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ON THE INCREASED PREVALENCE OF BUYOUTS IN COLLEGE ATHLETICS

JOSHUA S. LACOSTE*

INTRODUCTION

College athletics is changing—drastically. Many well-known and obvious changes stand out: conference realignment; the transfer portal; the College Football Playoff; Name, Image, and Likeness deals; athletic program cuts post-Coronavirus; Title IX regulation changes; new NCAA leadership; and major conference television deals. However, an under-discussed but quite significant contributing factor to the evolving landscape of college athletics is the prevalence of the coaching “buyout.” Buyouts permit schools to “pay off” coaches “in order to fire them without cause before the [contract] term is up” or coaches to “pay a fee to the school to break the contract,” typically to accept a new position at another school.¹

This paper will analyze the trend of schools opting to pay for buyouts on lengthy contracts, instead of firing coaches or giving them shorter, performance-based deals.² In doing so, it will address the following questions: (1) Will the current coaching environment, or “carousel,” expand the prevalence of buyouts

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¹ Christian Flores, *As College Coaching Carousel Spins Wildly, Where Does the Money Come From?*, NBC 15 NEWS, <https://myabc15.com/news/nation-world/as-college-coaching-carousel-spins-wildly-where-does-the-money-come-from> (Dec. 11, 2021, 1:06 PM).

² For example, in the case of former Indiana University (IU) head basketball coach Kelvin Sampson, who committed recruiting violations, the university opted to pay him a \$750,000 buyout to induce him to resign, as opposed to firing him for cause. Interestingly, Coach Sampson had committed previous recruiting violations at his former job at the University of Oklahoma. IU should have addressed concerns regarding the possibility of Coach Sampson’s recruiting transgressions by covering what would happen in the event that he again committed them. Perhaps it is the case that coaching contracts in that era lacked specificity in their language on what constituted a “for cause” firing. See Associated Press, *Sampson Forced Out at Indiana*, NY TIMES (Feb. 23, 2008), <https://www.nytimes.com/2008/02/23/sports/ncaabasketball/23indiana.html>.

in contracts? (2) Does the changing landscape of college athletics regarding buyouts affect student-athletes? and (3) What are the ethics of schools opting for buyouts over firing?

I. CHANGING LANDSCAPE IN COLLEGE ATHLETICS

A. Conference Realignment

As any fan of collegiate athletics could articulate, keeping up with the seemingly never-ending changes in college athletics is a time-consuming enterprise. In the early 2010s, conference realignment was an especially prevalent topic of discussion. From 2011 to 2013 alone, thirty Football Bowl Subdivision (“FBS”) programs switched conferences, resulting in a fourteen-member Southeastern Conference (“SEC”), a newly termed “PAC-12” (formerly “PAC-10”), and a less-than-twelve member BIG XII, among other changes.³ Around the same time, the Big East Conference underwent a dramatic split, which resulted in a fundamentally different basketball-centric conference that retained its namesake, as well as a new American Athletic Conference (“AAC”), which included former Big East members with football programs.⁴ In 2023, even more conference realignment is on the horizon. The University of Southern California (“USC”) and the University of California, Los Angeles of the PAC-12 are set to join the Big Ten in 2024.⁵ The SEC responded to the Big Ten’s expansion by adding the University of Oklahoma (“Oklahoma”) and the University of Texas, Austin (“Texas”)—both currently of the Big XII—in the

³ The following programs switched conferences (with their new leagues in parentheses): Colorado, Utah (PAC-12); Nebraska (Big Ten); Idaho, BYU, New Mexico State (Independent); Boise State, Fresno State, Hawaii, Nevada, Utah State, San Jose State (Mountain West); Texas A&M, Missouri (SEC); West Virginia, TCU (Big 12); Temple (Big East/American); UMass (MAC); Texas State, South Alabama, Georgia State (Sun Belt); Syracuse, Pitt (ACC); UCF, Houston, Memphis, SMU (American); Middle Tennessee, FAU, FIU, North Texas, Texas-San Antonio, and Louisiana Tech (C-USA). Amy Daughters, *A Timeline of College Football Conference Realignment Over the BCS Era*, BLEACHER REP. (July 2, 2014), <https://bleacherreport.com/articles/2115606-a-timeline-of-college-football-conference-realignment-over-the-bcs-era>.

⁴ The Big East became known as the “Catholic 7” and featured Villanova, Seton Hall, Providence, Georgetown, St. John’s, DePaul, and Marquette; Creighton, Butler, and Xavier subsequently joined the conference. Meanwhile, the American Athletic Conference initially included former Big East members Louisville and UConn but has since evolved. Sean Brennan, *“New” BIG EAST at 10 Years: Mission Accomplished*, BIG E. CONF. (Mar. 7, 2023, 8:30 PM), <https://www.bigeast.com/news/2023/3/7/mens-basketball-new-big-east-at-10-years-mission-accomplished.aspx>.

⁵ Ralph D. Russo and Eric Olson, *Big Ten Votes to Add USC, UCLA as Members Starting in 2024*, AP NEWS (June 30, 2022, 8:02 PM), <https://apnews.com/article/sports-college-california-f81832a258fc3bed53ef86ff0ba25291>.

same year.⁶ Together, the updated Big Ten and SEC will form what some consider a “Super Two” conference⁷ model, replacing the commonly termed “Power Five.”⁸ With the loss of Texas and Oklahoma slated for 2024, the Big XII has announced it will expand to include Brigham Young University (formerly Independent), the University of Central Florida (“UCF”), the University of Cincinnati (“Cincinnati”), and the University of Houston (“Houston”) (formerly of the AAC) in 2023.⁹ To replace UCF, Cincinnati, and Houston, the AAC announced the additions of Florida Atlantic University, the University of North Carolina at Charlotte, the University of North Texas, the University of Texas at San Antonio, Rice University, and the University of Alabama at Birmingham in 2023.¹⁰ In the meantime, debate regarding the next moves of the PAC-12, Big XII, and “two super-conferences” has ensued and captivated the world of college athletics.¹¹ Undoubtedly, conference strength will be a relevant factor for coaches deciding where to spend their careers; thus, buyouts in contracts may correlate to the size and prestige of conferences, depending on an array of factors, such as conference television deals.

A. Conference Television Deals

Major sources of revenue for universities and, thus, university athletic programs, are conference television rights deals. Conference realignment has

⁶ Katie Windham, *Texas, Oklahoma Joining the SEC in 2024*, SI: BAMA CENT., <https://www.si.com/college/alabama/bamacentral/texas-oklahoma-joining-the-sec-in-2024> (Feb. 9, 2023, 8:27 PM).

⁷ Paul Myerberg, *With UCLA and USC Joining the Big Ten, College Football's Future is Two Super-Conferences*, <https://www.usatoday.com/story/sports/ncaaf/2022/06/30/ucla-usc-big-ten-pac-12-future-conference-realignment/7780419001/> (June 30, 2022, 8:25 PM); Blake Toppmeyer, *Here's My Plan for Three 20-Team NCAA Super-Conferences. Who's in? Who's out?*, THE TENNESSEAN (Aug. 4, 2023, 5:02 AM), <https://www.tennessean.com/story/sports/college/SEC/2023/08/04/realignment-pac-12-acc-sec-big-ten-fsu-big-12-expansion-arizona-utah/70496148007/>.

⁸ The “Power Five” consists of the Big Ten, SEC, Big XII, PAC-12, and ACC. *What is the Power 5?*, THE WIRE: SIGNING DAY SPORTS (June 9, 2023), <https://thewire.signingdaysports.com/articles/what-is-the-power-5/>.

⁹ Adam Wells, *Cincinnati, Houston, UCF and BYU to Join Big 12 in Summer of 2023*, BLEACHER REP. (June 10, 2022), <https://bleacherreport.com/articles/10038310-report-cincinnati-houston-ucf-and-byu-to-join-big-12-in-summer-of-2023>.

¹⁰ ESPN News Services, *Florida Atlantic, Charlotte, North Texas, UTSA, Rice, UAB set to join American Athletic Conference*, ESPN (Oct. 21, 2021, 10:12 AM), https://www.espn.com/college-football/story/_/id/32445087/florida-atlantic-charlotte-north-texas-utsa-rice-uab-set-join-american-athletic-conference.

¹¹ ESPN Staff, *What Does the Future of Realignment Look Like in College Football?*, ESPN (Mar. 13, 2023, 8:00 AM), https://www.espn.com/college-football/story/_/id/35753158/what-does-future-realignment-look-college-football.

impacted negotiations for such deals. For instance, “[j]ust two months after the Big Ten announced [the additions of USC and UCLA], the conference signed a seven-year, \$7 billion deal with FOX, CBS and NBC that will give the conference three marquee games every Saturday.”¹² The SEC, with its additions of Texas and Oklahoma, will bring in \$3 billion over the course of ten years with ESPN/ABC.¹³ As a result of conference realignment, the PAC-12 and Big XII, both of whose media rights expire soon, hang in the balance.¹⁴ If either conference adds schools, their deals could achieve more value. As for the remaining “Power Five” player, the ACC is in a \$4.8 billion deal over twenty years, which pales in comparison to the other conferences’ contracts.¹⁵ The University of Notre Dame, who is an Independent in football but an ACC member for all other sports (except for hockey), currently has a TV deal worth roughly \$25 million per year with NBC; however, it expects that number to increase to \$60 million annually when the current contract expires in 2025.¹⁶ Other conferences, such as the AAC, have smaller but still significant deals; the AAC’s 12-year contract nets the conference \$1 billion with ESPN.¹⁷ Outside of the conference television deals, ESPN pays \$470 million per year for a four-team playoff.¹⁸ With the deal expiring in 2026 as the new twelve-team playoff comes to the fore, an increased Playoff television deal is likely in the works. With the playoff slated for expansion in 2024, “television rights could swell to about \$695 million” from \$470 million.¹⁹ The next deal could net \$2 billion in annual television revenue, per some executives and consultants close to the situation.²⁰

¹² George Malone, *College Football Conferences with the Best TV Deals – and How They Might Make Even More*, GOBANKINGRATES (Jan. 1, 2023), https://www.gobankingrates.com/net-worth/sports/college-football-conferences-with-the-best-tv-deals/?utm_term=incontent_link_4&utm_campaign=1200330&utm_source=yahoo.com&utm_content=4&utm_medium=rss.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Abigail Gentrup, *Notre Dame’s Next Media Deal Expected to Fetch \$60M Annually*, FRONT OFF. SPORTS, <https://frontofficesports.com/notre-dames-media-deal-expected-to-fetch-60m-annually/> (Aug. 17, 2022, 4:15 PM); Trent Moore, *Why is Notre Dame Independent and Not in a College Football Conference?*, NBC (Oct. 6, 2023, 1:11 PM), [https://www.nbc.com/nbc-insider/why-is-notre-dame-independent-and-not-in-a-football-conference#:~:text=The%20Fighting%20Irish%20were%20ahead,day%20\(with%20games%20now%20aired](https://www.nbc.com/nbc-insider/why-is-notre-dame-independent-and-not-in-a-football-conference#:~:text=The%20Fighting%20Irish%20were%20ahead,day%20(with%20games%20now%20aired).

¹⁷ Malone, *supra* note 12.

¹⁸ *Id.*

¹⁹ Alan Blinder, *College Football Playoff Will Expand to 12 Teams*, NY TIMES (Sept. 2, 2022), <https://www.nytimes.com/2022/09/02/sports/ncaaf-football/college-football-playoff-expansion.html>.

²⁰ *Id.*

B. The Transfer Portal

One aspect of the changing landscape in college athletics that can have a direct impact on program performance—and playoff or postseason appearances—is the “Transfer Portal,” which was created in 2018 “as a compliance tool to systematically manage the transfer process from start to finish, add more transparency to the process among schools and empower student-athletes to make known their desire to consider other programs.”²¹ The new system has allowed players to “receive immediate eligibility at their next destination,” as opposed to the past, in which student-athletes had to sit out an entire season before gaining eligibility.²² Since its advent, “more players are choosing to change schools than ever before.”²³ In fact, the University of Southern California, which appeared in a New Year’s Six Bowl Game in Coach Lincoln Riley’s first year on the job, rebuilt its football roster around 26 transfers.²⁴ Quarterback Caleb Williams, who transferred from the University of Oklahoma, won the Heisman Trophy for the nation’s best college football player.²⁵ His presence, along with that of eight fellow transfers who started for the Trojans, contributed to an 11-3 record after going 4-8 the previous season.²⁶ College basketball has also seen a heavy dose of action from transfers. For the 2021-22 season, “[t]ransfers accounted for fully 40% of the minutes played at major-conference programs . . . up from 25% the year before.”²⁷ In addition to the transfer portal itself, the impact of the NCAA’s extension of eligibility from

²¹ Greg Johnson, *What the NCAA Transfer Portal Is . . . and What It Isn’t*, NCAA CHAMPION MAG., <http://s3.amazonaws.com/static.ncaa.org/static/champion/what-the-ncaa-transfer-portal-is/index.html> (Fall 2019).

²² Kevin Harrish, *NCAA Makes Massive Transfer Portal Rule Changes*, THE COMEBACK (Jan. 12, 2023), <https://thecomeback.com/college-football/transfer-portal-rule-changes.html>.

²³ *Id.*

²⁴ Billy Witz, *Transfer Portal Sends U.S.C. Football into a New Dimension*, NY TIMES (Sept. 11, 2022), <https://www.nytimes.com/2022/09/11/sports/ncaaf-football/usc-football-transfers-lincoln-riley.html>.

²⁵ Ralph D. Russo, *USC’s Williams Wins Heisman After Leading Trojan Turnaround*, AP NEWS (Dec. 10, 2022, 10:32 PM), <https://apnews.com/article/college-football-sports-southern-california-trojans-caleb-williams-f527ed19f1268e745deb41ba7cdeb31b>.

²⁶ Paolo Uggetti, *USC QB Caleb Williams Outpaces Field, Wins Heisman Trophy*, ESPN (Dec. 10, 2022 7:30 PM), https://www.espn.com/college-football/story/_/id/35227552/usc-qb-caleb-williams-outpaces-field-wins-heisman-trophy.

²⁷ John Gasaway, *Which Men’s College Basketball Programs Get the Most Out of Transfers?*, ESPN (Aug. 4, 2022, 8:00 AM), https://www.espn.com/mens-college-basketball/insider/story/_/id/34303945/which-men-college-basketball-programs-get-most-transfers.

five years to compete in four full seasons to six years to compete in the same amount also contributed to reliance on the Transfer Portal.²⁸

C. Program Shut-Downs

Although the extension of eligibility amidst the Coronavirus pandemic was generally a positive development, unfortunately many athletic programs shut down. Between March and October of 2020, 300 teams were shut down.²⁹ Although most closures occurred at smaller NCAA Division II and Division III schools, the group of institutions who has eliminated such teams includes Stanford University and Brown University, both of which have multibillion-dollar endowments.³⁰ The sport with the most teams shut down was tennis, with 57 schools eliminating their respective programs.³¹ Conversely, only four of the 300 teams were football.³² The silver lining in this development is that with fewer sports at each school, schools will not need to reserve as many spots for scholarship student-athletes and, thus, use them for other qualified applicants in different fields of study—or use them to bolster another athletic program from which the school could make money.³³ Regardless, while the financial savings for athletics departments are immediate and obvious, it remains to be seen what the long-term effects of program shut-downs will end up being. For instance, St. Francis College in Brooklyn, New York, recently eliminated its entire athletics program.³⁴ As reasons for the decision, the school cited “increased operating expenses, flattening revenue streams, and plateauing enrollment in

²⁸ Michelle Brutlag Hosick, *Division I Council Extends Eligibility for Student-Athletes Impacted by COVID-19*, NCAA (Mar. 30, 2020, 6:50 PM), <https://www.ncaa.org/news/2020/3/30/division-i-council-extends-eligibility-for-student-athletes-impacted-by-covid-19.aspx>.

²⁹ Molly Ott & Janet Lawrence, *Colleges Are Eliminating Sports Teams—And Runners and Golfers Are Paying More of a Price than Football or Basketball Players*, THE CONVERSATION (Mar. 3, 2021, 8:26 AM), <https://theconversation.com/colleges-are-eliminating-sports-teams-and-runners-and-golfers-are-paying-more-of-a-price-than-football-or-basketball-players-148965>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* “For example, Stanford’s admissions office will no longer need to reserve 240 or so spots for accomplished fencers, field hockey and squash players, rowers, sailors, synchronized swimmers, men’s volleyball athletes and wrestlers.”

³⁴ Joseph Staszewski, *St. Francis Brooklyn Stunningly Eliminates Entire Athletics Program*, NY POST (Mar. 20, 2023, 10:25 PM), <https://nypost.com/2023/03/20/st-francis-brooklyn-stunningly-cuts-entire-athletics-program/>.

part due to a shrinking pool of high school graduates in the aftermath of the pandemic.”³⁵

D. Name, Image and Likeness

Prior to the Supreme Court’s ruling in *NCAA v. Alston*,³⁶ student-athletes at the largest college football programs were eligible to receive “the cost of attendance,” which typically included “tuition and fees, room and board, books and other expenses related to attendance” at their respective universities.³⁷ However, in that case, the Court “upheld a district court ruling that the National Collegiate Athletic Association (NCAA) rules limiting education-related compensation violated section 1 of the Sherman Act.”³⁸ Shortly thereafter, “the NCAA voted of its own accord to allow a student athlete to receive compensation in exchange for use of their name, image, and likeness (NIL).”³⁹ In the wake of NIL, “collectives” have grown. Typically, such collectives have “outspoken sponsors” who have a “mission to directly promote and benefit a specific school,” operating as “an over-the-table extension of the under-the-table recruiting inducement market that has always existed for college football and men’s basketball players.”⁴⁰ The regulatory climate around NIL is currently unsettled, as the NCAA did not put many guidelines around the promulgation of NIL, and as many states passed NIL laws—some more restrictive regarding “how much athletic departments could get involved.”⁴¹ Interestingly, numerous NIL laws were passed before *Alston* was decided. Florida, for instance, repealed its NIL law because of the disadvantages the law created. Gov. DeSantis’ new law will no longer bar schools and coaches from “causing NIL money to go to

³⁵ *Id.*

³⁶ 141 S. Ct. 2141 (2021).

³⁷ *NCAA v. Alston*, 135 HARV. L. REV. 471, 471 (2021). This phenomenon was an outgrowth of *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049, 1054-55 (9th Cir. 2015), when the NCAA “announced it would allow athletic conferences to authorize their member schools to increase scholarships up to the full cost of attendance.”

³⁸ *Id.*

³⁹ *Id.* It is important to note that *Alston* did not compel the NCAA’s vote on NIL, but the NCAA took that vote upon its own volition. Even with this decision, “the NCAA still restricts the compensation that schools can provide directly to their athletes unrelated to education.”

⁴⁰ Richard Johnson, *Year 1 of NIL Brought Curveballs, Collectives and Chaos. Now What?*, SPORTS ILLUSTRATED (July 12, 2022), <https://www.si.com/college/2022/07/12/nil-name-image-likeness-collectives-one-year>.

⁴¹ *Id.*

players or facilitating endorsements for their athletes.”⁴² Not a single vote in the House or Senate was against this bill.⁴³ Nonetheless, players still may not receive direct payments as “inducements for recruiting or retention.”⁴⁴ The law will also provide “liability protection from coaches or teams whose routine decisions (like benching or suspending a player) inadvertently affect the athlete’s NIL deals [and] . . . requires schools to add a second workshop for players about financial literacy, life skills and entrepreneurship.”⁴⁵

In practice thus far, NIL has served to mean that “college athletes can now earn and accept money doing commercial endorsements, appearances and social media posts, writing books, hosting camps, giving lessons and performing various other commercial activities outside of their schools.”⁴⁶ Although many had the concern that only the top one percent of athletes would make any money, athletes “from star players in high-revenue sports to walk-ons to charismatic athletes in lesser-viewed sports” have benefitted from NIL.⁴⁷ While it is true that former Heisman Quarterback Bryce Young of Alabama has made \$3.5 million from NIL deals, it is also true that Olivia Dunne of LSU gymnastics has taken home \$2.7 million.⁴⁸ Other, less-lucrative but still beneficial deals include a Wright’s Barbecue deal with the Arkansas offensive line, a Kool-Aid deal for Alabama football player Kool-Aid McKinstry, an SOS Heating and Cooling deal for Nebraska football player DeColdest Crawford, and a Boost Mobile deal for Fresno State basketball players Haley and Hanna Cavinder.⁴⁹ Not only may individual players financially benefit from money in NIL, but the aforementioned collectives at schools can help contribute to nicer facilities,

⁴² Matt Baker, *Gov. Ron DeSantis Signs Effective Repeal of Florida Name, Image and Likeness Law*, TAMPA BAY TIMES (Feb. 16, 2023), <https://www.tampabay.com/news/florida-politics/2023/02/16/florida-nil-law-gators-fsu-football-usf-name-image-likeness/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Jay Bilas, *Why NIL Has Been Good for College Sports . . . and the Hurdles That Remain*, ESPN (June 29, 2022, 7:00 AM), https://www.espn.com/college-sports/story/_/id/34161311/why-nil-good-college-sports-hurdles-remain..

⁴⁷ *Id.*

⁴⁸ Sean Labar, *Top 10 NIL Earners Include Bryce Young, Olivia Dunne and Three High School Ballers Making Absurd Money*, OUTKICK (Jan. 6, 2023, 6:03 AM), <https://www.outkick.com/10-most-valuable-nil-athletes-bryce-young-livvy-dunne-bronny-james/>.

⁴⁹ Darren Rovell, *The Weirdest, Most Interesting College NIL Deals to Date, Including John Daly II, DeColdest Crawford*, ACTION (Aug. 25, 2022, 8:01 AM), <https://www.actionnetwork.com/general/the-weirdest-most-interesting-college-nil-deals-to-date-including-john-daly-ii-decoldest-crawford>; Mike D. Sykes, II, *A Definitive List of the 16 Most Fun (and Kind of Weird!) NIL Deals Signed by College Athletes*, FORTHEWIN (Mar. 24, 2022, 9:00 AM), <https://ftw.usatoday.com/lists/nil-college-basketball-football-best-weirdest-deals>.

better equipment, or more money for players to participate in study abroad programs. For instance, at Tulane University, a member of the AAC who had not finished a season in the top twenty-five in football since 1998, the “Fear the Wave” collective received close to \$500,000 for the program after the school’s stunning Cotton Bowl victory.⁵⁰ For a school like Tulane, who went 2-10 in 2021 and 12-2 in 2022, “[t]he NIL era has provided . . . turnaround and growth,” allowing Tulane “to go from bottom of the barrel to [beating] the cream of the NCAA crop.”⁵¹

E. College Football Playoff

At the end of the 2014 college football season, the sport experienced its first-ever four-team “playoff,” known as the College Football Playoff (“CFP”), in lieu of its previous Bowl Championship Series model.⁵² Not only has the Playoff had a tremendous financial impact on host cities,⁵³ but it also increases revenue for participating universities, their in-conference peers, and ultimately, the players and coaches. In 2018-19, the “New Year’s Six” (“NY6”) Bowl games paid out a combined \$549 million to conferences and schools.⁵⁴ These six games “help[] subsidize the bowl expenses of teams in lesser bowl games

⁵⁰ Bryce Lazenby, *Tulane’s Cotton Bowl Victory Leads to a Massive Surge in NIL Donations*, MEDIUM (Jan. 5, 2023), <https://bw1931.medium.com/tulanes-cotton-bowl-victory-leads-to-a-massive-surge-in-nil-donations-670efc6a6fdb>.

⁵¹ Steven McAvoy, *Fear the Wave: How Tulane Football Went from Bottom of the Barrel to Cream of the Crop*, NIL DEAL NOW (Jan. 19, 2023), <https://www.nildealnow.com/how-tulane-football-went-from-bottom-of-barrel-cream-of-crop/>.

⁵² The Bowl Championship Series used a complex formula to help determine matchups for elite games, including the championship, for sixteen seasons. The College Football Playoff uses a human-produced rankings system. See James Parks, *College Football Playoff Rankings: How the CFP Creates the Top 25 Poll*, *College Football HQ*, SI: FANNATION (Dec. 4, 2023, 5:15 PM), <https://www.si.com/fannation/college/cfb-hq/ncaa-football-rankings/college-football-playoff-rankings-top-25-how-cfp-process-works>.

⁵³ For instance, the 2022 College Football Playoff National Championship in Indianapolis generated total sales of \$156 million from January 7-10, 2022. Matt Christy, *Report: College Football Championship Generated \$156.6 Million for Indianapolis*, FOX 59 (Sept. 30, 2022, 7:22 PM), <https://fox59.com/indiana-news/report-college-football-championship-generated-156-6-million-for-indianapolis/#:~:text=INDIANAPOLIS%20—%20An%20economic%20impact%20study,game%20estimate%20of%20%24150%20million>.

⁵⁴ Brent Schrottenboer, *College Football Playoff Business is Booming at Halfway Point, but Expansion Looms*, USA TODAY (Jan. 9, 2020, 9:55 AM), <https://www.usatoday.com/story/sports/ncaaf/2020/01/09/college-football-playoff-financial-success-expansion-future/2838495001/>. The “New Year’s Six” games are seen as the six most prestigious college football postseason games and include the Rose Bowl in Pasadena, CA; the Sugar Bowl in New Orleans, LA; the Orange Bowl in Miami Gardens, FL; the Fiesta Bowl in Glendale, AZ; the Peach Bowl in Atlanta, GA; and the Cotton Bowl in Arlington, TX. The “New Year’s Six” moniker did not develop until the inception of the College Football Playoff era, when it was determined that each year, two of the six games would serve as “playoff” games, while the other four would be more traditional bowl games.

through revenue sharing with all 10 conferences and independents in major college football.”⁵⁵ Thus far, the CFP model has proven to be quite the financial success. In the former Bowl Championship Series (“BCS”) system, the combined payout of the equivalent of the NY6 was \$227 million during its last year, 2013-14.⁵⁶ In the current model, conversely, ESPN is paying roughly \$7.3 billion combined to televise the NY6, plus the championship, during its twelve-year contract.⁵⁷

As a result of the four-team CFP model thus far, the College Football Playoff Board of Managers announced that the bracket will expand to twelve teams,⁵⁸ beginning with the 2024-25 season.⁵⁹ For the 2024 season, television rights could “swell to about \$695 million, from roughly \$470 million a year, for each of the existing contract’s last two seasons.”⁶⁰ But many analysts anticipate that the new twelve-team playoff deal will be “the biggest television contract in college sports history” and could net “close to \$2 billion a year.”⁶¹ For comparison, the 67-game “March Madness” tournament in college basketball, featuring 68 schools, is expected to average \$1.1 billion per year in television money.⁶² Under the current deal, Power Five schools split the base payouts evenly, regardless of how many school are in each conference.⁶³ What that means currently is that each school in the ACC, Big Ten, and SEC receives \$7 million annually from the deal; with the new deal, each school will receive roughly \$23 million.⁶⁴

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ The new twelve-team model will include the six highest-ranked conference champions and six at-large berths.

⁵⁹ Wayne Staats, *College Football Playoff Will Expand to 12 Teams in 2026, Maybe Sooner*, NCAA (Sept. 2, 2022), https://www.ncaa.com/news/football/article/2022-09-02/college-football-playoff-will-expand-12-teams-2026-maybe-sooner?utm_campaign=inline-article; *College Football Playoff to Expand to 12 Teams Starting with 2024 Season*, NCAA (Dec. 12, 2022), <https://www.ncaa.com/news/football/article/2022-12-01/college-football-playoff-expand-12-teams-starting-2024-season>.

⁶⁰ Blinder, *supra* note 19.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Matt Balvanz, *The \$2 Billion Impact of a CFP Expansion*, NAVIGATE (June 17, 2021), <https://nvgt.com/blog/the-2-billion-impact-of-a-cfp-expansion/>.

⁶⁴ *Id.*; Daniel Wilco, *What is March Madness: The NCAA Tournament Explained*, NCAA (Apr. 4, 2023), <https://www.ncaa.com/news/basketball-men/bracketiq/2023-03-15/what-march-madness-ncaa-tournament-explained>.

F. New NCAA Leadership

In 2022, the NCAA announced that President Mark Emmert would retire by June 30, 2023.⁶⁵ Emmert's tenure came under fire amidst the NCAA's failure to provide any regulatory guidance on NIL, after the "disparity between the bells and whistles at the 2021 men's and women's NCAA basketball tournaments," and the perception that he failed to adequately address the physical and mental health of student-athletes.⁶⁶ A number of complaints started with Emmert's contract being renewed in 2021 "for the NCAA's inability to move forward with proposed reforms to [the NCAA's] rules prohibiting athletes from earning money off their NIL."⁶⁷ Replacing him is former Republican Massachusetts Governor Charlie Baker, who critics hope think may "turn out to be little more than the next well-paid piñata in the presidential role."⁶⁸ Some believe the NCAA, in hiring Governor Baker, was looking for a "deal-maker[] who can market [conferences] to media companies for the highest possible dollar," or "someone who can convince politicians to produce legislation that keeps the association viable and out of its current barrage of lawsuits."⁶⁹ Others see the Governor Baker hire as the NCAA going after a "consensus builder" who can achieve the following goals: (1) "[b]uild and re-establish trust with the membership of 1,100 colleges and universities;" (2) "[s]olve complex governance and business issues across its stakeholders;" and (3) "[d]iversify and grow revenue streams."⁷⁰ Further, the NCAA cited his former life as a Harvard basketball player, "husband to a former college gymnast, and father to two former college football players" as reasons it believes he will build a sustainable

⁶⁵ Rob Schmitz, Jason Fuller, & Sarah Handel, *Over 12 Years, Mark Emmert Helped the NCAA Make Billions—but What's His Legacy?*, NPR (Apr. 27, 2022, 4:35 PM), <https://www.npr.org/2022/04/27/1095099699/over-12-years-mark-emmert-helped-the-ncaa-make-billions-but-whats-his-legacy>.

⁶⁶ J. Brady McCollough, *Commentary: Here is Why Mark Emmert Will Be Remembered as the Guy Who Tanked the NCAA*, L.A. TIMES (Apr. 26, 2022, 7:31 PM) <https://www.latimes.com/sports/story/2022-04-26/mark-emmert-ncaa-president-stepping-down-legacy>.

⁶⁷ Adam Rittenberg, *NCAA President Mark Emmert's Contract Extended through 2025*, ESPN (Apr. 27, 2021, 9:52 PM), https://www.espn.com/college-sports/story/_/id/31348577/ncaa-president-mark-emmert-contract-extended-2025.

⁶⁸ Pat Forde, *NCAA Targeting Political Firepower with President Pick*, SPORTS ILLUSTRATED (Dec. 15, 2022), <https://www.si.com/college/2022/12/15/ncaa-targeting-political-firepower-president-charlie-baker-mark-emmert>.

⁶⁹ *Id.*

⁷⁰ Michael Smith & Bret McCormick, *New NCAA President Baker Seen as Leader and Consensus Builder*, SPORTS BUS. J. (Dec. 19, 2022), <https://www.sportsbusinessjournal.com/Journal/Issues/2022/12/19/Upfront/colleges.aspx>.

model for college athletics.⁷¹ However, Governor Baker received some pushback when he announced he would not move to the NCAA's Indianapolis headquarters—but remain in Massachusetts.⁷² He views his role as frequenting Washington, D.C., to lobby Congress, as well as visiting state legislators and wants to have access to them from his home state.⁷³

II. IMPACT OF THE COACHING CAROUSEL ON BUYOUTS

A. 2021 Turmoil

Before understanding how buyouts are impacted by the “coaching carousel,” one must understand what the coaching carousel is and how it has developed over the past few years. At the end of every season, Athletic Directors fire Head Coaches, Head Coaches fire members of their staffs, and members of some staffs move to better positions at new schools. Thus, positions open, and a free agency-like frenzy in the coaching world ensues. Lately, the coaching changes in college football have been especially remarkable and unexpected. With increased mobility in modern society, coaches seem more willing to take risks at smaller programs in regions they are not affiliated with so that they can use such jobs as steppingstones to ultimately end up in the upper echelons of college football.⁷⁴ Even coaches who are at elite programs seem more willing to leave their respective schools for other elite programs.

No better example of this phenomenon occurred than in late November 2021, when the college football landscape was rocked by former Oklahoma Head Football Coach Lincoln Riley accepting the same position at the University of Southern California (“USC”) and former Notre Dame Head Football Coach Brian Kelly accepting the same position at Louisiana State

⁷¹ NCAA Announces Governor Charlie Baker to Be Next President, NCAA (Dec. 15, 2022), <https://www.ncaa.com/news/ncaa/article/2022-12-15/ncaa-announces-governor-charlie-baker-be-next-president#:~:text=INDIANAPOLIS%20E2%80%94%20The%20National%20Collegiate%20Athletic,the%20role%20effective%20March%202023>.

⁷² Dan Wolken & Steve Berkowitz, *Incoming NCAA President Charlie Baker Will Not Relocate to Indianapolis to Work at Headquarters*, USA TODAY (Feb. 14, 2023), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2023/02/14/ncaa-incoming-president-charlie-baker-wont-relocate-indianapolis/11255437002/>.

⁷³ *Id.*

⁷⁴ Chris Vannini, *Moving Up and Often: Climbing the Coaching Ladder Means Being Prepared to Relocate*, THE ATHLETIC (Apr. 5, 2018), <https://theathletic.com/300346/2018/04/05/college-assistant-coaches-on-move/>.

University (“LSU”).⁷⁵ “Riley guided the Sooners to four consecutive Big 12 titles and three College Football Playoff appearances in his first four seasons.”⁷⁶ After Coach Riley infamously said in a post-season press conference that he would not take former LSU Coach Ed Orgeron’s place to “be the next head coach at LSU,” he left to USC.⁷⁷ In his five seasons as Oklahoma’s Head Coach, Riley had a 55-10 record, with a 37-7 record in the Big 12.⁷⁸ The OU football program seemed to be in a strong spot, as it had experienced conference championships and Playoff appearances both under Coach Riley and former Coach Bob Stoops.⁷⁹ In recent history, the school produced Heisman Trophy-winning quarterbacks Sam Bradford, Baker Mayfield, and Kyler Murray.⁸⁰ In other words, Oklahoma was—by all stretches of the imagination—an elite program when Coach Riley left. In Coach Riley’s own words, “OU is one of the best college football programs in the country, and it has been forever.”⁸¹ USC, on the other hand, had achieved only a 46-24 record in the preceding seven seasons and had not lived up to its standards as a premier program.⁸² However, in his view, the USC job was “unparalleled” and had the “pieces . . . in place” to contend for national championships.⁸³ In order to hire Coach Riley, USC had to fire Coach Clay Helton, who “had two full years remaining on his deal.”⁸⁴ USC paid him \$10 million in buyout money.⁸⁵ Additionally, in order to get

⁷⁵ Rodger Sherman, *The Ripple Effects of the Wildest Coaching Carousel in College Football History*, THE RINGER (Nov. 30, 2021, 1:38 PM), <https://www.theringer.com/2021/11/30/22808764/lincoln-riley-brian-kelly-usc-oklahoma-lsu-notre-dame>.

⁷⁶ Mark Schlabach, *Lincoln Riley Leaving Oklahoma to Be USC Football Coach*, ESPN (Nov. 28, 2021), https://www.espn.com/college-football/story/_/id/32737893/lincoln-riley-leaving-oklahoma-become-usc-head-football-coach-sources-say.

⁷⁷ *Id.*

⁷⁸ Jake Curtis, *Pac-12 News: Oklahome’s Lincoln Riley Reportedly Will be USC’s Head Coach*, SI FANNATION (Nov. 28, 2021, 4:48 PM), <https://www.si.com/college/cal/news/lincoln-riley-to-usc>.

⁷⁹ *Head Coaches*, SOONER SPORTS: FOOTBALL, <https://soonersports.com/sports/2019/8/14/208798710> (Nov. 30, 2021).

⁸⁰ Katherine Wright, *College Football Teams With the Most Heisman Trophy Winners*, NCAA (Apr. 24, 2024), <https://www.ncaa.com/news/football/article/2021-01-05/college-football-teams-most-heisman-trophy-winners>.

⁸¹ Schlabach, *supra* note 76.

⁸² Antonio Morales & Bruce Feldman, *USC Coach Clay Helton Fired After Posting 46-24 Record Into 7th Season*, THE ATHLETIC (Sep. 13, 2021), <https://theathletic.com/4199918/2021/09/13/usc-coach-clay-helton-fired-after-posting-46-24-record-into-7th-season/>.

⁸³ *Id.*

⁸⁴ Edward Sutelan, *Lincoln Riley’s Oklahoma Buyout to Leave for USC, Explained*, SPORTING NEWS (Nov. 29, 2021), <https://www.sportingnews.com/us/ncaa-football/news/lincoln-rileys-oklahoma-buyout-usc-explained/1vtp3qs9i662e1odrs9ag2j0mg>.

⁸⁵ *Id.*

Coach Riley out of his Oklahoma contract, USC had to pay a \$4.5 million buyout to Oklahoma.⁸⁶ Thus, USC paid \$14.5 million to coaches “not to coach.”⁸⁷

Coach Kelly, the winningest coach in Notre Dame history, agreed to leave the Fighting Irish before waiting to see whether the Playoff Committee selected his team for an appearance in the College Football Playoff.⁸⁸ Ultimately, Notre Dame was one spot short of the Playoff, but the program would have been in an unusual situation if the Head Coach had resigned as the team entered the field of play for a championship game.⁸⁹ Kelly led Notre Dame to a 113-40 record, a BCS National Championship appearance, and two Playoff berths in his tenure.⁹⁰ Although his decision was surprising to some, he lost the Fiesta, Cotton, and Rose Bowl games at Notre Dame, as well as the BCS Championship.⁹¹ Additionally, despite the fact that he produced a top-20 recruiting class every season in South Bend, he “appeared severely outmatched [by] Alabama and Clemson [in the postseason], [losing] by a combined 44 points.”⁹² Coach Kelly replaced Ed Orgeron, who led LSU to a championship victory in 2019, and Coach “O” replaced Les Miles, who also led LSU to a title.⁹³ Kelly’s deal with LSU is a 10-year, \$95 million contract, “a significant increase from a salary

⁸⁶ *First Impressions of USC’s Hiring of Lincoln Riley as Next Head Coach*, NBC LOS ANGELES, <https://www.nbclosangeles.com/news/sports/first-impressions-of-lincoln-riley-expected-to-be-next-head-coach-at-usc/2767996/> (last updated Nov. 29, 2021, 4:34 PM).

⁸⁷ Sutelan, *supra* note 84.

⁸⁸ Michael Rosenberg, *Brian Kelly’s Brusque Exit at Notre Dame is More of the Same From Him*, SPORTS ILLUSTRATED (Nov. 30, 2021), <https://www.si.com/college/2021/11/30/brian-kelly-leaves-notre-dame-for-lsu>.

⁸⁹ *Notre Dame Falls Just Short of College Football Playoff as Georgia, Cincinnati Claim Last 2 Spots*, NBC CHI., <https://www.nbcchicago.com/news/sports/nfl/chicago-bears/notre-dame-falls-just-short-of-college-football-playoff-as-georgia-cincinnati-claim-last-2-spots/2700449/> (Dec. 5, 2021, 11:34 AM).

⁹⁰ Wilson Alexander & Scott Rabalais, *LSU to Hire Notre Dame’s Brian Kelly as Next Football Coach, Sources Say*, THE ADVOCATE, https://www.theadvocate.com/baton_rouge/sports/lsu/lsu-to-hire-notre-dames-brian-kelly-as-next-football-coach-sources-say/article_2f24441a-5169-11ec-93ae-a7f86a2b07fd.html (Nov. 29, 2021).

⁹¹ Frank Vitovitch, *It’s Time Notre Dame Ends This Stupid Major Bowl Losing Streak*, UNHD (Dec. 30, 2021), <https://www.unhd.com/football/2021/12/30/its-time-notre-dame-ends-this-stupid-major-bowl-losing-streak/>.

⁹² Victor Mather, *Brian Kelly Leaves Notre Dame for LSU*, NY TIMES (Nov. 30, 2021), <https://www.nytimes.com/2021/11/30/sports/ncaafootball/brian-kelly-lsu-notre-dame.html>.

⁹³ Ralph D. Russo, AP College Football Writer, *LSU Hiring Coach Brian Kelly Away From Notre Dame*, DETROIT NEWS, <https://www.detroitnews.com/story/sports/college/2021/11/29/lsu-hiring-coach-brian-kelly-away-notre-dame/8802839002/> (Nov. 29, 2021, 10:50 PM).

believed to be in the \$3 million range at Notre Dame.”⁹⁴ Coach Kelly cited LSU’s “commitment to excellence, rich traditions, and unrivaled pride and passion” as reasons for his joining the program.⁹⁵

Coach Kelly’s example suggests that the coaching carousel is no longer confined to taking place after the season; rather, as teams await postseason outcomes and vie for conference championships, schools are heavily recruiting new coaches. For example, just after Tulane University clinched its first American Athletic Conference Championship appearance in school history, Head Coach Willie Fritz was in negotiations with Georgia Tech to become the school’s next Head Coach. Rumors swirled that the deal between Fritz and the Yellow Jackets was done a few days before Tulane hosted the AAC Championship vs. UCF. However, Fritz ultimately backed out of the deal and elected to stay at Tulane to finish out the season. Although the distraction of the news ultimately did not impact the team’s performance in the AAC Championship—or in the subsequent Cotton Bowl—it is easy to see how the distraction of a coach leaving before the end of a historic season would be a negative outcome for the sport of college football.

B. 2022 In-Season Firings

After the 2022 season, some major college football programs had to distribute upwards of \$10 million to various coaches. Although former Wisconsin head coach Paul Chryst had \$20 million left on his contract through 2027, the University of Wisconsin paid him \$11 million in buyout earnings.⁹⁶ The funds to pay for that buyout came from the University of Wisconsin Foundation, the school’s fundraising organization.⁹⁷ Chryst won 72% of his games at his alma mater, achieving a 67-26 record during his tenure.⁹⁸ The reason for Chryst’s accepting a lower amount on his buyout than the \$20 million he was owed is unknown, though the payment was accelerated. Included in the language of the buyout was that Chryst had a “duty to mitigate the liquidated

⁹⁴ *Id.*; The Athletic College Football Staff, *Brian Kelly Leaves Notre Dame to Coach LSU for 10-Year Deal Worth at Least \$9.5 Million Annually*, THE ATHLETIC (Nov. 29, 2021), <https://theathletic.com/4184773/2021/11/29/brian-kelly-leaves-notre-dame-to-coach-lsu-for-10-year-deal-worth-at-least-9-5-million-annually/>.

⁹⁵ Mather, *supra* note 92.

⁹⁶ Adam Rittenberg, *Wisconsin to Pay Fired Football Coach Paul Chryst an \$11 Million Buyout*, ESPN (Oct. 3, 2022), https://www.espn.com/college-football/story/_/id/34721073/wisconsin-pay-fired-football-coach-paul-chryst-11-million-buyout.

⁹⁷ *Id.*

⁹⁸ *Id.*

damages, or decrease the amount UW owed him if he took another coaching job in Division I college or professional football.”⁹⁹

The money for the buyout did not come from taxpayer dollars, as the UW Foundation account includes “scholarship endowment money and funds available for the [athletic] department to use at its discretion” and was valued at \$143 million as of June 2021.¹⁰⁰ Chryst’s firing demonstrates the “eat-or-be-eaten” nature of the college football coaching landscape in the 2020s. As a native of Madison, graduate of the university, winner of three Big West division titles and three top-15 finishes in his seven seasons, Chryst had a relatively good track record at UW.¹⁰¹ However, “media rights deals are skyrocketing, . . . salaries are skyrocketing, . . . facilities never stop being built and modernized, and . . . the NIL collectives are kicking into high gear,” leading to a “desperation to win that is leading to an epidemic of in-season firings.”¹⁰²

In another example of a 2022 in-season college football head coach firing, Nebraska parted ways with Scott Frost. The university “could have waited 20 days and saved itself north of \$8 million in buying out the contract of Coach Scott Frost [but] [i]nstead . . . added to a fortune of payments to deposed coaches and athletic directors from the past 17 years.”¹⁰³ Ultimately, the school paid close to \$16 million to Frost—\$5 million the first two years and \$2.5 million for the subsequent two—in addition to a “prorated amount” in 2022.¹⁰⁴ If the Cornhuskers had fired Frost a few weeks later, “the final bill would have been roughly \$8 million with the buyout halved for the final four seasons to \$7.5 million.”¹⁰⁵ Per unofficial university policy, “there was no negotiated settlement between coach and school,” unlike in the Wisconsin-Chryst situation, because “[t]he University of Nebraska has a long history of living up to what [it] agree[s] to.”¹⁰⁶

⁹⁹ Todd Milewski, *Here Are the Details of Paul Chryst’s Buyout after Being Fired as Wisconsin Football Coach*, BADGEREXTRA (July 19, 2023), https://badgerextra.com/sports/football/here-are-the-details-of-paul-chrysts-buyout-after-being-fired-as-wisconsin-football-coach/article_775e5528-4366-11ed-a629-5bd736396617.html.

¹⁰⁰ *Id.*

¹⁰¹ Pat Forde, *Paul Chryst Falls Victim to College Football’s New, Ruthless Way of Life*, SPORTS ILLUSTRATED (Oct. 2, 2022), <https://www.si.com/college/2022/10/03/paul-chryst-wisconsin-firing-ruthless>.

¹⁰² *Id.*

¹⁰³ Evan Bland, *Scott Frost Receives Full Buyout as Nebraska Severance Bill Tops \$50 Million Since 2005*, OMAHA: FOOTBALL (Sept. 23, 2022), https://omaha.com/sports/huskiers/football/scott-frost-receives-full-buyout-as-nebraska-severance-bill-tops-50-million-since-2005/article_67b9d06c-d61f-5b76-aa4c-c53848e0736f.html.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (internal quotations omitted).

The school's athletic director reasoned that the move happened during the season "because it owed something else to players and fans": (1) "[o]pportunity for current Huskers with nine regular-season games remaining" and (2) "[h]ope for a fan base enduring a longer bowl drought than each of the 66 Power Five programs not named Kansas."¹⁰⁷ Since 2005, "no school in the country [has] spent more money paying off football and men's basketball coaches . . . than the Huskers, who doled out nearly \$28 million overall in that span."¹⁰⁸ The brunt of these buyouts went to football coaches Bill Callahan (\$3.13 million), Bo Pelini (\$6.54 million), and Mike Riley (\$6.2 million).¹⁰⁹ To add Frost's total buyout to that of three athletic directors who were also forced out in the same span, and the overall number is \$50 million.¹¹⁰

The Auburn University Tigers are yet another football program that fired its coach, Bryan Harsin, during the 2022 season. Harsin received his pink slip eight games into his second season as the program's head coach, in which he let Auburn to a 9-12 (4-9 SEC) record during his tenure.¹¹¹ "Harsin will receive \$15.3 million (70% of the remaining amount on his contract) for his buyout[;] [h]alf of that amount [was] due within 30 days to be followed by four annual payments of the remaining balance."¹¹² Similar to the manner in which Nebraska has a long list of coaches to which it either has paid buyouts or is currently paying, "Auburn is still paying off [former coach Gus] Malzahn's buyout of \$21.5 million as it embarks on yet another coaching search."¹¹³ Underlying the university's decision to fire Harsin was the start to his tenure, where he ended "with a five-game losing streak and a 6-7 final record that culminated with a loss . . . in the Birmingham Bowl."¹¹⁴ Further, over the offseason, "[m]ultiple coaches left the program, . . . [m]ore than 20 players transferred to other programs and traditional National Signing Day came and went without the Tigers signing a single additional player."¹¹⁵

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Barrett Sallee, *Bryan Harsin Buyout: How Much Money Auburn Owes after Firing Football Coach in Eight Games into Second Season*, CBS SPORTS (Oct. 31, 2022, 1:28 PM), <https://www.cbssports.com/college-football/news/bryan-harsin-buyout-how-much-money-auburn-owes-after-firing-football-coach-eight-games-into-second-season/>.

¹¹² *Id.* (citing Nathan King, *Auburn Fires Bryan Harsin after 21 Games*, 247 SPORTS (Oct. 31, 2022), <https://247sports.com/college/auburn/Article/bryan-harsin-auburn-fired-194149418/>).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

Arizona State continued the 2022 trend of firing coaches in-season by ridding themselves of Herm Edwards. Fortunately for the school, Edwards agreed “to take a 50% buyout of his remaining salary,” which amount to approximately \$4.4 million paid through 2024.¹¹⁶ Edwards’ buyout was “relatively low” in comparison to the University of Colorado’s former coach Karl Dorrell and ASU’s former coach Todd Graham.¹¹⁷ Dorrell, who went 0-5 to start the 2022 season, had a buyout of \$8.7 million; Graham received a \$12 million buyout.¹¹⁸

Georgia Tech also fired Geoff Collins during the 2022 season after going 10-28 overall.¹¹⁹ In his tenure, the Yellow Jackets lost to Temple, the Citadel, and Northern Illinois.¹²⁰ Since the 2020 COVID season, Collins’ teams had just two wins over FBS programs; after the 2021 season, he had to replace eight assistant coaches.¹²¹ Collins’ buyout, which is \$11.37 million, “would have dropped to \$10.6 million at the end of the regular season and \$7.2 million in January.”¹²²

C. Pre-2022 Notable Buyout Payout

Arguably the most interesting coaching buyout prior to the 2022 season was that of former LSU coach Ed Orgeron, who won the 2019 National Championship with the Tigers. Upon his firing, LSU owed him \$16.8 million in buyout money over four years.¹²³ Orgeron received \$5 million two months after his firing, followed by two payments of \$1 million each in 2022, with the final payment scheduled for 2025.¹²⁴ Interestingly, he is still considered an employee of the university and “must make at least one public appearance a

¹¹⁶ Piper Hansen, *Herm Edwards to Take 50% Buyout of Remaining Salary, Plus Benefits and Academic Bonus*, STATE PRESS (Oct. 14, 2022), <https://www.statepress.com/article/2022/10/herm-edwards-50-percent-buyout-contract>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Mike McDaniel, *Georgia Tech Fires Coach Geoff Collins, per Reports*, SPORTS ILLUSTRATED (Sept. 26, 2022), <https://www.si.com/college/2022/09/25/georgia-tech-fires-coach-geoff-collins-per-report>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Sam Marsdale, *Geoff Collins Buyout: Georgia Tech Football Coach’s Midseason Firing Means Yellow Jackets Owe Large Sum*, 247 SPORTS (Sept. 26, 2022, 9:01 AM), <https://247sports.com/article/geoff-collins-buyout-georgia-tech-football-coachs-midseason-firi-194212194/>.

¹²³ Perry Robinson, *Breaking Down Details Behind ‘Separation Agreement’ between LSU & Coach O*, WAFB 9 (Oct. 19, 2021, 5:13 AM), <https://www.wafb.com/2021/10/19/breaking-down-details-behind-separation-agreement-between-lsu-coach-o/>.

¹²⁴ *Id.*

year for LSU.”¹²⁵ As part of the agreement, Orgeron was not permitted to seek “any coaching opportunities in the SEC for 18 months.”¹²⁶ During Orgeron’s tenure, one of his defensive coordinators—Bo Pelini—pocketed a \$4 million buyout after being fired one year into the job.¹²⁷ Coach O’s firing was particularly intriguing, since it came “[t]wenty-one months after going undefeated, winning a national championship and putting together perhaps the greatest single season in college football history[.]”¹²⁸ When Joe Burrow, Heisman Trophy-winning quarterback, and 13 other players left for the NFL Draft, “it created a leadership vacuum on the team, which was exacerbated by the COVID-19 pandemic and nationwide protests against police violence,” for which Orgeron was ill-equipped.¹²⁹ He was “unable to handle difficult conversations” and was “unskilled in the diplomacy needed to pull together a locker room with a wide range of backgrounds and experiences.”¹³⁰ Additionally, his control of the team arrived to the point where players would not only not “run through a wall for [him],” but they “wouldn’t run to the bathroom for him.”¹³¹

D. Non-College Football Head Coach Buyouts

The coaching carousel and related buyouts are not limited to head coaches—even coordinators’ buyouts have been in the news of late. For instance, Notre Dame failed to hire Utah Offensive Coordinator Andy Ludwig, according to the Salt Lake Tribune and ESPN, at least in part due to a \$2.8 million buyout clause in his three-year contract with the University of Utah.¹³² The Irish appeared so close to a deal with Ludwig that his presence at a Notre Dame hockey game was publicly promoted; he was seen there with head coach Marcus Freeman, then-tight ends coach Gerard Parker, football administrator Ron Powlus and deputy athletics director for business strategy Yulander Wells,

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Alex Scarborough & Mark Schlabach, *Inside the Unraveling of Ed Orgeron’s LSU Tenure in Just 21 Months*, ESPN (Oct. 18, 2021, 5:59 PM), https://www.espn.com/college-football/story/_/id/32424787/inside-unraveling-ed-orgeron-lsu-tenure-just-21-months.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Mike Berardino, *Reports: Andy Ludwig to Stay at Utah after Visiting Notre Dame*, ND INSIDER (Feb. 13, 2023, 11:54 PM), <https://www.ndinsider.com/story/sports/football/2023/02/13/reports-expensive-buyout-keeps-oc-andy-ludwig-at-utah-notre-dame-football-ncaa-south-bend/69898374007/>.

Jr.¹³³ However, Athletic Director Jack Swarbrick rejected the notion that Notre Dame did not hire Ludwig *because of* the buyout; rather, he noted that it was merely “an ‘obstacle.’”¹³⁴ In fact, he noted it was “an ‘obstacle’” only for “a brief period of time [and] only because of conflicting information that had been provided to [Notre Dame] regarding the amount and mechanics of the buyout”; but “it was an obstacle [Notre Dame] knew could be quickly resolved.”¹³⁵

Buyouts are also relatively prevalent in college basketball. New Notre Dame men’s basketball head coach Micah Shrewsberry “had a \$4 million buyout and was staring at a significant extension and raise at Penn State that would have more than doubled his salary.”¹³⁶ Instead, he accepted the Irish’s seven-year offer for roughly \$4 million each year.¹³⁷ “Shrewsberry was born in Indiana and six of his nine professional jobs . . . were in the state of Indiana.”¹³⁸ With Shrewsberry at the helm, Penn State experienced a nine-win improvement in his second year and reached the NCAA Tournament, as well as the finals of the Big Ten Tournament.¹³⁹

Also in college basketball, St. John’s University recently fired coach Mike Anderson, who recently sued the school for \$45.6 million—“\$11.4 million that was left on his contract and an additional \$34.2 million for ‘punitive’ damages—according to the ‘notice of intention to arbitrate’ filed last month by Anderson’s lawyer.”¹⁴⁰ He alleges that he was fired “with cause in March only

¹³³ *Id.*

¹³⁴ Mike McDaniel, *Notre Dame AD Rejects Report School Wouldn’t Pay Utah OC’s Buyout*, FOX 40, (Feb. 17, 2023, 1:04 PM), <https://fox40.com/sports/sports-illustrated/4cd39777/notre-dame-ad-rejects-report-school-wouldnt-pay-utah-ocs-buyout/>.

¹³⁵ *Id.*

¹³⁶ Greg Pickel, *Penn State Made ‘Lucrative’ Offer to Micah Shrewsberry; Coaches Lions Should Target Include Current Assistant: What They’re Saying*, ON 3: BLUE WHITE ILLUSTRATED, (Mar. 22, 2023), <https://www.on3.com/teams/penn-state-nittany-lions/news/penn-state-made-lucrative-offer-to-micah-shrewsberry-coaches-lions-should-target-include-current-assistant-what-theyre-saying/> (quoting Matt Fortuna (@Matt_Fortuna), X (Mar. 22, 2023, 4:52 PM), https://twitter.com/Matt_Fortuna/status/1638659839910969346).

¹³⁷ Pickel, *supra* note 136 (citing Jeff Goodman (@GoodmanHoops), X (Mar. 22, 2023, 5:00 PM), <https://twitter.com/GoodmanHoops/status/1638661964850401280>).

¹³⁸ Pickel, *supra* note 136 (quoting Ben Jones (@Ben_Jones88), X (Mar. 22, 2023, 5:09 PM), https://twitter.com/Ben_Jones88/status/1638664154033582080).

¹³⁹ Austin Hough, *Reports: Shrewsberry to Be Next Notre Dame Men’s Basketball Coach*, HERALD BULLETIN, (Mar. 22, 2023), https://www.heraldbulletin.com/sports/notredame/reports-shrewsberry-to-be-next-notre-dame-mens-basketball-coach/article_5359d35c-c901-11ed-88d8-d3a40a644862.html#:~:text=According%20to%20The%20Athletic%27s%20Matt,has%20a%20%244%20million%20buyout.

¹⁴⁰ Myron Medcalf, *Fired Hoops Coach Mike Anderson Seeks \$45.6M from St. John’s*, ESPN, (May 11, 2023, 12:54 PM), https://www.espn.com/mens-college-basketball/story/_/id/37603396/fired-hoops-coach-mike-anderson-seeks-46m-st-johns.

so the school could avoid paying his buyout and use the money to hire Rick Pitino[.]”¹⁴¹ Per the termination letter, Anderson was fired for “failure to create and support an environment that strongly encourages student-athletes . . . to meet all university academic requirements, failure to perform . . . duties . . . in a manner that reflected positively on [SJU], . . . [and] failure to appropriately supervise [his] assistant coaches.”¹⁴² Per Anderson, SJU attempted to “offer him a buyout for less than the \$11.4 million remaining on his deal before the school accused him of fictitious problems within his program and fired him for cause.”¹⁴³

Additionally, Anderson claims that the school was already in talks with Rick Pitino to be head coach at an “advanced” stage, against the rules.¹⁴⁴ Anderson’s representative alleges that “St. John’s manufactured . . . its preposterous ‘for cause’ termination . . . with the sole purpose of attempting to extricate the University from its \$11.4 million ironclad contractual obligation to Mr. Anderson, specifically so that it could otherwise divert those funds to Pitino.”¹⁴⁵ Anderson also claims that “the school in February began making false accusations that he had been dealing with cognitive issues” telling Anderson’s representatives that he “‘did not in any way resemble the coach from the prior four years’ and seemed ‘about gone’ mentally.”¹⁴⁶ Additionally, while the school contends the team struggled academically, Anderson cites that his team received the “Big East academic excellence award in 2020 for the highest cumulative GPA in the conference—the first in [the] program[’s] history.”¹⁴⁷

The coaching carousel and buyout culture extends even somewhat to college baseball, where former Notre Dame baseball coach Link Jarrett—who had signed a contract extension with the Irish through 2026—recently left to join Florida State’s program after leading Notre Dame to a College World Series appearance.¹⁴⁸ “Before Jarrett’s arrival [to Notre Dame] in 2019, the Irish had never advanced to the super regionals in back-to-back seasons[;] [yet] [i]n

¹⁴¹ *Id.*

¹⁴² *Id.* (internal quotations omitted).

¹⁴³ *Id.* (internal quotations omitted).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Myron Medcalf, *Fired Hoops Coach Mike Anderson Seeks \$45.6M from St. John’s*, ESPN, (May 11, 2023, 12:54 PM), https://www.espn.com/mens-college-basketball/story/_/id/37603396/fired-hoops-coach-mike-anderson-seeks-46m-st-johns.

¹⁴⁷ *Id.*

¹⁴⁸ Nikki Chavanelle, *Reports: Link Jarrett Expected to Be Named FSU’s Head Baseball Coach Friday*, ON3 (June 6, 2022), <https://www.on3.com/college/florida-state-seminoles/news/link-jarrett-expected-to-be-named-fsu-head-baseball-coach-friday-notre-dame/>.

Jarrett's two full seasons, Notre Dame reached the super regionals (2021) and College World Series (2022).¹⁴⁹ Additionally, Notre Dame's .728 winning percentage (86-32) during his tenure ranked fourth nationally.¹⁵⁰ Although Jarrett's buyout from Notre Dame is not publicly available, the Seminoles undoubtedly had to agree to pay some amount, after Jarrett's recent contract extension through 2026.

III. IMPACT OF THE CHANGING FINANCIAL LANDSCAPE ON ATHLETES

What is eminently evident in reviewing the latest buyouts in college athletics is that the buyout amounts seem to increase as time goes on. Just a few years ago, Texas A&M's \$10 million buyout of Kevin Sumlin and Tennessee's \$8 million buyout of Butch Jones were outrageous to Aggie and Volunteer fans, respectively.¹⁵¹ The reason that "booming buyouts have become more relevant in college football [is that] they've soared with the rest of coaches' compensation."¹⁵² Some posit that coaches receive such high compensation as a "function of the fact that players' salaries are suppressed."¹⁵³ Perhaps as NIL deals and collectives continue to grow, fans who have a penchant for contributing to their favorite teams will opt to send the money directly to players—and not to more general university athletic funds, the vehicle schools often use to pay for buyouts.

One way to limit buyout amounts is to add a clause to a coach's contract that if he gets a job right away, the buyout is limited by a certain amount.¹⁵⁴ For example, when the University of Florida fired Jim McElwain in 2017, McElwain's \$12.5 million buyout was offset by his next salary, if he took "another SEC job within 90 days of termination."¹⁵⁵ The school learned from its past mistake when it fired Will Muschamp in 2014. Then, UF owed Muschamp

¹⁴⁹ Carter Karels, *Florida State Hiring Former Player Assistant Link Jarrett as New Head Baseball Coach*, TALLAHASSEE DEMOCRAT (June 24, 2022 2:08 PM), <https://www.tallahassee.com/story/sports/college/fsu/2022/06/24/fsu-baseball-hiring-notre-dames-link-jarrett-new-head-coach/7696872001/>.

¹⁵⁰ *Id.*

¹⁵¹ Matt Baker, *Why Are College Football Coaches' Buyouts So Big?*, TAMPA BAY TIMES (Oct. 11, 2017), <https://www.tampabay.com/sports/college/why-are-college-football-coaches-buyouts-so-big/2340746/>; Matthew Watkins, *A&M's Firing of Football Coach Kevin Sumlin Means Another Big Buyout for a Texas School*, TEX. TRIB. (Nov. 27, 2017, 8:00 AM), <https://www.texastribune.org/2017/11/27/texas-am-kevin-sumlin-entitled-10-million-buyout-after-his-firing/>.

¹⁵² Baker, *supra* note 151.

¹⁵³ *Id.* (quoting Andrew Zimbalist, an economics professor at Smith College) (internal quotations omitted).

¹⁵⁴ *See id.* (quoting Kenneth L. Shropshire, adidas distinguished Professor of Global Sport at Arizona State University) (internal quotations omitted).

¹⁵⁵ *Id.*

about \$6 million, “money he was collecting while recruiting against the Gators as Auburn’s defensive coordinator and coaching against them at South Carolina.”¹⁵⁶ Another reason that buyout amounts have reached such tremendous heights is that “[c]oaches’ agents have a lot of leverage in negotiations with an athletic director who desperately wants to land his top candidate” in a “what have you done for me lately?” era.¹⁵⁷ Buyouts, thus, are “another way to sweeten the deal—like luxury cars and country club memberships.”¹⁵⁸

The emergence of pricey buyouts has also resulted from a “combination of revenue going through the roof[,] especially from television rights, powerful agents wielding tremendous leverage and university leaders giving in to increasingly one-sided contracts amid growing desperation to find a winner.”¹⁵⁹ Florida AD Scott Stricklin had an agent recently refer to him as “Captain No Guaranteed Money.”¹⁶⁰ Because successful coaches have a lot of leverage, “[they] end[] up setting the market, and then others who may not be quite as successful use where the market is to their benefit.”¹⁶¹ What some have described as “Exhibit A of the lunacy of intercollegiate athletics” is the case of former coach Charlie Weis, who made “more than \$24 million in buyouts from Notre Dame and Kansas.”¹⁶² Combined with his salary at both schools, “he earned \$64.5 million for a career college record of 41-49.”¹⁶³ Such a phenomenon “sets an unrealistic market and puts undue pressure on schools of all sizes[,] including those at lower levels.”¹⁶⁴ Smaller universities in smaller conferences often do not have enough revenues to afford major buyouts as a business expense.¹⁶⁵

Boosters are another major player in the coaching carousel and buyout frenzy to note. They are “major donators and fundraisers who finance and

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ John Talty, *How Did College Coach Buyouts Get So Big? Blame Groupthink and Overmatched ADs*, AL (Nov. 16, 2017, 5:00 PM), https://www.al.com/sports/2017/11/how_did_college_coach_buyouts.html.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ John Talty, *How Did College Coach Buyouts Get So Big? Blame Groupthink and Overmatched ADs*, AL (Nov. 16, 2017, 5:00 PM), https://www.al.com/sports/2017/11/how_did_college_coach_buyouts.html.

account for most of a university athletics program's budget."¹⁶⁶ Despite increased conference payouts, postseason participation and broadcast money, "boosters can act fast and round up their assets faster than those other sources."¹⁶⁷ The consequences of buyout money do not need to be detrimental. For instance, in the case of Scott Frost, who was "hired by Nebraska while he was the head football coach at the University of Central Florida, a smaller . . . football program[,] UCF received money from Nebraska when Frost was hired away."¹⁶⁸ "[I]n turn, UCF used that money to hire Josh Heupel, who was then bought out when he was hired at the University of Tennessee."¹⁶⁹ In other words, "[w]hen a coach gets fired, he receives the buyout, but when the coach gets hired to go to a different university, the university receives the buyout."¹⁷⁰

To understand the financial impact of buyouts on college athletics as a whole, one need not look further than the fact that "[o]ver the last 15 years, public Power Five schools have spent an average of roughly three-quarters of a million dollars per school per year on severance payments for former football and men's basketball coaches and administrative personnel."¹⁷¹ Additionally, "[m]ore schools are making more coaching changes more frequently."¹⁷² The only two universities that reported zero dollars in college football severance payments between 2005 – 2021 are Iowa and Missouri.¹⁷³ Iowa's Kirk Ferentz is "one of the longest-tenured coaches in all of sports, having led the Hawkeyes since 1999"; Missouri's Gary Pinkel was the school's longtime coach and "retired in 2015 after a 15-year tenure, leading to the hiring of Barry Odom."¹⁷⁴ In some ways, "it saves [schools] money to keep a coach after lots of 8-5-type seasons for the promise of the two or three double-digit win seasons they produce every decade," which is true in the case of both Iowa and Missouri.¹⁷⁵ On the flip side, those schools with the highest levels of spending do not possess

¹⁶⁶ John Lloyd, *The Importance of the Buyout for College Football Coaches*, SPORTICO (Sept. 28, 2022, 8:00 AM), <https://www.sportico.com/leagues/college-sports/2022/college-football-coaches-buyout-1234689739/>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Andy Wittry, *An Analysis of College Football and Basketball Coach Buyouts*, ATHLETICDIRECTORU <https://athleticdirectorou.com/articles/analysis-cfb-cbb-severance-payouts/> (last visited Mar. 22, 2024).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

any extraordinary trait: such spending “doesn’t necessarily discriminate based on geography, conference or historical success (or lack thereof).”¹⁷⁶

IV. THE ETHICS OF SCHOOLS OPTING TO PAY LARGE BUYOUTS

“In 2020, many college athletic departments ... [lost] more than \$1 billion in revenue due to [] COVID-19;” yet the same public FBS schools suffering these losses committed “more than \$125 million in buyout-related payments [that] season for head coaches, assistants, and strength coaches.”¹⁷⁷ Although some “scoff at the idea that a major public university ha[d] to fire hundreds of employees due to COVID-19 but [was] also willing to pay football coaches \$20M+ to be unemployed in the same year,” a reasonable explanation may exist.¹⁷⁸ For example, in 2019, Texas and Auburn both “reported record revenue for their athletic department[s]—more than \$360 million combined[,]” 70% of which came “solely from their football programs.”¹⁷⁹ Thus, “[g]iven the need to hire right and performance to improve, it will take years to determine if [schools] made the right decision”; in fact, if they do improve, “the buyout money [will not] even matter.”¹⁸⁰ In essence, an argument for large buyouts may be that they are part of the nature of the business in the 2020s era of college football and are needed to attract top talent. With top talent comes results, and with results comes money—both for athletic programs and for universities as a whole. Such success on the field may translate to additional opportunities for student-athletes and students alike.

However, this idea does not always come to fruition. “[D]espite universities and the NCAA receiving \$18.9 billion in annual revenue, big-time college football is shockingly unprofitable.”¹⁸¹ Despite the fact that the “top conferences lose money, coaches are the highest-paid public employee in 44 states.”¹⁸² In such states, the “level of poverty, educational attainment, and . . . public health” may be suffering.¹⁸³ In fact, some would argue that the \$533 million in buyout

¹⁷⁶ *Id.*

¹⁷⁷ Joe Pompliano, *College Football: Over \$125 Million in Buyout-Related Expenses*, HUDDLE UP (Jan. 4, 2021), <https://huddleup.substack.com/p/college-football-over-125-million>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Dr. J. Patrick Raines, *The Financial Structure of Big-Money College Sports is Broken*, THE TENNESSEAN (Dec. 30, 2021, 5:46 PM), <https://www.tennessean.com/story/opinion/2021/12/30/financial-structure-big-money-college-sports-broken/9055211002/>.

¹⁸² *Id.*

¹⁸³ *Id.*

payouts to coaches and assistants over the past ten years could have been a “significant down payment on the \$1.7 trillion in student debt in America.”¹⁸⁴ To state more practically, “[i]n Louisiana, 19% of the population . . . do[es] not earn enough income to provide the essentials for food, housing and transportation, i.e., the \$25,000 federally determined poverty income threshold.”¹⁸⁵ Further, the state of Louisiana has 391,000 citizens under the age of 65 without health insurance.¹⁸⁶ In other words, “a \$100 million salary for a football coach could potentially lift 4,000 families out of poverty and reduce the burden on taxpayers as states’ revenues increase from healthier, better educated, more productive citizens and college graduates with more discretionary income to spend.”¹⁸⁷

Further, with the increased revenue many programs have experienced, much of the money goes towards coaches’ salaries or buyouts, as opposed to benefits for student-athletes. Excessive spending on buyouts “can create pressure to keep up with the Joneses when it comes to building new facilities, increasing coaches’ salaries and bonus structures, or extending coaches’ contracts after the slightest hint of success or the belief that a coach might have wandering eyes for greener pastures.”¹⁸⁸ The arguable reason that “an increasing percentage of annual revenue goes to coaches, support and administrative staff members” but a “decreasing percentage goes toward expenses that have costs that are relatively fixed”¹⁸⁹ is that those expenses have limits.¹⁹⁰ Such limits are either “explicitly stated, such as the number of scholarships that are allowed per sport or the types of expenses that can be covered by grants-in-aid, or because of practical limits, such as how many meals athletes can eat in a given year, even though they’re allowed unlimited meals and snacks.”¹⁹¹ The data show that “[a]s revenue is increasing, an increasing percent of it is going to coaches” and not players.¹⁹² Because college athletics is meant to primarily serve student-

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Dr. J. Patrick Raines, *The Financial Structure of Big-Money College Sports is Broken*, THE TENNESSEAN (Dec. 30, 2021, 5:46 PM), <https://www.tennessean.com/story/opinion/2021/12/30/financial-structure-big-money-college-sports-broken/9055211002/>.

¹⁸⁸ Andy Wittry, *College Athletics Spending and the Movement Towards Revenue Sharing*, ATHLETICDIRECTORU, <https://athleticdirectoru.com/articles/student-athlete-revenue-sharing/> (last visited Mar. 22, 2024).

¹⁸⁹ *Id.* Such costs may include “athletic student aid, meals, or sports equipment.”

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

athletes, some may wonder if the rise of NIL and the transfer portal will allow players to gain an increased share in revenues going forward.

Another ethical issue in the coaching carousel and buyout frenzy is the level of commitment a coach offers to his team in this new era. College coaches are known for preaching to players that they be “all in” for the team, both on and off the field—and for attempting to demonstrate their level of commitment to a university during the recruiting process. Often, however, now coaches who recruit student-athletes to commit to come play for them for four years leave for greener pastures, ultimately leaving behind the recruited student-athletes to have to play for a new coach, or transfer to a new school. Because schools are more willing to pay buyout premiums on coaches who are under contract, those coaches who are under contract are more willing to switch schools upon receipt of greater financial gain. For example, when news broke that Brian Kelly was leaving Notre Dame to LSU, he was on an in-home recruiting visit with Notre Dame prospect Tobias Merriweather.¹⁹³

Not only is the issue of coach commitment to a program an issue that can arise in the recruitment process, but it can also surface at the end of the season. As previously mentioned, Brian Kelly left Notre Dame before the team learned its postseason fate. “At perhaps the most storied sports program in the world, one in the thick of a College Football Playoff race with a national championship potentially within reach,” Kelly left because “[t]he Tigers needed him *now* with early signing day approaching.”¹⁹⁴ To at least some extent, conference championship games and playoff build—“what should be the most exciting week of the season[—] ... have been hijacked by the coaches ... and their agents.”¹⁹⁵ Such behavior makes one wonder whether “[e]ven the most unscrupulous coaches now have to swallow hard before asking for loyalty from their players.”¹⁹⁶

CONCLUSION

¹⁹³ Nick Shepkowski, *Details Emerge of Brian Kelly's Final Notre Dame Recruiting Trip*, FIGHTING IRISH WIRE (Dec. 3, 2021, 10:03 PM), <https://fightingirishwire.usatoday.com/2021/12/03/notre-dame-football-recruiting-brian-kelly-rees-freeman-trip-merriweather/>.

¹⁹⁴ Dennis Dodd, *Brian Kelly Selfishly Leaving for LSU with Notre Dame in Playoff Race Puts Sport's Hypocrisy on Display*, CBS SPORTS (Nov. 30, 2021, 3:33 PM), <https://www.cbssports.com/college-football/news/brian-kelly-selfishly-leaving-for-lsu-with-notre-dame-in-playoff-race-puts-sports-hypocrisy-on-display/>.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

Overall, the emergence and prevalence of buyouts in the world of college athletics is not intrinsically good or bad; rather, it reflects the changing reality of the entire landscape of the NCAA and college athletics as a whole. Buyouts are highest in college football, which is the sport seeing the greatest changes. The transfer portal, NIL, new television deals, conference realignment, student-athlete social media presence, and facilities expectations are all ushering in a new era of college football. One can certainly argue that high buyout amounts merely reflect changes in market behavior. Universities now have access to data showing the shocking amount of revenue athletic programs (and especially football) can earn for schools—much more than almost any other enterprise they will engage in. These schools also see that success in sports is often tied to a particular coach (e.g., Alabama’s Nick Saban). Every school is looking for the next Nick Saban to achieve success not only on the gridiron, but also in the classroom—in the form of increased name recognition and ability to attract high-achieving students who want a college experience with strong sports. Thus, when a school realizes that its current coach is not suited for the job, it is willing to do all it can to swallow the sunk cost of whatever salary the school and the coach agreed to so that, in the end, the right coach will “right the ship.”

Often, however, this ideal does not come to fruition. Rather, schools find themselves in a cycle of high buyout payments. They go from alluring a seemingly good coach with a strong financial package that includes a buyout provision to firing that coach and attempting to attract a new one with similar provisions in a sequence that is not guaranteed to end. When these schools engage in the practice of spending money on coaches who are no longer coaching for their respective schools, they are—perhaps inadvertently—diverting resources that could otherwise be directed towards the student-athlete experience on former coaches. Such behavior gives the appearance that the school values the coaching staff more than the student-athletes themselves. Additionally, because coaches who are under contract are more willing now than ever to join different programs, buyout culture demonstrates a hypocrisy of college athletics: that students must “buy in” to a program for four years, while a coach may be “bought out” while he is recruiting players for the school he intends to leave.

Some may counter that the expectation of commitment levels in today’s era is no longer high for student-athletes either, as they can seemingly transfer whenever they want and for whatever reason they desire. In essence, the problem with buyout culture is not the nature of buyouts themselves. Instead, the issue is all the other changes happening in college athletics. Such rapid change in such a short amount of time is bound to produce results that are unintended and perhaps, deleterious. The notion that a coach would consider

leaving his team during conference championship week or while he is waiting to see if his team makes the playoffs would have been an entirely foreign concept just a few years ago. However, now with the transfer portal window and the expectation that a head coach have a big role in offseason programming and recruiting, one can more easily understand why a coach feels pressure to join his new program as soon as possible, so as to not lose time to competitors. In fact, if a coach waits until the end of the season to join a new school, he may be starting from behind in recruiting and offseason practice—to the point where the next season’s performance lags behind that of its competitors. If a coach gets off to a bad start in today’s “What have you done for me lately?” culture, he instantly joins the “hot seat” and awaits the potential for his next buyout. Thus, it is understandable why coaches leave when they do. The solution may be to change transfer portal and recruiting windows so that they cannot have any effect on whether a head coach will be with his team in the playoffs or conference championship. In conclusion, for those who have issues with buyout culture, the first step is to address all the other rampant changes in college athletics—the root cause—rather than the outgrowth.