To Educate or to Make a Profit: Compensating College Athletes' Families for Travelling Expenses

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“The old model of amateurism doesn't work. College has become a minor league for the pros.”

I. Introduction

Since the founding of the National Collegiate Athletic Association (“NCAA” or “Association”), the college sports fan base has become the largest in the sports industry, giving college athletes an ever-increasing status and value in society. The NCAA athletics fans base is also the wealthiest, most diverse, and therefore most lucrative of all sports. Major sports networks attribute large portions of their revenues to college sports viewership. Prospective college athletes from around the world aspire for the opportunity to compete for American college sports teams, and NCAA Division I teams recruit around 3,000 international athletes per year. What continues to contribute to the success of college sports is the NCAA’s focus on education as the priority motivating its policies. Part of this focus is the desire to “preserv[e] an academic environ-
The Association substantiates its regulation decisions on providing quality education and equitable competition. The Association’s restriction on compensation for college athletes, it recently granted a travel expenses waiver. The waiver permits colleges to compensate families of student-athletes to travel to Final Four and College Football Playoff games. The waiver promises up to $3,000 in expenses for families travelling to Final Four games and up to $4,000 for travel to the championship game. It also grants member institutions the option to provide additional benefit for these and other championships. When the waiver was released, the NCAA’s vice president stated that in enacting the waiver, the NCAA was dedicated to including families in the championship experience.

This move by the NCAA raises issues concerning the apparent paradigm shift indicated by the decision to compensate parents and families while restrictions on player compensation remain so tightly enforced. Indeed, until the waiver was announced, any money given to an athlete’s family for travel to championship games would have been penalized with ineligibility. The waiver brings the...
NCAA one decision closer to student-athlete compensation.\(^{16}\) By delegating funds to athletes’ families dependent on whether the teams make it to the playoffs, the NCAA is creating a relationship, however indirect, between performance and financial benefit awarded to the players’ families.\(^{17}\) Fifty percent of college students are financially supported by their parents, which means that when the NCAA provides monetary benefits to an athlete’s family, the athlete will likely benefit in some way as well.\(^{18}\) Regardless, the NCAA continues to hold firm on its stance that paying college athletes for their athletic performance is counterintuitive to its mission and purpose in regulating college sports.\(^{19}\)

The amateurism goal is central to preserving the pro-competitive nature of the college sports industry.\(^{20}\) The Association claims that it seeks to protect consumer demand by keeping student-athletes from receiving large sums of money for playing college sports.\(^{21}\) It also claims that allowing compensation would interfere with ‘student-athletes’ education while hindering athletic integrity.\(^{22}\)

\(^{16}\) See Schwartz, supra note 14 (finding NCAA’s purported commitment to restricting athlete compensation inconsistent with travel waiver announcement).


\(^{20}\) See Kastenberg & Pratt, supra note 19 (describing potential for student-athlete compensation as disrupting cooperation between member schools, both athletically and academically).

\(^{21}\) See id. (explaining NCAA sanctions that exist to penalize schools for violating compensation rules to prevent schools from taking advantage of recruiting inequalities).

\(^{22}\) See id. (stating NCAA’s position that athlete compensation would interfere with education and integration of student-athletes in their academic communities).
The amateurism goal serves to prevent the commercial exploitation of student-athletes.23

Concerns about the NCAA’s inconsistent stance when it comes to player compensation are nothing new, and the waiver only exacerbates this issue.24 In an apparent attempt to quell criticism about its stingy anti-compensation policies, the NCAA proudly announced the waiver without specifying what enabled it to do so.25 Along with the announcement, the Association proclaimed that it had been discussing travel expenses compensation for the past few years.26 NCAA President Mike Emmert declared that the waiver has been considered since 2011 and was the next step in “improving the student-athlete experience,” along with extended scholarship opportunities.27 Despite the NCAA’s proclaimed justifications, the travel expense waiver exceeds the scope of the NCAA’s goal in restricting compensation.28 The fallout from the waiver, therefore, has the potential to result in teams continuing to maneuver around the NCAA restrictions and lead to numerous lawsuits filed by student-athletes.29

Courts have considered the student-athlete’s right to compensation using both the Sherman Antitrust Act,30 and the NCAA’s amateurism goal.23
ateurism standards. Historically, the NCAA had free rein in enacting regulations in furtherance of amateurism. However, increasing challenges are beginning to erode the liberty it once enjoyed. Students have claimed that the NCAA restrained trade in restricting licensing and use-of-likelihood compensation in both the college education and broadcasting markets. These restrictions are based on the exclusive nature of the college sports market and the explicit control the NCAA has over its revenue.

Courts have also begun to approach the NCAA regulations more harshly in light of its apparently wavering standards. The market justification previously allowed has since been challenged and sincerely questioned. Judicial history suggests that if the NCAA does not more clearly establish the goals of its restrictions, it may be subjected to numerous antitrust violations. Courts now place a higher burden on the NCAA to produce evidence that its regulation has pro-competitive effects. The variety of avenues available to student-plaintiffs seeking compensation will be expanded by the introduction of the travel expenses waiver.


32. See Lazaroff, supra note 31, at 337 (describing courts' general deference toward NCAA policies and purported goals on amateurism basis alone). In the past, courts did not question the NCAA restrictions, trusting the mere assertion of competitive balance and amateurism as sufficient justifications. See id. (setting out historical evolution of NCAA compensation policies).

33. See id. at 339–40 (describing recently growing changes in evolution of student-athlete claims against NCAA and courts beginning to hear and give credence to such claims).

34. See, e.g., In re NCAA Student-Athlete Name & Likeness Licensing Litig., 990 F. Supp. 2d at 999 (setting forth plaintiffs' claims against NCAA for nonconsensual commercial use of their names and likenesses).

35. See id. at 1002–04 (describing NCAA's role in market such that it exercises control over licensing and use of student athletes' names and likenesses, subjecting it to possible antitrust actions).

36. See Lazaroff, supra note 31, at 353 (discussing courts' recent trend in approaching student claims against NCAA same way as other antitrust claims, giving more weight to NCAA's impact on students and economic market).

37. See id. at 350–51 (discussing courts' permission of NCAA restrictions on market distinction, which relies on premise that competitive balance and eligibility concerns are sufficient to exclude it from antitrust violations).

38. See id. at 343 (noting that courts are no longer exclusively convinced by NCAA's justification that all of its restrictions have anticompetitive effects).

39. See id. (describing new standard that NCAA must show obvious or demonstrable pro-competitive effects in order to avoid antitrust challenges).

40. See, e.g., In re NCAA Student-Athlete Name & Likeness Licensing Litig., 990 F. Supp. 2d 996 (N.D. Cal. 2013) (describing likeness licensing litigation);
This Comment will critically analyze the NCAA’s announcement of the travel waiver with respect to its historical objectives and challenges in enforcing its policies, specifically focusing compensation restrictions. Section II will discuss the history and development of the NCAA’s amateurism policies, which have driven its compensation restrictions, and how the NCAA and courts have handled and justified the policies when challenged. Section II will then assess the travel expense waiver as related to the Association’s stated objectives. Section III will detail how antitrust claims factor into the compensation restrictions, defining the college sports market and the role of NCAA regulations in antitrust challenges. Section IV will provide support for the legitimate goals of NCAA regulation, detail the existing options and provide suggestions for how to reconcile the NCAA’s important objectives with students’, universities’ and the public’s exploitation concerns. Section V will discuss the consequences that the travel waiver implicates, and the potential consequences of lifting compensation restrictions. Finally, Section VI will summarize the travel waiver’s contribution to existing complaints about student-athlete compensation and the future litigation and conflict it is likely to cause.

II. BACKGROUND: THE SLOWLY ERODING BASIS FOR NCAA JUSTIFICATIONS

A. The Formation and Degradation of the NCAA’s Amateurism Rules

Since the NCAA was founded, it has instituted restrictions on member colleges paying student-athletes. The Association sets a number of goals in support of these restrictions, some of which are
contradicted by the travel expense waiver. These goals motivate and justify compensation restrictions pertaining to recruitment, likeness licensing or any other type of conduct the NCAA deems inappropriate. The NCAA’s main goals are: to maintain competitive balance between amateur athletic teams, keep a clear line distinguishing professional and amateur sports, preserve the identity and integrity of college sports, and to maintain a prominent media audience for college sports. Over the years, courts deciding student-athlete compensation cases have taken these NCAA arguments into account. Historically, the NCAA has generally been able to convince the court of its legitimate purposes.

More recently, courts have loosened the strict stance on certain aspects of the compensation restrictions, putting the travel expense waiver at risk for stirring up even more litigation. This has the potential to stir up more litigation and weaken faith in the NCAA’s justifications and purposes, ultimately risking the degradation of its mission and platform. Such decisions require more of a showing that the NCAA has substantial goals for restricting compensation, without imposing unnecessary limits on the student-athlete mar-

47. See 20015–16 NCAA MANUAL, supra note 15 at art. 12 (setting out rules for amateurism and eligibility). The NCAA’s provision of any benefit, not limited to monetary compensation, is strongly forbidden by the NCAA, which leaves no room for discretion in providing benefits outside of already permissible conduct. See id. at art.12.3.1.3

48. See id. at arts. 12.1.2, 19.5 (setting out specific anticompetitive violations and conduct which NCAA deem to be violations and subject to sanction).

49. See Lazaroff, supra note 31, at 358–59 (discussing NCAA’s intentions in creating and enforcing amateurism rules).


51. See Worldwide Basketball & Sports Tours, 2002 WL 32137511, at *16–17 (holding that NCAA restrictions caused no identifiable harm on athletes or college sports market).


53. See id. at 963 (holding that if NCAA fails convince court of its precompetitive justifications, court may impose permanent injunctions on NCAA compensation restrictions).
In addition, these decisions indicate a shift away from deferring to the NCAA in compensation challenges.55

B. Concern on All Fronts: Fallout From the Travel Expenses Waiver

When the NCAA announced its travel expense waiver in January 2015, the media sprang to life with skepticism about what this meant for the NCAA.56 Questions centered on the issues of eligibility rules and the general ban on financing athletes and their families.57 Even those who have favored student-athlete compensation have questioned the Association’s motives.58 The waiver presents two potential issues in enforcing the NCAA’s amateurism model: the NCAA’s actual motivation in amateurism restrictions and the likely resulting outpouring of litigation opened up by the allowance of travel expenses.59

1. Compromise or Corruption: The NCAA’s Motivation

The first consideration in assessing the NCAA’s motivation for the waiver is the recipients of the stipend, which are participants in the Final Four Championship and the men’s Football Playoff.60 The announcement of the waiver came with statements about families sharing in the championship experience, but made no refer-

54. See id. at 979 (noting NCAA’s minimal showing of evidence of competitive balance).
55. See Kastenberg & Pratt, supra note 19 (discussing legal implications and risks NCAA and universities will face in light of recent court decisions).
56. See Jack Andrade, NCAA Changes Tune, Will Pay Travel Expenses for Families of Athletes, BOSTON.COM (Jan. 7, 2015), http://www.boston.com/sports/untagged/2015/01/07/ncaa-changes-tune-will-pay-travel-expenses-for-families-of-athletes (discussing controversial nature of NCAA’s decision with public scrutiny ramifications). Critics argue that because the NCAA has not spoken to why the provision of travel expenses was not allowed until now, there is little support for any compensation restrictions the NCAA maintains. See Schwartz, supra note 14 (noting lack of foundation for compensation rules).
58. See id. (noting that waiver raises questions about NCAA ineligibility rules concerning student athlete compensation); see also Schwartz, supra note 14 (asserting that NCAA skates fine line between compensating students and compensating their parents).
59. For a general discussion of the NCAA’s motivation, see infra notes 60–73 and accompanying text. For a discussion of the potential resulting litigation, see infra notes 75–85 and accompanying text.
60. See NCAA to Pay for Family Travel Under Pilot Program, supra note 9 (announcing which families would be eligible for travel compensation).
ence to other championships outside of these two sports.61 Because the men’s basketball tournament is a hefty contributor to the NCAA’s budget, this delegation raises suspicions.62 Critics have argued that in order to retain its reputation, the NCAA would have to compensate families for travel to championship games of every sport.63

Another consideration is the NCAA’s own prohibition on transportation benefits, which has not been altered since the waiver was announced.64 On its face, the prohibition declares the travel expense waiver unethical.65 In enacting the waiver, the NCAA showed no intention of modifying its by-laws to reflect the departure.66 The only way to begin reconciling the waiver with the NCAA by-laws is to declare that the only two parties permitted to pay travel expenses are the NCAA and its member colleges.67 However, the NCAA did not make this delineation and has not answered many inconsistency concerns.68

Third is the waiver’s conflict with its professed motives in enacting and maintaining compensation restrictions.69 Currently, student-athletes’ permission to use their names and likenesses is part

61. See id. (mentioning only basketball and men’s football post-season games as eligible for family travel benefits). The NCAA, while acknowledging the importance of other Division I sporting events, has not spoken to why travel expenses will not be extended to those events. See Schwartz, supra note 14 (noting discrepancies in NCAA’s travel waiver and its previous decisions).


63. See id. (noting dissatisfaction at inequality of NCAA provision of travel benefits).

64. See 2015–16 NCAA Manual, supra note 15, at art. 12.3.1.3 (deeming any player ineligible if player or player’s relatives receives benefits, including transportation from any outside agent).

65. See id. at art. 10.1(c) (finding any provision of additional benefits to student athletes unethical violation of bylaws).

66. See NCAA to Pay for Family Travel Under Pilot Program, supra note 9 (indicating no reconciliation between bylaws and travel waiver, or any kind of loophole in existing rules).

67. See Schwartz, supra note 14 (speculating that waiver implies only NCAA and universities have authorization under waiver, while not explicitly forbidding others from contributing).

68. See id. (expressing concern that waiver’s unspecified range of donors will result in boosters, sponsors, and other interested parties’ provision of travel benefits, in direct violation of NCAA policy).

69. For a discussion of the NCAA’s goals in maintaining compensation rules, see infra notes 46–49 and accompanying text.
of the recruitment process, but with new lawsuits pushing the limits, member institutions may also begin pushing back for permission to use formerly restricted methods of recruitment.70 This would open up to various legal issues involving universities trying to get around the NCAA restrictions to compete in recruiting athletes.71 Allowing schools to pay for families’ travel expenses attacks the balance between athletic teams.72 As a result, travel expenses have the potential to become another tool for schools as they attempt to recruit players.73

2. NCAA Opens the Door to a Roomful of Litigation

Student-plaintiffs seeking compensation for their athletic performance have come at the NCAA from all sides.74 Most recently, in O’Bannon v. National Collegiate Athletic Association,75 college athletes brought an antitrust action against the NCAA concerning a names and likeness dispute.76 The student-athletes wanted a share of revenues generated by the NCAA and member schools using the students’ names and likenesses in video games, telecasts, and other media footage.77

In support of their demands, the plaintiffs alleged that the NCAA rules restricting such revenue sharing violated antitrust laws.78 In their allegations, the plaintiffs argued that because Divi-

70. See Kastenberg & Pratt, supra note 19 (discussing students’ and universities’ suggestions to provide stipends based on game attendance, and shares of licensing revenue to student-athletes).

71. See id. (describing unfettered disruption likely to result from undermining NCAA objectives).

72. See id. (noting courts’ and NCAA’s concerns of commercial exploitation of student-athletes).

73. See id. (discussing legal and anti-competitive issues implicated by loosening NCAA compensation restrictions). NCAA member universities currently use academic scholarships and quality of athletic facilities to recruit players for their programs. Loosening the restrictions would subject universities to increased variety and unbalanced inequality in recruiting, potentially disrupting the NCAA’s competitive platform. See id. (noting NCAA foundational justification for pro-competitive philosophy).


75. 7 F. Supp. 3d 955 (N.D. Cal. 2014), aff’d in part, vacated in part, 802 F.3d 1049 (9th Cir. 2015), petition for cert. filed, No. 15-1167 (U.S. Mar. 14, 2016).

76. See id. at 962–63 (summarizing litigation).

77. See id. at 962 (setting out plaintiffs’ claims).

78. See id. at 963 (describing plaintiffs’ Sherman Act challenge).
sion I teams are their only avenue to a professional career, student-athlete recruits have no option but to permit the universities and the NCAA to use their names and likeness without compensation. Therefore, the students claimed, the NCAA’s refusal to allow compensation beyond scholarship awards restrains trade within the market of college athletic institutions.

While conceding that its regulations may restrain trade in the college athletics market, the NCAA argued that the restraints were not unlawful because they achieved “pro-competitive purposes.” Therefore, any hindrance on competition between colleges in recruiting athletes is enforced in the interest of equal competition among college teams. The district court, while acknowledging that the NCAA may be justified in this goal, also voiced doubt in the NCAA’s general stance and policy. The opinion stated that its “other rules and practices suggest that the Association is unconcerned with achieving competitive balance.”

C. Back to Basics: The Board of Regents Standard

An early challenge to the NCAA compensation rules came in National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma. The plaintiffs were NCAA member colleges who felt that they lacked sufficient influence in the NCAA’s regulation decisions. The plaintiffs asserted that the NCAA’s television program restriction, which limited the number of college games broad-
cast, was a restraint of trade in violation of the Sherman Act. The NCAA defended that the plan was necessary to ensure live attendance at college football games, which is instrumental in maintaining the integrity of the sport.

The Supreme Court held that in order to preserve the quality of college athletics, students must not be paid. The Court stated that this was appropriate in light of the NCAA’s need to maximize consumer demand for amateur athletics. The Court also stated that the market needed to be preserved and that the NCAA’s regulations were an effective way of protecting the amateur competition in light of the nature of college sports. This decision represents the hard line once drawn by the NCAA in its goal to maintain amateurism and pro-competitive balance. The Court also held that

87. See id. at 85 (describing plaintiff’s claims against NCAA).
88. See id. at 116 (describing NCAA’s defense based on protecting and insulating live ticket sales).
89. See id. at 100–02 (stating NCAA’s goals in maintaining compensation restrictions and agreeing with NCAA that they promote integrity of education received).
90. See id. at 101 (recognizing that without restraints, market for college athletics would be unavailable). Writing for the Court, Justice John Paul Stevens described:

[T]he NCAA seeks to market a particular brand of football—college football. The identification of this "product" with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable, such as, for example, minor league baseball. In order to preserve the character and quality of the "product," athletes must not be paid, must be required to attend class, and the like. And the integrity of the "product" cannot be preserved except by mutual agreement; if an institution adopted such restrictions unilaterally, its effectiveness as a competitor on the playing field might soon be destroyed. Thus, the NCAA plays a vital role in enabling college football to preserve its character, and as a result enables a product to be marketed which might otherwise be unavailable. In performing this role, its actions widen consumer choice—not only the choices available to sports fans but also those available to athletes—and hence can be viewed as precompetitive.

Id. at 101–02 (footnote omitted).
91. See id. at 117 (agreeing with NCAA that regulations served legitimate and important goals). The Court explained:

Our decision not to apply a per se rule to this case rests in large part on our recognition that a certain degree of cooperation is necessary if the type of competition that [the NCAA] and its member institutions seek to market is to be preserved. It is reasonable to assume that most of the regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore precompetitive because they enhance public interest in intercollegiate athletics.

Id. at 117 (footnote omitted).
92. See Lazaroff, supra note 31, at 338 (citing Bd. of Regents, 468 U.S. at 100–02) (noting that Board of Regents reinforced NCAA principle that competitive balance idea is "legitimate and important").
the restraints were essential to the marketing, popularity, and identity of college sports. During the next two decades, courts steadfastly held to the stance taken by the Board of Regents Court.

III. WHY ANTITRUST LAWS SHOULD THWART POTENTIAL LITIGANTS

A. Defining Commercial Entities

Those opposed to the NCAA’s regulations have claimed that the restrictions violate the Sherman Act by limiting the market created by student-athletes’ services and the use of their likenesses in the media. The Sherman Act prohibits activities in restraint of trade or commerce; in other words, activities that have anti-competitive effects. Because the statute is targeted at businesses and their particular markets, courts have held that it is not directly applicable to the student-athlete context. Furthermore, in 2004 one federal court found that not only were the antitrust laws inapplicable to NCAA restrictions, but that the rules were not commercial. In doing so, the court used the standard of whether the rules were commercial considering the surrounding circumstances.

93. See id. at 338–40 (discussing significance of Court’s decision in Board of Regents, and vital role NCAA restraints have in enabling college sports market to prosper); see also Bd. of Regents, 468 U.S. at 100–02 (supporting justifications in support of NCAA’s restraints on trade).

94. See Lazaroff, supra note 31, at 339 (stating that Board of Regents “laid a strong foundation for subsequent arguments that the antitrust laws should not invalidate restraints on competition for the services of NCAA student-athletes,” and “lower federal courts seized the opportunity to treat NCAA player restraints in a significantly different manner from other NCAA regulations”).

95. See Lazaroff, supra note 31, at 344 (discussing antitrust principles as related to NCAA restrictions, and legal implications).


99. See id. at 581 (stating that nature of conduct must be commercial in order to fit under antitrust analysis).
For the Sherman act to apply, not only must an entity be commercial, but the rule itself must also be commercial. Additionally, commercial entities can be immune to antitrust challenges if a legitimate purpose exists for their regulation. The NCAA takes a paternalistic role in promoting legitimate goals, and therefore, its compensation regulations have not been held to warrant a Sherman Act challenge. In a sense, the NCAA has been exempted from susceptibility to the market in the context of these claims.

1. Actual Economic Injury

Antitrust law actually protects the competition itself, not the economic injury to the individual. When there is actual economic injury caused by restraints on the market, it must be direct and substantial. Students challenging the NCAA rules and seeking to prove actual injury must prove that the regulations have caused some other adverse effect. More recently, the standard developed by the courts has been to reluctantly hold the NCAA to antitrust standards unless anticompetitive impact can be offset by benefits to the market.

2. Relationship Between the Media, the NCAA, the College and the Athlete

A popular criticism of the NCAA’s strict regulations is the idea that the Association and its member schools make so much money from their athletes’ performance that it is unjust for any share of

100. See Valley Prods. Co. v. Landmark, 128 F.3d 398, 402–03, 405–06 (6th Cir. 1997) (noting accepted premise that actual competition in relevant market must exist in antitrust litigation).

101. See Gaines v. Nat’l Collegiate Athletic Ass’n, 746 F. Supp. 738, 743–45 (M.D. Tenn. 1990) (concluding that NCAA regulation need not be examined under antitrust laws because its overriding purpose was essential to maintaining important education standards).

102. See Pocono Invitational, 317 F. Supp. 2d at 584–85 (discussing NCAA’s legitimate and necessary purpose in promoting compensation rules).

103. See id. at 585 (finding NCAA compensation restrictions not to be facially anticompetitive).

104. See Brown Shoe Co. v. U.S., 370 U.S. 294, 326 (1962) (deciding that regulated competitive market must be generally recognized by public).


106. See id. at 537 (interpreting statutory language to mean that judicial remedy in cases must remedy broader issues outside of specific antitrust plaintiff’s claims).

107. See, e.g., Law v. Nat’l Collegiate Athletic Ass’n, 134 F.3d 1010, 1020 (10th Cir. 1998) (adopting standard when anticompetitive effects appear so obvious so as to warrant additional examination).
this revenue to be withheld from the athletes. Proponents believe that athletes are the most important part of the revenue process but are unfairly cut out of being paid for their athletic performance. Contrary to this view, athletic programs do not actually receive the amount of money that the media promulgates. In fact, it is not uncommon for teams in the NCAA tournament to lose money. Division I programs generate hefty expenses in order to enhance the academic and athletic environment they can provide for their athletes.

In addition, while schools may report portions of their budget as coming from television, they are usually unclear where their revenue actually comes from, and donors or sponsors are often the main source. Television companies are the beneficiaries of tournament broadcasting and high-priced ticket sales. While some teams may bring in more than others depending on how they choose to allocate funds, the only entities receiving substantially large profits from televising college sporting events are the broadcasting companies themselves. In addition, teams that have created their own broadcasting networks must also devote significant use of this medium to promote their academic programs, and with more sports networks being developed each year, colleges will have to allocate funds to combat conflicting messages.

108. See Wong et al., supra note 2, at 18–20 (discussing public’s approach in support of lifting NCAA restrictions).
109. See id. at 18 (noting pro-compensation view of imbalanced relationship between Division I schools and their athletes). The litigation focused on granting students more rights in receiving revenue for their performance threatens the fundamental nature of the NCAA’s anti-compensation policies. See id. at 22 (describing student-plaintiff litigation raised in response to outrage at lack of student rights in revenue generated by college athletic programs).
111. See id. (describing money primarily allocated to student accommodation and coach salaries, at times withholding profit from athletic program).
112. See id. (describing money spent on high quality tutors, hotel accommodations for away games, and best coaches available).
113. See id. (noting athletic directors’ statements that reported numbers, while accurate, do not always clearly represent status of program or sources of funds).
114. See id. (discussing major profit gained by television broadcasting companies and revenues received from NCAA teams themselves).
115. See id. (recognizing discrepancies in Division I teams’ revenues, while no team’s earnings from televising events rival those of networks and broadcasting companies).
3. Where is the Market?

In order to subject the NCAA rules to antitrust laws, there must be an existing relevant market and anti-competitive effects existing within the market.117 The Supreme Court has held that antitrust plaintiffs must prove that the defendant has caused damage by reaching into the specified commercial market.118 In order to conclude that a rule is commercial, it must be determined that the entity promulgating the rule is commercial.119

When an entity that would normally be held to the commercial antitrust standard engages in conduct that actually enhances its market, neither the market nor the entity will be viewed as relevant for antitrust market analysis. Courts have found that the market served by the NCAA is not deemed to be a relevant commercial market under the existing standard.120 Because restraints on competition are necessary for the college sports industry to maintain its “product” (competition between teams), NCAA regulation that imposes such restraints cannot themselves be treated as violations of the Act.121

B. Questioning the Inadequacy of the Current Compensation Benefits

With the travel expenses waiver comes the inquiry into the compensation student-athletes already receive, and why it is not

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119. See Worldwide Basketball & Sports Tours, 2002 WL 32137511, at 14 (describing plaintiff’s burden to demonstrate that defendant has power and control within defined market). In Worldwide Basketball & Sports Tours, Inc. v. National Collegiate Athletic Association, the court gave credence to the holding in Board of Regents, where the Supreme Court held that the NCAA was exempt from the traditional market analysis because its restraints were essential for the college sports industry to continue. See Worldwide Basketball & Sports Tours, 2002 WL 32137511, at 5 (citing Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85, 101 (1984)).

120. See id. at 6–7 (deciding that although NCAA regulation may have some commercial impact, it did not fit relevant scheme for designation as market, and anti-competitive effects on particular market could not be identified).

121. See Law v. Nat’l Collegiate Athletic Ass’n, 134 F.3d 1010, 1016–18, 1024 (10th Cir. 1998) (requiring that different standard be used to assess NCAA regulation under Sherman Act).
enough.\textsuperscript{122} While some feel that student-athletes deserve compensation in exchange for their athletic participation, others believe it would be unfair to non-athlete students.\textsuperscript{123} Universities offer athletes scholarship tuition to recruit athletes to their programs, which is perceived as a type of compensation.\textsuperscript{124} Furthermore, students are not employees, and paying them for their performance would create an employee-employer relationship and all of the expectations and demands that follow.\textsuperscript{125} Student-athletes receive benefits from their performance that have nothing to do with being paid, and compensation would negate many of these benefits.\textsuperscript{126}

Student-athletes also receive benefits such as the exclusive use of state-of-the-art athletic facilities, private tutoring and money towards textbooks.\textsuperscript{127} The NCAA by-laws are clear about financial benefit to athletes not exceeding money for education.\textsuperscript{128} Considering the NCAA’s existing regulations concerning student pay, the introduction of the travel expense waiver blurs the line that distinguishes payment from nonpayment.\textsuperscript{129}

The NCAA defines payment as “the receipt of funds, awards or benefits not permitted by the government legislation of the Association for participation in athletics.”\textsuperscript{130} By its own definition, the NCAA considers payment as whatever the NCAA wishes to regulate.\textsuperscript{131} The loophole that the Association created will not fare well

\begin{itemize}
\item \textsuperscript{123} \textit{See id.} (noting that unlike many other students, even scholarship athletes who do not make the professional draft graduate without debt).
\item \textsuperscript{124} \textit{See id.} (describing argument that scholarships are compensation enough and that student athletes should not be paid).
\item \textsuperscript{125} \textit{See id.} (describing NCAA’s exclamation that students are not employees and cannot be expected to sacrifice studies for athletic performance).
\item \textsuperscript{126} \textit{See id.} (describing how regimented and rigorous life of paid student athlete would be).
\item \textsuperscript{127} \textit{See} Lazaroff, \textit{supra} note 31, at 360–61 (listing ways in which students already receive compensation in exchange for athletic performance).
\item \textsuperscript{128} \textit{See 2015–16 NCAA MANUAL, supra} note 15, art. 16.11.2 (defining any extra benefit as unethical and outside of NCAA’s permitted conduct).
\item \textsuperscript{129} \textit{See} Schwartz, \textit{supra} note 14 (asserting that travel expense waiver directly undercuts NCAA bylaws prohibiting provision of “transportation or other benefits” for athletes, their relatives, or friends).
\item \textsuperscript{130} \textit{20015–16 NCAA MANUAL, supra} note 47, art. 12.02.08 (defining payment for purposes of NCAA legislation).
\item \textsuperscript{131} \textit{See NCAA Paying for Parents to Get to Final Four, But Will This Pilot Program Become Permanent?}, N.Y. DAILY NEWS (Apr. 1 2015, 11:54 AM), http://www.nydailynews.com/sports/college/ncaa-paying-parents-final-indianapolis-article-1.2169548 (discussing inconsistencies in NCAA promulgation of rules and bylaws).
\end{itemize}
in future suits with courts seeking more substantial justification. Indeed, the O’Bannon decision demonstrates that courts are already dissatisfied with the amateurism goals the NCAA promulgates. The NCAA declared that in the case of the travel waiver, its focus was family. However, a major concern stems from the fact that the NCAA maintains a strong focus and emphasis on the integrity of amateurism in its goals.

The NCAA currently still requires any student-athlete or recruit to be certified as an amateur athlete before being considered to play. In declaring a new goal while refusing to budge on its existing ones, the Association essentially places a Band-Aid on a bullet hole. The NCAA’s waiver and its justifications offer no explanation for whether it will soon be permissible for other parties, such as boosters, or sponsors, to pay for travel expenses as well. If this were to be the case, new practical and legal issues would arise, and open the door to lawsuits no longer just regarding antitrust violation but the degradation of the college sports industry as it currently exists.

In O’Bannon, where the district court ruled against the NCAA restrictions on likeness revenue sharing, the NCAA was still able to convince the court that certain restrictions on compensation to student-athletes are warranted to protect competitive balance, and the

132. See Schwartz, supra note 14 (declaring absence of bedrock foundational principle to support travel expense waiver). NCAA by-laws state, “Pay is the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics.” 2015–16 NCAA Manual, supra note 47, art. 12.02.9 (defining pay as NCAA decides).


134. See NCAA to Pay for Family Travel Under Pilot Program, supra note 9 (quoting NCAA president as stating that families should have benefit of celebrating victories with student-athletes).

135. See Amateurs, supra note 6 (asserting quality of education as top priority and that athletes are “students first, athletes second”).

136. See id. (instructing any potential student athlete to become certified as amateur before consideration).

137. See NCAA Paying for Parents to Get to Final Four, But Will This Pilot Program Become Permanent?, supra note 131 (noting existing and future complications in delegating reimbursement funds).

138. See id. (drawing attention to discrepancies between existing NCAA prohibitions and travel waiver).

139. See Schwartz, supra note 14 (raising concerns about implications of allowing certain types of benefits); Tan, supra note 122 (describing possible consequence that student-athlete selection would be completely irrelevant of academic performance in high school).
court of appeals ultimately agreed.\textsuperscript{140} This small victory illustrates that both the Association and the courts are still holding steadfastly to the NCAA’s code as it stands.\textsuperscript{141} Loosening compensation restrictions also presents the issue of students as employees, creating a pay-for-play, or rather a pay-to-win system.\textsuperscript{142}

IV. PROTECTING THE INTEGRITY OF COLLEGE SPORTS

NCAA compensation restrictions function to prevent players from being manipulated by their university.\textsuperscript{143} Student-athletes need to be protected as players who not only devote their time to their team, but also to pursuing academic goals which are equally, if not more, important at this stage.\textsuperscript{144} The Seventh Circuit Court of Appeals has recognized these goals to be necessary for preserving fair and honest competition among amateur college students.\textsuperscript{145} That court, in \textit{Banks v. National Collegiate Athletic Association},\textsuperscript{146} found the NCAA’s requirements for member colleges to require minimum credit and GPA requirements to be in direct furtherance of academic goals and found in favor of the NCAA.\textsuperscript{147} The court also found favor with the NCAA’s restraints as pro-competitive and necessary to the college sports market.\textsuperscript{148}

\begin{itemize}
\item \textsuperscript{140} See O’Bannon, 7 F. Supp. 3d at 999–1000 (holding that some restrictions on compensation have valid precompetitive results); see also O’Bannon v. Nat’l Collegiate Athletic Ass’n, 802 F.3d 1049,1074 (9th Cir. 2015) (finding “concrete procompetitive effect in NCAA’s commitment to amateurism”), petition for cert. filed, No. 15-1167 (U.S. Mar. 14, 2016).
\item \textsuperscript{141} See Lazaroff, supra note 31, at 346–48 (noting courts’ reluctance to rule against NCAA justifications unless absolutely no showing of precompetitive justification has been proffered).
\item \textsuperscript{143} See Lazaroff, supra note 31, at 329 (noting importance of keeping college sports separate from professional).
\item \textsuperscript{144} See id. at 349 (discussing need to protect integrity of college sports model).
\item \textsuperscript{145} See Banks v. Nat’l Collegiate Athletic Ass’n, 977 F.2d 1081 (7th Cir. 1992) (supporting NCAA restrictions for benefits to academic focus on student-athletes’ careers).
\item \textsuperscript{146} 977 F.2d 1081 (7th Cir. 1992).
\item \textsuperscript{147} See id. at 1088 (recognizing restrictions as integral to educational and academic experience unique to Division I athletics).
\item \textsuperscript{148} See id. at 1089 (finding that NCAA did not have goal of commercial advantage or exploitation, but of preserving public interest in college sports).
\end{itemize}
that the rules promoted fair competition, encouraged educational success and prevented commercialism.  

A. Enhancing the Public Integrity and Interest

College sports are marketed differently and have a different audience than professional sports. NCAA regulations are important to this distinction because they enhance public interest in the college sports industry. College athletes are simultaneously pursuing degrees that will prepare them to enter the employment market. Because their sole purpose is not to be athletes, they appeal to a different market than professional sports. This factor serves as justification for the NCAA to maintain restrictions that hold a clear line between college and professional sports. The NCAA regulations help to facilitate this distinction because the regulations are uniform across all member colleges. Therefore, no school has a competitive advantage over another in marketing to the public.

B. Existing Options

NCAA member schools compete to recruit the best athletes by offering services in exchange for athletic performance. With this exchange comes the understanding, which the NCAA and the courts have adhered to, that receiving improper compensation can lead to loss of eligibility. The NCAA has the authority to regulate

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149. See id. at 1000–91 (holding that NCAA restriction serves to establish distinction between professional and amateur sports, further academic priorities, and prevent labor market for college athletes).

150. See The Largest, Most Attractive Fan Base in Sports, supra note 2 (discussing difference in fan base between amateur and professional sports).

151. See Amateurism, supra note 6 (describing NCAA’s role and mission in promoting the public’s interest for college sports).

152. See Banks, 977 F.2d at 1090 (asserting that college athletes are preparing to enter market for non-athletic occupations).

153. See id. (stating that NCAA restrictions are legitimate way to protect college academics from being overshadowed by profit objectives). In Banks, the Court decided that the NCAA did not violate antitrust laws when it withdrew student’s eligibility after he participated in professional draft. See id.

154. See id. (finding NCAA restrictions necessary to prevent athletes from focusing on professional prospects instead of academic pursuits).

155. See id. (acknowledging NCAA’s minimum requirements for student-athletes pertaining to all member schools).

156. See Lazaroff, supra note 31, at 35–37 (discussing NCAA goal of equality among NCAA member institutions).

157. See id. at 344 (discussing interaction between NCAA, universities, and athletes in recruiting process).

158. See id. at 334–36 (providing example of sanctions held to be appropriate in light of NCAA goals and regulations).
and set standards for what schools are permitted to offer during recruitment. When recruits enter this exchange, they agree to be responsible for any costs of participating in the program not covered by their scholarship. In assuming these costs, student-athletes subject themselves to the NCAA’s and their institution’s rules in order to remain eligible to play while furthering both their academic and athletic careers. The travel expense waiver apparently declares one such cost, travel expenses for families, exempt from this consideration. With the announcement of the waiver, the NCAA also mentioned its recent steps to provide more benefits that sidestep the no-compensation rules.

The goal for many recruits is to eventually play professionally. During recruitment, high school athletes who have an interest in playing professionally know that the way to get there is by playing for a Division I team. For these students, their university is aiding them in gaining public notoriety, and in turn, helping them in their pursuit of playing professionally. If it were not for this platform, student-athletes would have no framework for attempting to seek revenue from the use of their likeness. Despite these athletes’ vehement protests that this type of litigation is their

159. See id. at 331–32 (describing standardization principles behind NCAA enforcement policies).
161. See id. at 303 (noting that students are not market competitors, and therefore, the NCAA is not governed by antitrust laws).
162. See NCAA to Pay for Family Travel Under Pilot Program, supra note 9 (setting out guidelines for implementation of travel expense waiver).
163. See id. (mentioning NCAA’s continued efforts toward improving travel experience for students and families).
164. See Probability of Competing in Sports Beyond High School, NCAA, http://www.ncaa.org/about/resources/research/probability-competing-beyond-high-school (last visited Apr. 17, 2016) (comparing most college athletes’ intentions of being professionally drafted during academic career to actual percentage of drafted athletes).
165. See Estimated Probability of Competing in College Athletics, NCAA, http://www.ncaa.org/about/resources/research/estimated-probability-competing-college-athletics (last visited Apr. 17, 2016) (describing NCAA Division I program participation as primary source for professional draft). In fact, participation in Division I teams is almost exclusively the only way for an athlete to reach a professional career. See Tan, supra note 122 (recognizing general acceptance of professional teams drafting solely from Division I programs).
166. See Rovell, supra note 110 (indicating that NCAA teams regularly allocate funds to media publicity).
167. See Wong et al., supra note 2, at 53–54 (explaining fans’ devotion and loyalty to college athletes, largely due to respect for hard-working students, which contributes to sales of college team apparel and merchandise).
only mechanism for seeking adequate payment for the money they bring in, the majority of the public, including coaches and players, oppose compensation, believing that scholarships and the advantages of being a student-athlete are sufficient opportunities. Such lawsuits demonstrate these student-athletes’ are attempting to bite the hands that feed them.

V. CONSEQUENCES OF PAYING STUDENT-ATHLETES

A. The College Athlete Dynamic

Concerns about paying student-athletes center around an idea similar to the NCAA’s purported justification for its restrictions: protecting the academic integrity of the student-athlete. Proponents of compensation for student-athletes are concerned that the NCAA, instead of being focused on academic success, simply endeavors to exploit athletes and their universities for profit. These criticisms turn on the greed of the NCAA and the detrimental effects of industry on student-athletes.

Ironically, the proposed solution to this argument would only aggravate the problem. Continuing to open more avenues for student-athletes to be paid is a slippery slope towards an employer-employee relationship, and the exploitation of the student-ath-

168. See Alex Prewitt, Large Majority Opposes Paying NCAA Athletes, Washington Post-ABC News Poll Finds, WASH. POST (Mar. 23, 2014), https://www.washingtonpost.com/sports/colleges/large-majority-opposes-paying-ncaa-athletes-washington-post-abc-news-poll-finds/2014/03/22/c411a32e-b130-11e3-95e8-39bef8e9a48b_story.html (reporting general public opinion poll results). University of Maryland Athletic Director Kevin Anderson also commented, "You have an opportunity. If you don't want to be a student-athlete, you can say no and not go to school." Id.

169. See Rovell, supra note 110 (describing sacrifices Division I programs make to ensure their players receive quality benefits, even when it means cutting into profit, and general public’s misconceptions about special treatment players receive).


172. See id. (noting that universities are powerless to corporations that offer money for student athletes’ performance, and thus corruption is only kept at bay by NCAA anti-compensation policies).

173. See Chait, supra note 170 (arguing that compensating student-athletes would subject them to market forces, cutting against goal to protect them).
Were performance to be rewarded with compensation, the incentive for athletes to demand money based on individual and team successes would strain the quality of athletic programs, and might even result in cutting women’s and non Division I teams, creating not only outrage but also discrimination claims. The delegation of pay to student-athletes, like the decision to reimburse travel expenses for some families over others, would naturally lead to compensation directly based on the profit the players bring into the university.

The introduction of compensation would also raise the issue of athletes being paid in relation to the size of their fan base. This would ultimately degrade any college athlete’s chance of receiving a quality education, which is what athletic scholarships are intended for. The travel expense waiver raises an issue already present within the student compensation debate: whether performance or need-based, which athletes (and their families) should get paid?

B. Alternatives to Pay-For-Play

Ideas for alternatives to student compensation have been raised by way of reform within the NCAA and within the universities themselves. Schools have a better chance of instituting changes than reform of the NCAA. A possible reform, which would rec-

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174. See Nick Desai, Colleges Should Be About Education First, HUFFINGTON POST (Aug. 11, 2014, 6:30 PM), https://www.huffingtonpost.com/nick-desai/colleges-should-be-about_b_5669998.html (arguing that outcome-based compensation creates divide between students and athletes, placing higher value on athletes). This approach also overlooks the fact that the students not being considered for compensation are those whose academic pursuits are the primary goal of the academic institution. See id. (asserting college sports’ value as supplementing academic morale and engagement).

175. See Chait, supra note 170 (explaining compensation’s likely implications for decreased work ethic in compensated and uncompensated athletes).


177. See Chait, supra note 170 (discussing issues likely to arise when paying student-athletes based on factors such as performance, revenue, and spectatorship).

178. See id. (noting that for most college athletes, education is more valuable than playing time, and those few who go pro view education as fallback option).

179. See id. (discussing discrimination issues raised by allowing schools to compensate student-athletes).

180. See Lazaroff, supra note 31, at 362 (suggesting such NCAA reform as amending or eliminating certain restraints involved in antitrust disputes).

181. See id. at 365 (explaining universities’ options in likely case that NCAA does not reform nor provide further justification for its compensation restrictions).
oncile the travel expense waiver, would be to revert to the thirty-year old rule which did not allow freshman to play on their college team, allowing them to focus on academics for the first and most transitional year of college. In this scenario, while travel expenses still raise a serious pay-to-win issue, the freshman year rule may strike a balance by putting academics first before any issue of compensation arises. Most importantly this alternative would preserve the foundational goal of preparing student-athletes as contributors to society.

Another suggestion is to guarantee every athlete free tuition as long as no rules are violated. Other alternatives focus on a stipend for student-athletes held in trust until the student graduates. For the travel expenses waiver to stand alone without conflicting with the NCAA’s mission, the NCAA still must declare a line denoting what kind of compensation is prohibited, or else prepare for a continuous onslaught of criticism and resulting litigation.

VI. Conclusion

The travel expense waiver is another controversial diversion from the NCAA’s self-determined boundaries, which confuses the basis for prohibiting student-athlete compensation. The waiver conveniently allows the NCAA to conduct business as it pleases with-

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182. See Kay Hawes, Debate on Amateurism Has Evolved Over Time, NCAA News Archive (Jan. 5, 2000, 4:07 PM), http://fs.ncaa.org/Docs/NCAANewsArchive/2000/association-wide/debate%2Bon%2Bamateurism%2Bhas%2Bevolved%2Bover%2Btime%2B-%2B1-3-00.html (setting out historical timeline of NCAA amateurism rules); see also Chait, supra note 170 (describing benefit to be derived from further demonstrating appropriate priorities and decreasing likelihood of graduating without solid education).

183. See Chait, supra note 170 (discussing issue of some college freshmen becoming famous before setting foot in the classroom, opening door for multitude of compensation issues).

184. See Nocera, supra note 176 (emphasizing universities’ true educational purpose).

185. See Ken Reed, Solution Regarding Paying College Athletes or Not is Simple, HUFFINGTON POST (Nov. 13, 2015), http://www.huffingtonpost.com/ken-reed/solution-regarding-paying_b_8556872.html (proposing salary format as option for student athlete compensation).

186. See Lazaroff, supra note 31, at 367 (suggesting stipend as compromise for NCAA in light of many college athletes’ disadvantaged backgrounds).

187. See Kastenburg & Pratt, supra note 19 (noting courts’ hesitance to allow student-athletes too many options for procuring compensation and NCAA’s opportunity to appeal current standing decisions against it).

188. See Schwartz, supra note 14 (describing NCAA’s ironic departure from amateurism goal to purport family as overriding consideration in enacting travel waiver).
out lifting restrictions as they pertain to outside parties. This inconsistency and failure to cover all bases incentivizes other parties to cut corners as well. Member schools and athletes are already finding ways to maneuver around the NCAA restrictions. The waiver for travel expenses only fuels the fire and continues to perpetuate this cycle. The NCAA’s lackluster justifications have not gone unnoticed, by the public or the courts. Opening up more avenues for compensation only increases the likelihood of more challenges to the NCAA regulations. The more litigation that aims to invalidate the NCAA’s goals, the less effective the Association will be at regulating college athletics.

The NCAA purports to strive for maintaining a competitive balance between college teams and preserving the integrity of college athletics, and undercutting these missions degrades the public interest and respect, and therefore, the market of the industry. Travel expenses for families of students who make it to the Final Four and Championship games makes the compensation depen-

189. See id. (noting inconsistency in NCAA’s purported goals in prohibiting compensation and travel expense waiver’s allowance of extra benefits).

190. See Chait, supra note 170 (questioning what is to prevent public or private parties from petitioning NCAA or member institutions to allow donation in light of NCAA’s stated goal of family incorporation in enacting travel waiver).


192. See, e.g., Schwartz, supra note 14 (highlighting NCAA’s history of inconsistency in justifying its regulations).

193. See id. (describing public complaints from coaches, university athletic programs about NCAA’s absolute compensation restrictions).

194. See id. (discussing endless cycle of questions and issues raised by NCAA continuing to rule against its own principles).

195. See Kastenburg & Pratt, supra note 19 (noting that judicial decisions are trending in direction of establishing more bases for student-athlete suits seeking compensation).

196. See Lazaroff, supra note 31, at 330 (describing constant challenges to NCAA’s authority); see also Schwartz, supra note 14 (noting lack of respect for NCAA policies without basis of supported and accepted foundational principles).
dent on athletic performance, in turn violating all that is sacred about college sports.197

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197. See New, supra note 62 (noting further inequalities created by giving some, but not all, athletes various forms of compensation); see also Chait, supra note 170 (asserting that provision of quality education is most important goal in college athletics, and is in danger of being tainted by monetary compensation).

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