Spring 5-4-2024

BEYOND AMATEURISM: EXAMINING THE POTENTIAL LABOR EXPENSES OF NCAA STUDENT-ATHLETE EMPLOYMENT

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BEYOND AMATEURISM: EXAMINING THE POTENTIAL LABOR EXPENSES OF NCAA STUDENT-ATHLETE EMPLOYMENT

by

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A Thesis Submitted in Partial Fulfillment
Of the Requirements for the
University Honors Program

Department of Accounting
The University of South Dakota
May 2024

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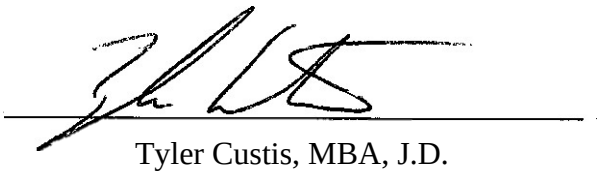

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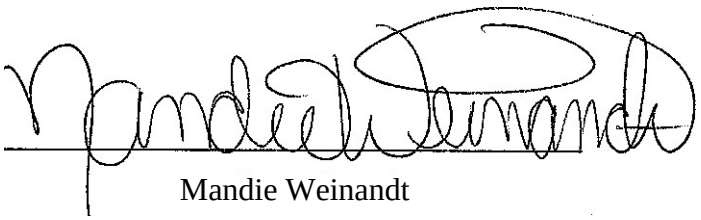

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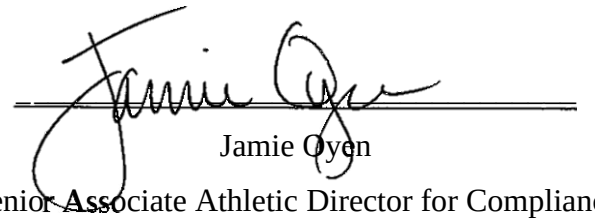

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ABSTRACT

Beyond Amateurism: Examining the Potential Labor Expenses of NCAA Student-Athlete Employment

Alayna Falak

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In light of recent administrative developments urging the classification of student-athletes as employees, litigation challenging the current status of student-athletes, and the Supreme Court's willingness to tackle National Collegiate Athletic Association (NCAA) issues, many questions surrounding the future of college sports under an employment model have emerged. The authors analyzed key litigation, recent developments from administrative agencies, and academic literature. Then publicly available data was used from the NCAA, the United States Department of Labor (DOL), and other sources to construct two estimates of what it would cost the NCAA member institutions to treat their Division I athletes as employees. The GOALS Hours model shows that paying student-athletes for all the athletic hours they report in season would be significantly more expensive than what the NCAA currently spends on athletic student aid. The NCAA Hours model shows that paying student-athletes minimum wage for only the hours allowed under current NCAA rules could be a reasonable option for the NCAA in terms of total costs. The authors considered different cost-management strategies and likely outcomes for the NCAA under both models.

KEYWORDS: Student-Athlete, NCAA, Employment Law, Labor Relations

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CHAPTER ONE

Introduction

On 29 September 2021, the Office of the General Counsel for the National Labor Relations Board (NLRB) issued Memorandum GC 21-08 on the subject of players' rights at academic institutions under the National Labor Relations Act (NLRA) (Abruzzo, 2021). It essentially served to notify the public and all institutions involved that the General Counsel (GC) would consider scholarship football players and all other similarly situated student-athletes as employees under the NLRA and could pursue misclassification violations against institutions that refused to comply (Abruzzo, 2021).

The NLRB has not actually adopted the memorandum, but the memo does seem to be a bellwether for where the board is heading (Edel, 2021). The NLRB has no jurisdiction over public educational institutions, so the policy would only apply to private universities (Edel, 2021). If fully adopted, student-athletes would have the right to unionize and collectively bargain for their wages, hours, vacation, and benefits (Edel, 2021). This would be a groundbreaking shift in the world of college athletics that would have far-reaching consequences. Since this policy would only apply to private universities, they could be put at a disadvantage compared to public universities if they have to foot the bill for higher costs resulting from the employee status of student-athletes. On the other hand, public universities voluntarily adopt these changes and start

treating their student-athletes similarly just so that they can compete with private schools to recruit and retain the best student-athletes.

Additionally, the 3rd Circuit Court of Appeals is set to rule on a case considering whether student-athletes should be considered employees under the Fair Labor Standards Act (FLSA) (McGuireWoods, 2022). The FLSA could apply not only to private institutions, but public institutions as well (USDOL, n.d.). Employees under the FLSA must be paid minimum wage and overtime if classified as nonexempt employees (USDOL, n.d.). A ruling for the student-athletes in this case would open the door to all kinds of new benefits for the student-athletes and costs for the universities.

With the National Collegiate Athletic Association's (NCAA) recent allowance of name, image, and likeness (NIL) deals and the Supreme Court's decision in *Alston* removing the cap on education-related benefits, the tides are changing in the NCAA, and all the momentum seems to be going in the direction of treating student-athletes as employees. Regarding the NCAA's compensation of student-athletes and the status of those student-athletes under the law, I analyzed key litigation, recent developments from administrative agencies, and academic literature. Then I used publicly available data from the NCAA, the Department of Labor (DOL), and other sources to construct an estimate of what it would cost the NCAA to treat its Division I athletes as employees.

CHAPTER TWO

Key Litigation and Literature

Antitrust Law and the Rule of Reason

The principal antitrust law at issue for the NCAA is the Sherman Act, passed in 1890 (Federal Trade Commission, n.d.). It serves as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade" (para. 1) and it prohibits "every contract, combination, or conspiracy in restraint of trade" (Federal Trade Commission, n.d., para. 4). The Supreme Court has long recognized that the Sherman Act does not outlaw every restraint of trade, because every contract in some way limits trade; it only seeks to prohibit unreasonable restraints of trade (Federal Trade Commission, n.d.). Some acts between competitors so egregiously limit trade, such as fixing prices, dividing markets, or rigging bids, that they are normally declared illegal *per se,* or in and of themselves, and no other analysis is needed (Federal Trade Commission, n.d.). However, in other cases, either when dealing with products that require a certain amount of trade restriction in order to exist or when the acts are not such flagrant violations of the law, courts apply the Rule of Reason, a three-step test to determine whether the acts enhance or stifle trade (*NCAA v. Board of Regents,* 1984). The 9th Circuit summarized the procedure concisely in *Tanaka v. University of Southern California:*

> The plaintiff bears the initial burden of showing that the restraint produces 'significant anti-competitive effects' within a 'relevant market.' Id. If the

> plaintiff meets this burden, the defendant must come forward with evidence of the restraint's procompetitive effects. The plaintiff must then show that 'any legitimate objectives can be achieved in a substantially less restrictive manner.' (2001, p. 1063)

One way around the antitrust hurdle would be for Congress to pass a law carving out an exemption for the NCAA from antitrust scrutiny. However, U.S. Senator Tommy Tuberville, who has been working with Senator Joe Manchin on legislation to regulate NIL issues in the NCAA, recently said he does not see an antitrust exemption as a likely outcome (Libit, 2022).

NCAA v. Board of Regents of the University of Oklahoma et al.

In 1981, the NCAA approved a television broadcasting plan for its football games involving agreements with American Broadcasting Company (ABC) and Columbia Broadcasting System (CBS) (*NCAA v. Board of Regents,* 1984). Each company had the right to televise 14 games and essentially had to pay a fixed fee to the participating schools for each national game and a smaller fee for each regional game, regardless of the schools involved or the magnitude of viewership (*NCAA v. Board of Regents,* 1984). The NCAA threatened sanctions (not limited to the football program) for any school that carried out any other television agreements (*NCAA v. Board of Regents,* 1984). A group of universities sued the NCAA for violation of the Sherman Act (*NCAA v. Board of Regents,* 1984). Even though the agreement was a horizontal price fixing plan that would normally be struck down as illegal *per se,* the Supreme Court declined to do so because

the case is based on an industry that relies on horizontal restrictions for its very existence (*NCAA v. Board of Regents,* 1984). Therefore, it applied the Rule of Reason (*NCAA v. Board of Regents,* 1984).

In the first step, the court found that the contract resulted in fewer college football games being televised and that higher-than-market prices that were unresponsive to viewer demands--effects which easily qualified as anticompetitive, therefore shifting the burden to the NCAA to prove a competitive justification (*NCAA v. Board of Regents,* 1984). In the second step, the NCAA argued that its plan promoted the marketing of broadcast rights, protected live attendance at non-televised games, and helped maintain a competitive balance (*NCAA v. Board of Regents,* 1984). The Supreme Court agreed with the lower courts' findings that all three arguments fell short of proving any sort of procompetitive benefit (*NCAA v. Board of Regents,* 1984). Since the plan failed the second step of the Rule of Reason and thus violated the Sherman Act, the Supreme Court affirmed the district court's injunction on the television plan (*NCAA v. Board of Regents,* 1984).

Law v. NCAA

In the 1980s, the NCAA faced rising costs amongst its athletics programs, largely because of Title IX requirements (*Law v. NCAA*, 1998). Some schools closed academic departments, cut sports teams, and fired faculty to stay afloat (*Law v. NCAA*, 1998). The NCAA found that one major contributor to high athletic costs was part-time assistant coaches, especially in basketball (*Law v. NCAA*, 1998). In 1991, the NCAA adopted new

rules limiting DI basketball to one head coach, two assistant coaches, and one entry-level coach also known as a "restricted-earnings coach" (REC), and it limited REC compensation to $16,000 per year, which amounted to the average cost for graduate school tuition (*Law v. NCAA*, 1998). RECs for men's basketball sued the NCAA, claiming its REC compensation limits violated the Sherman Act (*Law v. NCAA*, 1998). A District Court found the rule to be in violation of the Sherman Act and placed a permanent injunction on the REC salary limitation rules, so the NCAA appealed (*Law v. NCAA*, 1998). Just as in *Board of Regents*, the 10th Circuit Court of Appeals noted that a similar price-fixing agreement would normally be struck down as illegal *per se*, but due to the nature of college sports, the court would apply the Rule of Reason (*Law v. NCAA*, 1998).

The court determined that the horizontal price fixing agreement that capped salaries at $16,000 had an anticompetitive effect (*Law v. NCAA*, 1998). The NCAA argued that its policy would help retain entry-level positions, cut costs, and promote competitive balance by limiting wealthier schools from hiring more high-priced coaches (*Law v. NCAA*, 1998). The court found the first argument irrelevant, as it had no bearing on competition; it rejected the second argument because cutting costs does not qualify as a procompetitive benefit; and it rejected the third argument as essentially another cost-cutting argument (*Law v. NCAA*, 1998). Since the NCAA failed to justify its anticompetitive rule with any valid procompetitive benefits, it failed the Rule of Reason test and violated the Sherman Act, and the 10th Circuit Affirmed the lower court's

permanent injunction on any compensation limits like the REC rule (*Law v. NCAA*, 1998).

O'Bannon v. NCAA

In 2008, a former UCLA basketball player named Ed O'Bannon saw himself depicted on the UCLA basketball team in an Electronic Arts (EA) college basketball video game, for which he had not given consent to EA, nor had he received any compensation (*O'Bannon v. NCAA*, 2015). The NCAA prohibited student-athletes from receiving compensation for use of their NILs (*O'Bannon v. NCAA*, 2015). O'Bannon sued the NCAA and the Collegiate Licensing Company (CLC—the company that licenses the NCAA's trademarks) in 2009, saying the NCAA's NIL regulations violated the Sherman Act (*O'Bannon v. NCAA*, 2015). The district court applied the Rule of Reason and found less restrictive alternatives than the NCAA's current policies that would still serve the same purposes; those alternatives included: permitting athletic scholarships up to the full cost of attendance and holding up to $5000 per year from licensing revenues in trust to be distributed to student-athletes after college (*O'Bannon v. NCAA*, 2015). The court enjoined the NCAA's prohibition on those two activities (*O'Bannon v. NCAA*, 2015). Upon appeal to the 9th Circuit, after refuting some initial arguments by the NCAA, the court applied the Rule of Reason (*O'Bannon v. NCAA*, 2015).

First, the Court found that this price-fixing agreement had an anticompetitive effect (*O'Bannon v. NCAA*, 2015). Then the NCAA cited the preservation of amateurism and the integration of athletics and academics as procompetitive benefits, which the court

accepted as legitimate justifications (*O'Bannon v. NCAA*, 2015). Finally, the court partially agreed with the district court's findings on the substantially less restrictive alternatives (*O'Bannon v. NCAA*, 2015). It reversed the district court's decision and injunction on the latter alternative of holding $5000 in trust, but it affirmed the lower court's decision and injunction on the former alternative of raising the limit on scholarships to the full cost of attendance (*O'Bannon v. NCAA*, 2015).

NCAA v. Alston

Former DI Football Subdivision (FBS) football players and men's and women's DI basketball players sued the NCAA, claiming it violated the Sherman Act by restricting student-athlete compensation from schools (*NCAA v. Alston*, 2021). The district court gave a partial victory to the NCAA by permitting its restrictions on benefits unrelated to education, but it simultaneously ruled against the NCAA by enjoining its limits on education-related benefits (*NCAA v. Alston*, 2021). The plaintiffs did not appeal to the Supreme Court, but the NCAA did, asking for a reversal of the lower court's injunction, so the case was limited only to those rules enjoined, not the ones that were upheld (*NCAA v. Alston*, 2021). First, the NCAA made a few arguments about why it should not be subject to the Rule of Reason and the Sherman Act, which the court refuted (*NCAA v. Alston*, 2021). Then, the NCAA pointed out the instances in which it claimed the district court erred in applying the Rule of Reason (*NCAA v. Alston*, 2021). First, it contended the court essentially made it demonstrate that each compensation rule was the least restrictive means of accomplishing the procompetitive purpose of differentiating its sports (*NCAA v.*

Alston, 2021). The Supreme Court agreed that such a requirement would be erroneous, but the district court did not require that—it concluded that their rules violated the Sherman Act only after finding them exceptionally more restrictive than necessary (*NCAA v. Alston*, 2021). Then, the NCAA argued that the district court ignored the NCAA's idea of amateurism and used its own interpretation instead, which essentially redefined its product (*NCAA v. Alston*, 2021). The Supreme Court responded by saying the NCAA had not provided any coherent definition of amateurism to the lower court, which found that its compensation rules (the main component of its amateurism) had dramatically changed over time—none of which constitutes redefinition of the product (*NCAA v. Alston*, 2021). Finally, the NCAA claimed it could not achieve the same procompetitive goals without its limits on education-related benefits, and that the injunction amounted to micromanaging (*NCAA v. Alston*, 2021). The court disagreed because the district court struck down the restrictions only after finding that doing so would not blur the line between college and pro, and only then after finding that the injunction was a significantly (not merely marginally) less restrictive means of effecting the same procompetitive outcomes (*NCAA v. Alston*, 2021). The court also refuted the micromanagement argument by pointing out how the lower court gave the NCAA the flexibility to define education-related benefits, make rules on how the benefits are to be provided, and limit education-related cash payments; in addition, individual conferences may still enforce any restrictions they want (*NCAA v. Alston*, 2021). The Supreme Court affirmed the lower court's injunction on the NCAA's limitation of education-related benefits (*NCAA v. Alston*, 2021).

Justice Kavanaugh wrote a concurring opinion commenting on the NCAA's restrictions of non-education-related benefits, saying that even though such restrictions were not at issue in this case, the court did establish they should be subject to Rule of Reason scrutiny going forward (*NCAA v. Alston*, 2021). Kavanaugh believed those regulations would fail the Rule of Reason because the NCAA could not provide a legitimate procompetitive justification (*NCAA v. Alston*, 2021). The NCAA recognized that it controls the college athlete market and caps the price for student-athlete labor below market levels without the student-athletes having any negotiating power, but its rationale was that not paying student-athletes is a defining characteristic of college sports (*NCAA v. Alston*, 2021). Kavanaugh argued that this circular reasoning would not be legal in any other industry—e.g. restaurants cannot collude to lower the wages of cooks because customers favor the food from low-earning chefs (*NCAA v. Alston*, 2021). "Businesses like the NCAA cannot avoid the consequences of price-fixing labor by incorporating price-fixed labor into the definition of the product" (*NCAA v. Alston*, 2021, p. 4). He pointed out that the NCAA and its schools make billions of dollars a year that flow to everyone except the student-athletes (*NCAA v. Alston*, 2021). He also raised questions about many of the problems that would arise if the remaining compensation rules were enjoined, saying legislation, collective bargaining, and negotiation would all be viable means of addressing those problems (*NCAA v. Alston*, 2021).

Johnson v. NCAA

Ralph Johnson was a football player at Villanova from 2013 to 2017 (*Johnson v. NCAA*, 2021). The NCAA prohibits schools from paying their student-athletes and prohibits student-athletes from accepting payments, with a few specific exceptions (*Johnson v. NCAA*, 2021). In his time at Villanova, Johnson had mandatory football activities from 5:45 a.m. to 11:30 a.m. on weekdays and could not schedule any non-core classes during that time, including prerequisites for degree programs (*Johnson v. NCAA*, 2021). Because of restrictions like these, many NCAA student-athletes have said their participation in DI sports has stopped them from enrolling in their desired classes or majors (*Johnson v. NCAA*, 2021). Student-athletes report spending upwards of 30 hours per week on athletic activities, and football players specifically report spending over 40 hours per week (*Johnson v. NCAA*, 2021). The NCAA reported 2018 revenues of $1,064,403,240 (*Johnson v. NCAA*, 2021). Schools in the power five conference reported median 2016 revenues related to NCAA sports of $97,276,000 (*Johnson v. NCAA*, 2021). Johnson, along with several other student-athletes from various NCAA schools, sued the NCAA and 25 of its member schools on behalf of all similarly situated student-athletes, arguing that they should be considered employees under the FLSA (*Johnson v. NCAA*, 2021). At the 3rd Circuit Court of Appeals, the NCAA moved to dismiss all claims under Federal Rule of Civil Procedure 12(b)(6) because the plaintiffs did not plausibly allege that they are employees (*Johnson v. NCAA*, 2021). Under Rule 12(b)(6), the plaintiff must make a claim about the defendant's unlawful conduct with enough evidence to demonstrate that the claim is plausible (*Johnson v. NCAA*, 2021). The court will only

dismiss the complaint if the plaintiff's allegations do not rise above mere speculation (*Johnson v. NCAA*, 2021).

The FLSA broadly defines an employee as anyone who works for an employer (*Johnson v. NCAA*, 2021). The NCAA made three arguments for why the plaintiffs were not their employees: 1) the student-athletes were amateurs; 2) the Department of Labor (DOL) said that student-athletes were not considered employees; 3) the plaintiffs did not plausibly claim they were employees according to a multifactor test (*Johnson v. NCAA*, 2021). The court rejected the amateurism argument, saying that the NCAA gave "the circular reasoning that they should not be required to pay Plaintiffs a minimum wage under the FLSA because Plaintiffs are amateurs, and that Plaintiffs are amateurs because the [NCAA] and the other NCAA member schools have a long history of not paying student-athletes" (*Johnson v. NCAA*, 2021, p. 7). Next, on the DOL argument, the Wage and Hour Division published a Field Operations Handbook (FOH), which stipulated that students participating in extracurriculars, including athletics, "conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school" (p. 9) did not qualify as employees under the FLSA (*Johnson v. NCAA*, 2021). The court also rejected this argument, finding that athletics were conducted primarily for the benefit of the NCAA, not the student-athletes, as evidenced by the billions in revenues of the NCAA and its schools, and finding that athletics were not part of the educational opportunities provided by the school, but rather, athletics hindered the educational opportunities of students, as evidenced by the way student-athletes were forced to schedule classes around their athletic activities (*Johnson v. NCAA*,

2021) (11-12). As for the third argument, the court had to look at the economic reality of the plaintiffs' relationship to the NCAA when determining whether they could be considered employees under the FLSA (*Johnson v. NCAA*, 2021).

The court applied the Glatt multifactor test, which is a seven-part test to help distinguish between student interns and employees that focuses primarily on the question of whether the employer or the intern is the main beneficiary (*Johnson v. NCAA*, 2021). The court found that some of the factors pointed in the direction of the student-athletes not being employees, such as the expectation of no compensation and the understanding that there is no entitlement to a full-time position at the end (*Johnson v. NCAA*, 2021). The court also found that other factors pointed in the direction of student-athletes being employees, such as the lack of integration between athletic participation and coursework or academic credit, the lack of accommodation for academic commitments, and the lack of significant educational benefits (*Johnson v. NCAA*, 2021). Thus, the court concluded that the plaintiffs plausibly claimed that they were employees under the Glatt test and denied the NCAA's 12(b)(6) motion to dismiss the complaint (*Johnson v. NCAA*, 2021).

"**From Student-Athletes to Employee-Athletes**"

Marc Edelman laid out the three avenues for reforming college sports: voluntary changes by the NCAA, unionization under federal labor laws, and injunction of NCAA compensation limits through antitrust law (Edelman, 2017). He said voluntary change has seen limited success; some positive reforms include the NCAA throwing out its limit on how much food schools could provide to student-athletes and raising the scholarship cap

by $2000 (Edelman, 2017). Under the unionization method, Edelman pointed to the failed attempt of Northwestern football players to unionize when the NLRB declined to exercise jurisdiction (Edelman, 2017). However, he was more optimistic that the NLRB would exert its jurisdiction over a different bargaining unit such as football players from a whole conference or an entire division (Edelman, 2017). As for the antitrust avenue, Edelman outlined three main cases: *O'Bannon, Alston,* and *Jenkins,* which originally sought to eliminate all NCAA restrictions on compensation and create a free labor market like that of non-unionized professors (Edelman, 2017).

He then explained that one of the major issues of paying student-athletes under a pay-for-play model would be the tax implications on their scholarships (Edelman, 2017). If pay-for-play student-athletes lost all of their tax-exempt scholarships, the tax burden would be a major concern for college student-athletes and those advocating for change in the NCAA. However, he laid out a number of provisions in the tax code that might serve to make those amounts nontaxable (Edelman, 2017). Through some careful and thorough tax planning, universities may be able to avoid a large tax burden for their pay-for-play student-athletes (Edelman, 2017).

CHAPTER THREE

Administrative Developments

NLRB Memorandum GC 17-01

On January 31st, 2017, General Counsel Richard Griffin issued a memo regarding three recent NLRB rulings on unionization cases at universities, the most relevant of which was the *Northwestern University* case (Griffin, 2017). The Board ruled on this case in 2015, refusing to exercise jurisdiction over the school's scholarship football players who filed a petition to form a union (Griffin, 2017). The memo explained how the Board punted on the question of whether the football players were employees, reasoning instead that exercising jurisdiction over the case would cause instability in labor relations, especially because the petitioned-for bargaining unit only consisted of one team, while all the competing teams would be left unrepresented (Griffin, 2017). The NLRB specifically noted that it did not make this decision because it believed the football team would have an insubstantial effect on commerce, as some had wanted it to argue (Griffin, 2017). This leaves the door open to classifying the players as employees (Griffin, 2017). The Supreme Court has endorsed the NLRB's interpretation of the NLRA's definition of employee in §2(3), which explicitly lists exceptions to the definition, none of which include college athletes (Griffin, 2017). The Board has also traditionally applied the common law definition of employee to cases under the NLRA; the common law defines an employee as anyone "who perform[s] services for another and [is] subject to the other's control or right of control. Consideration, i.e., payment, is strongly indicative of

employee status" (Griffin, 2017, p. 18). The memo then lays out how the Northwestern football players satisfy the elements of an employee.

Student-athletes *perform the service* of playing football *for* Northwestern University, as evidenced by the football program's profit and the university's boosted reputation as a result of the program's success (Griffin, 2017). The NCAA *controls* the student-athletes' employment conditions through countless rules and regulations such as maximum practice hours, minimum GPA, compensation limits, and drug testing (Griffin, 2017). Northwestern also exercises *control* by structuring student-athletes' schedules with daily itineraries, ensuring compliance with NCAA policies, and penalizing football players for infractions (Griffin, 2017). Players are *compensated* for their services through scholarships that are lost if they quit or are removed from the team (Griffin, 2017). Therefore, the Northwestern scholarship football players and similarly situated student-athletes fulfill both the NLRA and common law definitions of employee, and the Board's ruling in *Northwestern* does not bar this class of employees from §7 bargaining protections, which should cover actions such as advocating for better concussion protections or reforming NCAA compensation rules to allow more profit sharing (Griffin, 2017). This applies only to scholarship FBS football players, as the employee status of similar student-athletes is outside the scope of this case (Griffin, 2017). Further questions about student-athletes in non-revenue generating sports and students in other non-sport extracurricular activities will surely arise, but this memo does not seek to resolve those difficult questions (Griffin, 2017).

NLRB Memorandum GC 21-08

In September 2021, General Counsel Jennifer Abruzzo issued a memo largely reinstating memo GC 17-01 that had been rescinded in 2018 (Abruzzo, 2021). GC 21-08 also gave new guidance on the GC's prosecutorial position on college athletes' employee classification, and it alleged that calling the players "student-athletes" rather than "employees" is misleading and constitutes a violation of §8(a)(1) of the NLRA (Abruzzo, 2021). Even though the NLRB refused in the *Northwestern* case to rule on whether student-athletes at private universities are employees under the NLRA, GC17-01 presented a lot of evidence in support of classifying them as such by laying out how they met all the elements of an employee under common law (Abruzzo, 2021). Given this evidence, GC 21-08 concluded that college athletes should be given §7 union protections (Abruzzo, 2021). The GC went on to say that because calling the employees "student-athletes" misleads them into thinking they have no §7 protection, it stifles collective activity, so the GC would therefore pursue a violation of §8(a)(1) in misclassification cases (Abruzzo, 2021).

The GC then pointed to the *Alston* case where the court struck down the NCAA's prohibition on certain education-related benefits and discounted the idea that all of its compensation limitations would continue to be considered lawful based on its outdated notions of amateurism (Abruzzo, 2021). The memo also referenced Kavanaugh's concurrence where he excoriated the rest of the compensation restrictions and proposed collective bargaining as one potential solution to the challenges that would arise with

paying student-athletes (Abruzzo, 2021). Then the GC explained how the NCAA had recently allowed student-athletes to start profiting off their NILs and hiring professionals to help them find deals (Abruzzo, 2021). Finally, the GC cited the collective action in which players across the NCAA participated concerning racial matters after the death of George Floyd and regarding their desire to keep playing in 2020 during the pandemic (Abruzzo, 2021). All of these developments serve to make the student-athletes more like employees and professional athletes and less like the amateurs many currently consider them to be (Abruzzo, 2021).

Equal Employment Opportunity Commission (EEOC) Involvement

In March 2022, the National College Players Association (NCPA) filed an employment and civil rights complaint to the Department of Education, Office for Civil Rights (OCR), alleging that the compensation limits imposed by DI schools violate the civil rights of black students (Dellenger, 2022). They argued that the policies have a disparate impact on black students because a disproportionately high percentage of black students are college athletes (Dellenger, 2022). OCR only has jurisdiction over Title VI of the Civil Rights Act, which prohibits discrimination in any programs that receive federal aid, but this complaint fell under Title VII, which deals with employment discrimination, so OCR referred the complaint to the EEOC (Loya, 2022). According to Illinois law professor Michael LeRoy, who spoke to *Sports Illustrated*, the referral by OCR to the EEOC indicates that the complaint is being taken seriously and could lead to an investigation of the NCAA schools' practices (Dellenger, 2022).

NLRB Charge Against USC, Pac-12, and NCAA

In December 2022, the NLRB instructed its regional branch in Los Angeles to take up unfair labor practice charges against the University of Southern California, its conference, the Pac-12, and the NCAA (Murphy, 2022). The NCPA filed the claim on behalf of USC's football, men's basketball, and women's basketball players, arguing that those student-athletes are employees of the school, conference, and NCAA, and their rights had been wrongfully repressed (Murphy, 2022). The NCPA was the same group that filed the union petition in the Northwestern football case, but it opted for unfair labor practice charges in this case because the NLRB cannot decline to assert jurisdiction before it is heard by an administrative law judge (Murphy, 2022). The next step is for the Los Angeles NLRB to present its case in administrative court (Murphy, 2022). If the administrative law judge rules in favor of the student-athletes, the NCAA could still appeal the decision in federal court (Murphy, 2022). But if the NLRB ultimately wins, student-athletes in those sports at all private NCAA universities will gain the rights of employees (Murphy, 2022).

CHAPTER FOUR

Methodology

Assumptions

The 2021-22 NCAA Sports Sponsorship Participation Rates Report provided data on the number of teams, number of student-athletes, and average squad size, which I used as the basis for the calculations. In estimating what it would cost the NCAA member institutions to pay its student-athletes, I made many assumptions regarding hours and costs. First, I used self-reported data from the 2019 NCAA GOALS Study to estimate hours spent on athletic activities. Those hours are reported in the following visual from the GOALS study. I used these hours as the basis for calculating weekly wages during competition season.

Figure 1

Median Hours Spent Per Week on Athletic Activities In-Season
(2019 Self-Report – GOALS Study)

	Division I						
	Baseball	Men's Basketball	Football (FBS/FCS)		All Other Men's Sports	Women's Basketball	All Other Women's Sports
Athletic Hours	42	32	40	37	31	35	32
Division II							
Athletic Hours	37	32	35		30	30	30
Division III							
Athletic Hours	34	29	31		27	27	27

Yellow indicates median up by 2 or more hours from 2015

Green indicates median down by 2 or more hours from 2015

NCAA Research

It is important to note that NCAA bylaw 17.1.7.1 limits countable athletically related activities (CARAs) during the season to 4 hours per day and 20 hours per week, but student-athletes consistently report spending significantly more time on their athletic endeavors, so I ran two sets of calculations: one using the reported hours per week and one using 20 hours per week (NCAA Manual, 2023). During the off season, the NCAA limits CARAs to eight hours per week, and the GOALS study did not collect any data for time spent on athletics out of season, so I used the NCAA's maximum allowable eight hours per week. I assumed a competition season of five months and an off season during the school year of four months, leaving three months of summer break, during which CARAs are prohibited.

In the calculation of wages, I used the effective average minimum wage in the U.S. of $11.80, which is higher than the federal minimum wage of $7.25 due to higher minimums imposed by many states (NPR). The FLSA requires all overtime in excess of 40 hours per week to be compensated at time and a half. This only applies to men's baseball, which reported 42 hours per week. The estimate of wages is not meant to reflect the true amount colleges will pay certain student-athletes. It is only meant to be a bare minimum in the case that all student-athletes are classified as employees. Colleges would presumably pay the highest-caliber student-athletes a lot more than minimum wage.

I included Social Security (6.2%) and Medicare (1.45%) taxes in the estimate (also known as FICA taxes). For 2022, the Social Security tax is only imposed on the first $147,000, and there is an additional 0.9% Medicare tax imposed on earnings over

$200,000, but none of the wages for student-athletes in any sport reached those thresholds in the estimate (Parys & Orem, 2022). It should be noted that IRC §3121(b)(10) creates an exemption for universities with regard to FICA taxes. FICA taxes are not imposed when a student is employed by the university and the student is enrolled at least half time and is regularly attending classes at the university. However, the exemption from FICA taxes does not apply to professional employees, which are characterized by their eligibility for various benefits, including, but not limited to, vacation, sick leave, paid holidays, retirement plans, reduced tuition, life insurance, and qualified educational assistance (Internal Revenue Service, n.d.). If student-athletes were to be classified as employees, it is unclear whether they would qualify for the FICA student exemption; FICA taxes were included in the estimate in case student-athletes were not exempt.

As instrumentalities of state governments, public universities are exempt from federal income tax and federal unemployment taxes (FUTA). Private universities exempt from federal income tax under IRC §501(c)(3) are also exempt from FUTA, so I did not include it in the estimate (Internal Revenue Service, n.d.). However, universities are usually subject to state unemployment taxes (SUTA). They generally have the option of either opting into the state unemployment insurance program, which involves paying a set amount based on payroll and claims history, or self-insuring, which entails paying the state only the amount in claims the state had to distribute to the organization's former employees (Fishman, n.d.). I made the calculations assuming the former option and used

the average 2022 SUTA rate of 1.92% and the average wage base of $20,135 (Towson, 2022).

The Affordable Care Act imposed a mandate on employers with at least 50 full-time employees, requiring them to offer affordable health insurance to at least 95% of said employees. Full time is defined as an average of at least 30 hours per week (Cigna, n.d.). Every sport in the GOALS survey reported an average greater than 30 hours per week. Therefore, I included healthcare costs in the estimate using the hours from the GOALS survey, but I did not include healthcare costs in the estimate using the NCAA's maximum of 20 hours because the student-athletes would not qualify as full-time employees. The Kaiser Family Foundation 2021 report listed the average annual employer contributions for different health insurance plans, and in the estimate, I used the high-deductible health plan with a savings option, which was the cheapest plan at $5774 per year for single coverage (Kaiser, 2021). The estimate assumes employers will provide health insurance for each student-athlete, but that is unrealistic. Student athletes may opt out of the university's coverage and remain on their parents' insurance, which they can utilize until they turn 26 (Cigna, n.d.), so the estimate for health insurance costs may possibly run high.

Many states require workers' compensation insurance, while some do not, but employers who do not purchase it could be liable for workplace injuries and illnesses, which are extremely common in sports, so I include it in the estimate (Hartford, n.d.). A number of different systems have developed across all 50 states, but workers'

compensation expense is generally calculated according to three factors. 1) Class codes--these codes, which are given by the state or the National Council on Compensation Insurance (NCCI), are based on the type of work performed and correspond with the rate the employers pay. More dangerous jobs would have higher rates and vice versa. 2) Payroll--the class code rate is multiplied by total payroll. 3) Experience modification number--this multiplier is based on the business's history of claims and would be lower for a business with a clean record and vice versa (Hartford, n.d.). Employers' average workers' comp expenses in 2021 were $1 per $100 of payroll, or 1% (Hartford, n.d.). However, I believe college athletes would be one of the extreme outliers on the high end of the scale due to the dangerous nature of sports. I used NCCI code 9178 for noncontact sports, defined as sports where the player is penalized for contact with other players, which had a rate of $5.06 per $100 of payroll (Work Comp Associates, n.d.). I used code 9179 for contact sports, defined as sports where the player is not penalized for contact with others, which had a rate of $7.43 per $100 of payroll (Work Comp Associates, n.d.). I assumed an experience modification number of 1, which would have no positive or negative effect on the total expense.

Calculations

For each sport, I calculated costs per student-athlete, per average team, and per sport. The cost per average team is simply the cost per student-athlete multiplied by the average squad size. The total cost per sport is simply the cost per student-athlete multiplied by the total number of student-athletes in the sport. I calculated wages by

multiplying each sport's reported weekly athletic hours or the NCAA's maximum of 20 hours by the average minimum wage of $11.80 to come up with weekly wages. For baseball, I also added in time and a half for their 2 hours above 40. I multiplied the weekly wage by 4.345 weeks per month to come up with monthly wages. I multiplied the monthly wage by 5 months to come up with competition season wages. For out-of-season wages, I followed the same process but based on 8 hours per week and multiplied by 4 months.

Next, I calculated FICA taxes, including a 6.2% Social Security tax and a 1.45% Medicare tax, for a total of 7.65%, which I multiplied by the wages. Then for health insurance expenses, I used the cost of the average $5774 ($478.67 per month) single coverage plan for the appropriate number of months. To calculate workman's comp, I used the class codes of $5.06 and $7.43 (for noncontact and contact sports, respectively) multiplied by wages and divided by 100. For SUTA, I simply had to multiply the average 1.92% rate by the wages. The total wages for every sport remained below the $20,135 wage base, so the full amount was subject to SUTA. Finally, I totaled all the wages and the expenses both separately and combined for men and women for the 5 months in season, the 4 months out of season, and the 9 months total.

CHAPTER FIVE

Results and Discussion

Overview

Each table lists the expenses for certain key sports per student-athlete, per average team, and per sport NCAA-wide. Each includes two sets of expenses: the GOALS category and the NCAA category. Both assume student-athletes "work" 8 hours per week during their 4-month off season, but during their 5-month competition season, the former assumes student-athletes are paid for the varying number of hours reported under the GOALS study, and the latter assumes student-athletes are only paid for the 20 hours currently allowed by the NCAA. Each table is divided into a 5-month, 4-month, and 9-month category, corresponding to the 5 months student-athletes spend in season, the 4 months they spend in the offseason during the school year, and the total of both, respectively. The expenses in the NCAA category are generally less than half of the expenses in the GOALS Hours category, typically running around 45% as high, and even dropping below 40% for sports like men's baseball. This is attributed to the student-athletes being paid for only 20 hours during season, rather than over 30 hours, which reduces not only wages but FICA taxes and workman's compensation costs as well. In addition, since student-athletes only work for 20 hours under that model, they do not qualify as full-time employees, so health insurance costs are excluded.

One thing to note about the calculations is that I excluded the costs of cross-country and indoor track from the totals because those student-athletes are captured by

outdoor track. Almost all cross-country athletes participate in track, and almost all indoor track athletes participate in outdoor track. Those who do not are an exception to the norm. The calculations for cross country may be helpful for seeing how much of the expenses apply specifically to the cross-country teams, but those expenses are essentially wrapped up in the outdoor track expenses. If a student-athlete competes in two or three out of the three sports, they may participate in more athletic hours throughout the year than if they only competed in one of the sports, but it would not double or triple the number of hours, and it would not require the school to pay double or triple the health insurance costs. Therefore, excluding cross country and indoor track from the totals avoids the double and triple counting of student-athletes who are already accounted for by outdoor track, which is labeled as "Track" in the tables.

Table 1. Women's DI Total Expenses per Student-Athlete

	GOALS Hours			NCAA Hours		
	5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Basketball	13,477	4,434	17,910	5,878	1,881	7,758
Other Contact Sports	12,790	4,473	17,262	5,999	1,920	7,919
Other Noncontact Sports	12,595	4,434	17,029	5,878	1,881	7,758

Table 2. Men's DI Total Expenses per Student-Athlete

	GOALS Hours			NCAA Hours		
	5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Baseball	15,828	4,434	20,261	5,878	1,881	7,758
Basketball	12,595	4,434	17,029	5,878	1,881	7,758
FBS Football	15,189	4,473	19,662	5,999	1,920	7,919
FCS Football	14,289	4,473	18,762	5,999	1,920	7,919
Other Contact Sports	12,490	4,473	16,962	5,999	1,920	7,919
Other Noncontact Sports	12,301	4,434	16,735	5,878	1,881	7,758

The sports in Tables 1 and 2 that are singled out (basketball, baseball, and football) are the sports in the GOALS survey that reported athletic hours per week separately, thereby leading to a different amount of expenses from wages, but only in the GOALS model. The division between contact and noncontact sports is due to the different rates for workers' compensation, which led to higher expenses for contact sports. Under the GOALS model, total expenses for the school year per student-athlete range from roughly $17,000 for noncontact sports for men and women to $20,000 for men's baseball. These amounts are slightly below the value of an average full-ride scholarship at a public university, and they fall well below the average value at a private nonprofit university. The average cost for tuition, fees, room, and board for 2021-22 was $21,878 for 4-year public institutions and $51,154 for 4-year private nonprofit institutions (NCES, 2022). It is important to note that these GOALS figures are costs for the universities, not the net pay that would end up in the pockets of student-athletes. From a university's perspective, the GOALS costs are reasonable; however, from a student-athlete's perspective, the take-home amount would not even equate to a full-ride scholarship. Under the NCAA model, costs for the school year run just under $8000 per student-athlete across the board. This figure seems much lower than many might expect. However, universities would presumably want to fill the gap between wages and the amount of a full scholarship for their scholarship student-athletes, which would tack on some considerable costs.

Tables 3 and 4 list the expenses per average team for key sports. The costs per student-athlete from above were simply multiplied by the average squad size for each

sport, which is why the figures vary much more widely. Sports like football have over a hundred student-athletes per team while sports like golf have under ten. This breakdown highlights the high costs of some of the more obscure teams that do not produce any revenue. An average women's rowing team, for example, costs over three times more than a women's basketball team.

Table 3. Women's DI Total Expenses per Avg. Team

	Average Athletes per Squad	GOALS Hours			NCAA Hours		
		5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Basketball	14.6	196,265	64,569	260,834	85,596	27,391	112,986
Field Hockey	23.2	296,153	103,566	399,720	138,913	44,452	183,365
Golf	8.5	107,178	37,729	144,907	50,015	16,005	66,020
Lacrosse	34.8	445,359	155,744	601,103	208,899	66,848	275,746
Rowing	52.4	659,671	232,215	891,885	307,835	98,507	406,342
Soccer	29.2	367,177	129,252	496,429	171,343	54,830	226,173
Softball	23.4	295,258	103,935	399,193	137,782	44,090	181,872
Swim/Dive	30.1	379,047	133,431	512,478	176,882	56,602	233,485
Tennis	9.6	120,619	42,460	163,079	56,287	18,012	74,299
Track	40.4	508,227	178,904	687,131	237,164	75,892	313,056
Volleyball	16.9	213,285	75,080	288,365	99,530	31,849	131,379

Table 4. Men's DI Total Expenses per Avg. Team

	Average Athletes per Squad	GOALS Hours			NCAA Hours		
		5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Baseball	40.3	638,637	178,896	817,533	237,153	75,889	313,042
Basketball	15.7	197,384	69,482	266,866	92,109	29,475	121,584
FBS Football	124.3	1,887,315	555,735	2,443,050	745,404	238,529	983,933
FCS Football	108.2	1,545,920	483,875	2,029,795	649,018	207,686	856,704
Golf	10.1	124,180	44,758	168,938	59,333	18,987	78,320
Lacrosse	49.1	613,702	219,769	833,471	294,775	94,328	389,103
Soccer	29.3	360,573	129,960	490,533	172,281	55,130	227,411
Swim/Dive	28.3	348,192	125,497	473,689	166,365	53,237	219,602
Tennis	10.5	129,008	46,498	175,506	61,640	19,725	81,365
Track	40.0	491,538	177,163	668,701	234,856	75,154	310,010
Wrestling	32.4	404,858	144,981	549,840	194,462	62,228	256,690

I applied the averages from Tables 4 and 5 to three different colleges: Virginia Tech, the University of South Dakota, and California State University--Long Beach. The results are reported in Table 5. Each school is from a different Division I football subdivision. I looked at the sports each school features and summed up the average costs for each one. The information about subdivision, sports teams, unduplicated athletes, and athletic student aid comes from the Knight Commission database for the year 2021.

Table 5. Applied Costs

	VT	USD	CSU Long Beach
Subdivision	FBS	FCS	No Football
Sports teams	22	17	19
Unduplicated athletes	622	448	365
Current athletic student aid	14,548,982	4,804,636	3,454,412
GOALS costs	9,608,177	6,696,637	5,767,163
Difference	4,940,805	(1,892,001)	(2,312,751)
NCAA costs	4,206,972	2,987,555	2,577,282
Difference	10,342,010	1,817,081	877,130

The figures in Table 5 are not meant to be an accurate portrayal of what the actual costs would be for these schools since they are averages, but I wanted to compare them to what the schools actually spend on athletic student aid. Virginia Tech currently spends $14.5 million in student aid, which is well over the projected costs for both the GOALS and NCAA models. In the cases of both USD and Long Beach, the schools currently spend more than the projected amount for the NCAA model, but less than the projected amount for GOALS hours. The projected numbers for these three schools are in the same ballpark as their current expenditures on athletic aid. This finding could indicate that the employment model in the NCAA may not be as catastrophic as some think. On the other

hand, this is more of a minimum estimate because it assumes a minimum wage. Schools will surely compete for the best recruits by paying higher wages to higher-value student-athletes, which could dramatically increase costs.

Table 6. Women's DI Total Expenses NCAA-Wide

	Total NCAA Teams	GOALS Hours			NCAA Hours		
		5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Basketball	348	68,300,270	22,469,967	90,770,237	29,787,268	9,531,926	39,319,194
Field Hockey	77	22,803,808	7,974,612	30,778,420	10,696,285	3,422,811	14,119,097
Golf	263	28,187,928	9,922,610	38,110,538	13,153,888	4,209,244	17,363,133
Lacrosse	118	52,552,353	18,377,836	70,930,189	24,650,049	7,888,016	32,538,064
Rowing	88	58,051,010	20,434,901	78,485,911	27,089,487	8,668,636	35,758,122
Soccer	335	123,004,158	43,299,466	166,303,624	57,399,854	18,367,953	75,767,807
Softball	294	86,805,719	30,557,027	117,362,746	40,507,863	12,962,516	53,470,380
Swim/Dive	294	72,019,022	25,351,868	97,370,891	33,607,656	10,754,450	44,362,106
Tennis	300	36,185,843	12,738,006	48,923,849	16,886,113	5,403,556	22,289,669
Track	339	172,288,949	60,648,515	232,937,464	80,398,587	25,727,548	106,126,135
Volleyball	333	71,024,006	25,001,607	96,025,613	33,143,332	10,605,866	43,749,198

Table 7. Men's DI Total Expenses NCAA-Wide

	Total NCAA Teams	GOALS Hours			NCAA Hours		
		5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Baseball	295	188,398,038	52,774,273	241,172,311	69,960,113	22,387,236	92,347,349
Basketball	350	69,084,354	24,318,818	93,403,172	32,238,194	10,316,222	42,554,416
FBS Football	130	245,350,951	72,245,603	317,596,554	96,902,466	31,008,789	127,911,256
FCS Football	123	190,148,142	59,516,637	249,664,779	79,829,203	25,545,345	105,374,548
Golf	295	36,633,171	13,203,544	49,836,714	17,503,253	5,601,041	23,104,294
Lacrosse	73	44,800,269	16,043,149	60,843,418	21,518,551	6,885,936	28,404,487
Soccer	202	72,835,797	26,251,909	99,087,705	34,800,792	11,136,253	45,937,046
Swim/Dive	131	45,613,095	16,440,141	62,053,236	21,793,842	6,974,029	28,767,871
Tennis	238	30,703,960	11,066,503	41,770,463	14,670,288	4,694,492	19,364,781
Track	288	141,562,971	51,022,963	192,585,934	67,638,493	21,644,318	89,282,811
Wrestling	77	31,174,093	11,163,563	42,337,655	14,973,600	4,791,552	19,765,152

Tables 6 and 7 show the total expenses for key sports across the NCAA as a whole. These figures highlight how big of an impact the average squad size has on costs under the employment model. Under the current model, the average squad size does not have as large of an effect because the NCAA limits the number of scholarships a school can give out in each sport, and the limit is not necessarily proportional to the average number of participants on each team. For example, a women's basketball team (average squad size 14.6) is capped at 15 scholarships, whereas a women's soccer team (average squad size 29.2) is capped at 14 scholarships (Scholarship Stats, n.d.). Under the employment model, every student-athlete must be paid, so the sports that have really large average sizes and have the largest number of student-athletes overall become very expensive. Track and field are expensive for both men and women. Women's soccer, softball, and swimming all have higher costs than basketball and volleyball. On the men's side, football is the most expensive, but baseball follows right after due to a large number of student-athletes and also average weekly hours of 42 in the GOALS model.

Table 8. Total DI NCAA Expenses 9 Months

	GOALS Hours			NCAA Hours		
	5 Months	4 Months	9 Months	5 Months	4 Months	9 Months
Women	870,599,435	304,664,306	1,175,263,741	404,417,468	129,413,590	533,831,058
Men	1,163,211,343	378,091,872	1,541,303,215	503,872,744	161,239,278	665,112,022
Total	2,033,810,778	682,756,178	2,716,566,956	908,290,212	290,652,868	1,198,943,080

Table 8 summarizes the total costs for men and women in all sports through the entire NCAA. According to the Knight Commission database, the 2021 total expenditures across Division I for athletic student aid were just over $1.7 billion. This figure is $500 million greater than the estimated costs under the NCAA Hours model but $1 billion less than the costs under the GOALS Hours model.

CHAPTER SIX

Conclusion

Future Research

This research opens up many other opportunities for future research. One question to look into is whether the GOALS or the NCAA concept of hours will prevail in practice. Will athletes log all the hours they spend on athletic activities, report it to the athletic department, and get paid for all those hours? Or will the NCAA and its schools be able keep a cap on hours (and enforce that cap much more strictly than they currently do) and only pay athletes for hours reported within that limit? This leads to additional questions about what activities would count as athletic activities, how the reporting system would work, and if the system would be a costly burden on universities in terms of time, money, and extra administrative work. Will universities be forced to pay student-athletes in the summer who are in their offseason or will they still be able to prohibit CARAs and avoid paying them? If they do not pay them in the summer, will student-athletes be able to claim unemployment benefits, and if so, how would that affect state unemployment tax rates for universities?

Research could also be done into what student-athlete wages might more realistically look like. This would be a big undertaking and probably highly speculative, which is why I used a minimum wage in my estimates. A multitude of factors will play into the fair market value of a college athlete for the school. One could perhaps draw

from current NIL valuations or from professional athletes' salaries and extrapolate from that the wages for student-athletes. From there, some other questions naturally arise. What will be the tax implications for student-athletes? Marc Edelman has done some work on this topic, talking about different strategies universities could employ to eliminate as much tax as possible on student-athlete wages. Will compensation be mainly in the form of wages or benefits? Will it be more or less beneficial for student-athletes than the current scholarship system?

One other course for research could be how the NCAA changes in response to student-athlete employment. Within DI, will nonrevenue teams and spots on remaining teams be cut as I speculated? Will the NCAA end up as a tiered system where Power Five schools are treated as a quasi-professional league, other middle-tier schools keep the current system, and the smaller schools move to more of a club or intramural model with more university funding? What will happen to DII and DIII schools, which place more emphasis on academics than sports compared to DI schools? There is no shortage of avenues for future research into NCAA student-athlete employment, which could go in a multitude of different directions.

Conclusion

My goal in constructing these estimates was to provide a data point in the decision-making process as the NCAA undergoes the changes that appear to be inevitable. This model is not meant to be an accurate depiction of the true costs the NCAA member institutions would incur under the employment model, but it is meant to

go beyond mere speculation and provide a reasonable, conservative estimate of what costs could look like.

The GOALS Hours model shows that classifying student-athletes as employees and paying them for all the athletic hours they report during the season and for eight hours per week during the offseason would be significantly more expensive than what the NCAA currently spends on athletic student aid. The model came in around $1 billion higher than actual current costs. The estimate would also be much higher if the GOALS study reported athletic hours per week during the offseason, which could run anywhere from two to five times higher than the NCAA maximum of eight hours per week.

The NCAA Hours model shows that classifying student-athletes as employees and paying them minimum wage for only the hours allowed under current NCAA rules could be a reasonable option for the NCAA in terms of total costs. The estimate fell around $500 million below what the NCAA currently spends on athletic student aid.

The problem with both models is that they leave no way for schools to compete for recruits. Rather than paying student-athletes based on their athletic ability and value to the school (as they do now with scholarships), they would be paying every student-athlete the same wage, which is not a realistic expectation. The most desirable student-athletes will inevitably demand higher wages, not only because they have a higher market value than other student-athletes, but because the wages they would receive under either model would not equate to a full-ride scholarship at most schools. Schools will meet these demands in order to recruit talent that will meet the needs of the program and offer

the best return. For example, Arch Manning, the star quarterback recruit for the University of Texas, grandson of Archie Manning and nephew of Peyton and Eli Manning, has a $3.8 million estimated NIL valuation, the second highest valuation in the nation (Heath, 2023). While this estimate is for NIL purposes and would not translate directly to Arch's wages at UT Austin, it does signal his high value to the institution as an employee.

Given all of this, if the NCAA is forced to classify student-athletes as employees, will it be able to survive? Some think this development would spell the end for college sports. However, like anything else, the NCAA would make changes to adapt to its new reality. A likely course for universities would be to cut some non-revenue sports, especially those with very large teams, and to whittle down the number of student-athletes on each remaining team. Eliminating a lot of those student-athletes who are currently "walk-ons" or who may be on scholarship in an obscure sport that generates no revenue would free up funds to pay higher wages to the remaining student-athletes. Would this be a positive development for the NCAA? While college sports may be able to survive, it would remove a lot of opportunities from student-athletes who are in it not for the money or fame, but for the chance to compete and push themselves to the limit, for the comradery, the love of the sport, and the pursuit of excellence. While it would be of immense benefit to great student-athletes, it would have the most detrimental effects on the student-athletes who work quietly in the background at their sport day in and day out, often overshadowed by revenue sports.

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