Quid Pro Quo: Restoring Educational Primacy to College Basketball

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ARTICLES

QUID PRO QUO: RESTORING EDUCATIONAL PRIMACY TO COLLEGE BASKETBALL

TANYON T. LYNCH*

I. INTRODUCTION ................................................................. 595

II. OVERVIEW OF THE ORGANIZATIONAL STRUCTURE OF COLLEGE ATHLETICS ........................................ 598

III. THREATS TO EDUCATIONAL PRIMACY ............................................... 600
A. Competitive Pressure .............................................................................. 601
B. Commercialism ....................................................................................... 605
C. Professionalism ....................................................................................... 608

IV. GOVERNANCE OF THE PRINCIPLE EDUCATIONAL PRIMACY .............. 609
A. Internal Governance .................................................................................. 610
B. External Governance ................................................................................. 613

V. AMATEURISM DEREGULATION .......................................................... 615
A. Pay-for-Play ......................................................................................... 616
B. Former Professional Eligibility ............................................................... 620

VI. THE NATIONAL BASKETBALL DEVELOPMENT LEAGUE ................... 625
A. The Benefits of the NBDL ....................................................................... 626
B. Potential University Responses: The Benefits of College ...................... 628

VII. CONCLUSION ................................................................................... 629

I. INTRODUCTION

Together, Division I-A football and Division I men’s basketball make up what is commonly referred to as “big-time college sports.” Unfortunately, the intensely commercial nature of big-time college sports presents a constant threat to the National Collegiate Athletic Association’s (NCAA) most sacred

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principle: amateurism.\textsuperscript{2} The NCAA’s strict amateurism regulations have long been criticized as exploitive,\textsuperscript{3} hypocritical,\textsuperscript{4} and unenforceable.\textsuperscript{5} To address these issues, Division I legislators\textsuperscript{6} are currently debating amateurism deregulation proposals that would allow student-athletes to accept certain forms of compensation and to engage in brief professional careers without forfeiting NCAA eligibility.\textsuperscript{7}

This article examines the synergy between NCAA amateurism deregulation and the National Basketball Association’s (NBA) fledgling National Basketball Development League (NBDL). It posits that amateurism deregulation coupled with the NBDL will provide a much-needed catalyst for restoring educational primacy to college basketball.\textsuperscript{8} Although the forthcoming analysis may be applied to a variety of college sports, this

\begin{itemize}
\item[2.] Orion Riggs, \textit{The Facade of Amateurism: The Inequities of Major-College Athletics}, 5 KAN. J.L. \& PUB. POL’Y 137, 141 (1996). The NCAA’s principle of amateurism states:
\begin{quote}
Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.
\end{quote}

NAT’L COLLEGIATE ATHLETIC ASS’N, 2000-01 NCAA DIVISION I MANUAL, art. 2.9 (2000) [hereinafter NCAA MANUAL].


\item[4.] SACK & STAUROWSKY, \textit{supra} note 1, at 47 (noting that athletic scholarships violate the NCAA’s amateurism principle).

\item[5.] ZIMBALIST, \textit{supra} note 3, at 25-26.

\item[6.] During the NCAA’s restructuring, Division I abandoned the one-school/one-vote principle in favor of a conference-based representation structure dominated by the major conferences. NCAA MANUAL, \textit{supra} note 2, at arts. 4.2.1, 4.5.1; Division I Governance Structure and Committees and Cabinet Rosters, NCAA.ORG, at http://www.ncaa.org/databases/governancestructure/dl/index.html (last visited Jan. 27, 2002). Although some legislative proposals are still circulated to the membership for comment, absent a legislative override, the membership no longer votes directly on legislation. NCAA MANUAL, \textit{supra} note 2, at arts. 5.3.2.3, 5.3.6. Instead, a committee and cabinet structure evaluates and comments on legislative proposals before they are submitted to the management council or board of directors for final approval. See, e.g., AEC Cabinet Amends Amateurism Package, NCAA NEWS, Mar. 12, 2001, at 1 [hereinafter AEC Cabinet Amends]. Despite the increased efficiency of the new governance structure, institutions without representatives on the committees and cabinets report feeling disenfranchised by the new process. Welch Suggs, NCAA Creates Panel to Review its Governance Structure, CHRON. HIGHER EDUC., Mar. 2, 2001, at A44.

\item[7.] Gary T. Brown, Councils Set Stage for Policy Changes in Each Division, NCAA NEWS, Apr. 23, 2001, at 1.

\item[8.] The principle of educational primacy requires that a student-athlete’s status as a student take precedence over his or her status as an athlete. John R. Allison, Rule-Making Accuracy in the NCAA and its Member Institutions: Do Their Decisional Structures and Process Promote Educational Primacy for the Student Athlete?, 44 U. KAN. L. REV. 1, 5-6 (1995) (citing NCAA MANUAL, \textit{supra} note 2, at arts. 1.3.1, 2.5, 41.01-13).
article’s scope will be limited to Division I men’s basketball.

Part II of this article introduces the organizational structure of intercollegiate athletics. Part III discusses the primary threats to educational primacy in college athletics programs. This section explains how competitive pressure, commercialism, and professionalism have caused many elite college athletics programs to lose sight of the primary purpose of colleges and universities.

Part IV introduces the potential guardians of educational primacy in college athletics programs. Included among this group are colleges and universities, conferences, the NCAA, legislatures, and the judicial system. This section describes the role undertaken by each of these institutions in ensuring that student-athletes receive a meaningful education.

Part V evaluates the practicality and potential impact of two Division I amateurism deregulation proposals: (1) pay-for-play and (2) former professional eligibility. It argues that Division I should adopt the latter proposal, which would allow athletes with brief professional sports careers to retain NCAA eligibility. Under this proposal, former professionals would lose one season of eligibility and would be required to satisfy one academic year in residence before they could participate in intercollegiate competition. In effect, this requirement would compel both the athlete and the university to make a substantial and immediate investment in the athlete’s educational development. Hence the former professional eligibility proposal would enhance educational primacy to a greater extent than the pay-for-play proposal, which merely addresses athletes’ financial needs.

Part VI demonstrates how Division I amateurism deregulation and the NBDL will interact to bolster the principle of educational primacy. It argues that the NBDL would be the better choice for those college-aged athletes intending to pursue a professional basketball career. As a result, the NBDL and college teams will inevitably become competitors for the limited pool of elite college-aged basketball players. When given the choice between college and NBDL basketball, those players that choose college would be implicitly


To satisfy an academic year in residence, a student must:

(a) Be enrolled in and complete a minimum full-time program of studies for two full semesters or three full quarters; or
(b) Be enrolled in a minimum full-time program of studies for two full semesters or three full quarters and pass a number of hours that is at least equal to the sum total of the minimum load of each of the required terms.

NCAA MANUAL, supra note 2, at art. 14.5.1.1.
demonstrating their commitment to education. Moreover, former professional eligibility would allow similarly committed athletes with short-lived NBDL careers to retain the opportunity to attend college on an athletic scholarship.

The NBDL will signal the end of Division I's privileged status as the de facto minor league of the NBA. As the preferred route to the NBA, the NBDL could substantially decrease the quality of the talent pool from which colleges choose their athletes. To curb the loss of revenue that could occur as the quality of the college game deteriorates, college basketball programs will need to devise ways to compete with the NBDL for elite young athletes. Yet the financial limitations of college athletics programs will prevent them from offering student-athletes the equivalent of a NBDL salary. Therefore, this article concludes that the most viable response to competition from the NBDL involves allowing college basketball players to obtain more value from the collegiate experience.

II. OVERVIEW OF THE ORGANIZATIONAL STRUCTURE OF COLLEGE ATHLETICS

Colleges and universities providing athletics programs typically belong to regional and national governing bodies that provide administrative, legislative, and promotional support for their members. Conferences provide this support at the regional level. At the national level, this support is provided by either the NCAA or the National Association of Intercollegiate Athletics. This article’s analysis will be limited to the NCAA, the most influential regulator of college athletics.

Although the NCAA’s principle of institutional control requires university presidents to assume ultimate responsibility for athletics programs, this authority is usually delegated to the institution’s athletics director, who

11. NCAA MANUAL, supra note 2, at art. 2.1. The principle of institutional responsibility and control states:

It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulation of the Association. The institution’s chief executive officer is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.

... The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

Id.
reports to either the university president or a vice president. Coaches and administrative staff in the athletics department report to the athletics director whose daily responsibilities may include generating revenue in addition to managing facilities, media relations, and academic affairs. Therefore, in reality, the athletics director bears most of the burden for assuring that the athletics department's goals remain consistent with the overall purpose of the university.

University presidents also delegate responsibilities for their athletics programs to collegiate conferences. In most major conferences, university presidents serve as the board of directors, which ultimately retains authority over conference operations. Historically, conferences existed primarily to provide schools with a reliable source of competitors. The modern conference's operations include monitoring compliance with conference and NCAA policies, managing conference championships, structuring broadcasting contracts, and redistributing revenues. The conference's commissioner either oversees or performs these functions.

Despite its voluntary nature, the NCAA is the leading regulatory body for intercollegiate athletics. Formed in 1906 with only 39 charter members, the NCAA now consists of over 1200 institutions, conferences, and organizations. The association is divided into three major membership categories: Division I, II, and III. Schools with football programs are further subdivided into Divisions I-A and I-AA. In 1997, the NCAA restructured its

13. Id. at 102.
14. Id. at 111.
15. Id. at 111-112.
16. Id. at 115. Conferences are comprised of academic institutions sharing common competitive philosophies. JAMES L. SHULMAN & WILLIAM G. BOWEN, THE GAME OF LIFE: COLLEGE SPORTS AND EDUCATIONAL VALUES 16 (2001).
17. DUDERSTADT, supra note 12, at 124.
20. Id. at 117.
22. What is the NCAA?, NCAA.ORG, at http://www.ncaa.org/about/what_is_the_ncaa.html (last visited Jan. 27, 2002).
23. What’s the Difference Between Divisions I, II, and III?, NCAA.ORG, at http://www.ncaa.org/about/div_criteria.html (last visited Jan. 27, 2002). The divisions are generally distinguishable by the number of sports sponsored, scheduling and attendance requirements, academic and eligibility standards, and the amount of financial aid authorized by the NCAA. Id. Division I represents the highest level of play and, as such, its members must meet the NCAA’s most stringent membership requirements. Id.
24. Id.
organizational scheme to provide for greater divisional autonomy. As a result, each division now has its own governing body.

III. THREATS TO EDUCATIONAL PRIMACY

The United States stands alone in combining higher education with athletic development. College athletics programs offer countless benefits to sponsoring institutions and participating students. At the institutional level, college athletics can play a role in increasing the institution's visibility and unifying the university community. Furthermore, these programs generate revenues from a variety of sources, including gate receipts, corporate sponsorships, and television rights fees. At the student level, athletics programs can provide educational opportunities for students who otherwise could not afford to attend college. Participation in college athletics can also facilitate the development of valuable attributes such as, leadership, competitiveness, discipline, and teamwork. To reap these and other substantial benefits, colleges and universities pour millions of dollars into their athletics programs. Ideally, all college athletics programs would place student-athletes' educational priorities first. Yet in practice, this does not occur. Under the current regime, competitive pressure to win games, commercialism, and professionalism often lead to the subordination of educational primacy. To understand how amateurism deregulation and the NBDL will interact to bolster educational primacy, one must first understand the problems of the current regime. To this end, the earlier sections of this article provide an in-depth description of these problems.


26. Id.


28. E.g., DUDERSTADT, supra note 12, at 8.


30. DUDERSTADT, supra note 12, at 134.

31. SHULMAN & BOWEN, supra note 16, at 3. An empirical study conducted by Shulman and Bowen found that athletes were no more likely to provide leadership than their non-athlete peers. Id. at 265.
Successful basketball teams generate millions of dollars in revenue from ticket sales, guarantees, payouts from tournaments, television rights fees, licensed merchandise, and corporate sponsorships. Additional benefits thought to accrue to athletically successful schools include additional tuition and fees from increased enrollments and an increase in alumni donations. However, when costs enter the equation, the vast majority of universities lose money on athletics programs. Still, many programs subscribe to the philosophy that "the team that spends the most wins the most."

When the team wins consistently, coaches reap substantial benefits from the team's success. This occurs because, increasingly, coaches' job security and base salaries are tied to their competitive records. In addition to high base salaries, successful coaches might also receive home loans, automobiles, deferred compensation, and bonuses for winning. Winning coaches can further supplement their university income with income from shoe contracts, sports camps, and appearances on radio and television talk shows.

Competitive pressure constitutes the first major threat to educational primacy. Competitive pressure may be generated either internally by inherently competitive coaches or externally by the financial incentives to win games. But regardless of its origin, this pressure eventually trickles down to student-athletes. As such, the pressure to win, if left unchecked, usually manifests itself in ways that seriously conflict with the principle of educational primacy. That is, perverse incentives at either the institutional or coach level can result in the intentional subordination of educational primacy. This section addresses coaches' ability to effectuate this subordination.

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32. ZIMBALIST, supra note 3, at 112-114, 136, 147.
33. E.g., DUDERSTADT, supra note 12, at 9 (noting that each time the University of Michigan appears in the Final Four or Rose Bowl, admissions applications surge).
34. Contra SHULMAN & BOWEN, supra note 16, at 255 (discussing the lack of evidence to support the proposition that an institution's athletic success stimulates alumni giving).
35. NCAA Fact Sheet, NCAA.ORG (revealing that average total expenses exceed average total revenues in all divisions except Division 1-A), at http://www.ncaa.org/about/factsheet.html (last visited Jan. 27, 2002).
36. DUDERSTADT, supra note 12, at 128.
37. SPERBER, supra note 27, at 194-195.
38. ZIMBALIST, supra note 3, at 80-81.
39. See, e.g., id. (detailing the compensation packages of several celebrity coaches).
40. A participant in a study on role conflict among college basketball players wrote that, "in college the coaches be a lot more concerned on winning and the money comin' in. If they don't win, they may get the boot, and so they pass that pressure onto us athletes." SACK & STAUROWSKY, supra note 1, at 101.
Many basketball players enter college academically deficient. Add to this deficiency, forty to sixty hours per week of athletic activities, and missed classes, and the result is an athlete unlikely to graduate. In fact, only forty-three percent of all NCAA basketball players graduate within six years and, of those athletes who do graduate, many do not receive a meaningful degree. As a result, some critics condemn Division I basketball programs for exploiting athletes until the end of their eligibility and then summarily discarding them. This exploitation is often facilitated by coaches, who exert considerable influence over the administrative processes governing student-athlete affairs. The areas in which coaches may exert the most influence are admissions, financial aid, and academic services.

To build and sustain successful programs, coaches frequently recruit student-athletes that fall decisively below their schools' regular admissions standards. Athletes who fail to meet a school's regular admissions standards may still be admitted through "special" or "wild-card" admissions processes. The "wild card" admissions process gives a coach a limited number of "no questions asked" admits. Therefore, the wild card process places the admit decision completely within the coach's discretion, limited only by NCAA eligibility standards. "Special admissions" is the process by which the admissions office admits athletes who, although they do not meet the school's regular admissions standards, enrich the student body nonetheless. Although this process is also available to legacies, musicians, and other

42. Welch Suggs, *College Basketball on the Line*, CHRON. HIGHER EDUC., Mar. 26, 1999, at A54. Contrastingly, 56% of all students and 58% of all athletes received their degrees in six years during that time period. ZIMBALIST, * supra* note 3, at 37.
43. ZIMBALIST, * supra* note 3, at 39 (noting that, as a quantitative measure, graduation rates do not speak to the quality of athletes' academic careers).
45. DUDERSTADT, * supra* note 12, at 193.
46. *Id.* at 193-94.
47. *Id.* (revealing that coaches at many institutions negotiate for a predetermined number of wild card admits, thereby enabling the coaches to more confidently recruit the very best athletes).
48. Special admissions decisions may still be heavily influenced by coaches. *Id.* at 195 (noting that a coach might give the admissions office a list of students with the understanding that they will be admitted).
49. SACK & STAUROWSKY, * supra* note 1, at 99.
students with desirable characteristics, a study conducted in 1991 shows that football and men's basketball players in elite sports programs are six times more likely than other students to have been special admits.

To successfully recruit a blue-chip athlete, a coach might find it necessary to exaggerate the athlete's educational prospects. For example, in Ross v. Creighton University, the coaching staff recruited Kevin Ross to play basketball at "an academically superior university," despite his severely deficient academic background. To obtain his commitment, Ross was assured that he "would receive a meaningful education." Yet after four years as a student-athlete, Ross dropped out of the university with the language skills of a fourth grader. Under the NCAA's current rules, Ross would not have met the initial eligibility standards and, therefore, he probably would not have been admitted to Creighton.

After an athlete enrolls in school, coaches can exert substantial influence over the athlete's academic future. The key source of this influence resides in a coach's ability to cancel an athlete's scholarship. Before the one-year renewable athletic scholarship came into existence in 1973, athletes received four-year scholarships that continued even after they withdrew from their sports. Today, NCAA rules permit expedited cancellation for athletes who voluntarily withdraw from their sports. Thus, cancellation power gives coaches a powerful tool that can be used to alter a student-athlete's academic priorities.

NCAA rules limit an athlete's participation in "countable athletically

52. 957 F.2d 410 (7th Cir. 1992).
53. Id. at 411.
54. Id.
55. Id. at 412.
56. Ross scored nine out of thirty-six points on the ACT. Ross v. Creighton Univ., 740 F. Supp. 1319, 1322 (N.D. Ill. 1990), aff'd in part, rev'd in part, 957 F.2d 410 (7th Cir. 1992). The average Creighton University student scored 23.2 points on the ACT in 1978, the year that Ross matriculated. Id.
57. SPERBER, supra note 29, at 28.
58. SACK & STAUROWSKY, supra note 1, at 83-84.
59. NCAA MANUAL, supra note 2, at art. 15.3.4.1(d). Athletic scholarships may be reduced or canceled before the renewal period expires if the athlete withdraws from the sport for "personal reasons." Id.
related activities" to four hours per day and twenty hours per week. However, many student-athletes complain that the "voluntary workout" exception swallows this rule. That is, to the extent that coaches use time spent on voluntary workouts to determine an athlete's status on the team, the workouts are not truly voluntary. Consequently, some athletes still spend forty to sixty hours per week on their sports, which invariably limits the amount of time that the athletes spend studying and attending classes.

Given athletes' rigorous game and workout schedules, similarly demanding academic programs would present a constant threat to NCAA eligibility. This threat would be even more pronounced for marginal students. To protect against the risk of an athlete becoming ineligible for competition, coaches often steer athletes into less demanding majors or courses. At some schools, these less demanding majors might include general studies, physical education, or sports management. Although most athletics departments provide extensive academic support services for student-athletes, in the absence of sufficient time to indulge these services, even a hollow major can threaten an athlete's eligibility.

When legitimate attempts to keep athletes on the court prove futile, competitive pressure and perverse incentives can combine to produce academic scandals, as was the case at the University of Minnesota from 1994

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60. Id. at art. 17.02.1. Countable athletically related activities include any on-court activity, chalk talk, strategy discussions, watching game films, and weight training. Id.

61. Id. at art. 17.1.5.1.

62. Id. at art. 17.02.1(h). Countable coaches may design general (as opposed to specific) voluntary individual workout programs for student-athletes and the workouts would not count as countable athletically related activities. Id. Furthermore, strength and conditioning coaches may conduct voluntary workout programs and the workouts would not be considered countable athletically related activities. Id. at art. 17.02.1(l).


64. SPERBER, supra note 29, at 31 (alluding to coaches' use of voluntary workouts to determine starting rosters).

65. Id. at 198.

66. DUDERSTADT, supra note 12, at 199. Afternoon practice schedules further limit an athlete's choice of major by restricting the athlete's ability to enroll in afternoon classes. SPERBER, supra note 29, at 244-245. These scheduling conflicts will be heightened as more schools shift from morning to afternoon-heavy course offerings. See, e.g., Nancy Foshee, MCHS Faculty Defends Request, COM. APPEAL (Memphis, Tenn.), June 4, 1995, at B9.

67. DUDERSTADT, supra note 12, at 195-196. A typical gut course-load might include "ceramics, marksmanship, [or one of] the respective theories of basketball, track and field, [or] football." Ross, 740 F. Supp. at 1322.

68. DUDERSTADT, supra note 12, at 199-200.
through 1999. During this time period, the head men's basketball coach, an academic counselor, and a secretary engaged in the most egregious academic fraud that the NCAA Committee on Infractions had seen since the early 1980s. Specifically, with the head coach's knowledge, a secretary completed four hundred assignments for student-athletes and the secretary's sister, a tutor, authored forty-eight papers for student-athletes. The NCAA's institutional sanctions for these and other violations included placing the university on probation for four years, vacating team and individual records, and decreasing grants-in-aid, official visits, and evaluation opportunities in men's basketball. As for the wrongdoers, the head coach was forced to resign and the contracts of his two accomplices were never renewed.

Often times, student-athletes must choose between athletic success and academic success. Coaches substantially influence this choice through their power to withdraw financial aid and playing time. To the extent that coaches feel pressured to use their influence to push athletes to the borderline of academic failure or fraud, the principle of educational primacy suffers along with the university's academic reputation.

B. Commercialism

The commercial model of college athletics gives priority to the spectators' entertainment needs, rather than to the student-athletes' educational needs. Corporate sponsorships, broadcasting contracts, product value, and market share dominate this model, where student-athletes and coaches are viewed as entertainment products. The Final Four exemplifies the commercial model of college athletics.

Commercialism constitutes the second major threat to educational primacy. In addition to subordinating educational primacy, commercialism increases the pressure to win. That is, dependence on revenues from gate receipts, corporate sponsorships, and television contracts intensifies external pressures to win. Furthermore, for "celebrity" teams, commercialism intensifies the pressure to win by creating an expectation by fans that these

70. Id.
71. Id.
72. Id.
73. Id.
74. DUDERSTADT, supra note 12, at 152.
75. Id. at 76, 152.
teams will continue their winning streaks indefinitely. As previously stated, the pressure to win, regardless of its source, poses its own threat to educational primacy. Critics of the commercial model of college athletics argue that, besides increasing the pressure to win, commercialism encourages academically intrusive scheduling and financially exploits student-athletes.

Media-driven schedules for athletic contests can assist in the subordination of educational primacy. That is, mid-week and late-night games scheduled to accommodate media demands often conflict with student-athletes' academic obligations. For instance, bowl game scheduling forces athletes to practice during final exam periods. Moreover, the "Final Four" teams of the NCAA tournament will miss at least three weeks of classes during March. Although such academically intrusive schedules can maximize television revenues and media exposure, these gains often come at the expense of the athletes' academic success.

Commercialism also raises concerns of financial exploitation for student-athletes. At most college games, corporate logos can be seen on uniforms, hats, and scoreboards among other places. In 1995, sponsorship and signage income for the average Division I-A school exceeded $450,000. The prototypical sponsorship deal is the shoe contract which provides athletes with free sneakers and apparel, and might also provide significant outside income for college coaches. In return, shoe companies receive millions of dollars in television exposure for the logos displayed on players' shoes and uniforms. Although these arrangements enrich athletics departments, coaches, and sponsors, many student-athletes, whose incomes are restricted by NCAA amateurism rules, feel that they are being exploited by such

76. Id. at 77.
77. Id. at 79-81.
78. Id. at 77.
79. SPERBER, supra note 29, at 38.
80. Id.
81. ZIMBALIST, supra note 3, at 136.
82. Shoe companies, such as Nike and Adidas, also sponsor youth summer leagues and high school teams. Id. at 138. Critics scorn these companies for using summer league and high school sponsorships to undermine the college recruiting process. SPERBER, supra note 27, at 185. That is, shoe companies sponsor youth summer league and high school teams primarily to establish and perpetuate brand loyalty throughout the participants' athletic careers. ZIMBALIST, supra note 3, at 138. Once brand loyalty is established, the decisive factor for top recruits choosing among colleges often boils down to shoe affiliation. Id. at 140. As a further incentive for top recruits to attend affiliated colleges, a shoe company might also finance a recruit's campus visits. Id. at 139-40.
83. See, e.g., ZIMBALIST, supra note 3, at 137.
84. See, e.g, id. at 137-138.
85. Id. at 147.
Few athletics departments generate sufficient revenue to cover the full cost of their programs. Although booster club donations, corporate sponsorships and the like provide additional revenues for athletics departments, most college athletics programs still require financial support from general university funds. Sympathizers of commercialized college sports cite the precarious financial condition of college athletics programs as support for the present and continued commercialization of college athletics.

86. *Id.* at 37. *See also* Sam Farmer, *Union May Put Label on Colleges*, L.A. TIMES, Jan. 18, 2001, at D1. Earlier this year, several former UCLA football players formed a union-like organization called the College Athlete’s Coalition to lobby for increased compensation for college athletes. *Id.* The coalition, which is currently limited to football, plans to expand to basketball and other sports prior to the close of the 2001-02 school year. Steve Wieberg, *Players Want Cut of $6 Billion TV Contract*, USA TODAY, Mar. 30, 2001, at 1A.


88. DUDERSTADT, *supra* note 12, at 133. *See also* ZIMBALIST, *supra* note 3, at 150; SHULMAN & BOWEN, *supra* note 16, at 248-249 (estimating that at some private institutions, athletics programs might receive subventions from university general funds of up to $12 million). At some universities, state laws might restrict the use of state or university general funds to finance college athletics programs. *See e.g.*, TEX. CONST. art. VII, § 17 (Vernon 1995) (prohibiting the use of certain state appropriations for facilities used solely for intercollegiate athletics); ARK. CODE ANN. § 6-62-801 (Michie 2001) (requiring limitations on the use of university general funds to support intercollegiate athletics programs); KAN. STAT. ANN. § 71-203 (2000) (prohibiting the use of public funds for athletic scholarships); R.I. GEN. LAWS § 16-59-9 (2001) (requiring auxiliary facilities of public universities to be self-supporting); LA. REV. STAT. ANN § 17:2053 (West 2000) (prohibiting private universities from using certain funds from the state for intercollegiate athletics purposes); LA. REV. STAT. ANN § 17:3801 (West 2000) (prohibiting the use of state educational trust funds for intercollegiate athletics purposes); OR. REV. STAT. § 341.009 (1999) (prohibiting state appropriations for athletic facilities for spectator sports). Some universities provide subsidies to athletics programs through related-party transactions, where expenses properly associated with the athletics department are paid by other departments within the university. ZIMBALIST, *supra* note 3, at 153. For example, athletic scholarships might be paid from the financial aid office’s budget or the debt service on athletic facilities might be paid from the university’s facilities budget. *Id.* *See also* Revenues and Expenses Both on the Incline for Division I, II, NCAA NEWS, Nov. 6, 2000 (noting that an NCAA study of athletics programs’ operational expenses excluded the cost of debt services because the cost was reflected “elsewhere” in university budgets), available at http://www.ncaa.org/news/2000/20001106/active/3723n04.html. In addition, some universities provide athletics department subsidies through full or partial tuition waivers for athletes. DUDERSTADT, *supra* note 12, at 139. *See, e.g.*, 110 ILL. COMP. STAT. 305/7g (2001) (authorizing tuition waivers for athletes).

89. Timothy Davis, *African-American Student-Athletes: Marginalizing the NCAA Regulatory Structure?*, 5 MARQ. SPORTS L.J. 199, 216 (1996). Most Division I-A athletics departments are considered “auxiliary enterprises” and, as such, are expected to generate revenues sufficient to cover costs. DUDERSTADT, *supra* note 12, at 87. Auxiliary enterprises are typically defined as:

[S]elf-supporting services provided at [colleges and universities] for which fees or charges are paid, and includes but is not limited to food services, college stores, student unions, institutionally operated vending services, recreational activities, faculty clubs, laundries, parking facilities, and intercollegiate athletics.

C. Professionalism

As early as the late-nineteenth century, the desire to produce winning athletic teams led universities to seek out highly skilled athletes, many of whom had little interest in academics. In fact, some of these early college athletes were not even students. In return for their athletic services, early student-athletes received “scholarships, sinecure jobs, gifts from alumni and citizens, and a hundred other types of financial compensation.” Current NCAA amateurism rules forbid all but the first category of compensation for student-athletes.

Modern universities attract athletes with promises of free tuition, room and board, and academic support services. All of which are sanctioned by NCAA regulations. As an additional incentive, a few universities have resorted to the use of prohibited “extra benefits” to lure the best athletes. The use of financial incentives in recruiting, whether NCAA-sanctioned or prohibited, allows college teams to attract higher quality athletes, thereby improving the teams’ revenue potential. Yet recruiting such highly qualified athletes also requires a corresponding commitment to provide the academic services, coaching staffs, and facilities necessary to support these athletes. The ability to provide the requisite support services helps to explain why well-funded athletics programs generally field the most competitive teams.

Professionalism poses the third threat to educational primacy. As an inherent form of pay-for-play, the athletic scholarship can be viewed as a manifestation of the professionalism that characterizes “amateur” college

90. SACK & STAUROWSKY, supra note 1, at 23-24.
91. ZIMBALIST, supra note 3, at 7.
92. SACK & STAUROWSKY, supra note 1, at 24.
93. NCAA MANUAL, supra note 2, at arts. 15.01.7, 15.02.2.
94. Id. at art. 16.02.3. The definition of “extra benefit” states:
An extra benefit is any special arrangement by an institutional employee or a representative of the institution’s athletics interests to provide a student-athlete or the student-athlete’s relative or friend a benefit not expressly authorized by NCAA legislation. Receipt of a benefit by student-athletes or their relatives or friends is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution’s students or their relatives or friends or to a particular segment of the student body (e.g., foreign students, minority students) determined on a basis unrelated to athletics ability.
Id.
95. See, e.g., SPERBER, supra note 27, at 249-255 (discussing NCAA amateurism violations involving extra benefits); Suggs, supra note 42 (discussing extra benefits received by college basketball recruits); ZIMBALIST, supra note 3, at 24-25, 45-46 (detailing NCAA amateurism violations involving extra benefits). Because NCAA rule violators typically do not admit their violations unless compelled to do so, it is not possible to accurately determine the frequency of the use of extra benefits. Id. at 45.
96. SHULMAN & BOWEN, supra note 16, at 231.
Accordingly, educational primacy is subverted because student-athletes cannot withdraw from their sports, even for academic reasons, without suffering the detrimental economic consequences of such a decision.

Further evidence of the professionalization of college sports lies in the fact that college athletics programs have become training grounds for professional sports careers. Indeed some athletes attend college for the sole purpose of advancing their professional sports careers. Professionalized college athletics demand that its participants train and perform at the highest possible level. These demands subvert educational primacy by requiring time commitments that are often inconsistent with a student-athlete’s student status. In addition to weakening the principle of educational primacy, the commercialized, professionalized model of college athletics can also be self-defeating. That is, professionalized athletes usually abandon the team when they reach a level of play sufficiently high to attract opportunities from major professional leagues.

Competitive pressure, commercialism, and professionalism constitute the three main threats to educational primacy. If left unchecked, these threats can combine to overshadow the academic purpose of institutions of higher education. The threats are interrelated in that commercialism intensifies competitive pressure and competitive pressure encourages professionalism. Hence, any attempt to safeguard the principle of educational primacy must address all three of its major threats.

IV. GOVERNANCE OF THE PRINCIPLE EDUCATIONAL PRIMACY

The principle of educational primacy requires that a student-athlete’s status as a student take precedence over his or her status as an athlete. In the world of college athletics, this principle competes with the demands of competitive pressure, commercialism, and professionalism. Various governance structures exist to safeguard the principle of educational primacy against these competing interests. These structures may be divided into two broad categories: (1) internal and (2) external. The internal governance...
structure consists of universities, conferences, and the NCAA, whereas the legislature and courts comprise the external governance structure. External involvement in the regulation of college athletics is very limited. Consequently, college athletics is dominated by internal governance structures, which are plagued by self-interest and conflicting goals.

A. Internal Governance

Internal governance of the principle of educational primacy has two main benefits. First, internal governance saves the government the cost of regulation. Second, internal governance structures can detect and remedy problems more quickly than external governance structures. To the extent that internal governance structures fail to adequately safeguard the principle of educational primacy, external governance structures can provide a meaningful oversight function.

The primary purpose of the university is education and, therefore, it is the university’s responsibility to provide an environment conducive to that purpose. Ideally, athletics programs would peacefully coexist with the university’s primary purpose and would place educational priorities over those of athletics. Yet, historically, university athletics programs have exhibited a tendency to operate in opposition to the university’s primary purpose.

Self-interest and perverse incentives can prevent individual universities from effectively policing the principle of educational primacy. College admissions standards vary and, as previously noted, schools lower these standards for elite athletes to build successful teams. Furthermore, universities alone determine what constitutes good academic standing once a student enrolls. Thus, a school may relax both its admissions standards and its standards for good academic standing to accommodate an athlete’s eligibility. Lenient academic policies for student-athletes clearly conflict with the goals of higher education. As a result, faculty members at some institutions have banded together in an attempt to expose and reform these policies. However, institutional athletic interests have very little incentive

101. The University of Virginia’s athletics department mission statement reads: “The mission of the Department of Athletics is to enhance and support the intellectual purpose of the University and its exemplary academic standards and traditions.” UNIV. OF VA. DEP’T OF INTERCOLLEGIATE ATHLETICS, STUDENT-ATHLETE HANDBOOK 2000-2001 6 (2000).

102. SACK & STAUCROWSKY, supra note 1, at 24 (noting that as early as the late-1800s, student-athletes were being relegated to the status of academic outsiders).

103. NCAA MANUAL, supra note 2, at art. 14.02.5.


105. Don Jacobs, Professors to Discuss Conflict of Athletics, Academics, KNOXVILLE NEWS-
to implement the reforms since doing so could place the schools at a recruiting and competitive disadvantage.

Conferences share common eligibility standards, which might be higher than those required by the NCAA. To this extent, conferences can regulate their members' academic standards to ensure that they do not fall to unacceptable levels. However a conference that sets its academic standards too high might find itself at a competitive disadvantage in inter-conference competition.

In addition to the regulation of academic policies, conferences promote their respective athletic contests and redistribute revenues among their members. Historically, conference members aligned themselves because of shared geography and competitive and academic philosophies. More recently, members' revenue potential has become the most important common denominator. To maximize revenues, conferences become parties to broadcasting contracts, which often require academically intrusive schedules. Absent external pressure to do so, a single conference has very little incentive to oppose its own policies regarding the scheduling of televised athletic contests. To do so would decrease its revenue potential and hence its attractiveness to present and future members.

Many of the NCAA's regulations support the principle of educational primacy. The NCAA's principle of student-athlete welfare instructs member institutions to promote an environment in which athletics programs are "conducted as an integral part of the student-athlete's educational experience." Moreover, the NCAA's principle of sound academic standards requires member institutions to maintain student-athletes as "an

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106. See, e.g., DUDERSTADT, supra note 12, at 219 (noting that the Big Ten's academic standards are more rigorous than those required by the NCAA).


108. The addition of Florida State University to the Atlantic Coast Conference and the addition of Penn State University to the Big Ten Conference illustrates this more recent phenomenon. Id.

109. The major football conferences are parties to an eight-year, $930 million contract with ABC to televise the Bowl Championship Series. D. Stanley Eitzen, Slaves to Big-Time College Sports, USA TODAY, Sept. 1, 2001 (Magazine), at 26.

110. See, e.g., John Swofford: Fourth Full-time Commissioner Is In His Fourth Year at the Helm of the ACC, THEACC.COM (boasting that the ACC is the only conference in the country with games on major networks at prime time on weeknights), at http://theacc.fansonly.com/genrel/072999aaa.html (last visited Jan. 27, 2002). Participation in bowl games often requires college football players to practice during their schools' final exam period. SPERBER, supra note 29, at 38.

111. NCAA MANUAL, supra note 2, at art. 2.2.1.
integral part of the student body."

To assure that universities do not lower their admissions criteria to predictably exploitive levels, the NCAA sets national eligibility standards for incoming student-athletes. Although the NCAA’s academic rules and principles declare its support for the principle of educational primacy, in practice, educational primacy has not been the NCAA’s main objective.

The NCAA also acts as a promoter and economic regulator of collegiate athletics. Indeed, the promotion and economic regulation of college athletics are the NCAA’s dominant functions. In this capacity, the NCAA experiences role conflict similar to that experienced by universities and conferences. The Division I governance structure reinforces this conflict because it is dominated by the major conferences and their concerns. As previously stated, a major concern of many conferences is the generation of revenues.

Although the NCAA manual contains hundreds of pages of rules, the small size of the NCAA’s enforcement staff impairs its ability to detect violations of those rules. As a result, the NCAA relies mainly on informants and institutional self-reporting to apprise it of alleged violations. Once the NCAA becomes aware of potential violations, lack of judicially enforceable discovery power limits its ability to gather and verify pertinent information. To lessen the impact of these limitations, the NCAA encourages schools to cooperate with NCAA investigators in return for reduced penalties. NCAA penalties for the most flagrant violations usually result only in the loss of scholarships and recruiting visits and perhaps probation for the offending university. Commentators use the NCAA’s inadequate detection methods and light penalties as evidence of its lack of commitment to the enforcement of its rules, academic or otherwise.

The NCAA’s national character makes it the ideal institution to promulgate and enforce uniform rules that encourage educational primacy. However, as an entity, the NCAA profits from activities that threaten educational primacy. In fact, the NCAA is financially dependent upon its basketball tournament, which capitalizes upon all three threats to educational

112. Id. at art. 2.5.
113. These standards require athletes to achieve a specified SAT/ACT score and high school GPA to participate in NCAA competition. NCAA MANUAL, supra note 2, at art. 14.3.1.1.1. Less rigorous standards apply to junior college transfer students. Id. at art. 14.5.4.1.
115. SPERBER, supra note 27, at 316.
116. Id. at 246-247.
117. Id. at 317.
118. DUDERSTADT, supra note 12, at 219.
primacy.\textsuperscript{120} Strict enforcement of the principle of educational primacy by the NCAA would force the organization into financial ruin.

Since a university's primary purpose is to educate its students, the university is the ideal entity to police the principle of educational primacy. However, historically and even today universities have not adequately done this, absent outside intervention. Since conferences and the NCAA are financially dependent on activities that compete with the principle of educational primacy, they do not and cannot be expected to vigorously police or enforce the principle of educational primacy. To summarize, self-interest and conflicting goals have prevented all three internal governance structures from adequately policing the principle. The next section discusses how external governance structures have dealt with these problems.

\textit{B. External Governance}

Internal governance structures regulate both the economic and educational aspects of intercollegiate athletics. This conflicting role, in which economic concerns often take precedence over student-athletes' educational concerns, supports an increased role for external regulation. Yet, courts and legislatures have largely declined invitations to intervene in university/student-athlete relations.\textsuperscript{121}

With the exception of Title IX, Congress does not interfere with the NCAA's regulation of the university/student-athlete relationship. To further insure this relationship against congressional intervention, the NCAA maintains an office in Washington, D.C., which employs full-time lobbyists.\textsuperscript{122} At the state level, legislative intervention is generally limited to the regulation of student-athlete relationships with sports agents\textsuperscript{123} and funding restrictions for college athletics programs.\textsuperscript{124}

\begin{footnotes}
\footnotetext{120}{Suggs, supra note 42. See generally Budget Supports New NCAA Structure, NCAA.ORG, available at http://www.ncaa.org/about/finances.html (last visited Jan. 27, 2002).}
\footnotetext{121}{ZIMBALIST, supra note 3, at 195-196.}
\footnotetext{122}{Id. at 196.}
\footnotetext{123}{Id.}
\footnotetext{124}{See, e.g., TEX CONST. art. VII, § 17 (Vernon 1995) (prohibiting the use of certain state appropriations for facilities used solely for intercollegiate athletics); ARK. CODE ANN. § 6-62-801 (Michie 2001) (requiring limitations on the use of university general funds to support intercollegiate athletics programs); KAN. STAT. ANN. § 71-203 (2000) (prohibiting the use of public funds for athletic scholarships); R.I. GEN. LAWS § 16-59-9 (2001) (requiring auxiliary facilities of public universities to be self-supporting); LA. REV. STAT. ANN § 17:2053 (West 2000) (prohibiting private universities from using certain funds from the state for intercollegiate athletics purposes); LA. REV. STAT. ANN § 17:3801 (West 2000) (prohibiting the use of state educational trust funds for intercollegiate athletics purposes); OR. REV. STAT. § 341.009 (1999) (prohibiting state appropriations for athletic facilities for spectator sports). Some universities provide subsidies to athletics programs}
\end{footnotes}
Although the threat of litigation might enhance the status of educational primacy in college athletics programs, courts have been reluctant to hold universities liable for the failure to educate individual student-athletes. To this end, courts uniformly deny negligent admissions and educational malpractice claims. Difficulties in establishing educational standards, injury, causation, and remedies are cited as reasons for courts’ hostility towards these claims. In addition, courts fear that allowing such claims would induce floods of litigation by disgruntled students.

Contract claims can provide an alternative to educational malpractice and negligent admissions claims. In Ross, the court noted that if Ross could establish that the university failed to honor a specific contractual promise, a breach of contract action might exist. Commentators further suggest that claims based on contract law’s implied obligation of good faith might be available to plaintiffs harmed by a university’s failure to educate. Courts, however, warn against attempts to recast educational malpractice claims as contract claims.

Courts and legislatures have, for the most part, chosen to play a passive role in the regulation of college athletics. This passiveness has, in effect, given the NCAA virtually unlimited power over the future of college athletics. Therefore, any serious attempts to reform college athletics must focus on the NCAA.

As the most powerful regulator of college athletics programs, the NCAA is in a unique position to strengthen the principle of educational primacy. Yet any attempt to strengthen educational primacy must also minimize its major threats, i.e. competitive pressures, commercialism, and professionalism. Even if institutional interests militate against the NCAA implementing legislation that directly strengthens educational primacy, the NCAA should, at the very least, take steps to ensure that future legislative amendments do not further through related-party transactions where expenses properly associated with the athletics department are paid by other departments within the university. ZIMBALIST, supra note 3, at 153.

127. Id. at 458.
128. Ross, 957 F.2d at 417.
129. Beh, supra note 125, at 196-98.
130. Ross, 957 F.2d at 416.
131. The U.S. Supreme Court has held that because the NCAA is not a state actor, its actions are not subject to constitutional constraints. Nat’l Collegiate Athletic Ass’n v. Tarkanian, 488 U.S. 179, 191-99 (1988).
weaken the principle. Amateurism deregulation is an area in which the NCAA can implement this laudable goal.

V. AMATEURISM DEREGULATION

The NCAA's definition of "amateur" cries out for reform. Under present rules, athletes lose their amateur status when they sign a contract to play for a professional team, even if they never in fact play for the team.\textsuperscript{132} Ironically, a U.S. athlete that plays on a professional team in one sport remains eligible to play a different sport.\textsuperscript{133} Similarly, many international athletes with previous participation on international "professional teams"\textsuperscript{134} remain eligible.\textsuperscript{135} Growing dissatisfaction with the inequities and inconsistencies in the current NCAA amateurism rules recently propelled amateurism deregulation to the forefront of Division I's legislative agenda.

Division I amateurism reform suggestions boil down to essentially two proposals. The first proposal would allow enrolled student-athletes to receive payments in addition to a full grant-in-aid without forfeiting eligibility.\textsuperscript{136} The second proposal would allow prospective student-athletes to retain eligibility.

\textsuperscript{132} NCAA MANUAL, supra note 2, at art. 12.1.1(e). However, it is possible for institutions to obtain restoration of eligibility for athletes who have lost their amateur status. \textit{Id.} at 14.12.1.

\textsuperscript{133} \textit{Id.} at art. 12.1.2.

\textsuperscript{134} A professional team is defined as any organized team that:

(a) Is a member of a recognized professional sports organization;

(b) Is directly supported or sponsored by a professional team or professional sports organization, except as permitted in 12.6.1.8 (see also Bylaw 12.6.1.1);

(c) Is a member of a playing league that is directly supported or sponsored by a professional team or professional sports organization (see also Bylaw 12.6.1.1);

(d) Has an athlete receiving for his or her participation any kind of payment, directly or indirectly, from a professional team or professional sports organization (see also Bylaw 12.6.1.1).

\textsuperscript{135} See generally Brown, supra note 9, available at http://www.ncaa.org/news/2000/20000731/active/3716n01.html. Due to differences in international amateurism standards, the NCAA determines an international athlete's amateur status using an "intent to professionalize" test, as opposed to strict adherence to Article 12.1.1 of the NCAA's bylaws. Gary T. Brown, Division I Delegates Say More Con Than Pro On Amateurism Package, NCAA NEWS, Jan. 15, 2001, available at http://www.ncaa.org/news/2001/20010115/active/3802n03.html. In Europe, professional clubs sponsor youth teams where participants gradually ascend towards the foreign equivalent of a U.S. professional team. \textit{Sperber}, supra note 27, at 236. Hence, by the time European athletes turn nineteen, they could be already playing just one tier below their countries' professional level. \textit{Id.}

\textsuperscript{136} NAT'L COLLEGIATE ATHLETIC ASS'N, NCAA DIVISION I AMATEURISM DEREGULATION [hereinafter DIVISION I DEREGULATION], at http://www.ncaa.org/databases/reports/1/200004bd/200004_d1_board_agenda_s11.htm (last visited Jan. 30, 2002).
even if they have briefly participated on a professional team. This section evaluates the merits of both proposals and concludes that the second proposal is more consistent with the principle of educational primacy.

The two core values of NCAA amateurism regulations are student-athlete welfare and competitive equity. Therefore, in evaluating amateurism deregulation proposals, student-athlete welfare and competitive equity concerns must be given considerable weight. The principle of student-athlete welfare requires NCAA member institutions to maintain an environment in which athletics complements rather than detracts from an athlete's educational experience. The principle of competitive equity seeks to level the playing field among college athletics programs. In the NCAA's bylaws, this principle translates into limitations on eligibility, recruiting, funding, and playing and practice seasons.

A. Pay-for-Play

To be eligible for a collegiate sports team, an athlete must be considered an "amateur." Under current NCAA bylaws, athletes lose eligibility in a given sport once they accept compensation for participating in that sport. These bylaws seek to ensure that institutions maintain "a clear line of

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137. Id.
138. Id.
139. NCAA MANUAL, supra note 2, at art. 2.2.1.
140. Id. at art. 2.10.
141. DUDERSTADT, supra note 12, at 218.
142. NCAA MANUAL, supra note 2, at art. 12.01.1. NCAA regulations state that amateur status may be lost where an athlete:
   (a) Uses his or her athletic skill (directly or indirectly) for pay in any form in that sport;
   (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
   (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received;
   (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletics skill or participation, except as permitted by NCAA rules and regulations;
   (e) Competes on any professional athletics team and knows (or had reason to know) that the team is a professional athletics team (per Bylaw 12.02.4), even if no pay or remuneration for expenses was received; or
   (f) Enters into a professional draft or an agreement with an agent (see also Bylaw 12.2.4.2.1).
Id. at art. 12.1.1.
143. Id. The NCAA exempts institutional athletic scholarships from the definition of "pay" for athletics skill. Id. at art. 12.01.4.
demarcation between college athletics and professional sports.  

U.S. colleges have long compensated student-athletes for their athletic abilities. In the late-1800s teams regularly paid participating athletes, some of whom were not even students. In response to these and other abuses, NCAA members adopted the Sanity Code in 1948, which prohibited financial aid based solely on athletic ability. A mere three years later, the membership abandoned the code as unworkable. Today, student-athletes may receive athletic scholarships covering an institution's "cost of attendance." In essence, athletic scholarships constitute a form of compensation based on athletic skill. Hence, under the plain meaning of the NCAA's rules, athletic scholarship recipients are not, and never have been, true amateurs.

The proposed changes to the current compensatory scheme would allow student-athletes to accept compensation in excess of the cost of attendance. These proposals stem primarily from an attempt by the NCAA to provide incentives for elite athletes to delay their professional sports careers until graduation. By sanctioning supplemental income, these proposals also respond to the argument that big-time college athletics financially exploit student-athletes, many of whom come from low-income families.

The immediate financial rewards of playing professionally prompt many elite basketball players to begin professional careers prior to graduation. The early exit of these players guts college basketball rosters and injures the quality of the college game. Pay-for-play supporters believe that providing athletes with additional financial incentives will encourage them to delay their professional careers until after graduation.

Elite college basketball players generate revenues for their schools that far exceed the value of a full grant-in-aid. While the typical grant-in-aid is worth only $30,000, a top player might generate as much as $1 million in

144. *Id.* at art. 12.01.2.
145. ZIMBALIST, supra note 3, at 7.
146. SACK & STAUROWSKY, supra note 1, at 43-44.
147. *Id.* at 46-47.
148. NCAA MANUAL, supra note 2, at art. 15.01.7. The cost of attendance includes tuition and fees, room and board, books, supplies, transportation, and related expenses. *Id.* at art. 15.02.2.
149. SACK & STAUROWSKY, supra note 1, at 2.
150. *Id.* at 143. See also Brown, supra note 7.
151. Suggs, supra note 42, at A53.
152. SACK & STAUROWSKY, supra note 1, at 143.
153. ZIMBALIST, supra note 3, at 11.
154. See, e.g., DUDERSTADT, supra note 12, at 132.
revenue annually.\textsuperscript{155} Although reformers would like student-athletes to reap more of the fruits of their labor, current NCAA amateurism regulations would prevent this from occurring. Currently, the only way to provide athletes with compensation more closely related to their market value is through covert payments.\textsuperscript{156}

Reformers propose several methods by which the NCAA might allow student-athletes to legitimately receive additional athletically-related compensation ("pay-for-play"). These methods include part-time employment, stipends, loans, and prize money. Although athletes could theoretically undertake part-time employment to supplement their athletic scholarships, team and academic activities would prevent many of them from working the hours needed to earn significant additional income. In fact, current NCAA rules limit student-athletes' earnings from employment to a mere $2000.00 during the academic year.\textsuperscript{157} Although stipends would not present the scheduling difficulties of part-time employment, most athletics programs lack the funding to provide stipends. Loans based on an athlete's anticipated earnings would present similar funding concerns. Prize money from athletic contests is another way in which student-athletes could receive supplemental income. Indeed, this might be the most feasible reform since it does not present scheduling difficulties of employment, nor does it present the same funding difficulties of stipend or loan-based reforms. Nevertheless because stipends and loans are the most hotly debated pay-for-play proposals, the scope of this section will be limited to these two particular forms of additional compensation.

Pay-for-play would clearly benefit student-athletes financially. However, there are several reasons why pay-for-play falls short as an approach to amateurism deregulation. First, pay-for-play weakens the principle of educational primacy by strengthening its threats. Second, the proposals will

\textsuperscript{155} ZIMBALIST, supra note 3, at 11.

\textsuperscript{156} See generally Press Release, NCAA Infractions Appeals Committee, Former Southeast Missouri University Head Men's Basketball Coach Public Infractions Appeals Committee Report (Jan. 11, 1999), available at http://www.ncaa.org/releases/makepage.cgi/infractions/1999011101in.htm#Violations; Suggs, supra note 42. In 1982, "signing bonuses" for top high school prospects were in the five figures. ZIMBALIST, supra note 3, at 24. See also Jerry Kirshenbaum, Digger's Non-bombshell, SPORTS ILLUSTRATED, Apr. 5, 1982, at 10. The estimated black-market rate for elite college football players is purported to be around $200,000.00. Tim Sullivan, College Football Players Seek Share of Profits, GANNET NEWS SERVICE, Jan. 20, 2001, at ARC. Covert payments may take the form of cash payments, cars, apartments, or jobs for parents. SPERBER, supra note 27, at 250-51. Commentators suggest that financial need and the perception of exploitation might influence an athlete's willingness to accept covert payments. Davis, supra note 89, at 223-24.

\textsuperscript{157} NCAA MANUAL, supra note 2, at art. 15.2.6.1.
not deter athletes from leaving college early to compete on professional teams. Third, the financial implications of pay-for-play make its implementation impractical for the vast majority of institutions.

Pay-for-play will strengthen all of the major threats to educational primacy: competitive pressures, commercialism, and professionalism. Pay-for-play will intensify competitive pressures on student-athletes to the extent that performance expectations increase along with the athletes’ compensation. That is, coaches might expect a higher level of performance and student-athletes might feel obligated to provide a higher level of performance if they are being paid to play. Furthermore, any attempts to raise the funds necessary to finance stipends or loans might result in a corresponding increase in commercialism. As previously stated, commercialism compounds the pressure to win and intrudes upon the athletes’ academic lives. Intense competitive pressures can increase the recruitment of academically-underprepared, professionalized athletes. In light of these facts, it is unlikely that pay-for-play will enhance student-athletes’ overall educational experience in accordance with the principle of student-athlete welfare.

Furthermore, pay-for-play will not encourage student-athletes with professional potential to delay their professional careers. First, colleges will never be able to compete with professional teams in terms of players’ salaries. Second, offering athletes additional compensation as an incentive to remain in college assumes that the athletes enrolled in college to receive an education. Such an assumption ignores the fact that many elite athletes attend college for exposure and athletic training, rather than for educational purposes. If a player’s main goal in attending college is to obtain sufficient exposure and training to launch a professional career, then it is unlikely that the player will remain in college once the opportunity for a professional career presents itself.

Moreover, practical considerations would prevent the widespread implementation of pay-for-play. That is, inadequate funding would prevent most universities from offering athletes modest stipends, let alone amounts sufficient to cause them to defer potentially lucrative professional careers. Many schools lack sufficient funding for basic athletic scholarships. Add to the cost of scholarships, the cost of student-athlete salaries and the cost of complying with the tax and labor laws implicated by an employer-employee relationship, and many schools would be forced to drop their athletics

158. SPERBER, supra note 27, at 8.
programs altogether. Even schools that currently profit from their athletics programs would be unlikely to break even in a pay-for-play regime.

Under the current amateurism regulations, the wealthiest athletics programs tend to field the most competitive teams. This occurs because recruiting top athletes usually requires a further commitment to provide the academic services, coaching staffs, and facilities necessary to support these athletes. Pay-for-play would further increase the costs of operating a competitive athletics program, thereby exacerbating existing competitive inequities.

Although pay-for-play might lessen the perception of student-athlete exploitation, it fails to address several other pertinent issues. That is pay-for-play does not advance student-athletes' educational welfare, nor does it promote competitive equity. Indeed, the implementation of such a proposal would weaken educational primacy and widen the competitive gap between the rich and poor athletics programs. Given the destructive effects that pay-for-play will wreak on student-athlete education and athletics departments' finances, this sort of approach to amateurism deregulation should not even be seriously considered.

B. Former Professional Eligibility

NCAA regulations do not allow an athlete to correct a mistaken decision to pursue a professional sports career.\(^{160}\) NCAA amateurism regulations state that an athlete who signs a contract to play on a professional team or who knowingly competes on a professional team forfeits his or her eligibility.\(^ {161}\) In effect, participation on a professional team is used as a proxy for athletes with skills too advanced for intercollegiate competition.\(^ {162}\) The amateurism regulations attempt to foster competitive equity among college athletics teams by eliminating this class of athletes from the college recruiting pool.

The NCAA's Division I Management Council recently reviewed an amateurism deregulation package which included a proposal that would give high school graduates the option to compete on professional teams for a limited time without forfeiting NCAA eligibility ("the proposal").\(^ {163}\) The proposal is based on the "Tennis Rule," which allows tennis players to

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160. See, e.g., Shelton v. National Collegiate Athletic Ass'n, 539 F.2d 1197, 1198 (9th Cir. 1976) (upholding the NCAA's amateurism regulations, which made Shelton ineligible, despite Shelton's argument that he was unduly influenced to sign the professional contract).

161. NCAA MANUAL, supra note 2, at art. 12.1.1.


163. AEC Cabinet Amends, supra note 6.
compete in "organized competition"\textsuperscript{164} for up to one year after graduating from high school.\textsuperscript{165} Under the proposal, athletes who compete in "organized competition" for more than one year would forfeit all Division I eligibility.\textsuperscript{166} When the proposal was first introduced, it extended the Tennis Rule to all sports.\textsuperscript{167} However, the Academics/Eligibility/Compliance Cabinet\textsuperscript{168} (AEC Cabinet) recently recommended the exclusion of basketball from the proposal, citing the sport's unique susceptibility to third party influences, e.g. agents, boosters, and non-scholastic coaches.\textsuperscript{169} 

Men's basketball boasts the NCAA's lowest graduation rates.\textsuperscript{170} As such, men's basketball players stand to gain immensely from any proposal that bolsters educational primacy. As this section will soon demonstrate, allowing former professionals to retain eligibility will bolster educational primacy. Therefore, basketball should not be excluded from the proposal.

The current amateurism rules regarding professional athletes were intended to prevent schools from recruiting "ringers" whose sole purpose for matriculation was to play sports.\textsuperscript{171} Historically, athletes were allowed to matriculate one day and play the next, regardless of their academic standing.\textsuperscript{172} Today, NCAA eligibility and transfer regulations place limitations on such practices.\textsuperscript{173} 

Allowing athletes to experiment briefly with professional sports careers prior to enrolling in college will advance student-athlete welfare in several ways. First, granting former professionals eligibility will promote educational primacy. Second, it will expand the number of athletic opportunities available to athletes immediately after high school. Lastly, former professional eligibility will provide athletes with a valuable bargaining tool.\textsuperscript{174}

\textsuperscript{164} Organized competition includes athletic activities where official score is kept, admission is charged, game officials are used, or where a team is privately or commercially sponsored. NCAA MANUAL, supra note 2, at art. 14.2.3.5.3.

\textsuperscript{165} Id. at art. 14.2.3.2.

\textsuperscript{166} AEC Cabinet Amends, supra note 6, at 1.

\textsuperscript{167} Id.

\textsuperscript{168} The AEC Cabinet is responsible for reviewing Division I legislation and making recommendations to the Management Council regarding academic, eligibility, and compliance issues. NCAA MANUAL, supra note 2, at art. 21.6.6.2.2.

\textsuperscript{169} AEC Cabinet Amends, supra note 6, at 1.

\textsuperscript{170} ZIMBALIST, supra note 3, at 39.

\textsuperscript{171} AEC Cabinet Amends, supra note 6, at 1.

\textsuperscript{172} ZIMBALIST, supra note 3, at 21.

\textsuperscript{173} NCAA MANUAL, supra note 2, at art. 14.5.1 (stating that transfer students must complete one academic year in residence to become eligible for competition).

\textsuperscript{174} ZIMBALIST, supra note 3, at 197-198.
The proposal will promote educational primacy since, like redshirting, it requires an institution to make a considerable investment in an athlete's education before the institution can benefit from the athlete's athletic skills. The proposal's year in residence requirement will require former professionals to immediately forfeit one full year of exposure. This waiting period would dissuade all but the most academically-inclined former professionals from joining college teams.

Former professional eligibility will also advance student-athlete welfare by increasing the number of athletics options available to recent high school graduates. Under current NCAA regulations, participation on a college team is no longer an option for an athlete who is considered to be a professional. Hence most high school graduates must choose between college teams and professional teams, without having experienced either. Permitting athletes to compete professionally for a brief period would improve their ability to evaluate their potential for and interest in a professional sports career. Perhaps after having actually experienced the rigors of a professional sports career, some athletes might decide that pursuing a college education is more consistent with their long-term goals.

Additionally, former professional eligibility will improve athletes' bargaining power with professional leagues. Currently, an athlete forfeits eligibility by entering a professional draft prior to enrolling in college. If professional athletes could retain eligibility, they could use it to obtain negotiation leverage with professional teams. That is, a drafted athlete could more confidently reject an inadequate offer from a professional team in favor of a college team since, under the proposal, being drafted would no longer render the athlete ineligible. If a professional team was sufficiently interested in retaining the athlete's services, it might improve its offer to prevent the athlete from joining a college team.

The proposal also...

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175. Taylor & Traub, supra note 44, at 83.
177. Athletes with professional aspirations covet playing time and media coverage, also known as "exposure." Sperber, supra note 27, at 230.
179. NCAA Manual, supra note 2, at art. 12.1.1(f). Once enrolled, a basketball player may enter a professional draft once without forfeiting eligibility, provided that the player is not drafted. Id. at art. 12.2.4.2.1.
181. John Smallwood, Why Is All the Outrage Saved for the NBA, PHILA. DAILY NEWS, July 4, 2000 (noting that Major League Baseball teams pay draftees considering college more money to discourage them from going to college immediately after high school), available at http://www.lexis.com. See also, Gary Lundy, Baseball System Does Not Favor Burke's Return to
minimizes the effect that former professional eligibility will have on the competitive equity of intercollegiate athletics. The one-year waiting period will curtail schools’ recruitment of ringers. Moreover, by limiting the experimental professional period to one year, the proposal will have a minimal effect on competitive equity. That is, an athlete engaging in such a brief professional sports career is not likely to have gained a substantial competitive advantage.

The proposal further addresses competitive equity concerns by eliminating the disparate treatment of U.S. athletes vis-a-vis their international counterparts. In contrast to the status quo, the proposal would hold United States and international athletes to the same amateurism standards. Presently, since United States and international amateurism definitions differ, the NCAA determines an international athlete’s amateur status primarily by his or her “intent to professionalize.” Because amateurism is defined more expansively abroad, this test allows some international athletes to retain eligibility even though they have had extensive involvement with professional teams. Under the proposal, the only inquiry for both U.S. and international athletes would be the length of the athletes’ participation on a professional team. Thus, international athletes with more than one year of participation on a foreign professional team would be ineligible for NCAA competition.

The proposal would also provide important institutional benefits. That is, it would simplify the amateurism determination process by retiring the elusive “intent to professionalize” test. Furthermore, the proposal would be less costly to administer than the current amateurism regime since fewer reinstatement requests would be made. A pay-for-play system, on the other hand, would substantially increase costs. Hence, the proposal, unlike pay-for-play, would

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184. For instance, if an international athlete had played on a youth team funded by a professional sports organization from age 13 to 18, the athlete could retain eligibility so long as he or she did not demonstrate the intent to professionalize. Brown, supra note 9, available at http://www.ncaa.org/news/2000/20000731/active/3716n01.html. A similarly situated U.S. athlete would forfeit all college eligibility. Id.


promote educational primacy, minimize competitive inequities, and save money.

Still, opponents of former professional eligibility advance several arguments against the proposal. First, they very persuasively argue that the proposal will encourage athletes to postpone college.\(^{187}\) Indeed, the proposal probably will encourage some athletes to postpone their college educations, i.e. those with no immediate interest in higher education. Contrastingly, the proposal is not likely to have any effect on those athletes with a more intense desire to pursue a college degree. For those athletes that initially, but mistakenly, postpone college, the proposal would provide them with a limited opportunity to correct their initial decision to choose athletics over education.

Second, opponents of former professional eligibility argue that the proposal will increase the influence of third parties in the recruiting process.\(^{188}\) As previously stated, the most successful athletes would be unlikely to play for college teams under the conditions imposed by the proposal. Former professionals who do opt to play on college teams are likely to be those with spent ambition for a professional sports career. As such, these athletes would be attending college for primarily academic reasons. Consequently, the influence of third parties would be curtailed by the athletes’ academic aspirations and the target schools’ academic offerings.

Lastly, former professional eligibility opponents argue that implementation of the proposal will further undermine competitive equity.\(^{189}\) However, the proposal’s one-year limitation on professional careers coupled with its one-year waiting period will minimize, if not eliminate, any competitive advantage gained by former professionals. Clearly the highest caliber athletes are not going to trade in their paid professional careers for a position on a less handsomely remunerated college team.

All competitive endeavors suffer from inherent inequities and college athletics is not an exception to this proposition. The proposal minimizes most of the competitive advantage that a brief professional career could produce. And even if implementation of the proposal would widen the competitive gap between athletics programs, the proposal’s educational benefits clearly exceed any of its drawbacks.

The NCAA’s amateurism regulations are ripe for reform. Given the present financial state of college athletics, pay-for-play is not a viable reform.

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189. *Id.*
Former professional eligibility, on the other hand, is a viable reform that not only promotes educational primacy, but also addresses detractors’ competitive equity concerns. If implemented, the proposal coupled with the opportunities provided by the NBA’s fledgling developmental league, could restore educational primacy to college basketball.

VI. THE NATIONAL BASKETBALL DEVELOPMENT LEAGUE

College basketball teams have long served as the NBA’s de facto minor league. The most recent trend in college basketball is that an increasing number of players are abandoning college teams for the NBA prior to completing their degrees and prior to attaining NBA caliber basketball skills. NBA officials blame the proliferation of underdeveloped talent for the league’s declining quality of play and waning popularity. With no end in sight, the present trend among elite college players promises to further saturate the ranks of the NBA with underdeveloped talent.

To better accommodate its developmental needs, the NBA plans to launch the National Basketball Development League (NBDL) in eight southeastern cities beginning in November 2001. The NBDL will serve as the NBA’s official minor league. Unlike college teams, the NBDL will give the NBA more control over player development and, unlike existing basketball minor leagues, the NBDL will have the full financial and marketing support of the NBA behind it.

NBDL officials maintain that the new league will not compete with college teams. However, because the NBDL will be recruiting college-aged players displaying a level of talent just below that of NBA players, it will inevitably skim talent from college teams. The NBDL’s minimum age requirement is the only factor that will prevent its recruiting efforts from completely overlapping those of college teams. At minimum, a NBDL player must be either twenty years old or at least eighteen if the player was

190. Sam Smith, Here’s a Speedy Cure For What Ails Today’s NBA, CHI. TRIB., Jan. 7, 2001, at 8.
193. The league will serve as a feeder system for the NBA, but the developmental teams will not have a direct affiliation with specific NBA franchises. Id.
194. John Millea, Running the Option, STAR TRIB. (Minneapolis, Minn.), June 28, 2000, at 9C.
previously drafted by a NBA team and subsequently cut. The NBDL will not impose an upper age limit.

The NBDL will offer those players seeking professional basketball careers a viable alternative to college basketball teams. Recognizing the potential threat that the NBDL poses to the future of college basketball, some coaches openly question the league’s professed desire not to compete with college basketball. These coaches’ sentiments were expressed by Duke University’s famed basketball coach Mike Krzyzewski who commented that “[t]here’s no question [that] the league will compete with college [basketball].” Krzyzewski further commented that he wasn’t “sure how much it will hurt [college basketball].”

A. The Benefits of the NBDL

The NBA recruits heavily from college teams. Consequently, many elite basketball players see college, not as an educational opportunity, but as the gateway to a professional basketball career. So it is not surprising that the vast majority of these players either leave college early or forgo college altogether.

From an educational primacy standpoint, the NBDL will help college basketball more than it will hurt it. That is, the league will siphon off those players with little or no desire to receive a college education. Contrastingly, those players choosing to attend college will be more likely to be there because they want to earn a degree, and not because college is the only viable route to the NBA. Furthermore, the inclusion of basketball in the former professional eligibility proposal will allow players with short-lived NBDL careers to remain eligible for college teams. As previously stated, these players will possess a similar commitment to education.

Lacking the drawbacks of college basketball teams, the NBDL promises to become the route of choice for athletes with NBA aspirations. Unlike college players, NBDL players will be able to receive compensation

197. Id.
199. Id.
200. Id.
201. SPERBER, supra note 27, at 8.
202. Cf. Lundy, supra note 181 (noting that college baseball players with Major League potential are encouraged to leave college prior to completing their degrees).
for their athletic skill without risking their status on the team. The average NBDL salary will be approximately $30,000.00,\textsuperscript{203} the value of a typical financial aid package.\textsuperscript{204} However, NBDL players will not be burdened with the daily responsibilities of dual athlete and student status. Some of the NBDL's critics argue that the league will leave many players without a future and without a degree.\textsuperscript{205} Yet this type of criticism ignores the reality that, under the status quo, many basketball players never graduate and that many of those who do graduate lack the basic skills that a college degree is supposed to represent.\textsuperscript{206}

In addition to salaries, the NBDL will also rival college teams in exposure opportunities. Each of the NDBL's teams will play a fifty-six game regular season followed by a playoff.\textsuperscript{207} Current NCAA regulations prevent college teams from playing more than twenty-eight regular season games.\textsuperscript{208} The NBDL's partnerships with SFX Entertainment, a worldwide concert promoter, and ESPN, a major sports network, will ensure that the teams receive adequate media exposure.\textsuperscript{209} In fact, some games will be broadcast via television,
radio, and the Internet. Hence, the NBDL is well-positioned to offer athletes the same opportunities for exposure that they now seek from college teams.

The NBDL's success could wreak havoc on the finances of the NCAA and its members. That is, as NBDL games begin to displace college games, the NCAA's members can expect to see a corresponding decrease in their television rights fees. To mitigate this loss of revenue, schools might be forced to either increase fees and fund-raising or implement cost-savings measures, such as reducing athletic scholarships or postponing capital and personnel expenditures.

The rights fees from the men's basketball tournament are the NCAA's main source of income. The NCAA's contract with CBS is supposed to provide it with $6 billion in rights fees over the next eleven years. However, if ratings for the tournament continue to decline with the level of play, the NCAA might be forced to renegotiate the contract prior to its expiration date.

B. Potential University Responses: The Benefits of College

The NBDL could be a double-edged sword for college basketball. On the one hand, it could help to restore educational primacy to college basketball by siphoning off those players with no interest in a college education. On the other hand, the league could also siphon off the potential revenue that could have been generated by those players. However, there are several ways in which the NCAA and its members can attempt to minimize the NBDL's impact on college teams.

First, schools must reemphasize the importance of a college education to high school recruits. They could do this by providing prospective student-athletes with information on the likelihood and duration of typical professional basketball careers. Furthermore, instead of misleading players with respect to their prospects for a professional basketball career, schools could stress the


212. Suggs, supra note 42.


need for players to have marketable skills besides athletic prowess. In so doing, schools could emphasize the ways in which their institutions could provide these skills.

Second, athletes must be given a meaningful opportunity to take advantage of their schools' academic programs. At the national level, this could be accomplished by shortening playing seasons and placing scheduling restrictions on weekday games requiring travel. At the institutional level, schools could increase support services for academically risky student-athletes and make voluntary workouts truly voluntary.

Lastly, the NCAA should implement the former professional eligibility proposal for all sports, including basketball. College teams will inevitably lose some players to the NBDL. Current NCAA regulations bar all former professionals from college teams, regardless of the duration of their professional careers. Implementing the proposal would allow players with short-lived NBDL careers to remain eligible for college teams. Former NBDL players would be more likely to enroll in college to receive an education, rather than to rehabilitate their professional sports careers. Moreover, colleges would be able to select from an additional class of highly-skilled athletes that would be more likely to remain with the program until graduation.

VII. CONCLUSION

This article illustrates how amateurism deregulation and the NBDL could interact to bolster the principle of educational primacy. For basketball players with NBA ambitions, the NBDL would be a viable, and perhaps superior, alternative to college teams. Consequently, the presence of the NBDL could help to ensure that players choosing to attend college will do so because they value education, and not because college is the only viable route to the NBA. The implementation of former professional eligibility would allow basketball players with brief NBDL careers and renewed academic aspirations to retain the opportunity to attend college on an athletic scholarship. Hence, former professional eligibility and the NBDL could interact to bolster educational primacy by making it more likely that both pre- and post-professional basketball players would enroll in universities for academic, rather than athletic reasons.

The NBDL will end Division I's privileged status as the NBA's minor league. As the preferred gateway to the NBA, the NBDL could substantially decrease the quality of the college game. To curb the corresponding loss of revenue, elite college basketball programs will need to devise ways to compete

with the NBDL for quality basketball players. Because the financial realities of college athletics programs will prevent them from offering pay-for-play, the programs should focus on ways to allow basketball players to obtain more educational value from the collegiate experience. By increasing the educational value of the collegiate experience for basketball players, schools would be more likely to attract skillful high school prospects whose interests are consistent with the academic missions of colleges and universities. And even if some prospects still choose to go to the NBDL immediately after high school, the proposal, if implemented, would give them a chance to change their minds.