The Drake Group
Est. 1999
ACADEMIC INTEGRITY IN COLLEGIATE SPORT

POSITION STATEMENT

The Drake Group[1] Response to Declaration of James E. Delany in Support of the NCAA's Class Certification Opposition Brief[2]

March 21, 2013

This response is posted on behalf of an organization of scholars associated with the Drake Group. We have studied, participated in and worked in the business of intercollegiate athletics over several decades. Our goal is to provide information to the Court on whether the NCAA's restrictions on college athletes' free participation in the lucrative market for their images, likenesses and names is necessary either to uphold the principles of amateurism or to preserve the activity of intercollegiate athletics.

I. Are NCAA Restrictions on Athletes' Free Participation in the Lucrative Market for their Images, Likenesses and Names Necessary to Uphold Principles of Amateurism?

A. The British Roots of Amateurism in American College Sports

The amateur ideal, while most clearly associated with the British aristocracy, was probably embraced by the leisure classes in most preindustrial civilizations.[1] At the very center of this ideal was the belief that leisure activities are qualitatively superior to those associated with

---

[1] The Drake Group is a national organization of faculty and others whose mission is to defend academic integrity in higher education from the corrosive aspects of commercialized college sports. The Drake Group goals include: (1) ensure that universities provide accountability of trustees, administrators, and faculty by publicly disclosing information about the quality of educations college athletes receive; (2) advance proposals that ensure quality education for students who participate in intercollegiate athletics, (3) support faculty and staff whose job security and professional standing are threatened when they defend academic standards in intercollegiate sports; (4) influence public discourse on current issues and controversies in sports and higher education; and (5) coordinate local and national reform efforts with other groups that share its mission and goals. The Drake Group is "In residence" at the University of New Haven. For further information see: http://thedrakegroup.org or contact Gerald S. Gurney, *President at* geraldgurney@gmail.com

[2] Preferred citation: Sack, A. and Zimbalist, A. (2015) The Drake Group Response to Declaration of James E. Delany in Support of the NCAA's Class Certification Opposition Brief. (March 21, 2013). Retrieve at: http://thedrakegroup.org/

making a living or whose motive is material gain. The aristocrat had time to appreciate activities like literature, science, and sports merely for the love of it.

This amateur ethos was deeply ingrained in sports at Britain's leading universities and public schools in the early nineteenth century. A 1927 Carnegie Foundation report on sport in British schools and universities found that British students took sport very seriously, but that the amateur's casualness and dislike for professional drill were very much in evidence among athletes.[2] British students took great pains to distance themselves from the highly trained professional, the latter being viewed as "a mere segment of a man."

Between 1852 and 1880, intercollegiate competition began in the United States in baseball, rowing, American football, and other sports, most of which had British roots. The Carnegie Foundation reported the usages and customs in the pre-Civil War period were (consciously or unconsciously) similar to those at Oxford and Cambridge.[3] However, in the late nineteenth century, as college sport began to grow as a form of mass commercial entertainment, the demand for skilled players began to undermine the British model.[4]

B. The NCAA's Early Defense of the Amateur Ideal

Although amateur rules created in Britain were difficult to enforce on a society increasingly dominated by the acquisitive values of America's "captains of industry," efforts were made to preserve them. The Intercollegiate Athletic Association of the United States (IAUUS) later named the National Collegiate Athletic Association (NCAA) was founded in 1905. The NCAA's position on amateurism, as it appears in Articles VI and VII of its 1906 Bylaws, is unequivocal and consistent with the British model.

According to Article VI, each member institution was to enforce measures to prevent violations of amateur principles. Included among these violations was "the offering of inducements to players to enter colleges or universities because of their athletic abilities or maintaining players while students on account of their athletic abilities, either by athletic organizations, individual alumni, or otherwise directly or indirectly."[5] Athletic scholarships violated amateur rules. Need-based financial aid unrelated to sports did not.

The NCAA's first definition of amateurism appeared in 1916. According to Article VI(b) of the bylaws, an amateur is "one who participates in competitive physical sports only for the pleasure, and the physical, mental, moral and social benefits derived therefrom.[6] An amended version appeared in 1922. "An amateur sportsman is one who engages in sport solely for the physical, mental, or social benefits he derives therefrom, and to whom the sport is nothing more than an avocation."[7].

Because the NCAA had no enforcement power at this point in history, its amateur rules were violated with impunity. An NCAA committee report in 1934 concluded that abuses in areas of recruitment and subsidization "have grown to such a universal extent that they constitute the major problem in American athletics today."[8] In the first half of the twentieth century, when the college sport industry experienced explosive growth, it made absolutely no business sense to trust its fortunes to athletes who were not recruited and subsidized.

In 1948, the NCAA bowed to the pressure to offer some sort of athletically-related financial aid when it passed what is referred to as the Sanity Code. This legislation allowed—for the first time ever—schools to award athletically-related financial aid as long as it was limited to tuition and incidental expenses and the athlete qualified for need. Aid exceeding tuition could be granted if based on superior academic scholarship. The Sanity Code, which stipulated that aid could not be withdrawn if a student ceased playing, was abandoned in 1950 when the NCAA membership voted not to expel schools that had violated the rule.[9]

C. Broadening Amateur Rules to Accommodate Industry Growth

Six years after the demise of the Sanity Code (1956) the NCAA adopted athletic scholarships to cover commonly accepted educational expenses. In 1957, an "Official Interpretation" defined expenses as room, board, tuition, books, fees, and $15 for laundry.[10] Few of the people who attended the NCAA's first convention in 1906 could have conceived that by 1957 NCAA rules would allow a university to use these types of financial inducements to recruit high school athletes.[11]

As college sport became increasingly commercialized, the amateur umbrella had been expanded to include athletes who at the NCAA's founding convention would have been branded as professionals. The 1957 legislation contained provisions to counter the argument that athletic scholarships constituted "pay for play" which might expose its members to worker's compensation claims. Financial aid could not be "reduced (gradated) or canceled on the basis of an athlete's contribution to team success, injury, or decision not to participate. The NCAA mandated the use of the term "student athlete."[12]

In 1967 the NCAA moved even further from its original conception of amateurism when members began to complain that athletes were accepting four-year scholarships and deciding not to participate. One athletic director opined that this was "morally wrong." He then added that "regardless of what any one says, this is a contract and it is a two way street."[13] To address this problem the NCAA passed rules that allow the immediate cancelation of a scholarship of an athlete who voluntarily withdraws from sports or does not follow a coach's directives.

The NCAA made a total break from the traditional model of amateurism in 1973 by requiring that athletic scholarships be renewable on a year-to-year basis.[14] This rule allows a coach to cancel athletes' scholarships at the end of one year for just about any reason, including injury, contribution to team success, making room for a more talented recruit, or failure to fit into the coaches' style of play. The contractual nature of this relationship and the control it gives to the coaches over the player's behavior has many of the trappings of an employment contract.[15]

In marked contrast to the British model adopted by the NCAA in 1906, the 1973 version transformed athletes into highly specialized entertainers. In revenue sports, athletes' lives became routinized by coaches, leaving little time for other interests or extracurricular activities. Nonetheless the drift away from earlier amateur practices has not detracted from its college sport's popularity as commercial entertainment, and the NCAA's ability to arbitrarily define what constitutes amateurism insures that increasing subsidies to athletes will not pose a threat to the NCAA's brand of "amateur sport".

D. Increase in NCAA Subsidies to Athletes from 1973 to the Present

Over the ensuing four decades, the NCAA has also allowed explicit gifts to be given to student-athletes. For instance, the University of Connecticut was allowed to give out 298 championship rings in commemoration of their 1999 NCAA basketball championship. The nicest rings, which were 10-karat gold inset with diamonds and cost $495.50 apiece, went to the team's coaches, the athletics director, the associate athletic director and the university president. The rings for the players on the team were only gold tone, and cost $199. Somehow, amateurism allows gifts, but only inferior gifts to the players.

NCAA also allows players in football bowl games and the March basketball tournament to receive up to over a thousand dollars in gifts. An article in the *Sports Business Journal* from March 2012 provided some details: "For example, a senior on a team that runs the table and wins championships for the regular season, postseason conference tournament and NCAA tournament could secure gifts valued at up to $3,780. Last year's comparable total was $3,380. Up to 25 gift packages can be provided to a team by its school and by its conference for participating in this month's conference tournaments, according to NCAA bylaws."[16]

The NCAA has also liberalized its rules with regard to Pell Grants. At the 1982 Convention, it was decided that poor students would be allowed to supplement an athletic scholarship with 50 percent of the maximum Pell Grant (which was $1,800 at the time); this proportion was raised to 74 percent in 1990 and to 100 percent in 1996.

The NCAA has modified its rules in ways that have little to do with the core notion of amateurism and that are inconsistent with those of other amateur organizations. For instance,

while the NCAA deems it acceptable for an amateur in college to receive a grant of tuition, room and board, it prohibits prospective student-athletes, while still in high school, from receiving aid based on athletic ability (I am not sure of this—Allen)

Or, while the Amateur Athletic Union (AAU) allows broken time payments (payments to athletes in training or in competition to compensate for lost income while away from their job), the NCAA does not. Nor does the NCAA allow student-athletes to receive sponsorship money even if it only covers basic expenses (a policy that prevented Olympic skier Jeremy Bloom from returning to the University of Colorado football team.) The AAU not only allows broken time payments, but it permits athletes to receive income from endorsements.

The United States Golf Association's *Rules of Amateur Golf* for 2012 allows amateur members to compete in professional tournaments provided that they do not receive prize money. Amateur members are also allowed to hire an agent and to receive compensation that is unrelated to winning a tournament.

Further, in some cases, the NCAA has different rules for European student-athletes than for U.S. student-athletes – professional tennis players from Europe are allowed to play NCAA tennis while U.S. student-athletes who have earned income playing tennis are not allowed to compete in college (check). The NCAA Manuals are over 1,000 pages long and the list of quixotic regulations that purport to uphold amateurism is extensive.

The NCAA also restricts student-athletes from contacting a lawyer or player agent to help them (a) arrange and prepare for appearances at combines, (b) receive information about what the economic implications are regarding their options with respect to the amateur draft, or (c) enter into preliminary negotiations around signing a professional contract. Any of these activities would predate the athlete signing a contract, being paid or becoming a professional.

The 2012-13 *Division I NCAA Manual* has dropped the definition of amateurism that has been in place since 1922, and simply states that it does not allow pay except as permitted by the governing legislation of the association.*"* The inescapable conclusion is that the NCAA maintains its own, idiosyncratic, changing, frequently arbitrary, and often illogical definition of amateurism. It is more restrictive than that applied in other amateur athletic organizations. The NCAA tweaks its definition regularly to meet its needs. In short, in intercollegiate athletics amateurism is whatever the NCAA says it is. NCAA restrictions on college athletes' free participation in the lucrative market for their images, likenesses and names are obviously not necessary to uphold the principles of amateurism which are constantly changing to meet industry needs.

II. Are NCAA Restrictions on Athletes' Free Participation in the Lucrative Market for their Images, Likenesses and Names Necessary to Preserve the activity of Intercollegiate Athletics?

A. Competitive Balance

The NCAA has claimed that its restrictions on income from the use of athletes' images, likenesses and names are necessary in order to promote balance in competitive outcomes and financial solvency for athletic programs. In fact, the NCAA's policies do not promote competitive balance and sharing licensing income with its current (via trust funds) and former athletes would be completely compatible with maintaining the current financial standing of intercollegiate athletic programs, provided the NCAA took appropriate measures to reduce waste and inefficiency. Below we address, first, the issue of competitive and, second, that of financial solvency.

The expert report of Professor Roger Noll in this case laid bare the facts on the skewed outcome of athletic recruitment, won/loss records and postseason success. We shall not review that record here. Rather, in what follows we document the acute and growing inequality that prevails in intercollegiate athletics and how the NCAA underwrites that inequality.

In 2011-12, the NCAA redistributed $467 million to Division I schools; that is, the Association distributed 61 percent of its revenues to the 32 percent of its schools in Division I. The six elite conferences within the FBS of Division I received approximately 48 percent of the total revenue disbursement. These six conferences represented 73 schools, accounting for 21.5 percent of Division 1 schools and only 6.9 percent of all NCAA members. The non-elite conferences received the other 52 percent. The non-elite conferences represent 267 schools, 78.5 percent of Division I schools. Division II (with 26.5 percent of the NCAA's schools) received 4.37 percent of NCAA revenues (or 6.4 percent of distributions) and Division III (with 41.5 percent of schools) received 3.18 percent (or 4.6 percent of distributions).

Of course, it may be argued that Division I schools generate almost all of the NCAA's revenue and, therefore, they are entitled to a disproportionate share of the revenue. Still, if the NCAA is trying to promote balance on the playing fields, amateurism, and the primacy of education, as it claims; then a more equal distribution of revenues would better suit these goals.

The skewed revenue distribution is mirrored by the NCAA's power structure, which leans heavily toward representation from Division I, and within Division I, heavily toward the FBS. The NCAA Executive Committee carries the deciding vote regarding policy issues affecting the entire Association. This Committee consists of 16 voting members and 4 non-voting members.

Of the 16 voting members, 8 are chancellors or presidents from FBS institutions. The remainder of the Executive Committee is a smattering of smaller Division I football programs, as well as Division II and Division III chancellors or presidents.

The Division I Board of Directors sets Division I policy. It consists of 11 FBS presidents and 7 non-FBS presidents (who rotate among the 20 non-FBS conferences.) Thus, FBS, with 124 schools, has 61 percent of the voting power on the Division I Board, despite the fact that it represents only 36 percent of the schools in Division I. Of the 11 FBS representatives, 6 representatives and the chair of the Board come from the six elite (or AQ) conferences within FBS.

The Division I Leadership Council is responsible for advising the Division I Board of Directors, overseeing the appointment and substructure of cabinets and committees, and taking final action on matters delegated to it by the Board of Directors. The Leadership Council is comprised of 31 members, one from each conference. However, the amount of voting power differs by conference. Representatives from the six elite conferences and Conference USA each receive three votes. The other 4 remaining FBS conference representatives each receive 1.5 votes. The 20 non-FBS conference representatives each receive 1.2 votes. Thus, the FBS conferences have a combined 27 votes while the non-FBS conferences have 24.

The Division I Legislative Council has the same structure as the Leadership Council. The FBS conferences have the majority of the votes. The Legislative Council is the primary legislative authority. They are in charge of developing educational material regarding pending legislation. While the objective is equity, the structure of the governing NCAA committees reveals a bias toward prominent football institutions from the elite conferences.

The NCAA has also allowed the AQ conferences to organize its own postseason tournament and to retain all the revenue generated therefrom. All the other 88 NCAA sponsored sports have a national postseason championship playoff that is sponsored and run by the NCAA. Since its inception in 1998 through 2014, it has allowed for preferential bowl access and sharply differential revenues to flow to the six original BCS (aka, automatic qualifier or AQ) conferences.

Overall, during the first thirteen years of the BCS system, bowls have included 105 appearances by AQ conference teams and only seven appearances by non-AQ conference teams. During 2007-2011, total payouts from the BCS bowls amounted to $722.1 million, of which $618.4 million (or 85.6 percent) has gone to AQ conferences, the balance went to the non-AQ conferences within the FBS.

Revenue distribution data among schools and divisions in college sports prior to 2000 is scarce, and that which is available is generally tabulated with different metrics than what is available since 2000. It is therefore difficult to get an accurate picture of how much inequality has increased over the decades. Further, due to inconsistent and incomplete accounting practices within athletic departments and the fact that a good deal of revenue and cost information is treated as proprietary, it is impossible even today to achieve a full and accurate picture of the extent of inequality. Nonetheless, it is possible to compile pieces of information from the periodic *NCAA Revenues and Expenses* reports (Fulks, 2005, 2008, 2011), the EADA reports (http://ope.ed.gov/athletics/), and other sources to assemble a broad outline of the trends and the status quo in revenue inequality among FBS programs.

Table 1 presents data on the highest to average revenue ratio for roughly the top 150 athletic programs between 1962 and 1997. It depicts a clear trend toward greater inequality with some acceleration in the trend after the 1984 Supreme Court decision in Board of Regents v. NCAA. The post-2003 data is for the FBS (120 schools in 2010-11) and it refers to the highest to the median revenue ratio. With the skewed revenue distribution that prevails in the FBS, the mean will typically be considerably above the median, so these two data series are not comparable.

Table 1

Revenue Inequality Among the Approximately Top 150 Athletic Programs, 1962-1997

Year	Top School/Average School
1962	1.81
1970	1.92
1980	2.48
1989	3.04
1995	3.29
1997	3.48

Sources: Mitchell Raiborn, *Financial Analysis of Intercollegiate Athletics.* Kansas City: NCAA, 1970; M. Raiborn, *Revenues and Expenses of Intercollegiate Athletic Programs, 1970-1977, 1978-1981, 1981-1985, 1985-1989.* Overland Park: NCAA, 1978, 1982, 1986, 1990; Daniel Fulks, *Revenues and Expenses of Intercollegiate Athletic Programs, 1993.* Overland Park: NCAA, 1994; D. Fulks, *Revenues and Expenses of Division I and II Intercollegiate Athletic Programs, 1995, 1997.* Overland Park: NCAA, 1996, 1998.

Although the top/average revenue ratio series ends in 1997, it is possible to extend the trend through 2003 by reference to NCAA data for football and men's basketball programs. Table 2 shows that the ratio of the highest revenue program from football and men's basketball to the average revenue program steadily increased from 3.56 in fy1997, to 3.66 in fy1999 and to 3.89 in fy2003.

Table 2

FBS Football and Men's Basketball Revenue, 1997-2003

	High	Average	Ratio (high/avg)
1997	$37,400,000	$10,500,000	3.56
1999	$44,700,000	$12,200,000	3.66
2003	$67,300,000	$17,300,000	3.89

After 2003, the average program is no longer reported; only the median is reported. As shown in Table 3, the ratio of the highest to median school for football and men's basketball revenue continues its steady ascent between fy2004 and fy2010.

Table 3

FBS Football and Men's Basketball Revenue, 2004-2010

	High	Median	Ratio (high/median)
2004	$62,708,000	$11,501,000	5.45
2007	$89,379,000	$15,740,000	5.68
2010	$119,833,000	$20,986,000	5.71

Another view of revenue inequality by deciles in the FBS is provided in Table 4. Although the two years are not neatly comparable because the fy2003 data is for total revenues and the fy2010 data is for generated revenues, there is an apparent trend toward greater inequality. The standard deviation of the revenue more than doubles between the two years.

Table 4

FBS Men's Total Revenues, 2003

Percentile	More than	Less Than	Range Avg
0 to 10	$1,145,000	$2,700,000	$1,922,500
11 to 20	$2,700,000	$5,200,000	$3,950,000
21 to 30	$5,200,000	$7,400,000	$6,300,000
31 to 40	$7,400,000	$11,200,000	$9,300,000
41 to 50	$11,200,000	$15,700,000	$13,450,000
51 to 60	$15,700,000	$20,800,000	$18,250,000
61 to 70	$20,800,000	$26,000,000	$23,400,000
71 to 80	$26,000,000	$31,500,000	$28,750,000
81 to 90	$31,500,000	$41,000,000	$36,250,000
91 to 100	$41,000,000	$68,000,000	$54,500,000
		St. Dev.	$16,577,883

FBS Total Generated Revenues, 2010

Percentile	More than	Less Than	Range Avg
0 to 10	$3,820,000	$6,083,000	$4,951,500
11 to 20	$6,084,000	$8,294,000	$7,189,000
21 to 30	$8,295,000	$13,281,000	$10,788,000
31 to 40	$13,282,000	$22,973,000	$18,127,500
41 to 50	$22,974,000	$35,365,000	$29,169,500
51 to 60	$35,366,000	$44,330,000	$39,848,000
61 to 70	$44,331,000	$57,615,000	$50,973,000
71 to 80	$57,616,000	$71,093,000	$64,354,500
81 to 90	$71,094,000	$97,715,000	$84,404,500
91 to 100	$97,716,000	$143,555,000	$120,635,500
		St. Dev.	$37,784,11

Historically strong football programs also find it easier to maintain attendance and revenue even during poor performance years. The correlation coefficient between win percentage and attendance during 2005-2011 was .16 for AQ schools and .35 for non-AQ schools. That is, attendance at non-AQ schools was much more sensitive to team performance than for AQ schools.

Yet another perspective on growing inequality is shown in Table 5, which reports on revenue distribution across FBS conferences, with emphasis on the automatic qualifying (AQ) and non-automatic qualifying (non-AQ) conferences. Considering football and men's basketball revenue

together, the standard deviation of revenue distribution by conference increased sharply from $144.0 million in 2003 to $237.4 million in 2010. Further, separating FBS into AQ and non-AQ conferences, Table 8 shows that the difference in the average total revenue of AQ and non-AQ conferences grew from $243.7 million in 2003 to $387.3 million in 2010.[17]

Table 5

FBS Conference Inequality, 2003-2010

	Conference		Total Football Revenue	Total Men's Basketball Revenue	Football + Basketball Revenue
2003	Atlantic Coast		$180,171,498	$89,947,019	$270,118,517
	Big East		$123,255,993	$64,569,934	$187,825,927
	Big Ten		$276,809,402	$105,113,003	$381,922,405
	Big 12		$258,812,764	$78,194,746	$337,007,510
	Conference USA		$69,615,428	$29,599,122	$99,214,550
	Mid-American		$33,280,645	$15,693,288	$48,973,933
	Mountain West		$53,061,049	$34,001,598	$87,062,647
	Pacific-10		$176,744,243	$60,011,337	$236,755,580
	Southeastern		$350,193,187	$81,250,948	$431,444,135
	Sun Belt		$22,333,410	$12,182,508	$34,515,918
	Western Athletic		$34,188,546	$15,283,538	$49,472,084
		SD	$113,607,693	$33,294,075	$144,048,005
		AQ avg	$227,664,515	$79,847,831	$307,512,346
		non-AQ avg	$42,495,816	$21,352,011	$63,847,826
		AQ - non-AQ	$185,168,699	$58,495,820	$243,664,519
2010	Atlantic Coast		$278,558,264	$146,638,009	$425,196,273
	Big East		$221,618,743	$122,963,744	$344,582,487
	Big Ten		$466,123,523	$152,852,255	$618,975,778
	Big 12		$431,271,998	$121,797,935	$553,069,933
	Conference USA		$111,232,908	$56,707,091	$167,939,999
	Mid-American		$80,508,627	$36,288,065	$116,796,692
	Mountain West		$105,176,368	$51,528,057	$156,704,425
	Pacific-10		$252,858,608	$90,156,086	$343,014,694
	Southeastern		$640,229,277	$138,777,080	$779,006,357
	Sun Belt		$56,678,431	$24,526,765	$81,205,196
	Western Athletic		$67,120,620	$26,709,080	$93,829,700
		SD	$193,162,379	$50,359,583	$237,384,451
		AQ avg	$381,776,736	$128,864,185	$510,640,920
		non-AQ avg	$84,143,391	$39,151,812	$123,295,202
		AQ - non-AQ	$297,633,345	$89,712,373	$387,345,718

Finally, Table 6 presents a breakdown in the sources of revenue inequality among the four quartiles of athletic programs in FBS in fy 2010. There are four categories of revenues that account for the lion's share of the differences between the top quartile and bottom quartile of athletic programs: ticket sales where the average difference between programs in the top and bottom quartiles is $23.3 million; NCAA and conference distributions where it is $18.1 million; alumni donations where it is $22.2 million and the category of sponsorships, advertising and royalties where it is $5.9 million. Although some of the television money comes indirectly via the NCAA and conference distributions, the direct payment of television rights fees has only a diminutive differential of $1.7 million. Since it is in the area of television revenue that we can expect the largest differentials in the coming years (in some cases growing to over $20 million per school annually), the prospect for growing inequality in FBS is daunting.

Table 6

Sources of Revenues Division I – FBS by Expense Quartile Fiscal Year 2010 Median Values

	First (High) Quartile	Second Quartile	Third Quartile	Fourth (Low) Quartile
Total Ticket Sales	24,418,000	12,704,000	6,258,000	1,113,000
NCAA and conference distributions	19,334,000	9,914,000	3,661,000	1,233,000
Guarantees and options	412,000	623,000	615,000	1,085,000
Cash contributions from alumni and others	23,616,000	10,942,000	5,304,000	1,423,000
Third Party Support	0	0	0	0
Other:				
Concessions/Programs/Novelties	1,831,000	1,453,000	631,000	136,000
Broadcast Rights	1,665,000	83,000	53,000	0
Royalties/Advertising /Sponsorship	6,534,000	4,197,000	1,399,000	590,000
Sports camps	557,000	12,000	15,000	157,000
Endowment/ Investment	1,667,000	653,000	187,000	60,000
Miscellaneous	2,137,000	788,000	645,000	250,000
Total Generated Revenues	86,942,000	45,404,000	23,072,000	6,836,000
Allocated Revenues:				
Direct Institutional Support	0	4,924,000	3,822,000	4,730,000
Indirect Institutional Support	0	122,000	365,000	728,000
Student Fees	0	1,583,000	1,714,000	4,891,000
Direct government support	0	0	0	0
Total Allocated Revenues	3,380,000	9,446,000	11,409,000	13,615,000
Total All Revenues	89,236,000	57,841,000	36,586,000	20,567,000

Another important contrast lies in the comparison of institutional (school and government) subsidies to athletic programs. Overall, this component of athletic revenues in FBS has been growing rapidly, from 22 percent of total athletic revenues in fy2003 to 34.5 percent in fy2010. These subsidies are also very unevenly distributed across the quartiles. Average subsidies per program in 2010 were $3.4 million in the top quartile, $9.4 million in the second quartile, $11.4 million in the third quartile and $13.6 million in the bottom quartile. The growing inequality is clearly painting a bleak picture for all but the top FBS programs.

Greater revenue equality would have to emanate from NCAA policy either to distribute March Madness revenues more equally and/or to introduce an FBS football playoff with a more equal dispersion of those revenues than practiced under the BCS.

Importantly, revenue redistribution can accomplish the important goal of changing the incentives facing intercollegiate programs by lowering the distribution tied to commercial success and raising the distribution tied to educational success. For example, in 2011-12 the NCAA distributed $467 million. Approximately 95 percent of the NCAA's revenue comes from the March Madness Division I basketball tournament. Of the $467 million, $184.1 million (40 percent) was distributed to schools according to their success in the basketball tournament over the previous six years, $122.7 million (26 percent) went to the scholarship fund which is distributed to schools according to the number of student-athlete grants-in-aid they give,[18]

$61.4 million (13 percent) went to the sports sponsorship fund which is distributed to schools based on the number intercollegiate sports they sponsor, and $66 million (14 percent) went to the student assistance fund which primarily goes to support student financial need and preferentially is distributed to FBS schools. Thus, $368.2 million, or 78.8 percent of the total NCAA distribution, is allocated according either to success in the March basketball tournament or to the size of the athletic program and its scholarships. The second largest recipient is the $122.7 million allocated to the scholarship fund, which strongly favors FBS programs where 85 full football grants-in-aid are allowed. This means that money generated in the sport of basketball is going to support football programs, which appears to make neither logical nor educational sense.

Although $23.4 million (5 percent of total) in the academic enhancement fund and modest portions of the student assistance and supplemental funds go to support the education of student-athletes, *none of the $467 million is allocated according to the academic success of student-athletes or to other measures of school educational success*.[19] Restructuring these NCAA distributions, then, would not only be desirable from the perspective of competitive balance, financial solvency and blunting the incentives toward commercialism, but also from the perspective of incentivizing the schools' focus on educational outcomes.

B. Financial Solvency

The notion that remunerating student-athletes for the use of their images, likenesses and names would render college athletics financially unviable is reminiscent of the claims that the owners of major league baseball teams used to make about the reserve clause; to wit, without a clause that bound players to the teams as indentured servants, the owners asserted, the baseball industry would collapse. Since the introduction of free agency in baseball in 1976, however, the MLB has grown at an extraordinarily rapid pace and franchise values have expanded accordingly.

We have not seen the financial data related to the revenue generated from EA video games. In what follows, we present an explanation of why there is more than a few million dollars per FBS program that is attributable to wasteful and inefficient policies, and, hence, without changing the quality of the competition could be diverted to remunerating current and former student-athletes for the commercial use of their property rights.

Between 1985-86 and 2009-10, the average salary of head football coaches at 44 Division IA schools rose from $273,300 to $2,054,700, or by 7.5 times, (in 2009-10 dollars), while the average salary of college presidents increase from $294,400 to $559,700, or by 0.9 times, and the average salary of full professors rose from $107,400 to $141,600, or by 0.3 times. Stated differently, the compensation of head football coaches increased 8.3 times faster than that of university presidents and 25 times faster than that of full professors.

The salaries of the top-paid FBS football head coaches in 2011-12 ranged from $2,275,545 to $5,193,500. For the 25 top-paid basketball coaches the range was $1,521,370 to $4,987,578. Assistant coaches' salaries have also risen rapidly, in some cases to over $1 million. (Coaches' perquisites generally include country club memberships, free use of cars, housing subsidies, private jet service, complimentary tickets, inter alia, and they can earn additional income from motivational speaking, media appearances, certain endorsements, summer camps and book contracts.)

These salaries make little sense economically. Defenders of the multimillion-dollar head coaches' salaries invariably chant the mantra: "Compensation packages are driven by market forces." Perhaps this is so, but in college sports market forces are artificially influenced by several factors: (a) no monetary compensation is paid to the primary workforce – the athletes; (b) the presence of substantial tax preferences; (c) the absence of shareholders demanding dividend distributions or higher profits; (d) extensive subsidies from the university and state budgets; and (e) athletic directors whose own salaries rise proportionately to those of the department's head coaches.

The resulting outsize pay packages defy one of the central principles of a competitive market. College football and basketball coaches earn, on average, almost the same amount as their NFL and NBA peers, although college programs generate a fraction of the revenue of professional

teams. The top 32 football programs bring in between $40 million and $90 million, whereas NFL teams generate an average of about $260 million. The disparity is even greater in basketball, where the top 30 Division I teams average about $15 million in revenue, one-tenth the average NBA team revenue of approximately $150 million.

The factor contributing most directly to the inflated coaches' pay is the athletes' amateur status. In significant measure, coaches are paid for the value produced by others, most notably the athletes they or their assistant coaches recruit. That is, the marginal revenue product of the star players accrues largely to the head coach, rather than to the players themselves, just as was true for professional athletes prior to the days of free agency. The value produced from recruiting – whose success relies on many factors, such as assistant coaches, the school's conference, its reputation and facilities – is attributed to the head coach.

If head coaches' salaries were pegged to a multiple of the average assistant professor's salary (say five times), DIA schools would save millions of dollars annually (and an important message would be sent to the student body about the primacy of education). Assuming head coaches' compensation were capped at $400,000, it would have virtually no impact on the allocation of superior coaching resources to college football and basketball. The difference between current pay levels and $400,000 is what economists call rent – payment to a factor of production over and above what it needs to be paid to have it allocated to its most productive use. The next best alternative employment for elite college coaches (the opportunity cost) is likely to be well below $400,000. Many of them would be reduced to coaching at lower-division collegiate programs for a third or less of the capped amount, or at high schools for less still.

To be sure, a salary cap would meet with fierce resistance from the NCAA. The NCAA has long functioned as a trade association for coaches, athletic directors, and conference commissioners. Why would they want to cap themselves? They wouldn't, just as they prefer not to allow the diversion of any revenue toward the student-athletes. Of course, before the NCAA could legislate a cap on coaches' salaries, it would be prudent to seek an antitrust exemption for this purpose from Congress. The NCAA refuses to ask Congress.

There are other reforms that the NCAA could help its schools save money in order to cover the expenses that would follow from allowing athletes to receive rightful remuneration for their property rights. One such policy change would be to reduce the number of full grants-in-aid for FBS football teams down to 60 (or fewer) from the current level of 85. The average FBS football team has 35 walk-ons, bringing the mean squad size to 120. With a limit of 60 scholarships, there would be 95 players per team on average (assuming the number of walk-ons did not increase, which it probably would as several players lose their scholarships.) With 95 players, FBS teams would be more than twice the size of NFL active rosters, or more than 50

percent larger than NFL active plus reserve and practice squad rosters. Limiting FBS to 60 football scholarships would save over $1.5 million a year for the typical school.[3]

There is also substantial waste and extravagance in the budgets for the "non-revenue" sports at the FBS level. Table 7 presents a comparison of expenditures regarding "non-revenue" sports at the FBS and FCS (Division IAA) levels. It shows that the average spending on these sports during 2009-10 at the FBS level is over $350,000 greater per sport than at the FCS level. If half of this excess expenditure could be reduced for 17 sports[21][4], then the average savings per year would be $2.99 million per school.

COMPARABLE TEAM EXPENSES: FBS v. FCS, 2009-10

	MEN Baseball	MEN Trckcomb	MEN Gymn	MEN IceHcky	MEN Lacrsse	MEN Rowing	MEN Lacrsse
Average FBS Expenses	$1,391,583	$863,425	$639,883	$2,303,044	$1,246,749	$806,857	$1,246,749
Average FCS Expenses	$561,041	$348,698	$137,761	$1,280,870	$572,572	$455,545	$572,572
Difference	$830,542	$514,728	$502,122	$1,022,174	$674,177	$351,312	$674,177

	WOMEN Bskball	WOMEN Trckcomb	WOMEN FldHcky	WOMEN Golf	WOMEN Gymn	WOMEN IceHcky	WOMEN Lacrsse
Average FBS Expenses	$2,140,398	$1,023,112	$831,258	$428,823	$902,136	$1,464,959	$905,674
Average FCS Expenses	$933,209	$466,463	$484,704	$178,969	$377,270	$788,354	$448,037
Difference	$1207,189	$556,649	$346,554	$249,854	$524,866	$676,605	$457,637

	WOMEN Gymn	WOMEN SwimDivng	WOMEN Rowing	WOMEN Soccer	WOMEN Softball		
Average FBS Expenses	$902,136	$833,348	$1,124,629	$899,440	$873,395		
Average FCS Expenses	$377,270	$347,164	$417,056	$469,814	$443,296		
Difference	$524,866	$486,183	$707,573	$429,626	$430,099		

All Comparable 49 "Non-Revenue" Sports

Total Difference	$17,224,328
Average Difference per Team	$351,517

The foregoing is intended only to be illustrative of the opportunities for rational cost savings that could take place at the FBS level. Given any reasonable level of estimated costs accruing from the payment for the use of current and former student-athletes' property rights, it is clear that there are sufficient resources within the NCAA to cover these responsibilities without threatening to disrupt the current financial condition of intercollegiate athletics.

Notes

1. See Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy* (Boston: Beacon Press, 1966), 488. Also Bliss Perry, *The Amateur Spirit* (New York: Houghton, Mifflin and Company, 1904). 25. Thorstein Veblen in his classic, *The Theory of the Leisure Class*, observed that abstention from productive labor had become a sign of superior status among landed aristocrats from the time of the ancient Greeks.

2. Howard Savage, *Games and Sports in British Schools and Universities* (New York: The Carnegie Foundation for the Advancement of Teaching, 1927), 78. According to Savage, "for the undergraduate, sport is not an exhibition to be watched; it is a recreation to be indulged in actively.

3. Howard Savage et al., *American College Athletics*, Bulletin Number 23 (New York: Carnegie Foundation for the Advancement of Teaching, 1929), 21.

4. The subsidization and recruitment of college athletes took a variety of forms. College alumni were often at the center of nationwide efforts to procure athletic talent; cash payments, jobs, and loans that were invariably forgiven were just a few of the inducements. Alumni often operated independently to procure talent for their alma maters. At other times, they worked closely with coaches and college administrators. Citizens not formally related to a college became boosters of college sport helped to subsidize talented players. See Alexander Meiklejohn, "The Evils of College Athletics," Harper's Weekly, 2 December 1905, p. 1751. Also Henry Beach Needham, "The College Athlete," *McClure's Magazine*, June-July 1005, pp. 115-28.

5. Intercollegiate Athletic Association of the United States, NCAA, *Proceedings of the First Annual Convention*, 29 December 1906, p. 33.

6. Intercollegiate Athletic Association of the United States, NCAA, *Proceedings of the Eleventh Annual Convention*, 28 December 1916, p. 118.

7. Intercollegiate Athletic Association of the United States, NCAA, *Proceedings of the Seventeenth Annual Convention*, 29 December 1922 p. 118.

8. Jack Falla, *NCAA: The Voice of College Sports* (MS: Kansas: National Collegiate Athletic Association, 1981), 9-17. In 1935 a total of eleven of thirteen colleges in the Southeast Conference voted to recognize athletic ability in determining financial aid assistance for football players, thus ignoring the NCAA amateur code on recruiting and subsidizing athletes. See "sheepskin of or Pig Skin?" *Washington Post*, 18 December 1935 clipping found in President Newcomb papers, II, Box 4, Folder "Athletics," University of Virginia archives.

9. National Collegiate Athletic Association 1947-48 *Yearbook*, pp. 212-13. To counter the argument that financial awards specifically earmarked for athletes constituted "pay" for services rendered, the Sanity Code retained a clause stating that "No athlete will be deprived on financial aids …for failure to participate I intercollegiate athletics," pp. 77-79.

10. National Collegiate Athletic Association, 1956-57 *Yearbook*, pp. 4-5.

11. Walter Byers, the executive director of the NCAA from 1951 to 1987 has characterized the awarding of athletic scholarships as the beginning of a nationwide money laundering scheme whereby boosters who formerly gave money directly to athletes could now funnel it to athletes through legitimate university channels. See Walter Byers, *Unsportsmanlike Conduct: Exploiting College Athletes* (Ann Arbor: University of Michigan Press, 1995, 73.

12. Byers, *Unsportsmanlike Conduct*, 69,75.

13. Clyde B. Smith, letter to Walter Byers, 6 July 1964, Walter Byers Papers, Long Range Planning Folder, NCAA Headquarter, Overland Park, Kansas.

14. Byers, Unsportsmanlike Conduct, 164.

15. Robert A. McCormick and Amy Christian McCormack, "The Myth of the Student Athlete: The College Athlete as Employee," Washington Law Review, 2006, 71-157.

16. David Broughton, "Higher limits bring gift package upgrades," *Sports Business Journal*, March 5-11, 2012. In 2012, The NCAA allowed each bowl to award up to $550 worth of gifts to 125 participants per school. In addition, participants were allowed to receive awards worth up to $400 from the school and up to $400 from the conference for postseason play, covering both conference title games and any bowl game. David Broughton, "Players share the wealth with bowl gifts," *Sports Business Journal*, December 3-9, 2012.

17. Another measure of inequality is provided by the Thiel Index which increased by 7.1 percent (from .310 to .332) between fy2005 and fy2010 among FBS programs. The Thiel Index goes from 0 (perfect equality) to 1 (perfect inequality).

18. The scale is non-linear, so that a school granting 80.48 athletic scholarships would receive a check from the NCAA for $31,874, while a school granting 242.44 scholarships would receive $717,805, i.e., that latter school grants three times as many scholarships but receives 22.5 times as much aid under this NCAA fund! That is, the big-time football programs with 85 football

scholarships are heavily favored by this regressive distributional scheme. Data for this discussion is from the NCAA, *2011-12 Revenue Distribution Plan*.

19. Although it appears little more than tokenism, it is at least noteworthy that one of the distribution policy details the new BCS playoff structure has revealed is the intention to make ten percent of the television revenue distribution contingent on the schools meeting a specified APR threshold. The threshold itself has not yet been set. Thus, although the link between distribution and academic success appears to be rather exiguous, it is noteworthy that the BCS has gone a step beyond the NCAA in at least recognizing the significance of this nexus.

20. At $30,000 per scholarship, 25 scholarships are valued at $750,000. A similar reduction could occur in women's scholarships under Title IX guidelines, and there would be additional savings in equipment, coaches and other items.

21. The median FBS school sponsors 19 sports or 17 "non-revenue" sports.

.