

# IN SICKNESS AND IN HEALTH: HOW CALIFORNIA'S STUDENT-ATHLETE BILL OF RIGHTS PROTECTS AGAINST THE UNCERTAIN FUTURE OF INJURED PLAYERS

MICHELLE A. WINTERS\*

## I. INTRODUCTION

On any given fall Saturday, millions clamber into college football stadiums to cheer their team onto victory.<sup>1</sup> From kickoff, the roar of the crowd can reach near deafening levels.<sup>2</sup> This frenzy only makes the collective hush more eerie when a player collapses on the field.<sup>3</sup> No matter their team allegiance, fans offer up silent prayers.<sup>4</sup>

During the 2011 season, there were two deaths attributed to participation in college football.<sup>5</sup> Approximately sixteen players involuntarily retired from the game after suffering career-ending injuries<sup>6</sup> and numerous others

---

\* J.D. Candidate, American University Washington College of Law, May 2014; B.A., The Ohio State University, 2009. I would like to thank my parents for always listening and always praying. This Comment is dedicated to my heart, my friend, my little brother, Brian Alan.

1. Gary Johnson, *NCAA Attendance Hits New High*, NCAA.COM, <http://www.ncaa.com/news/football/article/2012-01-26/ncaa-attendance-hits-new-high> (last updated Jan. 26, 2012) (stating that a total of 49,699,419 fans attended college football games in the 2011 season).

2. See, e.g., Scott M. Reid, *For USC, Autzen Is a Nightmare*, ORANGE COUNTY REG., <http://www.ocregister.com/sports/autzen-216720-oregon-stadium.html> (last updated Aug. 21, 2013) (claiming that during the University of Oregon Duck's 2007 victory over the University of Southern California, ESPN recorded the crowd's volume at 127.2 decibels).

3. See Jeff Kessler, Note, *Dollar Signs on the Muscle . . . and the Ligament, Tendon, and Ulnar Nerve: Institutional Liability Arising from Injuries to Student-Athletes*, 3 VA. J. SPORTS & L. 80, 80 (2001) (acknowledging that most fans of intercollegiate sports are very familiar with the silence that overtakes the stadium when a player suffers a severe injury).

4. See, e.g., Tammy Nunez, *Local and National Fans Praise and Pray for Tulane Safety Devon Walker, Who Incurred a Dangerous Blow in Today's Game at Tulsa*, NOLA.COM, [http://www.nola.com/tulane/index.ssf/2012/09/former\\_destrehan\\_and\\_tulane\\_sa.html](http://www.nola.com/tulane/index.ssf/2012/09/former_destrehan_and_tulane_sa.html) (last updated Sept. 8, 2012) (discussing the prayers and well wishes for Tulane University's Devon Walker after he suffered a fractured spine in September 2012).

5. FREDERICK O. MUELLER & ROBERT C. CANTU, NAT'L CTR. FOR CATASTROPHIC SPORT INJURY RESEARCH, *CATASTROPHIC SPORTS INJURY RESEARCH: TWENTY-NINTH ANNUAL REPORT* 28, 30 (2011), available at <http://www.unc.edu/depts/nccsi/2011Allsport.pdf>.

6. See Hinesward86, *2011 Players Injured or No Longer on Team*, C. FOOTBALL INJURIES (May 18, 2011, 11:17 AM), <http://cfbinjuries.blogspot.com/2011/05/2011-players-injured-or-no-longer-on>.

experienced concussions, contusions, tears, and broken bones.<sup>7</sup> Although it often tops the list, football is not the only sport where serious injuries occur.<sup>8</sup> This problem led to the creation of the National Collegiate Athletic Association's (NCAA's) Injury Surveillance System in 1982 and as of 2009, the Datalys Center for Sports Injury Research and Prevention.<sup>9</sup>

Student-athletes,<sup>10</sup> no matter the sport, put their bodies on the line for the glory of their school, the prospect of a college degree, and maybe a shot at the professional leagues.<sup>11</sup> Once those bodies are broken, student-athletes may be shocked to discover that their universities are not obligated to renew their scholarship or ensure they complete their four-year degree.<sup>12</sup> Even more disheartening, student-athletes may be responsible for the medical expenses incurred from their injury.<sup>13</sup> There is little legal recourse to recoup the value of an athletic scholarship or prompt the university to cover medical bills because of both judicial precedent and existing statutes.<sup>14</sup>

Acknowledging that current and former student-athletes can be left to pay

---

html (listing football players that were forced to retire early due to injuries).

7. See Jim Thomas, *Frequency of Injury Among College Athletes*, LIVESTRONG.COM (Aug. 11, 2011), <http://www.livestrong.com/article/513231-frequency-of-injury-among-college-athletes/> (predicting that there are about 12,500 injuries per year in college athletes).

8. *Id.* (acknowledging that cheerleading, although not considered an NCAA sport, accounted for 70.5% of catastrophic injuries suffered by college athletes); see also *Nearly 30 Percent of All College Athlete Injuries a Result of 'Overuse'*, SCI. DAILY (Apr. 12, 2012), <http://www.sciencedaily.com/releases/2012/04/120412113720.htm> (finding that while wrestling, football, women's soccer, and other contact sports were associated with a higher acute injury risk, overuse injuries were found more frequently in rowing, softball, track and field, and other low-contact sports).

9. See generally *NCAA Injury Surveillance*, DATALYS, <http://datalyscenter.org/programs/ncaa-injury-surveillance-program/> (last visited Dec. 2, 2013) (providing an overview of the Datalys Center's work).

10. See generally Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 WASH. L. REV. 71 (2006) (arguing that the NCAA's purpose in using the term is to obscure the legal reality that some of these athletes, in fact, are also employees).

11. See Matthew J. Mitten, *Team Physicians and Competitive Athletes: Allocating Legal Responsibility for Athletic Injuries*, 55 U. PITT. L. REV. 129, 133-34 (1993) (remarking that the nature of sports requires that competitive athletes be willing to risk their physical well-being if they hope to succeed).

12. See Allen L. Sack, *Athletic Scholarship Rules Should Be Clear*, HARTFORD COURANT (Mar. 8, 2011), [http://articles.courant.com/2011-03-08/news/hc-op-sack-athletic-scholarships-030820110308\\_1\\_academic-scholarships-athletic-scholarships-athletic-performance](http://articles.courant.com/2011-03-08/news/hc-op-sack-athletic-scholarships-030820110308_1_academic-scholarships-athletic-scholarships-athletic-performance) (indicating that when the NCAA made athletic scholarships renewable yearly, four-year scholarships vanished).

13. See Kristina Peterson, *College Athletes Stuck with the Bill After Injuries*, NYTIMES.COM (July 15, 2009), [http://www.nytimes.com/2009/07/16/sports/16athletes.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2009/07/16/sports/16athletes.html?pagewanted=all&_r=0) (listing examples of former student-athletes who have been left to pay their own medical expenses following injuries during the course of their participation in college athletics).

14. See *id.*

for medical expenses and recognizing that meeting the educational needs of student-athletes should be a priority, the state of California recently enacted legislation commonly referred to as the *Student-Athlete Bill of Rights*.<sup>15</sup> The legislation assures student-athletes that if their university does not renew their athletic scholarship because of an incapacitating injury or illness, the athletic program must provide an equivalent scholarship.<sup>16</sup> Furthermore, colleges must pay insurance deductibles for all student-athletes injured in the course of their “duties” and even insurance premiums for low-income student-athletes.<sup>17</sup>

Some herald the Student-Athlete Bill of Rights as revolutionary.<sup>18</sup> Consider the following hypothetical: Ace Willey, a high school quarterback from Los Angeles enters his senior year as one of the top players in the state.<sup>19</sup> He is being actively recruited by numerous Division I programs, including the University of California, Berkeley and their out-of-state Pac-12 rival, the University of Oregon. Ace receives multiple visits at his home from coaches trying their hardest to promote their university and athletic program. To enroll, Ace must show proof of health insurance and he lists his father’s insurance policy on university forms.<sup>20</sup> Sometime later, during a mandatory pre-season practice, Ace suffers a double compound leg fracture, shattering both his tibia and fibula.<sup>21</sup> Team doctors advise him to retire from football.<sup>22</sup> The athletic department later informs the player that his scholarship will continue through

---

15. See *California Governor Signs NCPA Student-Athletes Bill of Rights!*, NAT’L COLLEGIATE PLAYERS ASS’N (Sept. 27, 2012), [http://www.ncpanow.org/releases\\_advisories?id=0026](http://www.ncpanow.org/releases_advisories?id=0026) (chronicling the NCPA’s involvement in the drafting and passage of the California Student-Athlete Bill of Rights).

16. Hannah Madans, *Proposed ‘Bill of Rights’ for Student Athletes Draws University Opposition*, SACRAMENTO BEE, <http://www.sacbee.com/2012/06/17/4567509/proposed-bill-of-rights-for-student.html> (last modified June 17, 2012).

17. See *California Governor Signs NCPA Student-Athletes Bill of Rights!*, *supra* note 15 (describing the obligations for affected universities under the new statute).

18. *E.g.*, Dan Masi, *Student Athletes Score Big in California*, PACE INT’L L. REV. BLOG (Nov. 4, 2012), <http://pilir.blogs.law.pace.edu/2012/11/04/student-athletes-score-big-in-california/>.

19. See, *e.g.*, RIVALS.COM, <http://footballrecruiting.rivals.com/> (last visited Sept. 8, 2013) (tracking many of the top football recruits across the nation).

20. *E.g.*, Letter from Dr. Mario Ciocca, Dir. of Sports Med. to Parents of Univ. of N.C. Student Athletes (May 6, 2011), available at [http://www.goheels.com/fls/3350/imp\\_photos/sports/sports-med/auto\\_pdf/2011-12\\_medicalinfo.pdf?SPID=108097&DB\\_OEM\\_ID=3350](http://www.goheels.com/fls/3350/imp_photos/sports/sports-med/auto_pdf/2011-12_medicalinfo.pdf?SPID=108097&DB_OEM_ID=3350) (requiring all student-athletes “to show evidence of an existing ‘credible coverage’ health insurance policy or enroll in the UNC system-wide plan”).

21. See, *e.g.*, Tom Barrabi, *5 Most Devastating Sports Injuries*, MEN’S FITNESS, <http://www.menfitness.com/training/pro-tips/5-most-devastating-sports-injuries> (last visited Nov. 12, 2013) (discussing the 1985 double compound fracture suffered by former Washington Redskins quarterback Joe Theismann, widely regarded as one of the most gruesome to ever be captured on film).

22. See, *e.g.*, Associated Press, *Tre’ Newton Giving up Football*, ESPN (Nov. 15, 2012), <http://sports.espn.go.com/ncf/news/story?id=5809324> (reporting that team doctors suggested sophomore running back Tre’ Newton retire from football in order to avoid long-term problems).

the 2013–2014 academic year pursuant to NCAA rules but will not be renewed for subsequent seasons.<sup>23</sup> Devastated by the news, Ace contacts his parents, and, together, they solicit a lawyer to determine his rights and whether he has any legal recourse against the university.

This Comment explores a student-athlete's remedies when his athletic participation ends due to injury. With the advent of the *Student-Athlete Bill of Rights*, the answer to this inquiry is entirely based on the school he has chosen, as his rights will vary drastically depending on which program he chose. Part II of this Comment familiarizes the reader with the NCAA and its relationship with its member institutions and amateur athletes. Next, it explains the commercialization of college sports and the increasing pressure on student-athletes to succeed, leading to higher rates of injury. Finally, it reviews the difficulties experienced by student-athletes who suffer career-ending injuries and subsequently lose their scholarships perpetuated by judicial hostility to workers' compensation and the classification of student-athletes as university "employees." Part III applies the historical judicial approach and recent legislation to a hypothetical student-athlete and examines the disparate treatment that will surely now occur dependent on the jurisdiction and profitability of the athletic program. Part IV evaluates the need for broad adoption of Student-Athlete Bill of Rights legislation, which would give players uniform protection. It also analyzes the potential for clashes between the Student-Athlete Bill of Rights and NCAA rules. Part V concludes that other jurisdictions should adopt similar legislation to protect student-athletes after they suffer injuries and promote a level-playing field for students at all strata of college athletics.

## II. THE NCAA, THE COMMERCIALIZATION OF COLLEGE ATHLETICS, AND JUDICIAL RESISTANCE TO "STUDENT-ATHLETE RIGHTS."

College athletics is big business, with top universities raking in millions of dollars in revenue.<sup>24</sup> Programs woo high school students with the promise of a quality education, significant playing time, state-of-the-art training facilities, medical benefits, championship victories, and nearly anything else that a

---

23. See, e.g., *Coleman v. Western Mich. Univ.*, 336 N.W.2d 224, 225 (Mich. Ct. App. 1983) (after a player sustained a career-ending injury, the football program did not renew his scholarship and he was therefore unable to continue his education at this school).

24. See generally *60 Minutes: Has College Football Become a Campus Commodity?*, (CBS television broadcast Nov. 18, 2012) [hereinafter *60 Minutes: Campus Commodity*], available at [http://www.cbsnews.com/8301-18560\\_162-57551556/has-college-football-become-a-campus-commodity/](http://www.cbsnews.com/8301-18560_162-57551556/has-college-football-become-a-campus-commodity/) (detailing the economic incentives driving both big-time athletics programs, like the University of Michigan and smaller programs, like Towson University).

player can dream up.<sup>25</sup> These promises often do not manifest in reality and most courts have left student-athletes without recourse when their scholarships are snatched away due to injury or they find themselves with massive medical bills.<sup>26</sup>

College athletics have become much more than a recreational activity.<sup>27</sup> Therefore, the athletes who risk their bodies require greater protection than private students do.<sup>28</sup> To evaluate the effectiveness of the two current legal approaches, one must first understand the complex relationship between the NCAA, its member institutions, the student-athletes, and the judicial system.

*A. The NCAA Is the Most Powerful Organization in College Sports; It Determines the Governing Rules and Vigilantly Monitors Both Its Member Institutions and the Student-Athletes.*

While there are numerous governing bodies in amateur and collegiate sports, this Comment focuses specifically on the NCAA. It was founded in 1906 to protect young people from the “dangerous and exploitive athletics practices of the time.”<sup>29</sup>

The NCAA now oversees more than 400,000 student-athletes competing in three divisions at 1066 member colleges and universities.<sup>30</sup> Each division creates its own rules governing personnel, amateurism, recruiting, eligibility, benefits, financial aid, and playing and practice seasons.<sup>31</sup>

Division I hosts the largest programs that provide the most athletically

---

25. See Stacey Meyer, Comment, *Unequal Bargaining Power: Making the National Letter of Intent More Equitable*, 15 MARQ. SPORTS L. REV. 227, 227 (2004); Paul Myerberg, *College Coach Promises Top Recruit He'll Get to Meet Michael Jackson*, FOR THE WIN (June 4, 2013), <http://ftw.usatoday.com/2013/06/college-coach-promises-top-recruit-hell-get-to-meet-michael-jackson/>.

26. See David Cassilo, *For College Scholarship Athletes, Injury Can Spell Financial Disaster*, DAILY CALLER (Nov. 9, 2011), <http://dailycaller.com/2011/11/09/for-college-scholarship-athletes-injury-can-spell-financial-disaster/>.

27. See Brad Locke, *SEC Media Circus Not Far Off*, DAILY J. (July 11, 2012), [http://djournal.com/view/news\\_obituaries\\_full/19263096/article-BRAD-LOCKE--SEC-media-circus-not-far-off](http://djournal.com/view/news_obituaries_full/19263096/article-BRAD-LOCKE--SEC-media-circus-not-far-off). But see 2012–2013 NCAA DIVISION I MANUAL art. 2.09 (2012) [hereinafter NCAA MANUAL] (calling student participation in intercollegiate athletics an “avocation”).

28. Cf. C. Peter Goplerud III, *Pay for Play for College Athletes: Now, More Than Ever*, 38 S. TEX. L. REV. 1081, 1099–1100 (1997) [hereinafter Goplerud, *Pay for Play*] (arguing that student-athletes are not unlike graduate assistants and therefore deserve benefits).

29. *About the NCAA: History*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/History> (last updated Aug. 13, 2012).

30. *About the NCAA: Membership*, NCAA.ORG, <http://ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/membership+new> (last updated Aug. 13, 2012).

31. See *id.*

related financial aid for student-athletes.<sup>32</sup> It is further divided into the Football Bowl Subdivision (FBS) schools, Football Championship Subdivision (FCS) schools, and non-football schools.<sup>33</sup> The FBS, in particular, constitutes the most wealthy and visible programs.<sup>34</sup> Division II programs offer limited financial aid to student-athletes,<sup>35</sup> while Division III programs have no athletically related funding.<sup>36</sup>

The NCAA closely monitors its member institutions to ensure that they comply with regulations.<sup>37</sup> They also have the power to sanction programs for non-compliance.<sup>38</sup> These penalties may range from monetary fines and television bans to vacated wins and ultimately the death-penalty, a ban from competing in a sport for at least one year.<sup>39</sup> NCAA enforcement has become more prominent in recent years as universities vie for a greater piece of the financial pie.<sup>40</sup>

*B. Many Universities Have Shifted Their Philosophy on Athletics from a Recreational Activity to Profit-Earning Potential.*

Often classified as an “arms race,” athletic directors, university presidents, and coaches fight for greater publicity and prestige.<sup>41</sup> College football, in particular, is viewed as a cash cow,<sup>42</sup> whereby the university can gain revenue

---

32. See NCAA MANUAL, *supra* note 27, art. 2.13–15 (declaring that student-athletes may receive athletically related financial aid, without violating the principle of amateurism, provided the amount does not exceed the cost of education authorized by the Association).

33. See *id.*, art. 20.4.2 (outlining different requirements for FBS, FCS, and non-football schools).

34. See Brian Scott, *The 10 Wealthiest and Most Recognizable Teams in College Football*, BLEACHER REP. (Nov. 20, 2009), <http://bleacherreport.com/articles/294303-the-10-wealthiest-and-most-recognizable-teams-in-college-football>.

35. See generally 2012–2013 NCAA DIVISION II MANUAL (2012).

36. See generally 2012–2013 NCAA DIVISION III MANUAL (2012).

37. See *Investigations*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Enforcement/Process/> (last updated Jan. 21, 2013).

38. See A.J. Perez, *Comparing PSU Penalties to SMU*, FOX SPORTS, <http://msn.foxsports.com/collegefootball/story/comparing-penn-state-ncaa-penalties-to-southern-methodist-072312> (last updated July 24, 2012).

39. *Id.*

40. Timothy Davis, *An Absence of Good Faith: Defining a University's Educational Obligation to Student-Athletes*, 28 HOUS. L. REV. 743, 751–52 (1991) [hereinafter Davis, *Absence of Good Faith*] (arguing that the win-at-all costs attitude is evident because of the numerous instances of NCAA sanctions levied against educational institutions guilty of ethical abuses).

41. See *60 Minutes: Campus Commodity*, *supra* note 24 (showing how large universities use their brand name to generate millions of dollars).

42. See Thomas R. Hurst & J. Grier Pressly III, *Payment of Student-Athletes: Legal & Practical Obstacles*, 7 VILL. SPORTS & ENT. L.J. 55, 60 (2000) (discussing that at most universities football and men's and women's basketball produce revenue while the other sports are supported by these three).

through ticket sales,<sup>43</sup> merchandising,<sup>44</sup> alumni donations,<sup>45</sup> corporate sponsorships,<sup>46</sup> and championships.<sup>47</sup>

Yet, perhaps the most profitable commodity is the program's media rights.<sup>48</sup> For the 2011–12 academic year, experts project that the NCAA's total revenue topped \$871 million, with most of this amount coming from the new agreement with CBS Sports and Turner Broadcasting to show the NCAA Division I Men's Basketball Tournament, known as "March Madness."<sup>49</sup> On top of that, conferences and some individual athletic programs negotiate for their own media contracts to show regular season games.<sup>50</sup> In the past five years, there has been substantial conference realignment, primarily amongst football powerhouses; these changes speak to the quest for more lucrative television contracts.<sup>51</sup>

Nevertheless, running a top-tier athletic program is expensive<sup>52</sup> and the

---

43. Steve Berkowitz, *Marketers Reshape How College Teams Sell Tickets*, USATODAY.COM (Aug. 5, 2011), [http://usatoday30.usatoday.com/sports/college/2011-08-05-college-outsourcing-sports-ticket-sales\\_n.htm](http://usatoday30.usatoday.com/sports/college/2011-08-05-college-outsourcing-sports-ticket-sales_n.htm) (discussing a new proactive ticket-selling strategy in college sports—contacting potential customers and persuading them to buy season or group tickets); see also Johnson, *supra* note 1.

44. See Thomas O'Toole, *Texas, Alabama Are Top Two Schools in Merchandise Sales*, USA TODAY, [http://content.usatoday.com/communities/campusrivalry/post/2010/08/texas-alabama-are-top-two-schools-in-merchandise-sales/1#.UOm9p46d\\_7A](http://content.usatoday.com/communities/campusrivalry/post/2010/08/texas-alabama-are-top-two-schools-in-merchandise-sales/1#.UOm9p46d_7A) (last updated Aug. 25, 2010).

45. Elise Young, *The Gridiron Payoff?*, INSIDE HIGHER ED (July 3, 2012), <http://www.insidehighered.com/news/2012/07/03/report-finds-alumni-giving-among-other-areas-correlated-football-success> (citing to a report that found that if a NCAA Division I Football Bowl Subdivision team improves its season wins by five games, it can expect alumni athletic donations to increase by \$682,000 or about 28%).

46. See, e.g., *Sponsorship Opportunities*, UND.COM, <http://www.und.com/sponsorship/nd-corporate-sponsors-opportunities.html> (last visited Sept. 10, 2013).

47. See Samuel Chi, *2013 Notre Dame Football, BCS Rewards and the Value of Independence*, SBINATION.COM (Jan. 7, 2013), <http://www.sbnation.com/college-football/2013/1/7/3833196/notre-dame-football-2013-bcs-national-championship-game> (reporting that the Pac-12 teams will collect \$2.48 million each by virtue of having two conferences members in BCS games in 2013 and dividing that revenue twelve ways).

48. See Christian Dennie, *College Sports Media Rights on the Rise*, C. SPORTS L. BLOG (May 20, 2011, 2:18 PM), <http://www.bgsfirm.com/college-sports-law-blog/college-sports-media-rights-on-the-rise>.

49. *Finances: Revenue*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/finances/revenue> (last updated Feb. 13, 2013).

50. For example, the Pac-12 negotiated its own media deal, which will pay the Pac-12 an average value exceeding \$225 million a year. John Taylor, *PAC-12 Lands Blockbuster Media Rights Deal*, C. FOOTBALL TALK (May 3, 2011), <http://collegefootballtalk.nbcsports.com/2011/05/03/PAC-12-lands-blockbuster-media-rights-deal/>.

51. Sam Gordon, *Students Question Conference Realignment*, USA TODAY C. (Dec. 14, 2012), <http://www.usatodayeducate.com/staging/index.php/sports/students-question-conference-realignment>.

52. Nineteen programs spent in excess of \$80 million to operate their athletic programs while the University of Texas tops the list at \$133.7 million dollars. Steve Wieberg, et al., *Texas Athletic*

number of profit-earning programs is relatively small.<sup>53</sup> In fact, the wealth gap between the self-sustaining Division I schools and other programs is growing.<sup>54</sup>

*C. Student-Athletes, the Major Cog in This Massive Revenue-Producing Wheel of College Sports, Do Not Share In This Billion-Dollar Industry.*

The faces may change each season, but the student-athlete is of paramount importance to the success of collegiate athletic programs.<sup>55</sup> Recruiting battles can be vicious and often lead to legendary rivalries.<sup>56</sup> The NCAA imposes strict limits on the total financial aid each Division I member may award in each sport that the school sponsors.<sup>57</sup> It divides sports into two types for purposes of scholarship limitations: “head-count” sports and “equivalency” sports.<sup>58</sup> “Head-count” sports limit the total number of individuals that can receive full athletic scholarships; on the other hand, “equivalency” sports are limited only in the total monetary amount of financial aid that a school can offer and programs can divide that money between players in whatever way they decide.<sup>59</sup>

The relationship between the student-athlete and the institution begins upon signing the NCAA’s National Letter of Intent (NLI), which memorializes the agreement that the player will attend the university for one year in

*Overwhelm Rivals in Revenue and Spending*, USATODAY.COM, <http://usatoday30.usatoday.com/sports/college/story/2012-05-15/texas-athletics-spending-revenue/54960210/1> (last updated May 15, 2012).

53. Only twenty-two athletic programs in the country made a profit in 2010. Libby Sander, 22 *Elite College Sports Programs Turn a Profit in 2010, But Gaps Remain, NCAA Reports Says*, CHRON. HIGHER EDUC. (June 15, 2011), <http://chronicle.com/article/22-Elite-College-Sports/127921/>.

54. See Ronald J. Hansen & Anne Ryman, *College Sports Subsidies Remain Integral Part of the Game*, ARIZ. REPUBLIC (August 18, 2012), <http://www.azcentral.com/arizonarepublic/news/articles/20120818college-sports-subsidies-integral.html>.

55. See Oscar Robertson, *Don’t Treat Players Like Gladiators*, CHRON. HIGHER EDUC. (Dec. 11, 2011), <http://chronicle.com/article/NCAA-Oscar-Robertson/130072/> (arguing that players are revered by fans and coveted by institutions for their ability to produce revenue); see also, Edward H. Whang, Comment, *Necessary Roughness: Imposing a Heightened Duty of Care on Colleges for Injuries of Student-Athletes*, 2 SPORTS LAW. J. 25, 40–41 (1995) (commenting that colleges are dependent on student-athletes’ participation to generate both economic and noneconomic benefits for their schools).

56. See, e.g., Jesse Temple, *Bielema, Meyer Agree: There’s No Feud*, FOXSPORTSWIS.COM (Nov. 12, 2012), [http://www.foxsportswisconsin.com/11/12/12/Bielema-Meyer-agree-Theres-no-feud/landing\\_badgers.html?blockID=818925](http://www.foxsportswisconsin.com/11/12/12/Bielema-Meyer-agree-Theres-no-feud/landing_badgers.html?blockID=818925).

57. NCAA MANUAL, *supra* note 27, art. 15.5.

58. *Id.* art. 15.5.2–15.5.3.

59. Compare *id.* art. 15.5.2 (allocating men’s basketball thirteen full scholarship spots), with *id.* art. 15.5.3 (stating that there is a limit on the value of financial aid awards that an institution may provide in any academic year for certain other sports).



exchange for a financial aid award.<sup>60</sup> The university has the power to revoke the scholarship for any reason including poor athletic performance or injury, in addition to violations of the NCAA Bylaws like poor academic progress.<sup>61</sup> Students are often dependent on the athletic scholarships they receive to get a college education.<sup>62</sup> Until 2011, the NCAA expressly banned multi-year scholarships.<sup>63</sup> Although the NCAA repealed the ban, it did not go so far as to require mandatory four-year scholarships.<sup>64</sup>

Athletic scholarship awards require student-athletes to perform services for the university, a requirement that distinguishes them from other students and places them in a unique and increasingly significant relationship with the university.<sup>65</sup> Many feel that students are exploited as the NCAA limits their scholarships to include only tuition, room and board, and books, often leaving substantial gaps between the real cost of a college education.<sup>66</sup>

The pressure to perform has steadily increased for student-athletes.<sup>67</sup>

---

60. Meyer, *supra* note 25, at 227.

61. See, e.g., Doug Segrest, *College Athlete's Rights: Some Athletes Lose Their Single-Year Scholarships to Better Players*, AL.COM, [http://www.al.com/sports/index.ssf/2011/10/college\\_athletes\\_rights\\_some\\_a.html](http://www.al.com/sports/index.ssf/2011/10/college_athletes_rights_some_a.html) (last updated Oct. 24, 2011) (student-athletes losing their scholarships due to "poor" athletic performance).

62. See McCormick & McCormick, *supra* note 10, at 117–18 (arguing that student-athletes' primary requirements for survival—food and shelter—are met by their universities).

63. Associated Press, *NCAA Panel Approves Major Changes*, ESPN, [http://espn.go.com/college-sports/story/\\_/id/7156548/ncaa-panel-approves-major-scholarship-rules-changes](http://espn.go.com/college-sports/story/_/id/7156548/ncaa-panel-approves-major-scholarship-rules-changes) (last updated Oct. 27, 2011).

64. Michael H. LeRoy, *An Invisible Union for an Invisible Labor Market: College Football and the Union Substitution Effect*, 2012 WIS. L. REV. 1077, 1081 n.18 (2012).

65. See Daniel Nestel, *Athletic Scholarships: An Imbalance of Power Between the University and the Student-Athlete*, 53 OHIO ST. L.J. 1401, 1401 (1992) (arguing that student-athletes are significantly different from private students); see also Davis, *Absence of Good Faith*, *supra* note 40, at 786 (distinguishing the relationship between student-athletes and the university because of the express contract (the NLI), the additional obligations required, and differing collegiate experiences).

66. The average annual scholarship's shortfall (out of pocket expenses) for FBS full scholarship athletes is \$3222, but 85% of FBS schools' players with full athletic scholarships still live in poverty. See RAMOGI HUMA & ELLEN J. STAUROWSKY, NAT'L COLL. PLAYERS ASS'N, THE PRICE OF POVERTY IN BIG TIME COLLEGE SPORT 15 (2011), available at <http://assets.usw.org/ncpa/The-Price-of-Poverty-in-Big-Time-College-Sport.pdf>. But see Jay Weiner & Steve Berkowitz, *USA Today Analysis Finds \$120K Value in Men's Basketball Scholarship*, USATODAY.COM, [http://usatoday30.usatoday.com/sports/college/mensbasketball/2011-03-29-scholarship-worth-final-four\\_N.htm](http://usatoday30.usatoday.com/sports/college/mensbasketball/2011-03-29-scholarship-worth-final-four_N.htm) (last updated Mar. 30, 2011) (arguing that student-athletes receive benefits including: elite coaching; academic counseling; strength and conditioning consulting; media relations assistance; uniforms and equipment; medical insurance and treatment; free game tickets; regional and national exposure; and future earnings power that comes with some college education).

67. See David W. Woodburn, Comment, *College Athletes Should Be Entitled to Workers' Compensation for Sports-Related Injuries: A Request to Broaden the Definition of Employee Under Ohio Revised Code Section 4123.01*, 28 AKRON L. REV. 611, 612–13 (1995); Dan Childs, *Dangerous Games: College Athletes at Risk of Injury*, ABC NEWS (May 24, 2007), <http://abcnews.go.com/Health>

Adding additional practices and games during the week as well as international games and conference championships leads to overuse and exposes athletes to the chance of injury all in the name of additional revenue.<sup>68</sup>

*D. The NCAA and the Universities Wield a Near Limitless Power Over Their Student-Athletes Because of Judicial Hostility.*

In the 1950s and 1960s, a handful of states recognized the special relationship between college athletes and their universities. In *Nemeth v. University of Denver*,<sup>69</sup> the Colorado Supreme Court upheld a determination by the state industrial commission that Ernest Nemeth, a football player, was an “employee” within the meaning of the Colorado workers’ compensation statute.<sup>70</sup> Consequently, the court held that the university was obligated to provide workers’ compensation for his football injuries.<sup>71</sup> Later, a California court, in *Van Horn v. Industrial Accident Commission*,<sup>72</sup> overruled an order of the Industrial Accident Commission and awarded death benefits to the widow of a college football player who died in a plane crash while returning with the team.<sup>73</sup> The *Van Horn* court noted that provisions of the workmen’s compensation law should be liberally construed to effect the law’s beneficent purposes.<sup>74</sup>

Starting in the 1980s, courts, along with Congress, completely reversed direction, striking down student-athletes’ attempts to recover the value of their scholarships or receive reimbursement for their medical expenses.<sup>75</sup> Students

---

/Exercise/story?id=3206483&page=1#.UNOxr7bx2To (reasoning that college sports are more competitive than ever and this added intensity may be leading young athletes, who hit harder, turn faster, and push themselves farther than those of generations past, to an increased risk of certain types of injuries).

68. J. Trevor Johnston, *Show Them the Money: The Threat of NCAA Athlete Unionization in Response to the Commercialization of College Sports*, 13 SETON HALL J. SPORT L. 203, 215–16 (2003) (quoting former Arkansas State football coach that playing a thirteen game season takes a physical toll on the players).

69. 257 P.2d 423 (Colo. 1953).

70. *Id.* at 430 (finding that a student employed by the University to discharge certain duties is no different than the employee who is taking no course of instruction).

71. *Id.*

72. 33 Cal. Rptr. 169 (Dist. Ct. App. 1963), *superseded by statute*, CAL. LAB. CODE § 3352(k) (West 2013) *as recognized in*, *Shephard v. Loyola Marymount Univ.*, 125 Cal. Rptr. 829 (Ct. App. 2002).

73. *Van Horn*, 33 Cal. Rptr. at 175 (holding that one may have the dual capacity of student and employee in respect to an activity).

74. *Id.* at 174 (citing *Colonial Ins. Co. v. Ind. Acc. Comm’n.*, 164 P.2d 490 (Cal. 1945)).

75. *See generally* David L. Shuck, Jr., *Administration of Amateur Athletics: The Time for an Amateur Athlete’s Bill of Rights Has Arrived*, 48 FORDHAM L. REV. 53, 63, 66 (1979) (discussing the legislative history of the Amateur Athlete’s Bill of Rights, where many Congressman believed federal

became more creative in their claims for relief, positing contractual, constitutional, and tort claims, but to no avail.<sup>76</sup> *Resning v. Indiana State University Board of Trustees*<sup>77</sup> is perhaps the most iconic case of the era. There, the Supreme Court of Indiana found that no contractual duties existed between a university and its student-athletes.<sup>78</sup> It further held that an athlete receiving a scholarship is “first and foremost a student” who is not compensated to participate in a sport and therefore was not an employee under the workers’ compensation code.<sup>79</sup> This reasoning was adopted by courts across the country and some state legislatures began codifying this holding.<sup>80</sup>

In 2000, the Texas Court of Appeals, in *Waldrep v. Texas Employers Insurance Ass’n*, recognized that “college athletics has changed dramatically over the years since Waldrep’s injury” in 1971.<sup>81</sup> Even though the court denied Waldrep workers’ compensation, it called for a narrow reading of its decision, as “an analogous situation arising today” might not yield the same result.<sup>82</sup> However tentative, this small concession may signal a change in the national sentiment regarding student-athletes.<sup>83</sup>

*E. The National College Players Association and Others Have Led the Fight for the Rights of Student-Athletes Under the NCAA’s “Oppressive” Regime.*

Today one of the more prominent organizations advocating for student-athletes is the National Collegiate Players Association (NCPA).<sup>84</sup> The NCPA, established by UCLA athletes, operates with the goal of changing NCAA rules

---

intervention in the area of amateur athletics and its “private voluntary” associations was considered too extreme a measure).

76. See, e.g., *Marcum v. Dahl*, 658 F.2d 731, 734 (10th Cir. 1981) (student-athletes brought action claiming that the First Amendment protected their comments which ultimately led the women’s basketball coach to not renew their scholarships); *Conrad v. Univ. of Wash.*, 834 P.2d 17, 21 (Wash. 1992) (college football players brought action against university for breach of contract in failing to renew financial aid award).

77. 444 N.E.2d 1170 (Ind. 1983).

78. *Id.* at 1174–75.

79. *Id.* at 1173.

80. Davis, *The Courts and Athletic Scholarships*, 67 N.D. L. Rev. 163, 189–193 (1991) (explaining that the California State Legislature removed the scholarship student-athlete/employer-employee issue from the judiciary through legislative amendment to the workers’ compensation code).

81. 21 S.W.3d 692, 707 (Tex. App. 2000).

82. *Id.*

83. See Frank P. Tiscione, Comment, *College Athletics and Workers’ Compensation: Why the Courts Get It Wrong in Denying Student-Athletes Workers’ Compensation Benefits When They Get Injured*, 14 SPORTS LAW. J. 137, 156–57 (2007).

84. See generally About NCPA, NAT’L C. PLAYERS ASS’N, <http://www.ncpanow.org> (last visited Dec. 20, 2013) (giving information about the organization and its work).

they view as unjust and oppressive.<sup>85</sup> Some of the changes desired include: raising the scholarship amount, increasing graduation rates, and prohibiting universities from using a permanent injury suffered during athletics as a reason to reduce or eliminate a scholarship.<sup>86</sup>

In early 2012, the NCPA began working with California State Senator Alex Padilla to introduce a bill aimed at securing some of the sought-after protections through the legislative system.<sup>87</sup> After several modifications and concessions, the California Senate and House passed Senate Bill 1525.<sup>88</sup> California Governor signed the bill signed into law by Governor Jerry Brown on September 27, 2012.<sup>89</sup>

In addition to the provisions analyzed in this Comment, the act also seeks to improve graduation rates, offer financial and life skills courses to student-athletes, and afford student-athletes the same disciplinary due process as other students.<sup>90</sup>

### III. ANALYZING THE FINANCIAL IMPLICATIONS OF CALIFORNIA'S STUDENT-ATHLETE BILL OF RIGHTS VERSUS THE MAJORITY EMPLOYER-EMPLOYEE REGIME

Criticizing the NCAA's treatment of student-athletes is nothing new.<sup>91</sup> Many believe the fixation on sports is accompanied by a profound lack of

---

85. *Mission & Goals*, NAT'L C. PLAYERS ASS'N, <http://www.ncpanow.org/more?id=0004> (last visited Dec. 20, 2013).

86. *Id.*

87. Mit Winter, *California Proposes Scholarship Extension for Student-Athletes*, BUS. C. SPORTS.COM (Sept. 10, 2012), <http://businessofcollegesports.com/2012/09/10/california-proposes-scholarship-extensions-for-student-athletes/>.

88. The California Senate approved the bill by 24-10 vote. Don Thompson, *Student Athlete Bill Approved by CA Legislature: SB 1525 Would Compel Universities to Cover Injured Students*, HUFFINGTON POST (Aug. 22, 2012), [http://www.huffingtonpost.com/2012/08/22/student-athlete-bill-ca\\_n\\_1823420.html](http://www.huffingtonpost.com/2012/08/22/student-athlete-bill-ca_n_1823420.html).

89. *See California Governor Signs NCPA Student-Athletes Bill of Rights!*, *supra* note 15.

90. Cal. Newswire, *Calif. Governor Brown Signs Padilla's 'Student-Athlete Bill of Rights' – Goes into Effect on January 1, 2013*, ENEWSCHANNELS (Sept. 27, 2012), [http://enewschannels.com/2012/09/27/enc15390\\_165824.php](http://enewschannels.com/2012/09/27/enc15390_165824.php) (providing an overview of the new legislation).

91. *See generally* Robert N. Davis, *Academics and Athletics on a Collision Course*, 66 N.D. L. REV. 239, 242 (1990) (asserting that meaningful reform in college athletics requires changes in the way colleges view the role of athletics in higher education and the removal of the financial incentive to win at all costs); James V. Koch, *A Troubled Cartel: The NCAA*, 38 LAW & CONTEMP. PROBS. 135, 135 (1973) (disparaging the NCAA's tendency to restrict competition and maximize profits in the area of intercollegiate athletics); Frank W. Carsonie, Comment, *Educational Values: A Necessity for Reform on Big-Time Intercollegiate Athletics*, 20 CAP. U. L. REV. 661, 661 (1991) (arguing that educational values must be at the forefront of the reform movement of college athletics).

interest in undergraduate education.<sup>92</sup> With the new California law, the protections available to student-athletes are wildly divergent from those traditionally available.<sup>93</sup> The treatment of student-athletes will have an important impact on student's academic futures and the universities' finances.<sup>94</sup>

By applying the hypothetical situation to the relevant legal theories, this Comment determines: (1) whether the student-athlete will be able to recover his athlete scholarship after injury; and (2) whether the university will cover the cost of medical expenses associated with an injury, and for how long. Based on that analysis, this Comment calculates the financial responsibilities and economic burden to the university, the athlete, and the taxpayer. Availability of these rights is subject to where the student-athlete chooses to attend college.<sup>95</sup> For purposes of the Comment, Section A considers all NCAA member institutions outside of California and those California universities that are not subject to the Student-Athlete Bill of Rights. Financial statements and state regulations from the University of Oregon primarily guide the analysis. Section B deals with only four Division I schools in California: the University of California, Berkeley (Berkeley), the University of California, Los Angeles (UCLA), the University of Southern California (USC) and Stanford University (Stanford). Financial statements from Berkeley will guide the analysis of these programs.

*A. Current Protections Afforded to Student-Athletes Under the Common Law and NCAA Regulations: The Student-Athlete Has Little Legal Recourse and May Shoulder the Burden of His Education and Medical Expenses.*

Despite the economic crisis, which has caused sport reductions at several colleges and universities, the number of student-athletes participating in NCAA sports continues to rise as many consider it a path to a college degree.<sup>96</sup>

---

92. See, e.g., Mary Grace Miller, *The NCAA and the Student-Athlete: Reform Is on the Horizon*, 46 U. RICH. L. REV. 1141, 1166 (2012) (arguing that “academic institutions exist for the pursuit of academics rather than the pursuit of championships—yet some of the highest paid (and one would argue highest valued) individuals on campus are the men's basketball or football coaches.”)

93. See Thompson, *supra* note 88 (highlighting the novel nature of the new legislation).

94. See Winter, *supra* note 87 (discussing the new protections for student-athletes under the Student-Athlete Bill of Rights).

95. See *id.* (explaining that currently the Student-Athlete Bill of Rights applies to just four universities in the country but San Diego State University may soon be under the jurisdiction of this act).

96. Participation Climbs to 430,000 Student-Athletes, NCAA.ORG (Dec. 8, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/December/Par>

## 1. Scholarship Recovery Is a Nearly Impossible Proposition Because of a Lack of Due Process and Favorable Precedent.

If Ace suffers a career-ending injury, it is in the University of Oregon's economic best interest to terminate his scholarship beginning the next academic year.<sup>97</sup> He has little recourse if this happens.

### *i. Institutional Appeals*

The first step in renewing a scholarship is a lengthy appeals process established under NCAA Rule 15.3.2.4.<sup>98</sup> The NCAA does not establish criteria that the financial aid board should consider, just that the institution must establish "reasonable procedures," but "what constitutes 'reasonable procedures' is a question left to the interpretation of the university."<sup>99</sup>

While Ace is entitled to an attorney during the proceedings,<sup>100</sup> the more pressing concern is ensuring an objective arbiter.<sup>101</sup> Regulations ask that board members who feel they are too close to either side abstain from the proceedings.<sup>102</sup> Nevertheless, with the high profile nature of college sports and its athletes, as well as the board members interest's in university finances, this panel is often far from impartial.<sup>103</sup>

Although there is no historical data showing how often these appeals for

icipation+rate+climbs+to+430,000+student-athletes.

97. See, e.g., Michael Carvell, *Ole Miss Revokes Scholarship Offer to Georgia LB Because of Knee Injury*, AJC.COM (July 30, 2012, 10:54 PM), <http://blogs.ajc.com/recruiting/2012/07/30/ole-miss-revokes-scholarship-offer-to-georgia-lb-because-of-knee-injury/> (reporting that the University of Mississippi revoked a scholarship to make room for healthy players).

98. NCAA MANUAL, *supra* note 27, art. 15.3.2.4 (stating that the institution's regular financial aid authority must notify the student-athlete in writing of the opportunity for a hearing when institutional financial aid is not renewed for the following academic year).

99. Nestel, *supra* note 65, at 1418.

100. OR. ADMIN. RULE § 571-003-0125(4)(a) (2012) (guaranteeing students the right to counsel); *Givens v. Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972) (finding that access to counsel was a necessary element of due process). *But see* *Wasson v. Trowbridge*, 382 F.2d 807, 812 (2d Cir. 1967) (holding that there is no right to representation as long as "the government does not proceed through counsel"); *Nzuve v. Castleton State Coll.*, 335 A.2d 321, 323 (Vt. 1975) (finding that even in the face of pending criminal charges a student was not entitled to an attorney for the purposes of due process).

101. See *Winnick v. Manning*, 460 F.2d 545, 548 (2d Cir. 1972) (indicating that fundamental requirement of due process in school disciplinary proceedings is that a hearing must be accorded before an impartial decision maker).

102. OR. ADMIN. RULE § 571-003-0125(5)(d).

103. Cf. Brian L. Porto, *Balancing Due Process and Academic Integrity in Intercollegiate Athletics: The Scholarship Athlete's Limited Property Interest in Eligibility*, 62 IND. L.J. 1151, 1174 (1987) (arguing that the best way to ensure that the on-campus hearings are impartial is to have them conducted by faculty and administrators from other universities and preferably universities from other geographical regions).

reinstatement are successful, with many universities suffering economic cutbacks, it is safe to assume that even the general financial aid board is exceedingly interested in cutting down on expenses.<sup>104</sup>

### *ii. Public Funding*

If after the institutional appeal, the university still denies Ace a scholarship, he has the option to apply for financial aid with the pool of private students.<sup>105</sup> Ace, a Californian, is now responsible for hefty out-of-state tuition.<sup>106</sup>

At the University of Oregon, and many other Division I universities, student-athlete's scholarships are paid out of a separate fund.<sup>107</sup> The athletic department, acting independently of the University, previously paid for the cost of Ace's tuition, room and board, and other miscellaneous fees through the revenues earned in media rights, licensing, and ticket sales.<sup>108</sup> As an out-of-state student, the University of Oregon offers few scholarship opportunities to Ace.<sup>109</sup> Only, approximately, nine percent of students had their total need met in 2012.<sup>110</sup> Even if Ace receives some kind of aid, it is highly unlikely that grants will cover the total cost of his education. Moreover, he can potentially take funds away from an equally deserving private student and the taxpayers may bear the cost of his education.<sup>111</sup>

### *iii. Medical Waivers*

When a student-athlete suffers an injury or illness that limits or prevents

---

104. See Michael Cozzillio, *The Athletic Scholarship and the College National Letter of Intent: A Contract by Any Other Name*, 35 WAYNE L. REV. 1275, 1281 (1989) ("Once athletic eligibility has been exhausted, the university's concern for the student-athlete's academic well-being is similarly spent.").

105. See generally *Financial Aid & Scholarships*, U. OF OR., [http://financialaid.uoregon.edu/other\\_aid](http://financialaid.uoregon.edu/other_aid) (last visited Dec. 20, 2013).

106. OFFICE OF REGISTRAR, UNIV. OF OR., 2013–2014 TUITION & FEES 7–8 (2013), available at [http://registrar.uoregon.edu/files/pdf/UO\\_Tuition\\_and\\_Fees\\_2013-2014.pdf](http://registrar.uoregon.edu/files/pdf/UO_Tuition_and_Fees_2013-2014.pdf).

107. See UNIV. OF OR., 2010–2011 ATHLETICS ANNUAL REPORT 28 (2011), available at [http://isu.com/oregonducks/docs/2011\\_athletic\\_annual\\_rep?e=1291971/2081945](http://isu.com/oregonducks/docs/2011_athletic_annual_rep?e=1291971/2081945).

108. See *id.*

109. See *Scholarships for Incoming Freshmen*, U. OF OR., <http://financialaid.uoregon.edu/scholarships> (last visited Dec. 20, 2013).

110. *University of Oregon*, U.S. NEWS, <http://colleges.usnews.rankingsandreviews.com/best-colleges/university-of-oregon-3223> (last visited Dec. 20, 2013).

111. See S. APPROP. COMM., FISCAL SUMMARY OF SB 1525, 2d Sess., at 3 (Cal. 2012) (finding that there may be potential state savings under the proposed SB 1525, to the extent that former student-athletes are extended scholarships paid for by media rights funds, instead of being entitled to, or competing for, state and institutional aid upon losing an athletic scholarship).

his athletic participation for the remainder of a competitive season or longer, the NCAA sometimes allows for medical hardship waivers, medical exceptions, medical non-counters, and medical disqualification.<sup>112</sup> A medical disqualification or medical non-counter often involves a medical condition, like Ace's, where the medical staff advises the student-athlete to cease participation in intercollegiate athletics.<sup>113</sup> If approved, Ace may retain his financial aid, at the discretion of the institution, for the remainder of his four to five year college career.<sup>114</sup> Again, Ace's fate is in the hands of his university. The University of Oregon may apply to the Pac-12 Conference on behalf of Ace but his injuries must be well documented.<sup>115</sup>

## 2. Seeking Medical Expenses Through Workers' Compensation Is Futile Because of the Judiciary's Hostility to Finding an Employer/Employee Relationship Between Student-Athletes and Their Universities.

The injury to our student-athlete is undoubtedly an expensive one, requiring perhaps surgeries, medications, follow-up appointments, and physical therapy.<sup>116</sup> Universities decide what and how much they will pay to cover student-athletes.<sup>117</sup> The only NCAA bylaw concerning medical expenses and insurance coverage demands that each student-athlete participating in a covered event have insurance coverage of equal or greater value than the deductible of the NCAA Catastrophic Injury Insurance program.<sup>118</sup> However, the universities themselves do not have to foot the bill.<sup>119</sup>

At the University of Oregon, the athletic department has a secondary insurance policy for players, meaning that it will pay benefits for injuries related to participation or competition after Ace's father's insurance has run

---

112. NCAA MANUAL, *supra* note 27, art. 14.2.4, 15.3.3, 31.1.9.

113. See Bryan W. Smith, *Medical Hardship/Disqualification*, C. ATHLETIC TRAINER, <http://www.collegeathletictrainer.org/newsletter/article.php?article=2> (last visited Sept. 21, 2013).

114. See NCAA MANUAL, *supra* note 27, art. 31.1.9.

115. See PAC-12 HANDBOOK 2012–2013, at 33–34 (2012).

116. See *Broken leg*, MAYOCLINIC.COM (July 7, 2011), <http://www.mayoclinic.com/health/broken-leg/DS00978/DSECTION=treatments-and-drugs> (finding that many double compound fractures require rehabilitation up to several months—or even longer—for complete healing of severe injuries and surgery to implant internal fixation devices, such as plates, rods or screws, to maintain proper position of the bones during healing).

117. Jon Solomon, *College Athletes' Rights: NCAA Requires Health Insurance, but Schools Decide What to Pay*, AL.COM (Feb. 19, 2012), [http://www.al.com/sports/index.ssf/2012/02/college\\_athletes\\_rights\\_ncaa\\_r.html](http://www.al.com/sports/index.ssf/2012/02/college_athletes_rights_ncaa_r.html) [hereinafter Solomon, *College Athlete's Rights*].

118. NCAA MANUAL, *supra* note 27, art. 3.2.4.8.1.

119. *Id.* (stating that student-athletes can be covered by parents' or guardians' insurance coverage, a participant's personal insurance coverage, or the institution's insurance program).



out or denied benefits.<sup>120</sup> The University does not state that there is a limit on the medical expenses; however, coverage will cease two years from the date of the original injury regardless of continuous treatment costs.<sup>121</sup>

In many cases, private health insurance policies have exclusions regarding medical expenses resulting from college sports, especially at the varsity level.<sup>122</sup> This can be particularly devastating for student-athletes at smaller, financially challenged schools because normally, these athletic programs do not offer comprehensive insurance programs.<sup>123</sup>

The NCAA has an insurance policy that may be useful to injured athletes who find themselves with high medical expenses, the NCAA Catastrophic Injury Insurance Program.<sup>124</sup> Paid for out of a common fund into which all NCAA institutions contribute, this insurance program provides the NCAA with a needed public relations boost.<sup>125</sup> While many accuse the NCAA of being interested exclusively on filling its coffers, “by subsidizing and facilitating such a program, the NCAA is more closely looking out for the best interests of” its student-athletes.<sup>126</sup> Unfortunately, most injuries will not qualify for this extremely narrow insurance coverage.<sup>127</sup> A catastrophic incident is defined as “the sudden death of a student-athlete, . . . from any cause, or disabling and/or quality of life altering injuries.”<sup>128</sup> Put simply, Ramogi Huma, head of the National Collegiate Players Association, commented that “If you don’t lose a limb, or motion in one of your limbs, you

---

120. UNIV. OF OR., ATHLETIC MEDICAL INSURANCE INFORMATION FOR STUDENT-ATHLETES 2 (2009), available at <http://pages.uoregon.edu/athmed/sites/default/files/Medical%20Insurance%20Information%20for%20Student%20Athletes%204%2009.pdf> (mandating that student-athletes must submit all bills to their private insurance first).

121. *Id.*

122. *Health Coverage for NCAA College Athletes*, ATHNET, <http://www.athleticscholarships.net/athleteshealth.htm> (last visited Sept. 21 2013).

123. Dashiell Bennett, *College Athletes Without Insurance Should Try Not to Get Hurt*, DEADSPIN (July 16, 2009), <http://deadspin.com/5316330/college-athletes-without-insurance-should-try-not-to-get-hurt>; Greg Webb, *Many College Athletes Have Insufficient Health Insurance*, LEGAL EXAMINER, (July 26, 2009), <http://charlottesville.legalexaminer.com/miscellaneous/many-college-athletes-have-insufficient-health-insurance.aspx?googleid=267788>.

124. *See Student-Athlete Insurance Program: Catastrophic Insurance Program*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/NCAA+Insurance+Programs/Student+Athlete+Insurance+Programs/Catastrophic+Insurance+Program> (last updated July 30, 2012).

125. Glenn M. Wong & Chris Deubert, *The Legal & Business Aspects of Career-Ending Disability Insurance Policies in Professional and College Sports*, 17 VILL. SPORTS & ENT. L.J. 473, 506 (2010).

126. *See id.* (arguing that regardless of the NCAA’s intent in implementing such a program, the insurance program benefits student-athletes).

127. *See* Cassilo, *supra* note 26.

128. 2011–2012 NCAA SPORTS MEDICINE HANDBOOK 16 (2011).

wouldn't be considered catastrophically injured."<sup>129</sup> Although Ace has suffered an injury that ended his collegiate football career prematurely, he will not qualify for the NCAA's Catastrophic Injury Insurance.

If the University is unwilling to pay and Ace does not qualify for the NCAA's Catastrophic Injury Program, he will find little consolation through the legal system.<sup>130</sup> Workers' compensation is just one of the claims brought by athletes to recover medical costs.<sup>131</sup> Judges continue to view claims for workers' compensation with skepticism, finding that universities are not in the "business" of college sports and no employer/employee relationship exists between student-athletes and their universities.<sup>132</sup> The reasoning has generally focused on the supposed amateur nature of college athletics and the NCAA's description of athletics as an avocation, rather than a vocation.<sup>133</sup>

*Resning v. Indiana State University Board of Trustees* best exemplifies the judiciary's poor analysis of the realities of college athletics. The court focuses heavily on the differences between professional sports and collegiate athletics, determining that for the university student, sports are merely a continuation of the education process.<sup>134</sup> The court also argues that student-athletes' participation in football benefits the university only in a very general way.<sup>135</sup> To allege that universities receive no direct benefit from athletics is an "outdated" and "unsubstantiated" notion.<sup>136</sup> For, with the mounting pressures on coaches and student-athletes, as well as the billions of dollars at stake in

---

129. Cassilo, *supra* note 26; accord Sean Alan Roberts, *College Athletes, Universities, and Worker's Compensation: Placing the Relationship in the Proper Context by Recognizing Scholarship Athletes as Employees*, 37 S. TEX. L. REV. 1315, 1348 (1996) (finding that because of the wide array of less serious injuries in college athletics, many injured athletes would have been left without coverage since their injuries did not rise to a catastrophic level).

130. See, e.g., Michael Popke, *High School Sports Injury Lawsuits Often Dismissed*, ATHLETIC BUS. (July 2010), <http://upload.athleticbusiness.com/articles/article.aspx?articleid=3584&zoneid=28> (reviewing several state cases brought by high school athletes that failed regardless of the cause of action because of unfavorable precedent and immunity).

131. See, e.g., *Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3d 383, 393 (Cal. 2006) (denying a student-athlete's negligence claim and holding that by the very nature and history of baseball, a junior college baseball player could not recover for an injury because the student-athlete assumed the risk that an opposing pitcher would intentionally throw pitches at him).

132. *E.g.*, *State Comp. Ins. Fund v. Indus. Comm'n*, 314 P.2d 288, 290 (Colo. 1957).

133. Goplerud, *Pay for Play*, *supra* note 28, at 1097 (criticizing the NCAA's use of the term "student-athlete" in order to avoid liability).

134. See, e.g., *Resning v. Indiana State Univ. Bd. of Trs.*, 444 N.E.2d 1170, 1173 (Ind. 1983) (contrasting the expectations and employment status of professional athletes and student-athletes).

135. *Id.* at 1174.

136. Jason Gurdus, *Protection Off of the Playing Field: Student Athletes Should Be Considered University Employees for Purposes of Worker's Compensation*, 29 HOFSTRA L. REV. 907, 916 (2001).

Division I sports, few people truly believe that the university is simply advancing educational goals.<sup>137</sup>

The issue of whether student-athletes are employees for the purposes of workers' compensation is well settled.<sup>138</sup> With antiquated beliefs about the relationship between student-athletes and their universities, Ace is facing insurmountable odds if he brings litigation against the University of Oregon or the State's Workers' Compensation Division.<sup>139</sup>

### 3. The Economic Implications of This System Create Grave Challenges for the Student-Athlete While Allowing the University to Decide When to Limit Funding.

Universities can use their discretion when deciding how much, whom, and what medical expenses they are willing to pay for.<sup>140</sup> There are programs that cover all expenses associated with the student-athletes participation in college sports.<sup>141</sup> Conversely, there are numerous examples of injured players left with the brunt of those bills.<sup>142</sup> Student-athletes are completely at the mercy of their educational institutions and the NCAA has done little to protect the student's interests.<sup>143</sup>

The costs to the student-athlete can be substantial when considering surgeries, rehabilitation, medications, doctor's appointments, etc. In addition to paying the cost of private health insurance, students often discover that their policy is not sufficient to cover costs or their insurance companies are unwilling to cover sports injuries, particularly at the "varsity level."<sup>144</sup>

Similarly, universities can use their discretion when deciding to continue offering scholarships to injured student-athletes. The NCAA has not taken

---

137. Woodburn, *supra* note 67, at 633–34 (“Given the television revenues and publicity which college athletics provide to many universities, it is difficult to maintain the position that they cannot be considered at least partially engaged in the business of sports.”).

138. Kessler, *supra* note 3, at 108 (concluding that “[t]he thorny question of whether scholarship athletes are entitled to workman's compensation appears to be affirmatively settled in the negative”).

139. *See id.*

140. *See* Solomon, *College Athlete's Rights*, *supra* note 117.

141. *Id.*

142. Peterson, *supra* note 13 (chronicling student-athletes within all three NCAA Divisions who have been left to pay their own medical expenses following injuries during the course of their participation in college athletics).

143. *See* Solomon, *College Athlete's Rights*, *supra* note 117 (quoting Ramogi Huma, President of NCPA) (“[T]he bottom line is schools are not on the hook for one penny [of medical costs].”).

144. OONA WALSH, SPORTSPLEX OPERATORS & DEVELOPERS ASSOCIATION AVERAGE COST OF SPORTING INJURIES SKYROCKETS TO \$127 PER PARTICIPANT? (Aug. 2008), *available at* [http://sportsplexoperators.com/docs/SportsInjury\(Aug\).pdf](http://sportsplexoperators.com/docs/SportsInjury(Aug).pdf) (finding that many families are left to pay medical expenses out of pocket).

affirmative steps to ensure that college athletes will succeed academically. Realistically, a student-athlete will not have his scholarship reinstated or recover its value under the majority's precedent.<sup>145</sup> The cost of litigation is prohibitive particularly when the judiciary has repeatedly shown its disinclination to hold universities responsible under contract and tort law.<sup>146</sup> In sum, student-athletes must finance with the complete cost of tuition and their medical expenses.

*B. Current Protections Afforded to Student-Athletes Under the New Bill of Rights: The Law Offers Unprecedented Protection to Student-Athletes and Clearly Delineates Both Their Rights and Responsibilities.*

Injured student-athletes at the four revenue-producing universities have considerable new rights under Student-Athlete Bill of Rights.

1. Scholarship Recovery Is a Non-Issue for Injured Athletes at the Four Revenue-Producing Universities in California.

The Student-Athlete Bill of Rights, codified as sections 67450-67454 of California's Education Code<sup>147</sup> will give the hypothetical student-athlete great comfort upon non-renewal of his athletic scholarship. Section 67542(a)(1) declares that if the athletic program does not renew an athletic scholarship, universities must provide "equivalent scholarship" for a maximum of five academic years or until the student-athlete finishes his undergraduate degree.<sup>148</sup> Ace must meet just two criteria to qualify; first, he must suffer an incapacitating injury or illness resulting from his participation in the athletic program, and second, the institution of higher education's medical staff must determine that he is medically ineligible to participate in intercollegiate athletics.<sup>149</sup> Under the present hypothetical, Ace would be eligible for an equivalent scholarship (equal to the one he was originally awarded) because his injury occurred during a mandatory practice and the athletic training

---

145. Cf. Brian C. Root, *How the Promises of Riches in Collegiate Athletics Lead to the Compromised Long-Term Health of Student-Athletes: Why and How the NCAA Should Protect Its Student-Athletes' Health*, 19 HEALTH MATRIX 279, 309 (2009) (arguing that litigation is not an effective vehicle for student-athletes to recover damages).

146. See William A. Taylor, *The Economics of a Civil Lawsuit*, BUS. LAWS., [http://www.thebusinesslawyers.com/BBL\\_News\\_Articles/Litigation%20Economics%20101.pdf](http://www.thebusinesslawyers.com/BBL_News_Articles/Litigation%20Economics%20101.pdf) (last visited Dec. 20, 2013) (noting that a civil lawsuit is so expensive that it is typically unaffordable unless the attorney is willing to contract with the client on the basis of contingency).

147. CAL. EDUC. CODE §§ 67450-67454 (West 2013).

148. *Id.* § 67452(a)(1).

149. See *id.*

department determined that he could no longer participate in college athletics.

However, there is potentially an important gap in coverage under Section 67452(a) for those student-athletes who suffer perhaps season-ending injuries and subsequently lose their athletic scholarship. Under the Bill of Rights, players must suffer an incapacitating injury or illness *and* the team's medical staff must declare that he is medically ineligible to participate in intercollegiate sports.<sup>150</sup> This language is somewhat ambiguous because it is not clear if the player must be medically ineligible for only the rest of the season or indefinitely.<sup>151</sup> Litigation may arise surrounding this provision and given the court's resistance to renewing athletic scholarships for student-athletes, this class of student-athletes may find themselves in the same situation as that addressed above.

Another concern is the lack of requirements to maintain the equivalent scholarship.<sup>152</sup> The California Senate Committee on Higher Education noted that CalGrants provide up to four years of financial assistance to students who maintain academic and income eligibility.<sup>153</sup> The Committee was troubled that students who have received an athletic scholarship (who the Committee felt should have known the limitations of their aid) would also benefit from an additional scholarship not based on financial need for which no other population of student is eligible.<sup>154</sup>

It seems that the legislature left the issue within the institutions' discretion to determine requirements, and consequently there could be divergent policies and expectations for student-athletes. For instance, before the Student-Athlete Bill of Rights, the USC reviewed permanent/career-ending injuries on a case-by-case basis and decided whether to offer a medical athletic scholarship.<sup>155</sup> Presumably, the University could maintain a similar policy requiring those student-athletes awarded equivalent scholarships under the Student-Athlete Bill of Rights to work. Regardless, universities should ensure that the requirements are explicit and reasonable in light of the student's possible handicaps following the injury.

---

150. *See id.*

151. *Contra* NCAA MANUAL, *supra* note 27, art. 15.5.1.3 (stating in clear, unambiguous language that "A counter who becomes injured or ill to the point that he apparently never again will be able to participate in intercollegiate athletics shall not be considered a counter beginning with the academic year following the incapacitating injury or illness.").

152. *See* S. COMM. ON EDUC., SB 1525, 2d Sess., at 6 (Cal. 2012) (hypothesizing about foreseeable difficulties in the implementation of the student-athletes' bill).

153. *Id.* (discussing perceived "special treatment" that student-athletes may enjoy under the bill).

154. *Id.*

155. *Id.*

The Bill of Rights will become inoperative on January 1, 2021.<sup>156</sup> Any benefits provided pursuant to this bill would cease on January 1, 2021 (in the middle of the academic year).<sup>157</sup> This could cause severe hardship to those athletes depending on the Student-Athlete Bill of Rights to pursue their education.

One of the main objections surrounding the adoption of this new legislation and specifically the equivalent scholarship requirement was the belief that it would conflict with NCAA rules and put schools at a distinct recruiting disadvantage.<sup>158</sup> Football is a head-count sport for NCAA scholarship purposes.<sup>159</sup> Berkeley is allowed to offer 85 athletic scholarships each year. For each scholarship awarded, that student-athlete becomes a “counter.”<sup>160</sup>

The four affected universities expressed concerns that providing equivalency scholarships to injured players would count against their scholarship totals and leave them unable to recruit replacements.<sup>161</sup> This concern is unfounded in light of NCAA Rule 15.3.3.1.1(e), which discusses “medical non-counters.”<sup>162</sup> If an institution awards aid under this provision, the institutional financial aid agreement must include specific non-athletically related conditions (e.g., academic requirements) the student-athlete must satisfy.<sup>163</sup>

The NCAA did not comment on the Student-Athlete Bill of Rights.<sup>164</sup>

---

156. CAL. EDUC. CODE § 67454 (West 2013).

157. S. COMM. ON EDUC., SB 1525, 2d Sess., at 8 (Cal. 2012) (citing concerns of the Committee on how best to end funding for student-athletes).

158. *E.g.*, Letter from the Univ. of Cal., the Univ. of S. Cal., and Stanford Univ. to Members of the Cal. State Senate (May 30, 2012) [hereinafter Letter to Members of Cal. State Senate], available at [http://www.ucop.edu/state-governmental-relations/legislation/search/php-app/read\\_doc.php?id=1853](http://www.ucop.edu/state-governmental-relations/legislation/search/php-app/read_doc.php?id=1853) (suggesting that the affected universities feared sanctions by the NCAA if they complied with the proposed bill).

159. NCAA MANUAL, *supra* note 27, art. 15.5.6.

160. *Id.* (clarifying that “counters” signify eligible players, receiving institutional financial aid, that are countable against the NCAA imposed aid limitations).

161. *See* Letter to Members of the Cal. State Senate, *supra* note 158.

162. *See* NCAA MANUAL, *supra* note 27, art. 15.3.3.1.1(3) (declaring that a student-athlete who is exempt from counting due to an injury or illness may receive athletically related financial aid); *see also* Smith, *supra* note 113 (observing that student-athletes who are medically disqualified do not count toward the maximum number of grants allotted to a team).

163. NCAA MANUAL, *supra* note 27, art. 15.3.3.1.1(e) (listing the limited occasions in which universities may continue to fund athletes).

164. Jon Solomon, *Could a Student-Athlete Rights Bill Ever Pass in Alabama to Protect College Players*, AL.COM, (Sept. 28, 2012), [http://www.al.com/sports/index.ssf/2012/09/could\\_a\\_student-athletes\\_right.html](http://www.al.com/sports/index.ssf/2012/09/could_a_student-athletes_right.html) [hereinafter Solomon, *Could a SABR Pass?*] (quoting Ramogi Huma, President of NCPA on the NCAA’s odd decision to remain silent on the proposed Student-Athlete Bill).

Nevertheless, there seems to be no conflict between the recently adopted law and NCAA Rules. Students who recover equivalent scholarships under the Student-Athlete Bill of Rights are medical non-counters. According to NCAA rules, universities should apply some non-athletically related requirements to financial awards, but it takes no issue with continuing to fund injured athletes.<sup>165</sup> Moreover, it does not punish a university for funding an injured athlete, as he does not count against the scholarship totals.<sup>166</sup>

2. By Circumventing the Employer/Employee Test, Student-Athletes Are Entitled to Medical Expenses for Injuries Sustained During Their Participation in Sports and May Receive Continual Funding for Conditions That Are More Serious.

The Student-Athlete Bill of Rights does not explicitly state that student-athletes are employees of the university. Nevertheless, Ace no longer needs to worry about the judiciary's interpretation of California's workers' compensation codes.<sup>167</sup> Section 67453 provides student-athletes with the proper medical care.<sup>168</sup>

The Bill of Rights states athletic programs are responsible for paying insurance deductibles for claims resulting from an athlete's participation in the program.<sup>169</sup> Ace suffered an injury during a university-sponsored practice and therefore he can recover under this section. Unlike the University of Oregon system, Ace does not have to wait until his father's insurance has run out to receive institutional aid.<sup>170</sup>

The Bill of Rights has a special provision for low-income student-athletes; it mandates that unless a student-athlete refuses the payment of premiums, the athletic program must pay the premiums of each of its student-athletes whose household has an income and asset level that does not exceed the level for

---

165. NCAA MANUAL, *supra* note 27, art. 15.3.3.1.1(e) (dictating the necessary procedures for medical non-counters to receive aid).

166. See Brandon Castel, *Pair of Buckeyes Put on Medical Hardship*, THEOZONE.NET, <http://theozone.net/football/2011/MeyerHire/medicalhardships.html> (last visited Sept. 21, 2013) (showing two football scholarships opened up at Ohio State now that players have received medical disqualifications).

167. See, e.g., *Graczyk v. Workers' Comp. Appeals Bd.*, 229 Cal. Rptr. 494 (Ct. App. 1986) (denying a California student-athlete workers' compensation); see also CAL. LAB. CODE § 3352(k) (West 2013) (excluding from labor code protections "any student participating as an athlete in amateur sporting events . . . who receives no remuneration for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.").

168. See CAL. EDUC. CODE § 67453 (West 2013).

169. *Id.* § 67453(a)(2).

170. *Id.* § 67453(a).

CalGrant A recipients for insurance covering claims resulting from their participation in the athletic program.<sup>171</sup> With this new provision, these students have assurance that they will receive proper medical care for injuries sustained in the course of their participation in college athletics.

Again, issues remain with the new legislation. Section 67453 orders athletic programs to provide the necessary medical treatment or health insurance for injuries that require continuous treatment.<sup>172</sup> This financial support must continue for a minimum of two years following the student-athlete's graduation or separation from the institution of higher education. Yet, the Bill of Rights will become inoperative on January 1, 2021 and then all benefits will cease.<sup>173</sup> There may be some student-athletes who are entitled to continuous medical care but it's instantly withdrawn because of the way in which the statute is written.

### 3. The Economic Implications of the Student-Athlete Bill of Rights Should Not Create an Undue Burden on Institutions; Nevertheless, the Law Will Positively Change the Student-Athlete's Situation.

The cost of adopting the Student-Athlete Bill of Rights will depend on a variety of factors, including: (a) which institutions its rules will apply to; (b) the extent to which those institutions already comply with its provisions; and (c) the ways in which athletics media rights revenue is spent currently by the affected institutions.<sup>174</sup> There should not a substantial increase now that the Student-Athlete Bill of Rights has passed because all four universities claim to offer comprehensive medical insurance for all student-athletes even without prompting from the legislature.<sup>175</sup> In fact, most large athletic programs already offer a more comprehensive insurance policy than their smaller counterparts do.<sup>176</sup> Berkeley spent \$1.4 million on medical expenses and insurance for its entire athletic department for the 2012 fiscal year, about two percent of its budget.<sup>177</sup>

---

171. *Id.* § 67453(a)(1).

172. *Id.* §§ 67453(a)(3)(A)–(B) (covering the required contributions to student-athletes who have persisting injuries).

173. *See* S. COMM. ON EDUC., SB 1525, 2d Sess., at 8 (Cal. 2012) (postulating as to the effects on students once the law is inoperative).

174. *See* S. APPROP. COMM., FISCAL SUMMARY OF SB 1525, 2d Sess., 2–3 (Cal. 2012) (analyzing the fiscal impact of the Student-Athlete Bill of Rights).

175. Letter to Members of the Cal. State Senate, *supra* note 158.

176. *See* Bennett, *supra* note 123 (discussing the debt student-athletes face post-injury, particularly at smaller athletic programs).

177. *See* UNIV. OF CAL. BERKLEY INTERCOLLEGIATE ATHLETIC DEP'T, ADJUSTED STATEMENT OF REVENUES AND EXPENDITURES FOR THE FISCAL YEAR ENDED JUNE 30, 2012 (2013), *available at*



The true changes come in the scholarship provision. It is impossible to know how many student-athletes suffer injuries and subsequently have their scholarships reduced or terminated; yet, in all likelihood, the financial impact is minor statewide and would vary from year to year.<sup>178</sup> Currently, Berkeley spends fifteen percent of its \$67.5 million budget on student aid.<sup>179</sup> It is important to note that these extra costs will not affect the universities' budgets as the cost of scholarships and medical expenses will be drawn only from the media rights the four institutions receives from the Pac-12 Conference and the NCAA.<sup>180</sup> In 2012, Berkeley received about \$15 million in media rights from the NCAA and Pac-12.<sup>181</sup>

Alternatively, the Student-Athlete Bill of Rights will greatly reduce the costs to players. Those student-athletes who have to end their athletic pursuits can continue their academic ones. Remember, however, that the student-athlete may not receive a full athletic scholarship upon enrollment in the university. He or she will only receive the value conferred when they signed the National Letter of Intent. In addition, student-athletes would still be responsible for making up the costs not covered by the equivalent scholarship including miscellaneous costs for entertainment. Nevertheless, without the restrictions of NCAA bylaws, these former student-athletes could seek employment to supplement their scholarships.

Student-athletes can also play without fear of incurring large medical bills if they are injured. Injured athletes may be responsible for providing an insurance policy but they will no longer pay deductibles. Low-income students are responsible for neither the insurance premiums nor deductibles.

---

[https://admin.xosn.com/pdf9/2454888.pdf?DB\\_OEM\\_ID=30100&DB\\_OEM\\_ID=30100](https://admin.xosn.com/pdf9/2454888.pdf?DB_OEM_ID=30100&DB_OEM_ID=30100) [hereinafter UNIV. OF CAL. BERKLEY, INTERCOLLEGIATE ATHLETIC DEP'T] (summarizing the institution's yearly expenses).

178. IND. LEGIS. SERVS. AGENCY, OFFICE OF FISCAL AND MGMT. ANALYSIS: FISCAL IMPACT STATEMENT FOR HB 1311, 118th Gen. Assemb., 1st Sess., at 2 (2012) (providing an analysis of the economic impact of a similar student-athletes' bill).

179. UNIV. OF CAL. BERKLEY, INTERCOLLEGIATE ATHLETIC DEP'T, *supra* note 177.

180. CAL. EDUC. CODE § 67452(f) (West 2013).

181. UNIV. OF CAL. BERKLEY, INTERCOLLEGIATE ATHLETIC DEP'T, *supra* note 177; *see generally* Richard Sandomir, *Regional Sports Networks Show the Money*, N.Y. TIMES (Aug. 19, 2011), [http://www.nytimes.com/2011/08/20/sports/regional-sports-networks-show-teams-the-money.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/08/20/sports/regional-sports-networks-show-teams-the-money.html?pagewanted=all&_r=0) (reporting that Pac-12 is currently negotiating for its own television network and its revenue will likely increase).

#### IV. OTHER JURISDICTIONS SHOULD CONSIDER ADOPTING AND BROADENING THE BILL OF RIGHTS FOR THE SAKE OF EQUITY AND FAIRNESS.

The college athletic system is broken and in desperate need of reform.<sup>182</sup> As shown in Part III, college athletes will now experience drastically different realities if they suffer an injury depending on the jurisdiction in which they find themselves. Division I college athletics have become a year-round endeavor for student-athletes and current NCAA regulations, by not requiring universities to provide comprehensive medical care, do a great disservice to student-athletes.<sup>183</sup> One step towards resolving the overwhelming inequity between the student-athletes' medical and academic security and the universities' monetary interests is for more states to adopt legislation, like California's new law.<sup>184</sup> Oklahoma and Indiana also introduced Athletes' Rights bills, but ultimately they did not move forward.<sup>185</sup>

If adopted with similar language as the California statute, the legislation will likely apply only to schools within five major conferences: ACC, Big 12, Big Ten, Pac-12, and SEC because they carry the most valuable media contracts.<sup>186</sup> Not only will student-athletes receive recognition for their contribution to college sports, those programs governed by an Athlete's Bill of Rights will find themselves at a distinct recruiting advantage.<sup>187</sup> Student-athletes no longer need to wade through NCAA rules, conference rules, and case law to determine if they are entitled to continuing scholarships following an injury or who will pay their medical bills.<sup>188</sup> The act explicitly outlines their rights and remedies. Coaches can use the bill when presenting to parents that their university is superior to other university because the school will have to guarantee medical care and the opportunity to graduate regardless of career-

---

182. David Will, *The College Athletic System Is Broken*, DAILY PRINCETONIAN (Oct. 24, 2012), <http://dailyprincetonian.com/opinion/2012/10/the-college-athletic-system-is-broken/>.

183. See Root, *supra* note 145, at 314.

184. Cf. *California and Indiana Lawmakers to Push Athletes Bill of Rights*, NAT'L C. PLAYERS ASS'N (Jan. 9, 2012), [http://www.ncpanow.org/releases\\_advisories?id=0020](http://www.ncpanow.org/releases_advisories?id=0020) (announcing that the NCPA is working with lawmakers in multiple states to push similar Bill of Rights).

185. E.g., H.R. 1311, 118th Gen. Assemb., 1st Sess. (Ind. 2012).

186. See generally Matt Peloquin, *2012 NCAA Television Revenue by Conference*, C. SPORTS INFO.COM (May 10, 2012), <http://collegesportsinfo.com/2012/05/10/2012-ncaa-television-revenue-by-conference/>.

187. See Solomon, *Could a SABR Pass?*, *supra* note 164.

188. CONN. GEN. STAT. § 1055k (2013); CAL. EDUC. CODE § 67365 (West 2013) (recognizing the overwhelming and conflicting amount of information available to student-athletes, Connecticut and California passed Student-Athletes Right to Know Acts that require universities to disclose pertinent information relating to, among other things, institutional and NCAA policies on medical expenses, scholarship renewals, and transfers).

ending injury.<sup>189</sup>

However, the change might not be so groundbreaking considering that typically the more prominent Division I programs already provide greater coverage when insuring their athletes.<sup>190</sup> Some athletic departments accept a large amount of the responsibility for medical claims, while many other institutions assume far less.<sup>191</sup> Therefore, the more complicated question is whether California's Student-Athlete Bill of Rights and similar legislation adopted in the future should apply to schools without consideration of their profit margins and media rights.

Certainly many schools will have to make cutbacks in order to comply with such legislation.<sup>192</sup> In 2010, only twenty-two athletic programs were able to turn a profit.<sup>193</sup> Those that broke even were often heavily subsidized.<sup>194</sup>

In professional sports franchises, injuries constitute an enormous expense.<sup>195</sup> It is fair to assume that those programs that do not already budget for medical insurance will experience a large, new financial obligation. Ultimately, universities may need to use creative ideas to find the funds to maintain quality athletic programs and provide appropriate protections for their student-athletes.<sup>196</sup> Suggestions range from more traditional subsidies to the radical, including increasing student activity fees, raising tuition and ticket

---

189. See *Lawmakers Approve Financial Protections for College Athletes*, LATIMES.COM (Aug. 22, 2012, 2:00 PM), <http://latimesblogs.latimes.com/california-politics/2012/08/financial-protections-college-athletes.html>.

190. See Solomon, *College Athlete's Rights*, *supra* note 117 (stating that University of Alabama provided full medical, dental, rehabilitation, and custodial care expenses for injuries). *But see* Diane Heldt, *Student-Athletes, Families Primarily Cover Sport-Related Medical Expenses*, GAZETTE, <http://thegazette.com/2011/02/25/student-athletes-families-primarily-cover-sports-related-medical-expenses> (last updated Feb. 25, 2011) (claiming the University of Iowa Athletic Department paid to insure just twenty four student-athletes; the remainder of Iowa's more than 600 student-athletes have insurance either through their parents or pay for their own).

191. Solomon, *College Athlete's Rights*, *supra* note 117 (contrasting the wide-range of contributions universities are willing to make for injured student-athletes).

192. *Cf.* Goplerud, *Pay for Play*, *supra* note 28, at 1103 (noting that there is no doubt that most schools will face some difficulty absorbing the additional costs associated with this proposal).

193. Sander, *supra* note 53.

194. See Hansen & Ryman, *supra* note 54 (reporting that nearly all college sports programs require funding from their respective universities).

195. See Will Carroll, *Injuries Are the Fourth-Largest Cost to Sports Franchises*, TAURUS SPORTS ASSOCIATES (Apr. 26, 2012, 4:47 PM), <http://taurusports.net/davids-blog/2012/4/26/injuries-are-the-fourth-largest-cost-to-sports-franchises.html> (finding that Major League Baseball has lost over half a billion dollars to injuries in only the last five years).

196. *Cf.* C. Peter Goplerud III, *Stipends for Collegiate Athletes: A Philosophical Spin on a Controversial Proposal*, 5 KAN. J.L. & PUB. POL'Y 125, 131 (1996) [hereinafter Goplerud, *Stipends for Collegiate Athletes*] (proposing that universities implement new strategies to finance additional benefits for athletes).

prices, or soliciting corporate benefactors.<sup>197</sup> Other suggestions to generate increased funds include aggressively courting big donors and expanding fee-based athletic camps.<sup>198</sup> The Knight Commission On Intercollegiate Athletics proposes even bolder changes like reducing the number of available football scholarships, reducing coaches' salaries, and decreasing the number of expensive non-coaching personnel devoted to individual sports.<sup>199</sup> The creation of a national championship football playoff may also bring in more revenue for Division I FBS schools.<sup>200</sup> A particularly ingenious concept is requesting professional leagues such as the NBA, NFL, and the WNBA to fund NCAA programs, especially in light of their rules that force student-athletes to play a certain number of years in college before becoming a professional.<sup>201</sup>

In the interest of "equity and fairness,"<sup>202</sup> all NCAA universities should be required to provide at a minimum medical insurance. The argument for applying the statute unequally depending on the wealth of the athletic program fails. Scholarship continuation is not truly tied to revenue generation in the Student-Athlete Bill of Rights because even larger programs may suffer financial hits. The most important ideal is advocating for the athletes.

## V. CONCLUSION

The California legislature's recent passage of the Student-Athlete Bill of Rights will have a positive impact on student-athletes, while placing a bearable financial burden on college athletic programs and potentially benefitting taxpayers and students. The law gives substantial new rights to injured student-athletes, at profit-earning institutions and properly considers the contribution athletes make to their universities. Other state legislature should adopt similar statutes to protect the interests of young athletes.

---

197. *E.g.*, Hurst & Pressly, *supra* note 42, at 77.

198. *E.g.*, Hansen & Ryman, *supra* note 54 (recommending that universities to find more profit-earning business ventures).

199. KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS, RESTORING THE BALANCE: DOLLARS, VALUES, AND THE FUTURE OF COLLEGE SPORTS 4, 18 (2010).

200. *See* Hansen & Ryman, *supra* note 54 (stating that postseason revenue-sharing for the new playoff tournament starting in 2015 is expected to bring in \$5 billion dollars over ten years); Goplerud, *Stipends for Collegiate Athletes*, *supra* note 196.

201. Goplerud, *Stipends for Collegiate Athletes*, *supra* note 196 (arguing that because professional sports leagues use the NCAA as a "training ground" for its teams, they ought to provide significant support for collegiate sports).

202. *Cf.* Letter from Nadia Leal-Carillo, Legislative Dir., to the Hon. Norma Campos (June 20, 2012), *available at* [http://www.ucop.edu/state/legislation/read\\_doc.php?id=1868](http://www.ucop.edu/state/legislation/read_doc.php?id=1868) (citing "equity and fairness" as the basis for requiring all California schools to comply with the Student-Athlete Bill of Rights).