of the favorable benefits (while operating similar to a professional model), is up for discussion. While higher education is highly regulated at the federal, state and local levels, college athletics is not. Athletics regulation may be in order, whether it's agreed to by the membership, or imposed by Federal action.

One needs to look no further than the Autonomous Five conferences to see the financial imperative to play football in Fall 2020. The looming financial drop off has impacted all of Division I, whether they chose to compete in the fall or not. Many scholars in our review believe that college athletics continued focus on earning revenues just to drive spending mandates being treated as a commercial enterprise with modifications to its tax-exempt status. Mathewson (2008) argues there is a "jurisdictional basis for federal regulation of the cost and revenue structures of the intercollegiate athletics programs" (p. 602).

While antitrust guidance could help with the commercial regulation of college athletics, it cannot by itself reign in the growth in costs and revenues. This would require a competitive marketplace. For example, the imposition of a UBIT (unregulated business income tax) could serve indirectly to regulate college sports revenues, becoming in essence a "luxury tax."

Title VI of the 1964 Civil Rights Act, Title IX, Individuals with Disabilities Act, Student Right To Know Act, Equity in Athletics Disclosure Act, and others are classic examples of Congress providing substantial regulation of higher education, so there are pathways forward.

The challenge for the Commission is to create a structure that allows for revenue and expense regulations while maintaining the educational designation. Scholars argue persuasively whether this is solved as a federal regulation under the commerce hammer, or the educational sword, or a combination of both.

## **College Football Revenues Redirected to NCAA**

Since the launch of the College Football Playoff, the Knight Commission<sup>5</sup> has consistently advocated for the revenues to be received and controlled by the NCAA. Specifically, the revenues should: a) Require a portion of the CFP revenues to be allocated to the NCAA to reimburse for expenses associated with football's operation as an "NCAA sport" used for NCAA membership purposes; b) The CFP should refine its revenue distribution formula so as to equalize its incentive pool for football performance with its academic performance bonuses; c) The CFP should add current or former football student-athletes to its oversight board. This change would be similar to that implemented by the NCAA in its board governance.

Gurney, Lopiano and Zimbalist (2020) also advocate for the dissolution of the College Football Playoff and the folding of those monies into the NCAA structure.

## **Antitrust**

Considering that college sports continues to experience a widening gap of revenue and expense spending, and a growing number of lawsuits attacking the NCAA model and fairness for athletes, it is obvious the existing Federal labor laws and antitrust regulations aren't adequate to address many of the financial and structural issues facing college sports. The need to remain competitive, on the field and in recruiting, is overwhelming the educational aspects of sport.

Unique to other enterprises, the labor force does not get paid in the form of a salary. Instead, they receive educational benefits and opportunities provided to enhance their experiences as a *student-athlete*. Despite the growing media and other revenues, the operating deficits continue to grow exponentially for all but a handful of programs, causing more dependence on institutional funds and student fees. The decentralization of television rights from the NCAA to the Conferences has furthered the economic gaps while creating an unprecedented amount of attention for college sports.

As noted earlier, there are times when litigation against the NCAA drives changes in the rules; however, that is an expensive way to conduct business. As Meyer and Zimbalist (2017) have noted, "excessive time, money and effort are spent on legal affairs. Time, money, and effort by the NCAA, conferences, and schools should be spent on ensuring the integrity of college sports, the health and safety of college athletes, and maximizing the academic experience of these students. Instead, the NCAA, conferences, and schools are all spending excessive time, money, and effort defending themselves in the many attempts by athletes to be paid (and receive other

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<sup>5</sup> Important to note that the Knight Commission on Intercollegiate Athletics have made a number of proposals that address governance; not all are listed in-depth in this report.

benefits) for their play, whether via the antitrust or labor laws” (p. 48). Monies spent on litigation do not end up benefitting the athletes themselves.

Both the antitrust laws themselves and the inconsistent application of the *Rule of Reason* have only added to the confusion of applicability to NCAA rules. Meyer and Zimbalist (2017) wrote: “A solution is a limited and conditional antitrust exception. It would permit the NCAA and its member schools to impose certain rules, such as prohibiting payment for play to athletes without fear of violating the antitrust laws, while allowing certain types of payments and benefits to athletes. These exceptions would be provided if cost spending measures are implemented and player-centric measures are implemented” (p. 36). They advocate that this exemption would permit an exchange of *socially desirable policies* that could benefit athletes.

### Regulatory Solutions-in search of a public good

The authors are in firm agreement that the professionalization of commercialized big-time college sports is not a solution that would strengthen the public interest or student-athletes’ welfare, for the following reasons:

- a. College sports provide a large number of athletes, who recognize that the probability of a successful future professional sports career for them is low, with the opportunity to leverage their athletic abilities into academic achievement that might otherwise be unavailable to them.
- b. In any request for an antitrust model, the primary objectives should be to ensure that student-athletes receive the educational benefits that are the hallmark of the NCAA’s self-professed line of demarcation between intercollegiate and professional sports, and should ensure the educational, physical, emotional and social benefits of athletics participation in the long term outweighs the short-term capital gain of pay for play for both the student-athlete and society. As such, Mitten and Ross (2014) argue that NCAA reform can only come from an external entity. (see Independent Commission)<sup>6</sup>

### Control Salaries and Spending

Many researchers argued consistently for the creation of a mechanism to control salaries and spending, noting in particular the spending on athletic facilities.

Hogshead-Makar (2011) argued for Congress to pass a narrow antitrust exemption that would allow the NCAA to control athletic-program costs and, by extension, television revenues.

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<sup>6</sup> This article was published before the creation of the Autonomous Five.

Blue (2019) writes in favor of an antitrust exemption to control salaries and spending, but stops short of articulating what that exemption would look like (and who would provide the oversight). He advocates for the following two points:

- “Limits on spending would improve college athletics for student-athletes and fans by reducing the pressure on schools to generate incremental revenue. The revenue-maximizing tradeoffs that currently affect student-athletes and fans – such as inconveniently scheduled late night or midweek games that impact academics, and six-day TV selection windows for kickoff times – would occur much less often if spending restrictions were in place, since revenue generated above the spending limit couldn’t be used for competitive purposes”, and
- “Limits on spending would increase competitive balance in college athletics, thereby protecting long-term fan interest and commercial value. Spending limits (structured appropriately for each level of DI competition) would be in the competitive interest of all schools except the small minority who currently generate the most revenue, and thus ought to be supported by a majority of institutions and their fan bases.”

Any “left over” monies could be spent on adding value to the college athlete educational experiences, as well as health and safety issues.<sup>7</sup>

### Devolution

There is some concern among legal scholars that rules and regulations will be left to the Autonomous Five conferences (rather than the NCAA). This “devolution of amateurism regulations to the conferences will mean that no individual conference has enough economic power to be capable of committing an antitrust violation” (Haagen, 2019). Left unchecked, this situation could evolve into no national agreement on NCAA structure and rules.

### **Independent Commission/Federal Charter/Congressional Oversight**

Mitten and Ross (2014)<sup>8</sup> believe that representative governance includes a transparent rule making process accessible to all stakeholders, including the public. Further, all rules should go through independent review and include arbitration. The authors believe this would immunize the organization from anti-competitive restraints in Division I sports while limiting judicial scrutiny, federal, and state antitrust challenges, while allowing the NCAA to *preserve the line between the commercial and educational models*. At a minimum, independent directors should be added to NCAA boards, along with current and/or former athletes. The authors advocate for arbitration to allow for equitable rules oversight. By providing this mechanism, it can also provide feedback for institutional improvements (Porto et al., 2015).

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<sup>7</sup> Kevin Blue is currently the athletics director at the University of California-Davis.

<sup>8</sup> This law review article was published in 2014, the same year the Autonomous Five was created. Our researchers suggest it be viewed through that lens.

Durr (2018) advocates for both an antitrust exemption and an oversight commission whose primary purpose would be enforcing federal laws regulating college sports, and to guarantee student-athlete rights while maintaining the educational component of intercollegiate athletics.

In March of 2019, Representative Mark Warner introduced HR 1804, the first [bill](#) to propose tying tax exempt status to the granting of names, image and likeness rights to college athletes. In December 2019, Florida Representative Donna Shalala (and former President of the Universities of Miami and Wisconsin), proposed HR 5528. The [bill](#) would establish a bipartisan Congressional Advisory Commission to provide federal oversight for a minimum of two years.

In late summer, a group of Democratic Senators announced they were going to introduce legislation called the “College Athletes Bill of Rights” (Booker, et al., 2020). Their desired outcomes include establishing a permanent oversight commission, led by current and former college athletes, policy experts, academics, and administration officials, to give athletes a meaningful voice and to level the playing field by establishing baseline rules to govern college sports.

The Knight Commission has advocated for independent oversight to manage the NIL rights and relationships of athletes that would be entirely independent of the NCAA. This could be the same oversight board as the governance oversight board or could be separate.

The formation of a Congressional Advisory Commission may allow the NCAA to achieve its constitutional objectives by: preserving the line between an education model and the growing realization Division I is becoming a commercial model; allow for more educational based benefits to be directed towards more athletes; enhancing the academic integrity of intercollegiate athletics; promoting more competitive balance in big-time intercollegiate sports; and requiring university athletic departments to operate with fiscal responsibility.

## **Eliminate Conflict of Interest**

Scholars have wrestled with the inherent conflict of interests within the NCAA model for decades. The elimination of the democratic ‘one-school/one-vote’, and the evolution to ‘autonomy’ has created an inherent conflict of interest for those in the Autonomous Five, challenging the remaining Division I institutional and athletics leaders.

Presidents were grappling with multiple economic and health tensions when making decisions about the prospects of a fall sports schedule or on-campus classes. University leaders needed to be experts on the complex context of athletics, education and community welfare; therefore, they found themselves involved in seeking outcomes that weigh competing interests while maintaining objectivity, a near impossible balancing act.

Over the summer, the decision making on whether to play in the fall devolved to the institutions, then back to the conferences, then the NCAA (except for the FBS Conferences). By August, it moved back to the individual conferences (see: Big Ten, Pac-12). Question remain: how do you create a system of checks and balances applied equally to all? How do you ensure Presidential

Control (with no conflicts), with Independent Oversight (where conflicts exist) while striving to include the Governing Boards' participation in the NCAA processes, as recommended by the Association for Governing Boards? (AGB, 2018)

Lopiano and Gurney (2017) argue in favor of reverting back to a democratic organization (one school-one vote), potentially eliminating the conflict of interests that exist in the current NCAA Division I governance structures. They believe this arrangement would make the organization exempt from antitrust constraints and allow for cost containment in return for a federal preemption of state laws, schools would:

- Have their receipt of federal funds from the Higher Education Act on 1965 tied to their membership, and;
- Organization would hold the exclusive right to sponsoring national championships, including college football, and;
- Return of the athletics department self-study process with third party reviewers.<sup>9</sup>

### **Separate Division I Into Two Classifications—Educational and For-Profit**

For a few scholars, the answer is to separate the Autonomous Five from the rest of Division I. There are advantages to this for both, including separate governance and rules structures. Writers go so far as to argue that the Autonomous Five could be a completely “commercial” entity, including paying licensing fees back to the University for the use of their facilities, logos, school colors and other resources, while the rest of Division I could be brought under the “educational” umbrella, finding more common agreement in reigning in spending and redirecting funds towards educational benefits for college athletes (Clotfelter, 2011; Ridpath, 2018).

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<sup>9</sup> None of these proposals mentioned athletes as members of NCAA committees, a distinction from the US Olympic Committee model.



## PART TWO: FINANCES

### Financial Transparency

Much has been written about college sports finances. This section breaks down the various structural and transparency issues facing college sports, along with the increasing pressures to provide athletes greater compensation.

#### College Athletics Financial Information Database (CAFI)

Several scholars and journalists have decried the lack of financial transparency from many public (and nearly all private) institutions over the years. Much headway has been made with the Knight Commission's CAFI [database \(2020\)](#) for public Division I schools (both football and non-football playing programs), but there are still many other legitimate concerns about transparency in sports spending. It would be helpful to identify the benefits of financial transparency, including providing incentives.

#### Institutional Performance Program

The NCAA took a bold step forward with implementation of the IPP (Institutional Performance Program) [dashboard](#) for financial comparisons between conference members and peer institutions, but its access is limited to institutional Trustees, President, Chief Financial Officer, Athletic Directors, etc. It also contains metrics which allow for deeper institutional analysis. (NCAA website). Scholars note that this tool has the potential to provide a wide-ranging look at spending and access in college athletics. Practitioners indicate it has become an accelerator for chasing the highest spenders in the conference.

#### Equity in Athletics Data Set

The only other dataset commonly used is the Department of Education's [Equity in Athletics Data](#) set, an annual report designed with large buckets of general information on sports spending. The website's biggest strength allows for researchers and the general public to gather a snapshot of how each school is managing their gender equity compliance whether a public or private school.

#### Standard Accounting Practices

Finally, accountants have also advocated for clearer accounting guidelines, including a definition of *profit* and of *practical* budgetary guidelines. Others have argued for a common language that falls around cost centers and revenue distributions (especially if they are earmarked) (Williams, 2016).

### Alternative Financial Structures

There are a number of models that researchers and journalists have suggested might address the structural issues that confound athletic department finances.

## Regionalization

With the emergence of the coronavirus, the call has gotten louder for more regionalized scheduling without changing Divisional classifications, and conferences like the Atlantic-10 have been actively engaged in trying to do that for their Olympic sports. Other writers have suggested that entire conferences should merge, such as the Sun Belt Conference and Conference-USA, in order to create separate divisions closer together. (Smith, M., 2020) A strong argument can be made for the unintended consequences of conference re-alignment a decade ago; today, Division I conferences are stretched across multiple time zones and regions, dramatically spiking travel costs and missed class time, all in the chase for media dollars.

The Knight Commission (2014) and others have strongly argued for a reduction in expenses and a reformatting of how each sport is federated.

- Restructure the organization of sports competitions and related operations to reduce inefficiencies and unnecessary spending, and improve the quality of the student-athlete experience;
- Explore alternative competition models for Division I that may require greater federation by sport in order to minimize time and travel burdens on athletes and moderate financial costs without reducing broad-based opportunities.
- Consider a new financial framework with spending limits on various sport programs, incentives for maintaining spending limits or disincentives for exceeding spending limits;
- Require greater transparency, oversight, and reporting of financial measures that include comparing athletics spending to academic spending.

## Tiering and Multi-Divisional Classifications within an athletics program

There are two ways to approach “tiering” of an athletics program:

- Allowing for programs to participate in different NCAA Divisions (i.e. DI and DIII) inside of the same athletics program; or
- Creating an internal tiering program based on institutional financial support and competitive priorities

The low hanging fruit here involves the number of contests played and the length of in season and out of season practices for each team. This one item causes the hiring of more support staff than almost any other, as athletic trainers, equipment managers, team managers, support staff, etc. are now told they need to cover that sport for 22 (or 26) weeks during an academic year. The creep in this area (particularly in football and basketball) has stretched these staff members quite thin. Tiering could assist with managing staff sizes and season lengths.

Both concepts can address the near impossible standard of having high levels of sustained success across all sports offered by a department. The NCAA would need to modify its rules with regards to the first item, as they moved away from allowing multi-divisional classifications several years ago. The second item would likely need to be an understanding within the athletic conference (mostly for competitive equity issues) (Ridpath, 2020).

Another form of tiering within an athletics program is tied into program staffing. In both cases listed above, it would be easier to establish maximum numbers of staff hired in a particular program based on what tier they are in. Finally, programs in lower tiers could be restricted to fewer games, practices and out of season activities.

There have been many suggestions for other forms of cost cutting this spring, with things like furloughs, layoffs, hiring freezes, and eliminating recruiting and conference travel; those exceed the scope of this report on governance. The opportunity is there without Federal intervention to limit the size of coaching and support staffs (Glier, 2020; Sullivan, 2020).

Salary constraints is the most often cited method of managing costs, indeed some call the entire salary marketplace in college athletics inefficient, foolish and other adjectives (Blue, 2019). Others argue for spending caps on specific sports (Rawlings et al., 2013), with many arguing for a more restrictive entry into Division I FBS athletics (Auerbach and Vannini, 2020; Brown, 2020; Briggs, 2020; Knight, 2020).

Since March, over 125 teams have been eliminated or dropped to club status across all three divisions, including Stanford, Dartmouth, Brown and the University of Iowa. There has also been a disconnect in the accounting of tuition dollars, housing, dining and fees that athletes on partial or no scholarships bring to the table, as those typically appear only on the central ledger. An analysis of the financial value of revenues to the university's general fund from recruited walk-ons and partial scholarship student-athletes would be important to consider. (Schwartz, 2016)

Most athletic department budgets are treated as separate entities. Because walk-on and partial scholarship student-athletes pay through university budgeting processes, athletic departments and universities do not monitor revenues to the university. The result leads to devaluing the role of athletics in recruiting full-and-partially paying students to the university, often leading to sport sponsorship cuts that have negative revenue implications to the institution. The Knight Commission and others have spoken out forcefully about not eliminating opportunities, asking for reductions in scholarship minimums, and not changing the minimum number of sports sponsored to remain in Division I (Knight Commission, 2020).

A unique scholarship distribution proposal was published in 2019 outlining how to deliver a more equitable model for athletic scholarships. Instead of some sports being exclusively *full* scholarship sports and the rest being *equivalency* scholarships, Researchers proposed scholarship allocations based on squad sizes, travel party restrictions and/or starting line-up baselines (Kantor, Weight, and Osborne, 2019).

## **Maintaining Opportunities**

### The College Football Playoff and Post Season Bowl Games

In January 2020, the College Football Playoff generated \$549 million in the year 2018-19 (Schrotenboer, 2020). Extrapolating and multiplying that over the five years of its existence, the Playoff system has produced \$2.745 billion dollars, unequally distributed to a select number of

programs. After subtracting expenses, the annual net profit for those games is \$448 million. In total, ESPN is paying the College Football Playoff a total of \$7.3 billion beginning in 2014-15, for 12 years. The remaining post season bowl games generated \$99 million over 33 different bowls. This creates a disparate impact on the rest of Division I and, creates an artificial standard that the rest of college athletics (and even some Olympic sports National Governing Bodies) cannot live up to.

Scholars strongly support the KCIA recommendations with regards to the College Football Playoff funds, and in particular, those funds should be redirected across all of Division I. This would allow schools in the FBS and other Division I conferences to appropriately support all of their athletic programs at an equitable level. Some of our researchers believe the time has come to separate the Autonomous five from everyone else (commercial vs education)-there is no consensus.

## **Non-Profit Status, Taxation and Debt Ratings**

Should the potential tax vulnerabilities on athletic scholarships be treated as income, and television/multimedia revenues treated as unrelated business income be addressed? Few scholars have addressed this in recent years, but only because it hasn't emerged as an issue. In light of the current political climate, is it appropriate to build protections into governance recommendations to address this? Either or both could have serious ramifications for Division I athletics.

Schmalbeck (2020) believes the IRS would have reasonable grounds to declare that current university policies--apparently permitted by the NCAA--make athletic scholarships vulnerable to the claim that they do not qualify as tax-free awards under section 117 of the Internal Revenue Code; and that television revenues from big-time athletic events might well be considered unrelated business income.

Moody's Investor's Services revised the outlook of the NCAA from stable to negative. The projected revenue from its media partners for fiscal 2020 was \$827 million. The NCAA will receive only 30% of the expected \$827 million as a result of the cancellation of the men's basketball tournament (Moody's, 2020).

## **Paying Athletes**

### Names, Images, Likenesses

There are various approaches to whether and how athletes may receive compensation for their NIL. In addition to those described in various proposed federal and state statutes (2 state statutes are final, but with delayed effective dates), the NCAA's Federal and State Legislation Working Group issued its Final Report and Recommendations to the NCAA Board of Governors on April 17, 2020, suggesting that each division enact NIL proposals appropriate for their division by January 31, 2021 (with effective dates not later than the start of the 2021-22 academic year). The issues and differences considered in these various proposals include the following:

- The use of school marks (logos, school colors, etc.);

- Employment of professional advisers;
- Trust funds for NIL payments until athletic eligibility is exhausted;
- The role of boosters and how to keep NIL from being misused in the recruiting process;
- Conflict with institutional contracts;
- Conflict with institutional values regarding endorsed products (tobacco, gambling, alcohol).

It is notable that the Autonomous Five have weighed in separately with Congress regarding their priorities.

The state laws are the impetus for the recent focus on NIL. Currently, no state NIL statutes are in effect; it is possible that those that were enacted *could be repealed* if the NCAA enacts bylaws that satisfy the concerns expressed by the state lawmakers. Federal law could be enacted that would preempt the state laws and that might either defer to the 2021 NCAA bylaws or create a federal scheme for overseeing NIL.

To the extent that NIL permits group licenses (something not favored by the NCAA Working Group because of legal hurdles), a trade association may need to be created for student-athletes to join who wish to participate in a group license with their school and share in the revenue received from that license. The trade association would negotiate the group license on behalf of the student-athletes.<sup>10</sup>

### Olympic Style Reform

Paying athletes via Olympic-style athlete endorsements could be sorted out in the NIL debates. If not, those may need further examination. The option allows for male and female athletes to tap into a potential a “free market” of endorsement opportunities and could look like this:

- A: The NCAA could adopt a proposal similar to the International Olympic Committee. Under IOC rules, an athlete:
  - can receive compensation for athletic competitions and outside incidental activities which is placed into a trust fund;
  - Athletes can withdraw this money to pay for living and training expenses, and at the end of their careers the athletes can withdraw the entire amount. citation?
- B: Establish a trust fund whereby the athlete can receive a stipend:
  - student-athletes can receive extra compensation for athletic or academic accomplishments, producing extra incentive for an athlete to excel in the classroom (Gurney, G. et al., 2017).

There would need to be some oversight as to the appropriate kinds of products endorsed. It is notable that Olympic athletes are prohibited from activating their endorsements in the three weeks prior to the Olympic Games, as well as during the Games.

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<sup>10</sup> Team member Lissa Broome provided us an excellent analysis on all of the NIL proposals through mid-June 2020

Other selected proposals around paying players included: A revenue sharing plan (football and men's basketball primarily), giving college athletes a percentage of the revenue generated by an individual athlete's respective team. Coaches would be required to share 25-50% of their bonuses with the players. Distributions could be made via seniority, individual postseason performance, academic performance, sharing in endorsement revenues.

## PART THREE: ATHLETE RIGHTS

### Health

A great deal has been written by authors, journalists, scholars and practitioners about improving the college athlete experience over the years. While certainly advances have been made (access to nutrition, transfer portal) in recent years, there still remains a wide gap identified by researchers directed towards improving athlete health, safety and academic success.

#### Physical Health

In 2020, the NCAA passed the independent medical care legislation, which empowers team physicians and athletic trainers to make medical decisions without interference by members of the coaching staff. Several scholars over the past decade have lamented about the power imbalance in this area of athlete health. The NCAA Chief Medical Officer provided a number of best practices for athlete medical care, particularly during Covid-19, but the research shows that the best practices are not *mandated* for every athlete, both revenue and non-revenue. This discrepancy was noted in the literature as far back as 2013. (Rawlings, et al.)

#### Mental Health

Lopiano, Blade, Gurney, G. et al., (2019) wrote about the importance of mental health education for athletes, extending beyond sport performance. They described a culture of athletics that has embraced hazing and other team initiation rituals while accepting *tough coach* practices such as harsh communication, physical handling of students, and the use of physical punishment in response to errors or insufficient effort in a school environment that is now intolerant of bullying and verbal, physical, and mental abuse. It is important that the NCAA establish a no-tolerance rule when it comes to these kinds of behaviors. Researchers who discussed this topic tied this into standardizing coaching practices across all sports.

There is a component of mental health tied to the financial agreement within the athletic scholarship. While not elaborated in great detail in the research, the implied pressure to conform with what the coaching staff requires of you (including activities or strategies that may seem to conflict with an athlete's own moral compass) can also elicit great mental stress as well.

The NCAA recorded a Covid-19 Information for Athletics Healthcare Providers webinar covering a number of the physical and mental wellness challenges in dealing with athletes returning to campus. Several points made on the mental health side of the ledger include athlete concerns, staff mental health and the overall lack of structure and uncertainty. Panelists noted the forthcoming athlete mental health survey being published in July in the *British Sports Medicine Journal* that should assist in athletes defining their own level of mental health (NCAA, 2020).

## Athlete Medical Coverage

Mandate adequate injury insurance for athletes and institutional payment of athletic injury medical expenses not covered by insurance:

- NCAA Bylaw 16.4.1 specifies that only autonomy institutions must provide full medical care to college athletes for athletically related injuries extending at least two years following either graduation or separation from the institution or until the athlete qualifies for NCAA catastrophic injury program coverage. This provision should be extended to athletes in all NCAA divisions, and the NCAA should establish an insurance program and/or special fund for that purpose; citation?
- The NCAA should develop gender- and sport-neutral criteria for the institutional provision of disability/loss of value insurance that does not deplete institutional Student Assistance Fund allocations.

Others mention the disparities in medical coverage, including underinsured athletes, and the lack of medical care post eligibility (unless you are a member of the Autonomy Five Conferences). Gurney, G. et al., (2020) have argued that the revenues from the College Football Playoff should be shifted to injury expenses and long-term disability insurance.

The NCAA must begin to convert their health and insurance guidelines to rules and regulations. What happens too often is schools take the lowest common denominator approach, claiming the “best practices” are unaffordable. Much of what the NCAA has regulated has been surrounding “return to play”; after this pandemic, and with the emerging issues surrounding disparate family medical issues that accompany the health history of each athlete in our program, we must do more.

None of the literature addresses the issues of medical insurance adequately. As nearly 28 million Americans have lost their jobs in the pandemic, and likely millions more also lost their health insurance, the ability for athletes to inexpensively access insurance coverage should be at the forefront. The literature does advocate for post career athlete medical care for injuries sustained during their collegiate career, but the cost for covering their participation in pre-season, regular season, post season and out of season practices and games is scattershot at best.

Without exception, those who mentioned post-eligibility and athlete medical care strongly advocated for mandates over guidelines. The broad term of *best practices* leaves too much to chance from institution to institution. Athletes should expect to have a consistency in their care whether at practice or at an away competition.

The NCAA must address the real issue of athlete’s families having access to any (or limited) health care insurance. This concept has been exacerbated by Covid-19, and the millions of workers left without employer-sponsored health care.

Under the umbrella of a *Duty to Care*, scholars from the Drake Group specifically advocated for a broad definition of this term that includes:



- Prevent or reduce the occurrence of athletic injury;
- prohibit physical, sexual, verbal, or emotional abuse of athletes by coaches, other athletes and others;
- permit athletes to have adequate time to sleep, recover from training, and complete academic responsibilities;
- Inclusion of athlete health and protection rules and standards of conduct for athletic department employees (Lopiano et al., 2019).

## **Racial Equity and Justice**

Racial disparities in college sports could be argued as an athlete health issue. Many athletes of color bring different health risks and underlying medical conditions that are not presumed for a typical 18-22-year-old (Cooper et al., 2017). While the issues with sickle cell anemia were addressed via testing before being cleared for competition, other family history conditions can predetermine whether some athletes are predisposed to exposure to the coronavirus.

Similarly, the stark racial hierarchies and inequities in how athletes of color see themselves in the department infrastructure may be reflected in their health and wellbeing. The very real issues of a lack of diversity in both the coaching and administrative ranks of Division I programs is notable. Richard Lapchick's 2019 *Racial And Gender Report Card*, provides an annual reminder of how college sports are woefully behind on this front. With the #BlackLivesMatter movement upon us, researchers, practitioners and journalists are calling on higher education and college athletics to do better.

Ridpath (2018) argues this even more clearly as he explains that college athletics must ensure academic integrity while improving the athlete's opportunities for educational access and social mobility. A disproportionate number of athletes in football and men's basketball are African American; the current system propels a belief that education-based sport provides opportunities to individuals that would never otherwise have a chance. This assumption is racist and classist. Education is the true path to social mobility and success. Communicating to those who are members of a racial or other minority and/or lower socioeconomic class that athletics is their most likely and perhaps only way to advance in society contributes to thousands of young athletes who limit their pursuit of excellence to the field or court.

Cooper et al., argue that athletic departments and college leadership need to have a clear strategic plan for addressing racial equity with measurable outcomes, especially visible to students of color.

### Athlete's Voices/Social Media

Should media communications policies be modernized and standardized by the NCAA? With the increasing presence of athlete's voices on social media, the communication policies of sports information departments must also change with the times. There are still many Division I athlete handbooks that state "all media requests must go through the athletic department." In this age, it seems out of touch and impractical, when many athletes have more "followers" on their

accounts than their sport programs have. It may also infringe upon the athlete's First Amendment rights.

Should the NCAA provide parameters protecting the athlete's ability to exercise their Constitutional rights?

While athlete protests were minimally addressed in the literature, there is a wider need to define how protesting will affect an athlete's role on the team. Do they lose their scholarship? Do they get punished for speaking out? Are they permitted to be a part of a larger campus protest? If they are arrested for civil disobedience, are they treated differently when it comes to campus and team discipline?

## **Academic Success**

Much has been written about ensuring academic success in the highly competitive world of Division I athletics. The Knight Commission and others have addressed a number of concerns, with many already adopted by the NCAA. Continuing concerns around the practicality of the Academic Progress Rate (APR) and whether it is comparable to the graduation rates. Others speak to entrance standards for athletes, and not putting athletes who are not ready for college level work in harm's way. Some call for the abolition of "special admits" and advocate for athletes to go through the regular admissions process (Hawkins, 2013, Rawlings, 2013).

In comparing the hours spent on academics compared with academics argues the "NCAA 2015 research demonstrates that the median numbers of hours per week spent on academics by athletes in all competitive divisions ranged from 38.5 in Division I to 40.5 in Division III, and the median number of hours spent on athletics ranged from 34 in Division I to 28.5 in Division III. PAC 12 surveys report athletes in all sports averaging 50 hours per week spent on athletics activity" (Gurney, G., et al., 2016, p.1).

## Time Demands

Rawlings, et al., (2013), Gurney, G. et al., (2016), and Hawkins (2018) advocated for no athletic official interference in other areas, including: student discipline, no special admissions for underprepared athletes, a return to the concept of a *year of readiness* before competition, a reduction in the number of team contact hours, and no interference in academic advising and academic plans (including chosen or change of major).

One can argue that the consistent trend of weekly contact hours averaging 40-50 hours in a week (over the course of 22 weeks in an academic calendar) is troubling. Harvard University's Faculty of Arts and Sciences commissioned an analysis of the culture and structure of the athletics department. Released in May 2020, it noted (among many observations) the *disconnect* between athletes and typical students on campus, writing "student-athletes are struggling with three fundamental issues: finding free time to relax, unwind, and take advantage of community experiences; getting the sleep they need to feel rested and the nutrition they need to maintain a healthy diet; and balancing their academic and athletic commitments" (Mercer, 2020, p.16).

Other researchers have strongly advocated for athletes to have the ability and flexibility in their practice/competition schedules to pursue their academic major of choice. There have been numerous examples in the mainstream media of athletes being re-directed to an easier major (known as *academic clustering*), or limiting the athlete's career options after college. (Christy and Martin, 2010) This issue ties into athlete time demands, both per day and per season. Other proposals include extending the academic timeline for degree completion and lifetime scholarships.

Potuto (2016) argues the emergence of the Autonomous Five group, is lacking a voting plurality in self-determination due to full Division I's ability to impose their views (via a simple majority). Attempts to address athlete time demands have lacked consensus when voted on by the full Division I board. Exacerbating the problem, the Autonomous Five has no governing structure, leaving conference offices to design their own strategies, while lacking a mechanism to introduce the topic of time demands. Her suggestion points to the need for an Autonomous Five czar.

## **Coaching Standards**

Multiple researchers have strongly advocated for strengthening safety requirements for athletes at all levels. Concussions have received a great deal of attention over the last decade. In addition to appropriate return to play protocols, observers remain concerned about athlete safety in other situations as well. The focus on winning in order to generate the revenue, creates a dysfunctional culture that is the antithesis of an educational environment. It tolerates sexual harassment and sexual violence, abusive coaches with exorbitant salaries, corruption and bribery of college coaches, recruits and their families among other extant behaviors. With the change in the governance structure to vest much of the revenue in the Autonomy 5 conferences, scholars have noted this contributes to the failures of the NCAA to treat student-athletes fairly. (Durr, 2018)

Several writers have mentioned that coaching standards and certifications need to be developed across all sports. Certain sports have been highly successful at doing this (see [U.S. Soccer](#)), but others have followed a mentorship program that may or may not fill in the knowledge and experience gaps required for one to successfully manage a team of young adults.

The Drake Group developed a position statement titled "Athletic Governance Organization and Institutional Responsibilities Related to Professional Coaching Conduct," going into great detail about the culture and training of coaches, including issues surrounding hazing and sexual abuse of athletes by coaches. This group argues forcefully for a consistent standard across all NCAA sports and Divisions. They write, "adequate evidence shows that the coaching profession is without clear and consistent standards and that absent such guidelines, too many coaches, albeit a minority, are crossing the line that separates good practice from harm to athletes" (Rawlings, 2013; Lopiano et al., 2019, p.2).

Other suggestions include adopting a Coaching Code of Conduct that can be included in employment agreements and advocating for coaches to be seen and treated and seen as educators, tying in a course credit for athletic participation (Weight et al., 2015).

The formal education for coaches in most sports is limited to mentoring, basic life saving techniques (like CPR), and tactics and techniques of the game. If the primary purpose of an athletics department is to maximize the holistic development of athletes, then researchers point out the most important person overseeing this responsibility are the coaches. Currently, institutional policies and procedures hold up coaches as the primary *authority* in college athlete's lives; there is no other position at an institution that establishes performance expectations (and consequences) for every aspect of a student's life.

Several asked the following questions:

- If winning has little developmental impact, why is there such an overemphasis (distributions, bonuses, prestige, job security)?
- If winning has does have developmental impact, in what ways can competitive success be effectively integrated into a zero-sum context where 50% of the teams win/lose each game?

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## APPENDIX A

### Annotated Bibliography

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A guide to governance, oversight and best practices for Boards of Trustees at Colleges and Universities

Auerbach, N. & Vannini, C. (May 2, 2020). How Division I schools are pushing for NCAA relief to sustain sports in a crisis. *The Athletic*. Retrieved from: <https://theathletic.com/1789286/2020/05/02/ncaa-division-i-sports-group-of-5-waivers-covid-19-financial-crisis/>

Argues for a more restrictive entry into Division I FBS athletics

Blue, K. (2019). Why Congress Should Regulate Salaries and Spending in College Athletics, *AthleticDirectorU.com*. Retrieved from: <https://www.athleticdirectoru.com/articles/why-congress-should-regulate-spending-in-college-athletics/>

Argues for a limited antitrust exemption to control salaries and spending leading to increased competitive balance in college athletics, thereby protecting long-term fan interest and commercial value

Booker, C., Blumenthal, R., Harris, K., Murphy, C., Gillibrand, K., Wyden, R., Hirono, M., Sanders, B., Van Hollen, C., and Schatz, B. (2020, August 23). Booker, other Senators, Introduce College Athletes Bill of Rights. Retrieved from: <https://www.booker.senate.gov/news/press/booker-senators-announce-college-athletes-bill-of-rights>.

Legislative proposal addressing improved educational outcomes, comprehensive health coverage, accountability across college sports, enforceable health, safety and wellness standards and fair and equitable compensation. Endorsed by several athlete's rights organizations.

Cooper, J. N., Macaulay, C., & Nwadike, A. (2017). A critical race theory analysis of big-time college sports: Implications for culturally responsive and race-conscious sport leadership. *Journal of Issues in Intercollegiate Athletics* 10:204-233.

Racial disparities in college sports could be argued as an athlete health issue. Many athletes of color bring different health risks and underlying medical conditions that are not presumed for a typical 18-22-year-old; athletic departments and college leadership

need to have a clear strategic plan for addressing racial equity with measurable outcomes, especially visible to students of color.

Deford, F., Edwards, H., Elmore, L., Friday, W.C., Hogshead-Makar, N., McMillen, T., Robertson, O. (2011, Dec 11). What the hell has happened to college sports? And what should we do about it? *Chronicle of Higher Education*. Retrieved from: <http://chronicle.com/article/What-Happened-to-College-Sports/130071>

NCAA to mandate, as a condition of membership, that revenues derived from NCAA-brokered television, licensing, and marketing deals, bowl-game participation, and other NCAA championship events be deposited in individual institutional budgets that benefit the college or university as a whole and not in the athletic department.

Durr, M. (2018). The tipping point: Mayhem in college sports requires Congress to finally intervene in NCAA governance. *Arizona State Sports & Entertainment Law Journal*, Vol. 8, p. 26.

Congress should create a new Federal Commission to be housed in the Department of Education with a primary purpose of enforcing federal laws regulating intercollegiate athletics and monitoring the NCAA to ensure student-athlete rights and maintaining the educational component of intercollegiate athletics. Focus on winning to generate revenue creates a culture that allows sexual harassment and sexual violence, abusive coaches with exorbitant salaries, corruption and bribery of college coaches, recruits and their families, and the change in the governance structure to vest all of the power in the Autonomy 5 conferences contribute to the failure of the NCAA to treat student-athletes fairly.

Glier, R. (Apr. 22, 2020). With Football In The Fall Likely Off The Table, Schools Should Look To Save The Rest Of College Sports. *Forbes.com*. Retrieved from: <https://www.forbes.com/sites/rayglier/2020/04/22/its-over-for-football-so-save-the-rest-of-college-sports/#2e29475a2bfa>

Forget about playing football in the spring, and defer energies and expenses to spring sports like baseball, track and tennis. Get rid of the extraneous personnel, and devote student fees to spring sports.

Gurney, G., Lopiano, D. A., & Zimbalist, A. (2017). *Unwinding madness: What went wrong with college sports and how to fix it*. Brookings Institution Press.

Adopt a proposal similar to the International Olympic Committee. Athlete can receive compensation for athletic competitions and outside incidental activities--placed into a trust fund--withdraw this money to pay for living and training expenses, and at the end of their careers the athletes can withdraw the entire amount. OR establish a trust fund whereby the athlete can receive a stipend; student-athletes can receive extra

compensation for athletic or academic accomplishments, producing extra incentive for an athlete to excel in the classroom.

Gurney, G., Lopiano, D., Zimbalist, A. (Apr 25, 2020). Sports hiatus gives NCAA an opportunity to rethink the structure of college sports. *Forbes.com*. Retrieved from <https://www.forbes.com/sites/andrewzimbalist/2020/04/25/sports-being-on-hiatus-gives-ncaa-an-opportunity-to-rethink-the-structure-of-college-sports/#27eee3023b54>

Advocate for the dissolution of the College Football Playoff and the folding of those monies into the NCAA structure. Argued the revenues from the College Football Playoff should be shifted to injury expenses and long-term disability insurance.

Gurney, G., Sack, A., Lopiano, D., Meyer, J., Porto, B., Ridpath, D.B., Willingham, M., and Zimbalist, A. (2016, July). The Drake Group Position Statement: Excessive Athletics Time Demands Undermine College Athletes' Health and Education and Required Immediate Reform. Retrieved from: <http://thedrakegroup.org/>

Advocated for no athletic official interference in other areas including student discipline, no special admissions for underprepared athletes, a return to the concept of a “year of readiness” before competition, and a reduction in the number of team contact hours, and no interference in academic advising and academic plans. “NCAA 2015 research demonstrates that the median numbers of hours per week spent on academics by athletes in all competitive divisions ranged from 38.5 in Division I to 40.5 in Division III, and the median number of hours spent on athletics ranged from 34 in Division I to 28.5 in Division III. PAC 12 surveys report athletes in all sports averaging 50 hours per week spent on athletics activity.”

Haagen, P. (2019). Sports in the Courts: The NCAA and the Future of Intercollegiate Revenue Sports. *Judicature* Retrieved from: <https://judicature.duke.edu/articles/sports-in-the-courts-the-ncaa-and-the-future-of-intercollegiate-revenue-sports/>

There are at least two potential structural responses if the Rule of Reason defense is lost. The less radical would be to continue to devolve regulatory power from the NCAA to the individual conferences in the hope that the courts would hold that the conferences do not have sufficient market power to be capable of violating the antitrust laws. The more radical would be to borrow a page from the professional sports leagues and rely on collective bargaining and the non-statutory labor exemption to antitrust liability. To do so would require a fundamental break with the past, but it might permit institutions to better align the reality of intercollegiate athletics with its ideology.

Hawkins, B. (2013). *The new plantation: Black athletes, college sports, and predominantly white NCAA institutions*. Palgrave Macmillan.

No athletic official interference in other areas including student discipline, no special admissions for underprepared athletes, a return to the concept of a “year of readiness”

before competition, and a reduction in the number of team contact hours, and no interference in academic advising and academic plans.

Kantor, M.K., Weight, E.A., Osborne, B. (2019). NCAA Scholarship Model Proposal Report. Chapel Hill, NC: Center for Research in Intercollegiate Athletics. Retrieved from [https://ec951b37-ca10-47f8-94e6-1f6d4139c58a.filesusr.com/ugd/1ee3b7\\_dd308eb9bb214d599cbb0d2ef4a3319c.pdf](https://ec951b37-ca10-47f8-94e6-1f6d4139c58a.filesusr.com/ugd/1ee3b7_dd308eb9bb214d599cbb0d2ef4a3319c.pdf)

Advocate for making all athletic scholarships “equivalency” based, not “full” scholarships only in selected sports. Proposes new scholarship models based on data focused on equitable distribution of resources.

Knight Commission. (2020, April 27). Letter to President Mark Emmert Re: NCAA Policy Responses to the Financial Impact of COVID-19. (other KCIA citations listed in full at end)

Submitted in response to NCAA waiver requests submitted by 27 Division I conferences, the Knight Commission recommended preserving opportunities for all athletes, prioritizing education, athlete health well-being, and success; gender equity protections, and reductions in unnecessary spending.

Lapchick, R. (2020, June 20). Gender and Racial Report Card. The Institute for Diversity and Ethics in Sport. Retrieved from: [https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5\\_517e71c07bdc45e4b9a5c053dcbe3108.pdf](https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_517e71c07bdc45e4b9a5c053dcbe3108.pdf)

Annual review of gender and diversity hiring progress in higher education and college sports.

Lopiano, D., Blade, J. Gurney, G. Hudson, S. Porto, B., Sack, A., Ridpath, D., Zimbalist, A. (2019, Oct 1). The Drake Group Position Statement: College Athlete Health and Protection from Physical and Psychological Harm. Retrieved from: <http://thedrakegroup.org>

Redirect funds to athlete health and safety, educational expenses and insurance (some advocate for lifetime insurance for athletes); Inclusion of athlete health and protection rules and standards of conduct for athletic department employees

Lopiano, D., Gurney, G. (2014, Sept 11). Don’t reform the NCAA – replace it. Inside Higher Ed. Retrieved from: <https://www.insidehighered.com/views/2014/09/11/ncaa-cant-be-reformed-congress-should-replace-it-essay>

Lopiano, D., Gurney, G., Polite, F., Porto, B., Ridpath, D.B., Sack, A., and Zimbalist, A. (2016, Dec) The Drake Group Position Statement: Athletic Governance Organization and Institutional Responsibilities Related to Professional Coaching Conduct. Retrieve at: <http://thedrakegroup.org/>



Summary of both: In favor of a democratic organization (one school-one vote), eliminating the conflict of interests that exist in the current NCAA Division I governance structures. They believe that this arrangement would make the organization exempt from antitrust constraints and allow for cost containment. In return for a federal preemption of state laws, schools would: Have their receipt of federal funds from the Higher Education Act on 1965 tied to their membership; Organization would hold the exclusive right to sponsoring national championships, including college football.

Mathewson, A.D. (2008) *By Education or Commerce: The Legal Basis for the Federal Regulation of the Economic Structure of Intercollegiate Athletics*, 76 *UMKC Law Review*. 597 (2008). Retrieved from:  
[https://digitalrepository.unm.edu/law\\_facultyscholarship/222/](https://digitalrepository.unm.edu/law_facultyscholarship/222/)

Examines the argument for using the commercial character of intercollegiate athletics as the jurisdictional basis for federal regulation of the cost and revenue structures of the intercollegiate athletics programs.

Mercer (2020). *Harvard University: A Study of Harvard Athletics' Organizational Culture and Structure*. Retrieved from:  
[https://www.fas.harvard.edu/files/fas/files/harvard\\_athletics\\_study.pdf](https://www.fas.harvard.edu/files/fas/files/harvard_athletics_study.pdf)

Meyer, J. & Zimbalist, A. (2017). *Reforming College Sports: The Case for a Limited and Conditional Antitrust Exemption*, *The Antitrust Bulletin*, Vol. 62, p. 61.

Propose limited antitrust exemption similar to what has been proposed for medical students and residencies.

Mitten, M. & Ross, S. (2014). A regulatory solution to better promote the educational values and economic sustainability of intercollegiate athletics. *Oregon Law Review*, Vol. 92, p. 837.

Formation of a Congressional Advisory Commission may allow the NCAA to achieve its constitutional objectives by: preserving the line between a commercial/education model, and a commercial/professional model for intercollegiate sports; enhancing the academic integrity of intercollegiate athletics; promoting more competitive balance in big-time intercollegiate sports; and requiring university athletic departments to operate with fiscal responsibility; “educational, physical, emotional and social benefits of athletics participation in the long term outweighs the short-term capital gain of pay for play for both the student-athlete and society.

Moody's Investor Services (2020, March 23). *Rating Action: Moody's revises the National Collegiate Athletic Association's (IN) outlook to negative; Aa2 affirmed*. Retrieved from:  
[https://www.moodys.com/research/Moodys-revises-the-National-Collegiate-Athletic-Associations-IN-outlook-to--PR\\_906383628](https://www.moodys.com/research/Moodys-revises-the-National-Collegiate-Athletic-Associations-IN-outlook-to--PR_906383628)

The outlook revision to negative is driven by the financial impact of the cancellation of the Division I men's and women's 2020 basketball tournaments, as well as all remaining winter and spring NCAA championships in response to the coronavirus pandemic.

NCAA Resources, (2020, June 11). COVID-19 Information for Athletics Healthcare Providers. (video). Retrieved from:  
[https://www.youtube.com/watch?v=LF6u7Dp0hjU&feature=emb\\_logo](https://www.youtube.com/watch?v=LF6u7Dp0hjU&feature=emb_logo)

Covers a number of the physical and mental wellness challenges in dealing with athletes returning to campus. Several points made on the mental health side of the ledger include athlete concerns, staff mental health and the overall lack of structure and uncertainty.

Perko, A.P. (2018). Is it time for another evolutionary moment for elite college football? A concept for a new model with a conditional and limited antitrust exemption. *Paper presented at the American Bar Association, Section of Antitrust Law, Spring Meeting, Panel on College Sports: Beyond Pay.*

Congress “partially exempted the existing medical resident matching programs from antitrust laws” to protect the system used by hospitals to secure the employment of medical residents by matching students’ wish lists with the hospitals’ lists of desired students. This system serves the public interest by advancing the residents’ continued education and experience in their desired fields in an efficient and cost-effective manner.

Potuto, J.R. (2016) The Once and Future NCAA and Collegiate Sports. 6 *Ariz. St. U. Sports & Ent. L.J.* 85

Argues the emergence of the A5 group lacks a voting plurality in self-determination due to Division I’s ability to impose their views via a simple majority. Therefore, attempts to address athlete time demands have lacked consensus when voted on by full Division I board. With no governing structure for A5, conference offices are left to design their own strategies, but lack the mechanism to introduce the topic of time demands. Suggests the need for an A5 czar.

Rawlings, H., Delany, J., Goodson, P., Malekoff, R., Perko, A. (2013, Aug 29). Rawlings Panel on Intercollegiate Athletics at the University of North Carolina at Chapel Hill. Retrieved from <https://carolinacommitment.unc.edu/files/2013/08/Rawlings-Panel-Intercollegiate-Athletics-at-UNC-Chapel-Hill.pdf>

Multi-faceted panel discussion that covered a variety of topics, including oversight reform, financial transparency, athlete readiness and admissions criteria, coach education, spending caps, etc.

Ridpath, B. D. (2018). *Alternative models of sports development in America: Solutions to a crisis in education and public health.* Ohio University Press.

Proposed four alternative governance structure models for college sports, including decoupling them from higher education altogether. Included European style clubs, and financing from alternative sources, such as state lotteries.

Ridpath, B. D. (2020, Mar 9). Another reason why Congress must help Intercollegiate Athletics. Retrieved from <https://www.thedrakegroup.org/>

Offered reform solutions, including: Individual student bills should be fully transparent listing the amount of student fee being used to fund athletics; Institutions and/or government agencies should adopt a percentage cap on that portion of student fees support or a dollar limit per student FTE; Institutions should require student referenda to approve the use of student fees for intercollegiate athletics at least every four years and in any year in which an increase in such allocation is proposed.

Schmalbeck, R. and Zelenak, L. (2019) “The NCAA and the IRS: Life at the Intersection of College Sports and the Federal Income Tax,” 92 *So. Cal. L.Rev.* 1087

Schwartz, A. (2016) SportsGeekEconomics (blog)  
<https://sportsgeekconomics.tumblr.com/search/antitrust>

Detailed summary of vulnerabilities of college sports and the current Internal Revenue Code. Analysis of the O’Bannon and Alston cases, including detailing the assignment/re-assignment of cases to Judge Wilken’s docket; the potential holes in the NCAA’s arguments on appeal, and a brief discussion of devolution.

Schrotenboer, B. (2020, January 9). College Football Playoff business is booming at halfway point, but expansion looms. USA Today. Retrieved from:  
<https://www.usatoday.com/story/sports/ncaaf/2020/01/09/college-football-playoff-financial-success-expansion-future/2838495001/>.

Provides media rights history of Bowl Championship Series and exponential growth with College Football Playoff revenues. Predicts expansion in 2026.

Smith, M. (2020, May 26). Colleges target new schedule models to save money. *Street & Smith’s Sports Business Journal*. Retrieved from:  
<https://www.sportsbusinessdaily.com/Journal/Issues/2020/05/25/Colleges/Travel.aspx?>

In light of the pandemic, drastic cost-saving measures are being sought. Cutting sports is fast becoming a sign of the times. It appears the Group of 5 DI schools are being hit hardest. Reform Solutions: The American Athletic Conference is discussing a plan to schedule the regular season as independents giving them the freedom to arrange more games closer to home and then end the season with traditional conference championships; Sun Belt and Conference USA discussed merging or realigning; Governance structure implications: Additional separation of “revenue” and “nonrevenue” sports structures; Alternative inter-conference competition models for cost/time savings.

Sullivan, T. (2020, May 11). College athletics reformers see silver lining in pandemic, but will leaders rein in debt? *Louisville Courier Journal*. Retrieved from: <https://www.courier-journal.com/story/sports/college/louisville/2020/05/11/college-football-revenue-reform-under-spotlight-covid-19-pandemic/3093291001/>

As the pandemic grows, realization hits that this may be the moment to rein in the spending and deal with the growing debt issues. Facility debt has been growing dramatically in the last 10 years.

Weaver, K. (2020, Jan. 1) Names, Images, Likenesses...and Data. *Forbes.com*. Retrieved from: <https://www.forbes.com/sites/karenweaver/2020/01/01/names-images-likenessesand-data/#55d43c3421cc>

Athletes are unaware of the data being collected on them with various performance technology and tracking apps. Calls for informed consent and control over who the data is sold to, as well as cautioning institutions of the ethical problems in selling athlete's data.

Weight, E. A., Cooper, C., & Popp, N. K. (2015). The coach-educator: NCAA Division I coach perspectives about an integrated university organizational structure. *Journal of Sport Management*, 29(5), 510-522.

Broad overview of how coaches can return to the "educator-first" model, and creating certification programs, as well as best practices in developing the athlete holistically.

Williams, D. P. (2016). "Ticking and tying at the buzzer: An analysis of the NCAA agreed-upon procedures for reporting financial data," *Journal of Issues in Intercollegiate Athletics* 9: 185-207.

Insufficiency of current NCAA financial reporting framework makes it difficult to compare institutions. Reform Solutions: Improved structure in cost allocation guidelines for greater transparency on athletic expenditures; NCAA AUP framework that provides consistent and transparent financial reporting that would be free from potential public scrutiny; Establishing a reliable definition of profit and a true understanding of the athletic department. Governance Structure Implications: Implement ABC costing methodology (assigns costs first to an organization's activities and then to the products based on each product's usage of resources and activities); Uniformity among all athletic departments to allow for easier financial data comparisons and increasing public confidence; NCAA to encourage private schools to release financial data (NCAA could release its own financial statements to the general public since the association itself is tied directly to most societal issues in intercollegiate athletics).

## APPENDIX B

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Marshall v. ESPN, 111 F.Supp.3d 815 (M.D. Tenn. 2015), aff’d, 668 Fed. Appx. 155 (6<sup>th</sup> Cir. 2016).

Keller v. Electronic Arts (also known, along with O’Bannon, as In re NCAA Student-Athlete Name & Likeness Licensing Litigation), 724 F.3d 1268 (9<sup>th</sup> Cir. 2013).

O’Bannon v. National Collegiate Athletic Association, 7 F. Supp. 3d 955 (N.D. Cal. 2014), aff’d in part, vacated in part, 802 F.3d 1049 (9<sup>th</sup> Cir. 2015), cert. denied, 137 S. Ct. 277 (2016).

In re National Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litigation (consolidated Alston & Jenkins), No. 19-15566 (9<sup>th</sup> Cir. May 18, 2020).

Berger v. National Collegiate Athletic Ass’n, 843 F.3d 285 (7<sup>th</sup> Cir. 2016).

Dawson v. National Collegiate Athletic Ass’n, 932 F.3d 905 (9<sup>th</sup> Cir. 2019).

## Proposed Federal Legislation

Student-Athlete Equity Act, H.R. 1804, 116 Cong. (2019) (introduced by Rep. Mark Walker, R-NC March 14, 2019).

Congressional Advisory Commission on Intercollegiate Athletics Act of 2019, H.R. 5528, 116 Cong. (introduced by Rep. Donna Shalala, D-FL December 19, 2019).

Letter to Congressional Leaders from Power 5 Commissioners, May 23, 2020 calling for federal NIL legislation.

Legislation being drafted by Representative Anthony Gonzalez (R-OH), discussed at June 4, 2020, Knight Commission Webinar on NIL.

## Enacted State Legislation

California Fair Pay to Play, SB 206 (signed September 30, 2019, effective July 1, 2023).

Colorado, S.B. 123 (enacted March 20, 2020).

Florida, S.B. 646, H.B. 287 (enacted June 12, 2020).

## Proposed State Legislation

Georgia, HB 743 (introduced January 13, 2020).

Hawaii, SB 2673 (passed first chamber February 28, 2020).

Illinois, HB 3904 (Engrossed October 30, 2019, passed 1<sup>st</sup> chamber), SB 2278 (introduced October 28, 2019).

Iowa, HB 2282 (introduced February 7, 2020, passed 1<sup>st</sup> chamber), SB 2330 (introduced on February 19, 2020).

Louisiana, SB 239 (introduced March 9, 2020); HB 566 (introduced March 9, 2020 – would permit NIL, no Task Force, no effective date).

Louisiana, HB 441 (prefiled February 27, 2020); HB 668 (prefiled February 28, 2020).

Michigan, HB 5217 (passed 1<sup>st</sup> chamber on May 27, 2020).

Mississippi, SB 2356 (introduced February 13, 2020).

Mississippi, HB 880 (introduced February 14, 2020).

Missouri, HB 1564 (recommended as substituted from Committee on March 5, 2020) (substitute for HB 1792 and 1748), SB 1063 (introduced on February 27, 2020).

Nebraska, Legislative Bill (LB) 962 (final reading March 11, 2020).

New Hampshire, HB 1505 (amended February 13, 2020, passed 1<sup>st</sup> chamber).

New Jersey, SB 971 (amended March 5, 2020, passed 1<sup>st</sup> chamber, passed 2<sup>nd</sup> committee), Assembly Bill (AB) 2106.

New Jersey, AB 2356 (introduced February 3, 2020).

New York, SB 6761 (introduced October 2, 2019), AB 8612 (introduced October 2, 2019), SB 6729 (amended September 18, 2019).

New York, AB 8620 (amended Oct. 28, 2019), SB 6722 (amended October 16, 2019).

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North Carolina, SB 759 (introduced May 18, 2020), HB 1128 (introduced May 18, 2020).

Oklahoma, HB 3347 (received as substitute from committee on February 27, 2020).

Rhode Island, HB 7806 (introduced February 26, 2020).

South Carolina, HB 4973 (introduced January 21, 2020).

Tennessee, SB 2804 (introduced February 6, 2020), HB 2649 (introduced February 5, 2020).

Vermont, SB 328 (introduced January 21, 2020).

#### Proposed State Legislation that Failed Because of No Action Prior to Adjournment of Legislature

Alabama, HB 82 (introduced February 4, 2020, but failed when legislature adjourned and executive deadline passed).

Arizona, HB 2143 (passed first chamber and engrossed March 3, 2020, but failed because legislature adjourned and executive deadline is pending)

New Jersey, SB.

Connecticut, SB 306 (introduced on February 27, 2020, but failed when legislature adjourned and executive deadline has passed).

Kansas, SB 474 (recommended as amended from committee, March 10, 2020, but failed because legislature adjourned with executive deadline pending).

Kentucky, SB 238, SB 245 and HB 633 (introduced on March 2, 2020, but legislature adjourned with executive deadline having passed, so bill failed).

Maryland, HB 533 (introduced January 27, 2020, but legislature adjourned with executive deadline having passed, so bill failed), SB 518 (introduced January 30, 2020, but legislature adjourned with executive deadline having passed, so bill failed).

Minnesota, H.B. 3908 (introduced February 27, 2020), HB 3329 (introduced February 13, 2020), SB 2995 (introduced February 11, 2020) but all failed when adjourned and executive deadline had passed).

New Mexico, S.B. 191 (introduced January 28, 2020, but failed because adjourned and executive deadline passed).

Oregon, S.B. 1501 (engrossed February 12, 2020, but failed when legislature adjourned and executive deadline passed).

Virginia HB 300 (recommended as substituted from committee January 27, 2020, SB 464 (introduced January 8, 2020), HB 811 (Introduced January 8, 2020), all failed when legislature adjourned and executive deadline passed.

Washington, HB 1084 (recommended as substitute from the committee February 4, 2020, but failed because adjourned and execution deadline passed).

West Virginia, HB 4921 (introduced on February 11, 2020, but failed when legislature adjourned and executive deadline passed).

#### Proposed State Resolution

Wisconsin, Assembly Joint Resolution (AJR) 147 (introduced February 20, 2020).

#### Agency Actions -- NLRB

Northwestern University & College Athletes Players Ass'n (CAPA), 362 N.L.R.B. 1350 (2015).

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Knight Commission. (2018, June 19). Letter to President Mark Emmert Re: Recommendations to Commission on College Basketball Proposed on May 7, 2018.

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Knight Commission. (2020, April 27). Letter to President Mark Emmert Re: NCAA Policy Responses to the Financial Impact of COVID-19.