Revenue Sharing: A Simple Cure for the Exploitation of College Athletes

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I. INTRODUCTION

Year after year, fans of collegiate athletics flock to stadiums across the country to pay reverence to their respective athletic teams. These teams not only provide their supporters with a steady source of entertainment, but their performance also helps bring notoriety and pride to the universities they represent. Over the years, the popularity and marketability of victorious teams have brought enormous sums of money to their respective universities. College athletics, especially the so-called “revenue sports” of men’s basketball and football, is now a multi-million dollar business that is marketed, packaged, and sold in the same manner as other commercial products.

Lost in the pomp and circumstance of traditional rivalries and growing profits is the exploitation of the most important members of collegiate sports—the student-athletes. While colleges and universities continue to reap the monetary benefits generated by these athletes, the athletes have little hope of receiving even a minute portion of the profits. This system of inequality is directly based on the strict rules and regulations promulgated by the National Collegiate Athletic Association (“NCAA”) that prohibit student-athletes from receiving any form of monetary compensation, except for athletic scholarships.

1. See Stephen M. Schott, Give Them What They Deserve: Compensating the Student-Athlete for Participation in Intercollegiate Athletics, 3 SPORTS LAWS. J. 25, 27 (1996). In addition to gaining millions of dollars for their respective universities through participation in football bowl games and the NCAA Basketball Championship, athletic teams also generate money from alumni donations and increased enrollment. Id.

2. Id.

3. 1997–98 NCAA DIVISION I MANUAL art. 12, § 12.1.1 (NCAA ed., 1997) [hereinafter NCAA MANUAL]. Established in 1909, the NCAA seeks to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student
This Comment contends that athletic scholarships do not adequately and fairly compensate student-athletes in light of the substantial revenue they generate for their schools. This Comment also argues that current NCAA rules prohibiting compensation have various legal defects.\(^4\) In order to avoid these legal deficiencies, while allowing student-athletes to be properly compensated, this Comment proposes an extensive revenue-sharing plan that should be imposed on all universities throughout the country.

Part II discusses the influx of commercialism in present-day collegiate sports. Part III illustrates how the current NCAA regulations lead to gross inequalities and a general exploitation of student-athletes. Part IV examines the legal implications associated with the current NCAA rules, arguing that the prohibition on student-athlete compensation may violate federal antitrust laws. Finally, Part V proposes a comprehensive revenue-sharing plan that would both cure the antitrust violations and provide equitable compensation to student-athletes. This Comment concludes that allowing colleges and universities to adopt revenue-sharing plans to compensate student-athletes will not only allow college sports to avoid antitrust scrutiny, but will also eliminate the exploitative elements existing in college sports today.

II. REVENUE EXPLOSION OF COLLEGE SPORTS

To understand how athletes are exploited in collegiate sports, it is necessary to examine the wide disparities between the revenues generated by these athletes and the relative compensation received for their performances. Present-day college athletics is "big business," with two major "revenue sports," men's basketball and football, generating more money than any other sport.\(^5\)

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\(^5\) University athletic departments generally use the revenue generated mainly from men's basketball and football to subsidize their nonrevenue sports. Schott, supra note 1, at 47.
A large portion of the revenue generated in men's basketball and football comes from different playoff systems used to declare a national champion each year. In college football, a national champion is decided by coaches and newspaper writers based on the team's performances throughout the season and in various "bowl games." The net income from all football bowl games in 1993–94 totaled $40.7 million, which was distributed among those participating universities. College basketball, on the other hand, crowns its national champion using a single-elimination tournament usually scheduled toward the middle and end of March. The net income from this tournament in 1994 was $89 million, which was distributed among the sixty-four participating Division I schools.

The popularity of college bowl games and the NCAA Men's Basketball Tournament has produced additional profits from television revenues. Television receipts from the 1993–94 bowl games produced $36 million. In addition, CBS currently has an exclusive agreement to televise the Men's Basketball Tournament through the year 2002 for a reported $1.7 billion, all of which is distributed among the NCAA member schools.

These figures result in huge profits for each school. For example, Internal Revenue Service ("IRS") records from the 1994–95 academic year reveal that each university associated with the Atlantic Coast Conference ("ACC") received an average of $5.64 million in total profits from all athletic teams. Likewise, members of the Southeastern Conference ("SEC") received an average of $4.55 million during the same period. Although these totals may appear staggering, they do not account for the

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6. Alan Schmadtke, ACC, Especially 'Noles Rank High in Revenues, SUN-SENTINEL (Ft. Lauderdale), Oct. 30, 1996, at 10C.
8. Schott, supra note 1, at 27.
10. Schools are divided into different divisions depending on certain performance criterion. See NCAA Manual, supra note 3, art. 20, § 20.02.2 ("Performance criteria include, but are not limited to, minimum sports sponsorship requirements, minimum scheduling requirements and minimum game-attendance requirements.").
11. Schott, supra note 1, at 27.
12. Id.
13. Id. at 27 n.8.
14. Peter Finney, If They're to Play, Athletes Need Pay, TIMES PICAYUNE (New Orleans), Mar. 12, 1997, at D1. Over 1000 colleges and universities throughout the country are members of the NCAA. See Goldman, supra note 4, at 209.
15. Schmadtke, supra note 6, at 10C.
16. Id.
intangible income produced by contracts with outside sources. Shoe companies, for example, contract with universities and coaches to have athletic teams wear their products and logos.

Using the money gained directly and indirectly from the performance of athletes on the field, colleges and universities have the means to fund their athletic programs appropriately. However, the college athlete, who is the primary source of this revenue, receives absolutely no portion of the profits. NCAA rules prohibiting college athletes from receiving compensation breed inequality and exploit the athletes upon whom the universities depend.

III. NCAA Rules and Regulations

Despite the huge sums of money college athletics generate for NCAA member institutions, not a penny finds its way into the pocket of the student-athlete. This is due to the principles and ideals upon which the NCAA was founded. Although times have certainly changed, the NCAA still adheres to these principles as its reason for prohibiting monetary compensation for student-athletes.

A. NCAA Rules on Amateurism

NCAA rules on amateurism seek to create a clear line between college athletics and professional sports. In order to participate in college sports, an athlete must conform to general regulations regarding amateur status delineated in section 12.1.1. Subsection (a) states that an athlete's amateur status is revoked if the athlete uses his or her athletic skill to receive payment in any form for their performance in that sport.

Section 12.02.3 specifies that a professional athlete is one who receives

17. See Finney, supra note 14, at D1.
18. Kenneth L. Shropshire, Legislation for the Glory of Sport: Amatuerism and Compensation, 1 SETON HALL J. SPORT L. 7, 26–27 (1991). For example, Nike pays John Thompson, Georgetown University men’s basketball head coach, $100,000 a year. Id. at 27. Adidas pays Duke University’s Mike Krzyzewski $260,000 a year for exclusive shoe contracts for Duke’s men’s basketball team. Id. Additionally, Penn State University is under a contract with Nike that pays the school $5 million per year to place the Nike “swoosh” on the uniforms of the Penn State football team. Finney, supra note 14, at D1.
19. See NCAA MANUAL, supra note 3, art. 15, § 15.02.2.1.
20. Id. art. 2, § 2.9.
21. Id. art. 12, § 12.01.2.
22. Id. § 12.1.1.
23. Id.
any unauthorized payment, directly or indirectly, for athletics participation.  

1. Amateur/Education Model

Serious questions arise about the effectiveness and practicality of current NCAA rules on eligibility. The NCAA's rules on collegiate athletic competition are based primarily on a system commonly known as the "amateur/education" model. The model relies on an out-dated notion of amateurism inconsistent with the present environment of collegiate sports.

Under this model, collegiate athletics are considered an integral part of the educational process at the university. The student-athlete is thought to embody the altruistic values of selflessness, devotion, sacrifice, and purity. Furthermore, the student-athlete is believed to participate in sports for pleasure and physical, mental, or social benefits. The athletic scholarship is the preferred form of compensation because it allows the student-athlete to participate in sports for pure pleasure while allowing the individual to define and develop useful skills while enrolled in an academic program. However, these traditional notions of amateurism are neither accommodating nor reconcilable with the commercialism present in college athletics.

The amateur/education model does not acknowledge the modern interests driving college sports, namely financial gain and institutional prestige. Forcing a student-athlete to uphold the ideals expressed in the amateur/education model, while allowing universities to reap the profits from the athletes’ participation, allows for the exploitation of these student-athletes. The model fails to address the unique features of the relationship between the university and the student-athlete. Some

24. See id. § 12.02.3. "Unauthorized" forms of payment include any salary, gratuity, or other forms of comparable compensation. Id. § 12.1.1.1.
27. See id.
28. See id. at 273.
29. See Schott, supra note 1, at 31.
30. See id. at 26.
31. See Davis, supra note 25, at 278.
32. Universities exploit college athletes by holding them to the notions of amateurism, including those embodied in the NCAA rules, yet denying many of them the education they were promised. See Schott, supra note 1, at 26 n.5.
33. Id. at 26.
content that athletes in revenue-producing sports are the only scholarship students within the university who have a condition for receiving their scholarship. This condition is that their athletic performances will generate substantial revenue and exposure for their institutions. By preventing student-athletes from receiving a portion of the revenues they generate, schools exploit their talents.

2. Commercial/Education Model

In response to the problems associated with the amateur/education model, a model based on the modern-day economic realities of college sports was introduced. The "commercial/education" model holds that college sports are a commercial enterprise subject to the same economic considerations as other industries.

Under this model, economics displace traditional principles of amateurism as the controlling force of sports. The commercial/education model recognizes that college athletics is a commodity that is marketed, advertised, and sold like any other product. By establishing the importance of commercialism and discarding the traditional ideals of amateurism, this model is more sympathetic to the possibilities of rewarding college athletes with monetary compensation.

By recognizing that the student-athlete is an integral part of the college sports commodity, the model favors paying student-athletes for their contribution to the viability of the product. In addition, by realizing that commercial aspects do indeed have a heightened effect over collegiate sports, the model accepts the fact that college sports exist in a completely

34. See Ellen J. Staurowsky, Another Perspective on Compensation: Traditionalists Use a Semantic Dodge on Paying Athletes, NCAA NEWS, June 28, 1995, at 4; see also Schott, supra note 1, at 34. College students in other university departments are not faced with the same restrictions as college athletes, even if they are on scholarship for academic or other abilities. Id. These students are allowed to work during the school year, and an outside entity can pay for that student's compensation. Id. However, current NCAA eligibility rules prevent student-athletes from partaking in these benefits. Id.

35. Id.

36. In essence, universities condition student-athletes' scholarships, and thus, education on the success of the athletic team, without providing the necessary rewards for the student-athletes' academic and athletic achievements.

37. Davis, supra note 25, at 279.

38. Id.

39. Id.

40. Id. at 280.

41. See id. at 279–81.
different environment today than that faced by the founders of the NCAA nearly 100 years ago.  

B. Existing Rules on Student Compensation

There are three possible sources of compensation affecting student-athletes, two of which the NCAA places limits on and one that the NCAA prohibits. First, colleges and universities can offer scholarships, a source of compensation that is entirely up to the discretion of the educational institution. Additionally, the NCAA allows student-athletes to engage in limited part-time employment. Finally, the NCAA prohibits student-athletes from receiving money from third parties, including agents, "boosters," and potential endorsers. Each of these sources are regulated by the NCAA in a manner tending to limit the ability of these individuals to pursue economic opportunities.

1. Scholarships

Universities argue that athletic scholarships are adequate compensation. This argument, however, does not reflect the current state of affairs. A four-year scholarship is generally worth between about $30,000 (state university) to $120,000 (private university). In
comparison, popular and talented student-athletes may be able to generate millions of dollars for their university throughout their collegiate career.\textsuperscript{49} When current NCAA rules were created nearly 100 years ago,\textsuperscript{50} this economic disparity between the value of a scholarship and the amount of money generated by student-athletes did not exist.\textsuperscript{51} Continued reliance on scholarships fails to recognize the stark economic gaps inherent in present-day collegiate athletics.

Some view athletic scholarships as a means of giving a student-athlete an opportunity to receive a quality education while participating in college athletics.\textsuperscript{52} The scholarship and opportunity to receive a college education is seen as adequate compensation for the student-athlete’s on-field performance. The extent to which colleges and universities have promoted this ideal, however, has been heavily scrutinized. An alarming number of student-athletes fail to graduate,\textsuperscript{53} leading some to question whether they actually received adequate compensation for their athletic services.\textsuperscript{54} The disparity between the number of student-athletes offered scholarships and the number that actually graduate have led some to question whether colleges and universities are focusing more on the commercial value of potential recruits than on their educational well-

\begin{itemize}
  \item\textsuperscript{49} For example, the Los Angeles Daily News estimated that former UCLA basketball player Ed O’Bannon was worth $420,000 to UCLA during the 1993–94 season. Mark Alesia, Pay for Play?, L.A. DAILY NEWS, Nov. 13, 1994, at S1. In addition, basketball star Patrick Ewing’s four-year career at Georgetown University was estimated to have produced over $12 million for the school. See Robert N. Davis, Academics and Athletics on a Collision Course, 66 N.D. L. REV. 239, 255–56 (1990).
  \item\textsuperscript{50} The NCAA was initially formed in 1905 by 62 schools known as the Intercollegiate Athletic Association of the United States ("IAAUS"). Chin, supra note 4, at 1215. The IAAUS formally changed its name to the NCAA in 1910. Schott, supra note 1, at 30.
  \item\textsuperscript{51} See Goldman, supra note 4, at 209 (arguing that the focus of college athletics was not how much revenue each sport could raise for the university, but rather the focus was on making the playing conditions as safe as possible for the participants).
  \item\textsuperscript{52} Schott, supra note 1, at 26.
  \item\textsuperscript{53} Id. at 28.
\end{itemize}
Thus, colleges and universities may be failing to provide the educational benefits they guarantee each student-athlete in their scholarship agreements. Additional support for this argument is found in NCAA rules that allow member schools to revoke scholarship agreements. New NCAA rules specify that athletes who enter professional drafts, and are drafted, are ineligible for any future participation in collegiate sports. Therefore, if underclassmen decide to enter the draft, but instead choose to return to college to complete their education, NCAA regulations deny them that choice. Without eligibility, most universities are reluctant to give student-athletes even a partial scholarship to further their education. In essence, these universities are denying student-athletes wishing to test the professional market the very educational opportunity they claim to promote through scholarships.

2. Part-Time Jobs

In January 1996, due to overwhelming support for student-athletes to receive compensation, the NCAA passed a measure allowing student-athletes to obtain part-time jobs during the school year. The part-time jobs allow student-athletes to make up the difference between the value of an athletic scholarship and the school’s “full cost of attendance.” At the University of Washington, for example, a scholarship covers the $8800 to $14,000 needed to attend the university, but does not take into account the student-athlete’s personal or travel costs, which are approximately

55. See Schott, supra note 1, at 26. Two-thirds of all professional football and basketball players never received a college degree. Id. at 28. Statistics also show that a significant number of football players at Division I universities are placed on academic probation at some point in their academic careers. Id. at 26 n.6.

56. See id. at 26–27.


58. Id. An exception was recently added that would allow undrafted basketball players to return to college. NCAA MANUAL, supra note 3, art. 12, § 12.2.4.2.1. However, this rule does not apply to any other sports in which underclassmen choose to enter a professional draft and go undrafted. Id.

59. See NCAA MANUAL, supra note 3, art. 12, § 12.1.1 (a).

60. Id. art. 14, § 14.01.1.

61. Sharon Robb, NCAA Allowing Athletes' Jobs Gets Mixed Review in S. Florida, SUN-SENTINEL (Ft. Lauderdale), Jan. 15, 1997, at 8C; see also NCAA MANUAL, supra note 3, art. 15, § 15.2.6.


63. See discussion supra note 48.
$2100. A part-time job would allow a student-athlete to make this $2100 in order to fully satisfy his or her needs. However, this proposed employment system is subject to serious questions regarding the time constraints placed on athletes, and the possibility of illegal activities arising from these jobs.

The first problem is that student-athletes usually do not have time for a part-time job. They are already burdened with full-time class schedules, homework, practice, and travel for road games. Therefore, a twenty hour-per-week job stretches an already full-time schedule even thinner. By accepting a part-time job, athletes are compelled to sacrifice study time for work hours. The student-athlete would be better served spending their time studying to achieve a college degree, rather than working at a part-time job.

Also, allowing part-time jobs may lead to illegal activities as wealthy boosters seek to supplement a student-athlete’s paltry salary with hefty “tips.” A booster, for example, could slip a student-athlete working as a waiter a $100 tip that, if unreported by the student-athlete, would not be part of his salary. By allowing student-athletes to get jobs, the NCAA has essentially made it easier for boosters to slip favored athletes extra money “under the table.”

3. Compensation from “Outside Sources”

The NCAA limits compensation to scholarships and part-time jobs by prohibiting student-athletes from receiving compensation from other supporters unaffiliated with the university. For example, a student-athlete may not receive any money from an advertiser who uses his or her

64. Borst, supra note 62, at C2.
65. Id.
67. Attending school is a full-time job; participating in athletics is the equivalent of two full-time jobs (one as a student, and one as an athlete). Id. Thus, allowing part-time jobs to provide some monetary compensation to student-athletes would overtax them. Id.
68. Robb, supra note 61, at 8C.
69. Id.
70. Id. As one commentator observed, “Could we reasonably expect a student-athlete working a part-time job to maintain quality grades and still enjoy their newfound compensation for what free time they have left?” Maun, supra note 66, at B7.
71. Maun, supra note 66, at B7.
72. Id.
73. Id.
74. NCAA MANUAL, supra note 3, art. 12, § 12.1.
name or image in a commercial advertisement.\textsuperscript{75} In addition, a student-athlete's athletic eligibility is revoked once they sign with an agent for the purpose of commercially marketing their athletic ability.\textsuperscript{76} Finally, the student-athlete is prevented from receiving cash from persons unaffiliated with the NCAA as an award for their athletic performance.\textsuperscript{77}

The NCAA justifies these restrictions as being necessary to preserve the principles of amateurism and to protect student-athletes from commercial exploitation.\textsuperscript{78} However, NCAA rules restricting compensation injure free competition in collegiate athletics.\textsuperscript{79} Consequently, NCAA regulations may violate antitrust laws imposed by the Sherman Antitrust Act.\textsuperscript{80}

Thus, the present system based on the amateur/education model is not viable in the current collegiate athletic environment. The NCAA can no longer rely on the value of a college education as representing adequate compensation. The commercialism in college athletics today acts as a deterrent against student-athletes completing their college education.\textsuperscript{81} The mere possibility of receiving a college degree creates an unequal exchange when compared with the millions of dollars of revenue that these athletes generate.\textsuperscript{82} In addition, allowing part-time jobs for student-athletes raises concerns about over-taxing a student-athlete's already fragmented time schedule and increasing the opportunity for boosters to make "illegal" payments to favored athletes.\textsuperscript{83} Also, by enforcing its rules

\textsuperscript{75} Id. art. 12, § 12.5.2.1.
\textsuperscript{76} Id. art. 12, § 12.3.1.
\textsuperscript{77} Id. art. 12, § 12.1.1.4.1.
\textsuperscript{78} Id. art. 2, § 2.9.
\textsuperscript{79} See Chin, supra note 4, at 1232. Current regulations prevent student-athletes from selling their athletic skills to the highest bidder. Id. In imposing the current rules, the NCAA has effectively destroyed competition for student-athlete services. Id. Instead of actively bidding with one another for the services of student-athletes, universities merely offer comparable compensation in the form of athletic scholarships, which prevent student-athletes from earning the highest price for his or her labor. Id.
\textsuperscript{81} The commercialism in present-day college sports leads universities to engage in bidding wars at the expense of their athletes. Schools attempt to market their "star players" to the networks, which provide exposure and profit for these schools. Because the student-athletes being marketed currently receive no portion of this profit, the professional leagues offer more financial opportunities, regardless of whether these student-athletes have completed their academic requirements. See Rookie Johnson, Sometimes it Simply Boils Down to Matter of Dollars and Sense, STAR LEDGER (Newark, N.J.) May 9, 1996, at 4.
\textsuperscript{82} See Davis, supra note 49, at 256 (discussing the unequal balance between the revenue generated by Georgetown University during the four years Patrick Ewing attended the school and the value of the athletic scholarship he received).
\textsuperscript{83} See Maun, supra note 66, at B7.
limiting compensation, the NCAA may be subjecting itself to antitrust scrutiny under the Sherman Antitrust Act.\textsuperscript{84}

The only cure to this system is to implement rules and regulations conforming to the special circumstances of the situation. The commercial/education model recognizes the intricacies of today's system and should serve as a foundation for this new system. Using this model as a base, a strong argument can be made for the implementing a system of revenue sharing in which student-athletes would receive a portion of the revenues they generate as a means of compensation.

IV. NCAA REGULATIONS AND THE SHERMAN ANTITRUST ACT—ANTITRUST ANALYSIS OF COLLEGIATE SPORTS

Current NCAA alternatives for compensation, such as scholarships and part-time jobs, are not viable in the present commercial environment of collegiate athletics. In addition, NCAA regulations prevent implementing a new system that would allow student-athletes to receive a more comparable amount of compensation. However, NCAA regulations may not conform to the antitrust standards set by the Sherman Antitrust Act. If these rules violate the Sherman Antitrust Act and are consequently invalidated, there would be an opportunity to develop compensation packages that fully compensate student-athletes. An example of this would be a revenue-sharing program.

Passed in 1890, the Sherman Antitrust Act's main purposes are: (1) to protect commerce against unlawful restraints and monopolies; and (2) to preserve freedom of competition.\textsuperscript{85} There are generally two elements to analyzing a Sherman Antitrust Act claim.\textsuperscript{86} First, it must be determined whether the Act applies to the challenged activity.\textsuperscript{87} A threshold requirement for challenging a business practice is that the activity involve interstate commerce, making the action reachable by Congress under its commerce powers.\textsuperscript{88} If the Act applies, the second inquiry involves whether the business practice challenged actually violates the Act.\textsuperscript{89}

\textsuperscript{84} See discussion infra Part IV.
\textsuperscript{85} HARRY AUBREY TOULMIN JR., A TREATISE ON THE ANTI-TRUST LAWS OF THE UNITED STATES § 4.4 (1949); see also 1 PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 101 (Rev. ed. 1997).
\textsuperscript{86} See Goldman, supra note 4, at 214, 219–24.
\textsuperscript{87} See TOULMIN, supra note 85, § 4.5.
\textsuperscript{88} Id. A cursory reading of the Sherman Antitrust Act reveals that it was the intent of Congress to forbid any restraint on interstate or foreign commerce. Id.
\textsuperscript{89} See Chin, supra note 4, at 1230–32; see also Goldman, supra note 4, at 219–44. If the Act applies to the challenged restraint, the court will apply one of three analyses to determine
It is generally recognized, however, that the Act cannot be construed literally, inasmuch as every agreement restrains trade to some extent. Therefore, antitrust claims against a business combination or contract turn on whether the combination or contract “unreasonably” restrains trade.

Three tests are used by courts to determine if a combination or contract violates the Act: (1) the “per se” test; (2) the “rule of reason” test; and (3) the “quick look rule of reason” test. Accordingly, this Part analyzes the NCAA rules preventing college athletes from receiving compensation first to determine if the Act applies, and second to determine whether these rules violate the Act.

A. The NCAA and Interstate Commerce

In the context of antitrust claims, the interstate commerce requirement includes any activity within “the flow of interstate commerce” or “affecting commerce.”

There is some dispute among lower courts about whether a plaintiff must establish a nexus between the restraint and interstate commerce, or simply an effect on commerce resulting from the defendant’s business activities in general. However, reconciling this dispute is unnecessary because NCAA restraints on student compensation satisfy both tests.

It is apparent from the various elements of collegiate athletics that creating and conducting a collegiate sports program involves interstate activities. In addition, courts have generally held that NCAA restraints on college sports involve and affect interstate commerce. In Justice v.

whether the restraint violates the Sherman Antitrust Act. See discussion infra Part IV.B.1–3.

90. See Standard Oil Co. v. United States, 221 U.S. 1, 60, 64–65 (1911); see also Board of Trade v. United States, 246 U.S. 231, 238 (1918).


93. Specifically, Part IV of this Comment focuses on NCAA Rule 15.2, discussing how it limits the amount of financial aid a student may receive for tuition and fees, room and board, and course-related books. See NCAA MANUAL, supra note 3, art. 15, § 15.2. This restriction implicitly restricts NCAA athletes from receiving any other form of compensation for their performances on the field. See id. art. 12, §§ 12.1.1.4.1, 12.1.1.1.5, 12.1.1.1.6.

94. AREEDA & HOVENKAMP, supra note 85, ¶ 266.

95. See Goldman, supra note 4, at 215.

96. Id.

97. Current collegiate athletic programs include student-athletes who are recruited nationwide, the different schools compete nationally, and games are televised throughout the country. Id.

98. See, e.g., NCAA v. Miller, 10 F.3d 633 (9th Cir. 1993); Hennessey v. NCAA, 564 F.2d 1150 (5th Cir. 1977).
NCAA,\textsuperscript{99} the District Court recognized that the NCAA's regulatory activity was sufficient to establish the requisite interstate involvement.\textsuperscript{100} In reaching this conclusion, the court acknowledged that the NCAA schedules games that call for the transportation of teams across state lines, and also regulates nationwide recruiting of high school athletes.\textsuperscript{101}

1. "Commerce" v. "Interstate Commerce"

In \textit{United States v. Lopez},\textsuperscript{102} the Supreme Court limited federal power under the Commerce Clause by rejecting a federal statute that forbade the possession of a gun in a school zone.\textsuperscript{103} The Court held that mere possession of a weapon in a school zone was not "commerce" because it had nothing to do with manufacturing or trade.\textsuperscript{104} Based on the holding in \textit{Lopez}, the NCAA has argued that it is not involved in "commerce" in general, and therefore, its rules should not be subject to the scrutiny of the Sherman Antitrust Act.\textsuperscript{105}

In \textit{Smith v. NCAA},\textsuperscript{106} a student-athlete claimed that NCAA regulations prohibiting graduate students from using their remaining eligibility at a different school from the one at which they played as an undergraduate were unreasonable restraints of trade and injurious to their business and property.\textsuperscript{107} The District Court held that the NCAA rules in question did not involve commerce, thus making the Sherman Antitrust Act inapplicable.\textsuperscript{108} The court, citing a similar holding in \textit{Justice}, held that the Sherman Antitrust Act is only applicable to NCAA activities that are

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\textsuperscript{100} \textit{Id.} at 378.
\textsuperscript{101} \textit{Id.}
\textsuperscript{102} 514 U.S. 549 (1995).
\textsuperscript{103} \textit{Id.} at 551-52.
\textsuperscript{104} \textit{Id.} at 561. More importantly, the Court was concerned with the fact that the statutory language contained no "jurisdictional element" limiting its application to those instances of gun possession that affect interstate commerce. \textit{Id.} at 561-62. Furthermore, the legislative history of the statute contained no factual findings establishing a nexus between gun possession and interstate commerce. \textit{Id.} at 562-63.
\textsuperscript{105} Goldman, \textit{supra} note 4, at 215.
\textsuperscript{107} \textit{Id.} at 215-16. Eligibility was denied pursuant to NCAA Bylaw 14.1.8.2, which prohibited student-athletes from participating in intercollegiate athletics at a postgraduate institution other than the one from which they received their undergraduate degree. \textit{Id.} Because the student-athlete completed her undergraduate studies at St. Bonaventure University and was participating in a postbaccalaureate program at the University of Pittsburgh, she was deemed to be ineligible. \textit{Id.}
\textsuperscript{108} \textit{Id.} at 217-18.
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related to its commerce or business.\textsuperscript{109} The court determined that there was no logical way to conclude that rules regarding student-athlete eligibility involved a commercial activity, or afforded any of its member institutions with a commercial advantage.\textsuperscript{110} Therefore, the court implicitly held that NCAA eligibility rules were not subject to the antitrust laws under the Sherman Antitrust Act.\textsuperscript{111}

2. Errors in \textit{Smith}

The court’s holding in \textit{Smith}, however, is subject to criticism for three reasons. First, the reliance on \textit{Lopez} is misplaced. \textit{Lopez} cannot be applied to the Sherman Antitrust Act because antitrust laws properly limit their coverage to business combinations affecting interstate commerce.\textsuperscript{112} One of the main reasons the Court struck down the restriction in \textit{Lopez} was because the statute did not limit its application to activities affecting interstate commerce.\textsuperscript{113} However, antitrust laws limit their coverage to only those activities defined as "commerce."\textsuperscript{114} Accordingly, application of the commerce provision in antitrust laws should be regarded as an exercise in statutory interpretation, not constitutional law.\textsuperscript{115} The impact of a holding that a given activity is not "in" commerce is not to declare the antitrust statute unconstitutional, but merely to hold that as a matter of statutory interpretation, the statute does not reach the activity in question.\textsuperscript{116}

Second, applying \textit{Smith} to NCAA eligibility rules contradicts existing precedent. The holding is inconsistent with the Supreme Court’s decision in \textit{NCAA v. Board of Regents},\textsuperscript{117} where the Court implicitly accepted the fact that NCAA regulations involved commerce. The Court held that NCAA regulations on television contracts violated antitrust laws, implicitly recognizing that the antitrust challenge involved interstate commerce.\textsuperscript{118}

\textsuperscript{109} \textit{Id.} at 217 (citing Justice v. NCAA, 577 F. Supp. 356 (D. Ariz. 1983)).
\textsuperscript{110} \textit{Id.} at 218.
\textsuperscript{111} See \textit{id}.
\textsuperscript{113} \textit{Lopez}, 514 U.S. at 561.
\textsuperscript{114} \textit{AREEDA} \& \textit{HOVENKAMP}, \textit{supra} note 85, \textsection 266.
\textsuperscript{115} \textit{Id}.
\textsuperscript{116} \textit{Id}.
\textsuperscript{117} 468 U.S. 85 (1984).
\textsuperscript{118} \textit{See} \textit{id.} at 119–20.
Therefore, any case dismissing an antitrust claim on the grounds that the NCAA is not engaged in interstate commerce, as the District Court found in Smith, is inconsistent with Board of Regents. In fact, in Justice, the District Court found that an NCAA sanction prohibiting a team from participating in post-season competition involved interstate commerce.\textsuperscript{119} Indeed, because the NCAA operates in all fifty states, whether it is regulating television contracts, student eligibility, team play, or compensation for student-athletes, it is engaging in interstate commerce.

Third, the holding in Smith fails to acknowledge the commercialization of college sports today. The majority in Smith seemed to view college sports through the traditional amateur/education model,\textsuperscript{120} where notions of commercialism are dwarfed by idealistic visions of athletes participating in sports for the mere joy of playing.\textsuperscript{121} Relying on the amateur/education model, NCAA rules regarding eligibility would appear to not involve commerce.\textsuperscript{122} However, reliance on this model casts a blind eye towards the effects of commercialism on present-day collegiate athletics.\textsuperscript{123} Modern-day college athletics, especially men's basketball and football, is a vast commercial venture that yields substantial profits for colleges.\textsuperscript{124} Consequently, college athletics is a commodity that is sold like any other product to produce revenue.\textsuperscript{125}

Accordingly, the majority opinion in Smith, which held that eligibility rules regarding college sports were not in any way connected with commercial activity, is difficult to accept. Eligibility rules restrict athletes, the very people who produce the entertainment that colleges and universities commercially market as college sports. Hence, eligibility

\textsuperscript{120} See discussion supra Part III.A.1.
\textsuperscript{121} See Davis, supra note 25, at 274.
\textsuperscript{122} In the amateur/education model, students do not participate in athletics to get paid. Therefore, it would be irrelevant how much revenue these student-athletes generate. The eligibility rules in this instance would be to distinguish rules regarding which student-athletes can play in sports (i.e., only those who have been in college less than four years), instead of as a means of enforcement against student-athletes gaining compensation.
\textsuperscript{123} See Mike McGraw et al., \textit{Money Games Inside the NCAA: Revenues Dominate College Sports World}, KAN. CITY STAR, Oct. 5, 1997, at A1. Current collegiate athletics is big business. Universities profit from the on-field performance of their student-athletes and are constantly seeking to maximize their revenues. \textit{Id.} Colleges increase revenues by expanding stadiums to seat more people. \textit{Id.} The University of Texas recently planned to expand its football stadium to 82,000 seats. \textit{Id.} In addition, 66 new luxury suites were added, which will boost revenue by $3 million per year. \textit{Id.}
\textsuperscript{124} Banks v. NCAA, 977 F.2d 1081, 1099 (7th Cir. 1992) (Flaum, J., dissenting); see also Goldman, \textit{supra} note 4, at 216. In presenting amateur athletics to the ticket-buying, television-buying public, the NCAA is engaged in a large commercial venture. \textit{Id.}
\textsuperscript{125} Davis, \textit{supra} note 25, at 280.
rules are directly related to commerce because their restrictions determine which athletes participate in this commercial activity.

B. Application of Antitrust Law to Section 1 Sherman Antitrust Act

Claims—Three Types of Analyses

Assuming that the Sherman Antitrust Act applies to NCAA regulations, the next inquiry focuses on whether NCAA rules violate the Act. NCAA limits on student-compensation generally restrain free competition between NCAA member schools. Instead of actively competing for student-athletes, colleges and universities are compelled to limit their compensation packages to the standards set by NCAA regulations.

However, courts have specified that only "unreasonable" restraints of competition or commerce violate section 1 of the Sherman Antitrust Act. In order to determine whether a restraint is "unreasonable," the courts have developed what some commentators see as a "continuum-based" approach. Under this approach, the level of scrutiny applied to each restriction of competition is dependent on where each restriction fits along the antitrust continuum. The success of a student-athlete's potential claim against the NCAA can be measured by inserting NCAA eligibility rules into this continuum.

1. Per Se Antitrust Analysis

   a. History and Elements of the Rule

     At one end of the continuum lies the per se approach. This approach is used for restrictions that would "almost always" be found illegal, even under more discretionary analysis. All antitrust claims subjected to per

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128. Id. at 711. More specifically, the classification of restrictions along this continuum would be based on the clarity of the restriction's impact on competition. Id. The clearer the anti-competitive effects of the conduct, the closer it would be to the per se end of the continuum. Id. However, where the purpose and effect of the restriction is more ambiguous, the conduct would lie in the rule of reason portion of the continuum. Id.
129. Id.; see also Arizona v. Maricopa County Med. Soc'y, 457 U.S. 332, 344 (1982) (holding that per se treatment is appropriate "[o]nce experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it . . ."); Northern Pac. Ry. Co. v. United States, 356 U.S. 1, 5 (1958) (holding that some types of restraints have such predictable and pernicious anti-competitive effect, and such limited
se analysis will be found to be "unreasonable" and a violation of antitrust laws.\textsuperscript{130} Under the per se rule, the plaintiff does not have to prove that the restriction led to a decrease in competition.\textsuperscript{131} In addition, the court will not consider any of the defendant's proffered justifications for the restraint.\textsuperscript{132} In essence, the court will determine that the restriction violates antitrust laws and nothing the defendant argues can save the restraint from its demise. For example, in \textit{United States v. Socony-Vacuum Oil Co.},\textsuperscript{133} the Supreme Court noted that a combination that tampers with price structure or is formed for the purpose of fixing prices is illegal per se.\textsuperscript{134} Consequently, horizontal price fixing has been traditionally considered to be a classic example of an illegal per se restraint.\textsuperscript{135}

\textbf{b. Application to Regulations on Compensation}

Upon initial examination, all NCAA restrictions on compensation to student-athletes, including Rule 15.2, seem to be illegal per se. The NCAA is an association of schools that compete against each other to attract student-athletes for their athletic programs.\textsuperscript{136} NCAA restrictions, like Rule 15.2, seek to eliminate all forms of price competition among member schools by limiting the "price" paid to student-athletes.\textsuperscript{137} Therefore, under the reasoning in \textit{Socony-Vacuum}, NCAA restrictions on student-athlete compensation constitute horizontal price fixing and should be per se illegal.

In \textit{Board of Regents}, the Supreme Court had the option to use the per se test. The NCAA rule in question placed a ceiling on the number of games member schools could televise.\textsuperscript{138} The Supreme Court recognized

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\textsuperscript{130} See Yancey, supra note 92, at 676–77. If the necessary effect of the restraint restricts competition in general, then the court can condemn the restraint without any further inquiry because allowing such a restraint would contradict the general principles of the Sherman Antitrust Act. \textit{Id.}

\textsuperscript{131} \textit{Northern Pac. Ry. Co.}, 356 U.S. at 5; see also Yancey, supra note 92, at 677.


\textsuperscript{133} 310 U.S. 150 (1940).

\textsuperscript{134} \textit{Id.} at 221, 223.

\textsuperscript{135} See Yancey, supra note 92, at 677. A horizontal restraint is an agreement among business competitors on the way in which they compete with one another. \textit{Board of Regents}, 468 U.S. at 99. A horizontal price fixing restraint then is an agreement by competitors to fix the price they will pay for a product in order to keep costs down. \textit{Id.}

\textsuperscript{136} Goldman, supra note 4, at 220.

\textsuperscript{137} \textit{Id.}

\textsuperscript{138} \textit{Board of Regents}, 468 U.S. at 95.
that by participating in an association that prevented competition for television rights, the NCAA and its member schools had created a horizontal restraint. However, while acknowledging that horizontal price fixing is ordinarily deemed as illegal per se, the Court felt that it was inappropriate to apply the per se rule to the restriction. The Court refused to apply per se reasoning because it considered horizontal restraints on competition essential to produce college athletics. Therefore, despite the fact that the regulations restrained the activity of member schools, the Court believed it had to consider the NCAA's justifications for these restraints.

After the Supreme Court's ruling in *Board of Regents*, courts have been wary of applying the per se rule to NCAA regulations. In fact, no court has yet to apply the per se rule to invalidate an NCAA rule or regulation. Therefore, it would not be viable for a student-athlete to rely on the per se analysis for their antitrust claims.

2. Traditional Rule of Reason Analysis

a. Elements

Whereas the per se rule represents the most stringent of the three main approaches, the "traditional" rule of reason (hereinafter "rule of reason") analysis provides the NCAA with the most leeway to present justifications for eligibility restraints. Rule of reason analysis seeks to separate reasonable restraints that merely regulate or promote trade, from unreasonable restraints that suppress or destroy competition. In order to determine which restraints are reasonable, the Court of Appeals for the Third Circuit, in *United States v. Brown University*, created a two step

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139. *Id.* at 99.
140. *Id.*
141. *Id.* at 101. The Court focused on the fact that rules, such as those governing the size of the field, the number of players on a team, and the extent to which physical violence is proscribed, must be agreed upon by all member schools in order to have college sports. *Id.* Consequently, while these rules restrain the manner in which institutions compete, they are not deemed illegal per se. *Id.*
142. *Id.* at 103.
144. Under a per se analysis, a restriction can be condemned without considering any of the defendant's proffered justifications. *See Shacknai, supra* note 132, at 35. However, under a rule of reason approach, the defendant is at least allowed an opportunity to show that the restraint has some redeeming pro-competitive effects. *See Yancey, supra* note 92, at 675.
145. 5 F.3d 658 (3d Cir. 1993).
procedure. First, the plaintiff must show the restraint has anti-competitive effects within the relevant geographic and product markets. If the plaintiff meets the burden of proving anti-competitive effects, the burden shifts to the defendant to demonstrate that the restraint is actually pro-competitive. If the defendant can show that the restraint increases economic competition, it will be upheld as a reasonable restraint.

b. Judicial Application

In applying rule of reason analysis to NCAA regulations, courts have generally recognized that the NCAA acts in two different markets. The first is a purely commercial market, where the purpose of the regulation is to maximize profits. Any NCAA regulations in the commercial market have generally been subject to high antitrust scrutiny.

One example of judicial disdain for NCAA regulations in a commercial market is Law v. NCAA. The restriction in Law was an NCAA rule limiting the compensation paid to different men's basketball assistant coaches of each university. The District Court held the rule to be invalid because it was not connected to any legitimate non-commercial

146. Yancey, supra note 92, at 675.
147. Brown Univ., 5 F.3d at 668. A plaintiff may prove anti-competitive effects by showing actual anti-competitive consequences, such as an increase in price, or by showing that the defendant has market power. Id. Market power is defined as the ability to affect the market price for the relevant market. See Sherman Act Invalidation, supra note 4, at 1309.
148. Brown Univ., 5 F.3d at 669. In order to fulfill this burden, the defendant must prove three things. Yancey, supra note 92, at 676. First, the defendant must show that the restraint has some pro-competitive benefits. Id. Second, the defendant must show that these pro-competitive benefits outweigh the anti-competitive harms created by the restraint. Id. Finally, the defendant must prove that the restraint is the least restrictive alternative to achieve these pro-competitive benefits. Id.
149. See Sherman Act Invalidation, supra note 4, at 1307.
150. See Chin, supra note 4, at 1224; see also Gaines v. NCAA, 746 F. Supp. 738, 743 (M.D. Tenn. 1990).
151. See Chin, supra note 4, at 1224.
152. Id.; see also, NCAA v. Board of Regents, 546 F. Supp. 1276, 1288–89 (W.D. Okla. 1982); Gaines, 746 F. Supp. at 743.
154. Id. at 1400. The rule limited the men's basketball team of each school to three fully paid head or assistant coaches and one restricted earnings coach. Id. The restricted earnings coach was limited to receiving $12,000 during the academic year and $4,000 during the summer months. Id. Therefore, if a school previously had a head coach and three assistant coaches, under this rule one of the assistant coaches would have to be designated as a restricted earnings coach and have his salary reduced within the limits imposed by the NCAA. The NCAA expressly stated that the purpose of the rule was to cut the costs of running athletic programs, but argued that the restriction was non-commercial because it helped the NCAA member schools from ruinous cost increases. Id. at 1406.
Because the NCAA expressly stated that the purpose of the rule was to cut costs, and thereby maximize profits, the court recognized that the restriction directly regulated a commercial market and was therefore illegal.¹⁵⁶

Conversely, courts have been lenient in applying the rule of reason scrutiny to NCAA regulations in the non-commercial educational market.¹⁵⁷ Regulation in this market is directed at preserving amateurism and maintaining the identity of college athletics.¹⁵⁸ Therefore, these restrictions will usually be upheld regardless of their regulatory effects.¹⁵⁹

Despite this judicial deference, a student-athlete may convince a court that Rule 15.2 is invalid by showing that it is not connected to the legitimate goals of the NCAA. Such a challenge would seek to establish that the NCAA has abandoned the goal of combining education with athletics, and thus no longer has the right to intervene and restrain competition among colleges.¹⁶⁰ Without a connection to legitimate goals, the NCAA's entire regulatory program fits a pattern of purely anti-competitive behavior, and should be invalidated as a violation of the Sherman Antitrust Act.¹⁶¹ Additionally, if a student-athlete can prove that the NCAA's rules are aimed at maximizing profits, and not at upholding traditional goals, an argument can be made that these restrictions should be treated and rejected as regulations within a purely commercial market.

¹⁵⁵. *Id.* at 1409.

¹⁵⁶. *Id.*

¹⁵⁷. Chin, *supra* note 4, at 1224; see also Hennessey, 564 F.2d at 1154; Justice, 577 F. Supp. at 382–83.

¹⁵⁸. Chin, *supra* note 4, at 1224; see also Gaines, 746 F. Supp. at 743.

¹⁵⁹. Chin, *supra* note 4, at 1225; see also Hennessey, 564 F.2d at 1154; Justice, 577 F. Supp. at 382–83.


¹⁶¹. *Id.* In fact, the Supreme Court in the past has invalidated supposedly reasonable restraints because these restraints were not related to legitimate goals. In *Radiant Burners v. Peoples Gas, Light & Coke*, 364 U.S. 656 (1966), the plaintiff alleged that the Association's program to test gas furnaces was a sham and served only to suppress competition. *Id.* The Supreme Court found the restriction unlawful regardless of the net effects on the marketplace. *Id.* Consequently, if a student-athlete can show that the NCAA restrictions on compensation are not connected to legitimate goals, and are instead used only to suppress competition, then these restrictions must be held unlawful regardless of the effects on the market.
c. The Student-Athlete's Cause of Action

i. Defining Anti-Competitive Effects in a Relevant Market

In arguing that NCAA regulations violate section 1 of the Sherman Antitrust Act, a student-athlete must first show that these restraints have an anti-competitive effect on the relevant geographic and product market. Instead, due to the difficulty in showing actual anti-competitive effects, courts have required plaintiffs to show that the defendant has market power.

Courts have historically defined the NCAA's market power as its ability to affect the price its members pay for the services of student-athletes. Because the NCAA and its member institutions have unmitigated control over the market for college players, they can directly affect the price its members pay for student-athletes' services. The NCAA has almost complete monopsony power over the student-athlete labor market for the revenue-producing sports of men's basketball and football. If student-athletes want to participate in either sport, they must abide by NCAA regulations, as there are no alternative leagues in which a student-athlete can participate.

In addition, NCAA rules affect the price professional teams pay for student-athletes. If student-athletes forego their eligibility by entering a professional league as an underclassmen, they must either accept the

162. Yancey, supra note 92, at 675. A student-athlete could prove an anti-competitive effect by showing actual injury to competition or by showing that the defendant has market power. Id. Proving that the NCAA has market power in the relevant geographical market is fairly simple. Schools recruit nationally and student-athletes attend universities around the nation. Therefore, a national market is appropriate. In addition, if the NCAA argues for a narrower market, it still has market power because the NCAA is the dominant force in college athletics in every local region in the country. See Goldman, supra note 4, at 229.


164. Id.

165. Id.

166. A monopoly is created when all of the products in a certain industry are brought under the control of one entity, making it the sole seller and controller of commodity prices and allowing it to suppress competition. See People v. Detroit Asphalt Paving, 221 N.W. 122, 123 (Mich. 1928). A monopsony, on the other hand, occurs when there is a single buyer or group of buyers making a joint decision. See United States v. Syufy Enters., 903 F.2d 659, 665 n.4 (9th Cir. 1990). The NCAA exerts monopsony power because there are no alternative leagues in which student-athletes can participate. Thus, the NCAA is the sole buyer in the market. Id.

167. Goldman, supra note 4, at 227.

168. See Sherman Act Invalidation, supra note 4, at 1309.

169. Id.
professional team's offer or not play at all. Therefore, a student-athlete has less bargaining leverage than an athlete who could threaten to return to college athletics if an adequate offer was not received. The NCAA's unmitigated control over college athletics proves not only that the NCAA has market power, but also has restraints on compensation that have anti-competitive effects.

ii. The NCAA's Proposed Pro-Competitive Benefits

Once the anti-competitive effects of NCAA eligibility restrictions are proven, the burden shifts to the NCAA to show that pro-competitive benefits outweigh these negative effects. The NCAA can validate its restrictions by showing that these rules are reasonably necessary to further a legitimate purpose. In NCAA v. Board of Regents, the Supreme Court stated that the NCAA needs ample latitude to preserve education and amateurism in collegiate athletics. Therefore, the Court implied that NCAA restrictions that promote education and amateurism are reasonable regardless of their anti-competitive effects. Consequently, a valid challenge to restrictions on compensation revolve around the argument that because these rules promote neither education nor amateurism, the anti-competitive effects outweigh the pro-competitive benefits.

(a) The Fallacy of Education in Collegiate Athletics

Historically, the NCAA has tried to create a connection between collegiate sports and education. Limits on compensation are said to encourage student-athletes to choose a college based in part on educational quality, not economic reward. However, an argument can be made that some NCAA member schools have failed to fulfill their duty to educate.

170. Id.
171. Id.
172. Yancey, supra note 92, at 675. Taking the model set forth by the court in Brown University, after the student-athlete (the plaintiff) has satisfied his or her burden, then the NCAA (the defendant) must demonstrate that the restraint is actually pro-competitive. Id. In order to satisfy this burden, the NCAA must show that the pro-competitive benefits of restrictions on compensation outweigh the anti-competitive effects it produces. Id. In addition, the NCAA must show that the restraints are the least restrictive means to achieve the desired results. Id.
173. Goldman, supra note 4, at 225.
174. Board of Regents, 468 U.S. at 120.
175. Carstensen & Olszowka, supra note 160, at 549.
176. NCAA MANUAL, supra note 3, art. 2, § 2.9.
177. Goldman, supra note 4, at 240.
Two-thirds of all professional football and basketball players never received their college degree.\(^{178}\) In addition, student-athletes are constantly distracted from the academic aspects of college because of the high demands placed on them by their athletic commitments.\(^ {179}\) Because a college coach’s job rests on the performance of his or her athletes, many coaches place a secondary value on education.\(^ {180}\) Therefore, the NCAA cannot state that restraints on student-athlete compensation help promote educational goals. NCAA member schools often sacrifice educational values in their efforts to create more revenue by “winning at all costs.”\(^ {181}\)

Furthermore, various rules purportedly related to preserving education actually relate more to reducing the costs of administering athletic programs for NCAA member schools. For example, in 1972 the NCAA passed a rule allowing member schools to revoke the scholarship of unproductive athletes after one year.\(^ {182}\) If a university was actually concerned with the education of its student-athletes, it would guarantee scholarships for four years regardless of an athlete’s on-field performance.\(^ {183}\)

Essentially, the NCAA and its member schools have created an amateur/education hypocrisy. The NCAA has claimed that its primary goal is to create a connection between athletics and education. However, the NCAA and its member schools have placed their own financial interests ahead of the educational interests of their student-athletes.

(b) Preserving Amateurism

The NCAA’s second pro-competitive objective, preserving amateurism, cannot be supported. The NCAA claims that preserving amateurism is essential to further historic traditions and enhance the

\(^{178}\) Schott, supra note 1, at 26.

\(^{179}\) The “win at all costs” mentality inherent in college sports today threatens educational standards. Goldman, supra note 4, at 241. Because of the millions of dollars available for successful teams, many colleges and universities place intense pressure on their coaches to produce winning teams and focus their student-athletes on helping the “team” first, instead of on gaining an education. Id.

\(^{180}\) Schott, supra note 1, at 28. The university’s “win at all costs” attitude also forces many coaches to recruit athletes who may not be ready for a college curriculum, retain academically troubled students, and overlook academic fraud. Goldman, supra note 4, at 241.

\(^{181}\) Goldman, supra note 4, at 242.

\(^{182}\) See NCAA MANUAL, supra note 3, art. 15, § 15.3.5.

\(^{183}\) These student-athletes are replaced with more talented ones in order to produce a better sports team, which eventually leads to more revenue.
demand for college sports by enhancing their image. However, neither argument can be supported by compelling evidence.

The argument that the NCAA has to protect amateurism in order to keep up with tradition is based on gross misconceptions about student-athletes. These misconceptions are dependent on the amateur/education model, which considers the athlete's participating in college sports as a mere hobby. However, the NCAA and its members have failed to recognize that even under this approach, a present-day student-athlete is not an "amateur" in its purest sense.

An amateur is someone who takes part in sports for enjoyment, without receiving any form of compensation. A student-athlete, on the other hand, does not fit this definition. In exchange for participating in collegiate sports, the student-athlete is "compensated" in the form of tuition and fees, room and board, and required books. At many schools, this scholarship is valued at over $10,000. Therefore, it is illogical for NCAA member schools to demand that compensation restrictions be used to promote amateurism when their own student-athletes are not technically amateurs. In essence, the only real reason for the compensation rules is to allow the NCAA to eliminate all price competition among its members, much like a classic cartel.

The NCAA's focus on amateurism does not help promote college sports. Most consumers are attracted to collegiate teams because of their university affiliation. Accordingly, fan interest in collegiate sports is unlikely to be deterred simply because student-athletes received some form of compensation. It is the student-athlete's association with an educational institution, not the wages of the players that attracts the public's interest.

Perhaps more fatal is the fact that limited compensation rules do not promote intercollegiate athletics because many NCAA institutions frequently violate the rule. Furthermore, consumer demand for college

184. See Board of Regents, 468 U.S. at 102.
185. See Davis, supra note 25, at 273.
186. Shropshire, supra note 18, at 10.
187. Goldman, supra note 4, at 206.
188. See discussion supra note 48.
189. Goldman, supra note 4, at 210.
190. See Roberts, supra note 4, at 2659.
191. Id. For example, the University of Nebraska football team would probably generate more interest than an unaffiliated team called the Lincoln Cornhuskers.
192. Id.
193. Goldman, supra note 4, at 236.
194. Sherman Act Invalidation, supra note 4, at 1312. One of the more common violations
sports does not decline when a university is found to violate NCAA eligibility rules. In some instances, popular demand and support for certain schools actually increased after violating amateurism bylaws.

Consequently, neither the NCAA’s claim to promote education nor its desire to preserve amateurism present a valid pro-competitive justification for its rules regarding compensation. Because these rules are anti-competitive and present no compelling pro-competitive objectives, the NCAA cannot justify their implementation. Thus, these regulations must be struck down subject to section 1 of the Sherman Antitrust Act.

(c) Misplaced Reliance on *McCormack v. NCAA*

The Court of Appeals for the Fifth Circuit, applying the rule of reason analysis, held in *McCormack v. NCAA* that the NCAA’s eligibility rules are “reasonable.” Although the NCAA may wish to rely on *McCormack*, a strong argument can be made that the case does not foreclose any antitrust challenge of these rules. *McCormack* is the only case in which a court has addressed the issue of whether NCAA regulations on compensation violate antitrust laws, holding that they do not. The court cited *Board of Regents*, which stated that most NCAA regulatory controls were assumed to be reasonable. However, the Court in *Board of Regents* found anti-competitive restrictions reasonable only if these restrictions furthered education and amateurism in intercollegiate athletics.

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is payments to student-athletes. In 1990–91, Robert Morris College was cited for making illegal cash payments to a player. See Chin, supra note 4, at 1243. Southern Methodist University’s football team also received a one-year ban in 1987 for illegal payments to student-athletes. Rabid boosters at the school paid student-athletes more than $60,000 during the season. In addition, in July, 1997, the NCAA penalized the University of California after its head basketball coach paid $30,000 to the family of a player. See Mike McGraw et al., *Ruling With a Soft Touch: NCAA Backs Away From Giving Harshest Penalties*, KAN. CITY STAR, Oct. 7, 1997, at A1.


196. *Id.*

197. Because the pro-competitive benefits argued by the NCAA do not rescue its regulations from the anti-competitive harms produced, a least restrictive alternative analysis is not necessary. In essence, because there are no legitimate pro-competitive elements forwarded by these rules, they are assumed to be overly restrictive. Yancey, supra note 92, at 675.

198. 845 F.2d 1338 (5th Cir. 1988).

199. *Id.* at 1343.

200. See *id.* (“We hold that the NCAA’s eligibility rules are reasonable and that the plaintiffs have failed to allege any facts to the contrary.”) (emphasis added).

201. Schott, *supra* note 1, at 38.

202. *Id.*

As evidenced by the preceding section, current NCAA restrictions on compensation do not promote education or amateurism. Instead, they are skewed toward limiting potential costs for NCAA member schools. Consequently, if a court were to apply McCormack, paying special attention to the reliance on Board of Regents, it could find NCAA restrictions on compensation violative of the Sherman Antitrust Act under rule of reason analysis. Therefore, instead of relying on the questionable precedent raised in McCormack, future courts should apply their own independent and thorough antitrust analysis in cases directly challenging the NCAA’s restraints on payments to college athletes.  

3. Quick Look Rule of Reason Analysis

a. Elements and History of the Rule

The final type of analysis is an intermediate standard, borrowing aspects from both the per se rule and traditional rule of reason. In order to reconcile the need to regulate facially unreasonable restraints on trade, while mitigating the harshness of the per se rule, courts have created an intermediate scrutiny classified as quick look rule of reason. 

Courts have developed two methods of applying the quick look rule of reason. The first approach, used by the Third Circuit in Brown University v. United States, treats quick look rule of reason as a burden-shifting device. Under this approach, the court will presume that the plaintiff’s initial burden of proving anti-competitive effects has been

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204. Id. The dicta in Board of Regents seems even less compelling after considering the true nature of NCAA regulations. The Court in Board of Regents granted great deference to NCAA regulations because it felt that the regulations fostered competition and enhanced the interest in intercollegiate athletics. Id. However, upon close examination of NCAA regulations, the very rules that allegedly foster competition instead act as a facade for NCAA member schools to raise profits by cutting costs. See Sherman Act Invalidation, supra note 4, at 1312. In addition, the public interest in intercollegiate athletics is generated by on-the-field competition and loyalties to schools, not because these schools follow NCAA regulations. Id. at 1313. The fact that fan support continues, and sometimes grows, after a school is reprimanded for violations corroborates this argument. Id. Therefore, the NCAA can no longer clutch onto either Board of Regents or McCormack as justifications of their restrictions.

205. See Law v. NCAA, 902 F. Supp. 1394, 1405 (D. Kan. 1995) (citing NCAA v. Board of Regents, 468 U.S. 85 (1984)). In Law, the District Court recognized that the Supreme Court applied the quick look rule of reason standard in Board of Regents. Id. Also, the court specified that quick look rule of reason would be applied in cases where per se condemnation is inappropriate, but where no elaborate industry analysis is necessary to show the anti-competitive character of the restraint. Id.

206. 5 F.3d 658 (3d Cir. 1993).

207. Yancey, supra note 92, at 677.
The burden then shifts to the defendant to prove that the restriction promotes a pro-competitive objective to justify the anti-competitive effects. Under this test, the court presumes that the restraint has anti-competitive effects and focuses its analysis on the defendant's justifications.

A second quick look rule of reason approach was applied by the Supreme Court in Board of Regents. Under this approach, a court would presume that the restraint impairs competition. A court then gives looks to the justifications to determine if the defendant's claims are legitimate and capable of proof, a court will proceed with a rule of reason approach.

Board of Regents dealt with an NCAA regulation that prevented any university from taking part in an agreement with NBC that would allow college football teams to make more than six yearly television appearances. The Supreme Court struck down the restriction because it found that the NCAA's control over television broadcasting represented an illegal price fix. The Court refused to apply the per se rule, and instead relied on the District Court's findings to confirm the restriction's anti-competitive effects. The Court then took a quick look at the objectives of the restraint and found them to be legitimate. However, upon applying the rule of reason analysis, the Court held that the restrictions did

208. Id. The burden is met not by the plaintiff's showing of fact, but by the court's determination. Id.
209. Id.
210. Id.
211. See Board of Regents, 468 U.S. at 101-02. Under this approach, while the nature of the restraint may allow the court to determine the anti-competitive effects quickly, the court will still review the nature of the restraint and its justifications to determine if the restraint has pro-competitive effects. Yancey, supra note 92, at 680.
212. Yancey, supra note 92, at 679.
213. Id.
214. Board of Regents, 468 U.S. at 94. In addition, under the agreement, all teams received the same fee for a televised game regardless of public standing. Id. at 93.
215. Id. at 86.
216. Id. at 98–100 (citing Board of Regents v. NCAA, 546 F. Supp. 1276, 1300–01 (W.D. Okla. 1982)). The District Court had made a full inquiry into the NCAA's power over the market, the effect of the restraints, the justifications, and the alternatives. See Board of Regents v. NCAA, 546 F. Supp. at 1297–1318.
217. See Board of Regents, 468 U.S. at 101–02; see also Yancey, supra note 92, at 681 n.133. The Court determined anti-competitive effects prior to deciding if justifications existed. However, it is clear from the discussion of anti-competitive effects that the Court already determined that the justifications warranted a more extensive review.
not achieve the NCAA's goals, and therefore the anti-competitive effects could not be justified. 218

b. Application to Restrictions on Compensation

Applying either test presents a student-athlete with a viable challenge to NCAA restrictions on compensation. Under the Brown approach, a court would presume that the restrictions on compensation were anti-competitive and would look at the pro-competitive objectives proffered by the NCAA. 219 As stated in the previous section, the argument the NCAA has traditionally made to justify its rules is that they are necessary to preserve education and amateurism in college sports. However, it has become increasingly apparent that NCAA rules do not help promote these stated objectives. 220 Therefore, because the pro-competitive justifications for the restraints would fail under the Brown test, the NCAA regulations on compensation would be invalidated.

Likewise, in applying the Board of Regents approach, a court would again presume that the restraints are anti-competitive in nature. However, application of this test would compel a court to determine whether the NCAA’s justifications are legitimate. Assuming that a court would accept the preservation of education and amateurism as legitimate, it would then apply the rule of reason test. Applying the rule of reason test, a court would find that NCAA rules on compensation are geared more toward suppressing costs, rather than promoting education and amateurism. Consequently, even under the Board of Regents approach, a court could find the NCAA regulations violate the Sherman Antitrust Act.

V. REVENUE SHARING—THE CURE FOR THE EVILS OF THE PAST

In response to growing public support for compensating student-athletes, and to further protect itself against future antitrust violations, the NCAA has created alternatives that offer illusions of compensation. 221 However, these programs, which include allowing student-athletes to hold

218. See Board of Regents, 468 U.S. at 113–20. The Supreme Court's opinion in Board of Regents is often cited as an example of the quick look standard. See, e.g., Law, 902 F. Supp. at 1405. The Court in Board of Regents did not summarily condemn the restraint as price fixing, even though it noted that the action would normally be illegal per se. Yancey, supra note 92, at 681.


220. See discussion supra Part III.C.2.b.(a)–(b).

221. See discussion supra Part III.B.1–2.
part-time jobs, place too great a hardship on the athletes without providing legitimate compensation.222

The NCAA must acknowledge that the commercialism present in the existing system has led to the growth and prosperity of colleges and universities at the expense of their student-athletes. Therefore, the NCAA must institute a revenue-sharing plan between student-athletes and the colleges they represent in order to give these athletes the compensation they deserve. Only then will the NCAA be promoting equality instead of exploitation within the college athletic system.

A. Proposed Revenue-Sharing Plan

Revenue sharing essentially involves the practice of pooling together revenue from agreed-upon sources and then distributing it among the parties to the agreement.223 All four professional sports leagues have some form of revenue sharing between the ownership and players dealing with merchandising.224 In addition, many conferences within the NCAA use revenue sharing to divide yearly earnings among its members institutions.225

This Comment proposes that the NCAA amend section 12.02.2 of its Constitution226 so that student-athletes may receive a portion of the revenue generated by their team. This Part discusses the elements of the proposed revenue-sharing program, a copy of which is attached to this Comment in the Appendix, and identifies the existing NCAA regulations that would need to be repealed or amended to implement such a program.

1. Part A—Seniority-Based System

The current system, with its focus on scholarships, represents the traditional means by which to compensate student-athletes.227 While sole

222. See discussion supra Part II.C.
224. Id. at 226–30 (including the National Football League (“NFL”), National Basketball Association (“NBA”), Major League Baseball (“MLB”), and National Hockey League (“NHL”)).
225. Schmadtke, supra note 6, at 10C.
226. Section 12.02.2 defines “pay” as the receipt of funds, awards, or benefits not permitted by the governing legislation for participation in athletics. Section 12.1.1(b) revokes a student-athlete’s eligibility if they receive any pay as defined in section 12.02.2. Therefore, by changing the Constitution and “permitting” pay in the form of funds received from the revenue-sharing plan, the NCAA would bring the Plan within the standard parameters. NCAA MANUAL, supra note 3, art. 12, §§ 12.02.2, 12.1.1.
227. See Schott, supra note 1, at 26.
reliance on the current system is not viable in the face of the vast commercialism in collegiate sports, it does present a sound foundation upon which the proposed plan may build. Namely, scholarships providing room, books, and board should continue to be given to each student-athlete.

However, in addition to scholarships, Part III of the Plan includes a base system of monetary rewards available to all student-athletes. The Plan allows student-athletes participating on both men’s and women’s teams to share in the net profits generated by their teams. NCAA Rule 15.2 would have to be amended in order to allow for revenue sharing. In addition, Rule 12.1.1 would have to be repealed in part and amended in part to implement the various forms of compensation that would be available to student-athletes under this plan.

The Plan also considers the relative costs associated with each sport, which leads to the focus on sharing the net, rather than gross, profits generated by each team. Consequently, if a certain team, for some reason fails to make any profit for that school year, each student-athlete on that team would rely on their scholarship as their sole means of compensation. The focus on a seniority-based system would reward student-athletes for their continued contribution and loyalty to the athletic departments of their respective school.

228. See discussion supra Part III.B.1.
229. Accordingly, NCAA Rule 15.2 regarding permissible financial aid should not be repealed, but should be amended in consideration of the proposed bonus elements derived in this section.
230. If the 1996–97 athletics figures were used, Charles Woodson of the University of Michigan football team would have made $77,939. See University of Michigan 1996–97 Equity in Athletics Disclosure Report, Oct. 6, 1997, tbl. 10 (on file with the Loyola of Los Angeles Entertainment Law Journal) [hereinafter Michigan Disclosure Report]. This figure is derived by taking the Michigan football team’s total regular season profits of $10,391,905 and dividing the money according to the percentages set forth in Part III of the Plan. In comparison, Kara Wolters of the University of Connecticut women’s basketball team would have made $8272 according to the base system. See University of Connecticut 1996–97 Equity in Athletics Disclosure Report, Oct. 10, 1997, tbl. 10 (on file with the Loyola of Los Angeles Entertainment Law Journal) [hereinafter UConn Disclosure Report].
231. For example, during the 1996–97 season, the University of Tennessee women’s basketball program won the NCAA championship, but actually lost money. See University of Tennessee 1996–97 Equity in Athletics Disclosure Report, Sept. 24, 1997, tbl. 10 (on file with the Loyola of Los Angeles Entertainment Law Journal) [hereinafter Tennessee Disclosure Report]. Recognize that this portion of the Plan involves “base” compensation. Therefore, if a star student-athlete happens to play on a team that does not make a profit for that school year, they are not prevented from receiving any form of compensation. Instead, the student-athlete, if they qualify, can gain revenue from any of the other three areas that will be discussed.
232. “Years of service” is a more accurate measure than class-standing (e.g., freshman, sophomore, etc.) in college sports because the student-athlete’s class standing at the university may not be representative of the number of years they have participated with the athletic team.
The division of revenues would be as follows: (1) each player in his or her fourth year of participation would receive 1% of all revenues generated for that year; (2) each player in his or her third year would receive 0.75%; (3) each player in his or her second year would receive 0.5%; (4) each player in his or her first year would receive 0.25% of the revenue. Any money remaining after sharing the revenues would go to the athletic department to pay for miscellaneous expenses associated with the athletic program.

2. Post-Season Compensation

An additional area in which student-athletes could receive a share of the revenues is the monetary rewards offered to teams that participate in post-season tournaments. For many schools, the revenues collected during these games provide for large profits. While these earnings are generally divided among all the members in the conference, the revenue distributed to each school remains substantial.

Schools and student-athletes should set up a system of revenue distribution. For example, a 65% to 35% distribution in favor of the university should provide for legitimate compensation while allowing the

See Michigan University Football 1996 Roster, available in UNIVERSITY OF MICHIGAN MEDIA GUIDE (Univ. of Mich. Athletic Dep't ed., 1996). For example, Michigan football player Zach Adami was listed as a "senior" and traditionally considered to be a fourth-year student, even though 1996 was his third year on the team. See id.

233. Even these small percentages can add up to a substantial sum when factored into the revenues generated by present-day intercollegiate teams. For example, consider a college football program that has a net profit of $1 million over the course of the year. Now imagine that this football team has 80 players, consisting of 25 seniors, 20 juniors, 20 sophomores, and 15 freshmen. If all the seniors receive 1% of the profits, they would each get $10,000; juniors would receive $7500, sophomores $5000, and freshmen $2500. The use of $1 million in net profit is reasonable considering the fact that the average college makes more than $4 million annually on football and men's basketball, which translates to about $2 million for each team. See McGraw et al., supra note 123, at A1.

234. A system using the figures stated above would not drain the athletic program of all revenues. For example, using a hypothetical team of 80 football players, the cost of making payments to all the players is $537,500. Therefore, the university still has $462,500 to spend on other pressing needs.


236. See Davis, supra note 49, at 255.

237. For example, the 11 schools in the Big 10 Conference would each receive approximately $2.4 million from the football revenues generated from bowl games.
student-athlete to share in the profits of a successful playoff run. However, instead of dividing the revenues according to "years of service," playoff money generated by each respective team should be divided according to the role each student-athlete plays in the post-season. The focus on athletic performance, and not on seniority, is more important when dealing with playoff earnings because not every university qualifies for the playoffs.⁴³⁸ Therefore, even if the key players on a playoff team are in their second or third year of service, the Plan rewards them for their accomplishments instead of punishing them for their youth. Consequently, of the 35% of the profits given to student-athletes, 50% should go to the starters on the team, 35% should go to "key reserves," and 15% should go to the remaining players.⁴³⁹

3. Athletic and Academic All-Americans

An additional way to compensate student-athletes would be to increase the amount of money they may receive for academic and athletic awards. While the NCAA does not officially sponsor "All-American" teams, they do recognize and accept its connection to college sports.⁴⁴⁰ However, the NCAA limits the amount of compensation a student-athlete may receive in achieving these prestigious awards to $300.⁴⁴¹ Therefore, under the revenue-sharing plan, the $300 limit would be increased to allow academically and athletically gifted individuals greater compensation for their outstanding performances.

Each year, certain newspapers and magazines select All-American teams made up of the best players at each position in both basketball and football.⁴⁴² Because the NCAA does not currently sponsor any individual

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²³⁸. In college football, there are only 42 bowl invitations available for all Division I football programs. See With Bowl Lineups Decided, supra note 235, at 478.

²³⁹. The distribution of playoff money using the Big 10 football revenues (assuming a football team of 80 players) would fall along these lines. The football team would receive $840,000 (35% of the $2.4 million). Assuming there are 22 starters on the team, each starter would receive $19,000 (because the starters receive 50% of the total, or $420,000, to divide amongst themselves). Furthermore, assuming there are 28 "key reserves" and the remaining 30 players are bench players, they would receive $10,500 and $4200 respectively. During the 1996–97 football post-season, University of Tennessee star quarterback Peyton Manning would have received $10,142 through the system set forth in Part V of the Plan. See Tennessee Disclosure Report, supra note 231, tbl. 10; see also Alliance Comes Under Fire as Upsets Roil Bowl Pairings, SPORTS INDUS. NEWS, Dec. 13, 1996, at 485.

²⁴⁰. See NCAA MANUAL, supra note 3, art. 16, § 16.1.4.2.

²⁴¹. Id. art. 16, § 16.1.4.2.1. Under the proposed revenue-sharing plan, this section would have to be amended to allow a higher limit on the amount of money an award winning student-athlete may receive.

All-American team, the opportunity exists for the NCAA to create its own annual team. Alternatively, the NCAA could choose to officially sponsor any one of the existing All-American teams. In exchange for the opportunity to be selected as the official NCAA-sponsored All-American team, these newspapers or magazines could pay a fee to the NCAA. The NCAA could use these fees to reward the student-athletes chosen as All-Americans in their respective sports. For example, first team All-Americans would receive a $2500 award, and second team All-Americans would receive a $1000 award.

In addition, because the NCAA purports to draw a connection between athletics and education, lucrative awards should be given to all student-athletes who succeed both athletically and academically. General Telephone & Electric ("GTE") currently sponsors an Academic All-American Team consisting of student-athletes chosen for their academic and athletic prowess by the College Sports Information Directors of America ("CoSIDA"). The GTE Academic All-American Team annually honors almost 700 student-athletes in five men’s and women’s sports. These Academic All-Americans should each receive a $2500 award for their performances in the classroom and on the playing field.

In order to generate the revenue for these awards, each NCAA member school should donate $1500. Considering that the NCAA has

(naming the 1996–97 Sporting News All-American Team for College Basketball); see also All-Americas, STREET & SMITH’S COLLEGE FOOTBALL, 1997, at 15–16 (naming the 1997 Street & Smith’s All-American Team for College Football).

243. Because All-American teams usually generate fan interest, there would be an incentive for all newspapers and magazines to be distinguished as the "official" periodical of the NCAA.

244. Consequently, a sponsor or sponsors for the men's and women's All-American basketball teams would donate $35,000 each year ($25,000 for the five men's and five women's first team All-Americans and $10,000 for the second team All-Americans). Charles Woodson, as a 1997–98 First Team All-American, would receive $2500 pursuant to Part V of the revenue-sharing Plan. See Lake Mary's Kessler Chosen All-American, ORLANDO SENTINEL, Dec. 10, 1997, at C3.

245. See NCAA MANUAL, supra note 3, art. 2, § 2.9.

246. GTE Homepage, GTE Academic All-America Teams Program (visited Oct. 23, 1997) <http://www.gte.com> (on file with the Loyola of Los Angeles Entertainment Law Journal). In order to be eligible, student-athletes must hold a minimum 3.20 cumulative grade point average while being a starter or key reserve on their respective team, and have reached their sophomore year of college. Id.

247. Id. The five men's sports are football, basketball, baseball, and two at-large sports chosen from the various athletic programs offered at universities throughout the country. The women's sports include volleyball, basketball, softball, and two at-large sports. Id.

over 1000 members, $1.5 million of the necessary $1.75 million would be generated. The additional $250,000 could be donated by either GTE, other corporate sponsors, or by private donors. Additionally, special recognition should be given to student-athletes who qualify for both the first team All-American and academic All-American teams by having their awards doubled in recognition of their achievement. The money used for these bonuses could be provided for by the NCAA, its member schools, or through private donations. Considering the popularity of collegiate athletics and the honorable goals established by the Academic All-American program, it should be fairly easy to generate the additional funds needed.

4. Endorsements

The boom in collegiate athletic merchandise currently provides colleges and universities with their own private gold mines. The time has come for the universities to share these riches with student-athletes, who are mainly responsible for merchandise popularity. Large schools, such as the University of Nebraska, earn $2 million each year through licensing deals. Up to this point, however, student-athletes have been restricted from using their name or image in a commercial product. Therefore, colleges and universities have been able to keep all the profits from these endorsements even though most consumers buy these products due to their association with certain players and their respective schools.

In order to destroy this inequality, colleges and universities should allow student-athletes to get a portion of the merchandising and endorsement revenues they create. The distribution of endorsement revenues and endorsement contracts for these athletes has been the topic of much debate.

249. Goldman, supra note 4, at 209.
250. Therefore, instead of merely receiving $5000 ($2500 for being a first team All-American and $2500 for being a first team academic All-American), the student-athlete should receive a $10,000 award. During the 1996–97 season, four student-athletes in football achieved this honor: Peyton Manning of Tennessee, Brian Lee of the University of Wyoming, Grant Wistrom of the University of Nebraska, and Chad Kessler of Louisiana State University. See Lake Mary's Kessler Chosen All-American, supra note 244, at C3; see also GTE Academic All-American Team, supra note 248, at 1.
251. If the member schools were responsible for paying the bonuses of the four men's football academic/athletic first team All-Americans, each school would have to donate an extra $20 to its initial $1500 donation.
252. See Belo, supra note 4, at 134.
254. NCAA MANUAL, supra note 3, art. 12, § 12.5.2.1. Pursuant to the revenue-sharing plan, this article should be amended to allow student-athletes to share in team merchandising revenues and collect a percentage of revenues for individual endorsement contracts.
255. See Belo, supra note 4, at 146.
revenue can take one of three forms. The first is dividing a portion of all fees collected by the university through licensing agreements. Each university that signs a licensing agreement should allocate 35% of the profits to the athletic department. The athletic department could then divide these profits equally among all participating student-athletes. Another type of endorsement distribution involves the sponsorship of individual teams by product manufacturers. For example, Nike pays the Penn State University football team $5 million a year to place its logo on their uniforms. If Penn State University would allow 20% of this revenue to be divided among its football players, each player would receive a generous reward.

Finally, the NCAA should allow student-athletes to endorse products both nationally and locally. While the value of these endorsements would be difficult to predict under current NCAA regulations, there is some evidence that a "star" student-athlete could easily receive a six-figure salary for endorsing a product. NCAA rules should consequently be changed to allow these student-athletes to receive 80% of all endorsement revenue they individually generate.


257. Finney, supra note 14, at D1.

258. Twenty percent of the revenues from the contract signed with Nike would amount to $1 million. If the Penn State football team consisted of 80 players, each player would receive $12,500 according to Part VI.B of the Plan.

259. Current NCAA regulations allow student-athletes to appear in advertisements for any charitable, educational, or nonprofit organization. See NCAA MANUAL, supra note 3, art. 12, § 12.5.1.1.2. Under the revenue-sharing program, this rule would be amended to allow student-athletes to take part in commercial advertising.

260. Upon leaving college in 1995, Ki-Jana Carter of Penn State University received $500,000 in endorsements, while Drew Bledsoe of Washington State University received $700,000, after leaving college in 1993. See THE 1997 INFORMATION PLEASE SPORTS ALMANAC 584 (John Hassan ed., 1997). In addition, agent David Ware predicts that Charles Woodson, this year's Heisman Trophy winner, may receive over a million dollars in endorsements before he is officially drafted by an NFL team. See Angelique S. Chengelis, Woodson on Track to be Marketing Hit, DETROIT NEWS, Dec. 15, 1997, at D1.

261. The 80% figure is used for simplicity. Allowing student-athletes to receive 80% of all their endorsement contracts recognizes the economic value of their athletic abilities while compensating the university for providing them with a forum to display their talents. A star
Therefore, the proposed revenue-sharing Plan works to equalize profit in collegiate athletics without destroying the current system. The excess profits generated by universities in certain sports are used to help fund the needs of other “non-revenue” sports.\textsuperscript{262} The revenue-sharing plan recognizes this need by allowing each university to receive the majority of all revenues generated. However, by allowing student-athletes to share in this revenue, a balanced medium will be established between the student-athletes and the universities they represent.\textsuperscript{263}

B. Benefits of Revenue Sharing—Avoiding Antitrust Scrutiny

One of the main benefits of revenue sharing is that the NCAA avoids possible antitrust violations. The main complaint concerning current NCAA rules is that they restrict student-athletes from selling their athletic skills to the highest bidder.\textsuperscript{264} A revenue-sharing plan allows the student-athlete to choose a school not only for the academic and athletic opportunities it offers, but also for the economic benefits it provides. The student-athlete would be able to better ascertain his or her athletic value and choose the school that offers the most lucrative rewards—in essence, the highest bidder.

Those universities that seek to recruit “star” athletes would have to emphasize the economic opportunities available to each recruit should they attend the school and succeed in their academic and athletic ventures. By implementing such a system, each NCAA member school would be actively competing with one another for each recruit. The current system does not foster true competition because the NCAA and its member schools have jointly agreed to limit costs by refusing to pay compensation. A revenue-sharing plan would stop this exploitation and direct the NCAA toward the true competition envisioned by current antitrust laws.

Critics may argue that such a plan sacrifices smaller schools who do not have the economic capital to compete with larger universities.

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262. Chin, supra note 4, at 1232.

263. If the revenue-sharing Plan was implemented during the 1996–97 season, under Parts III–IV both Charles Woodson and Peyton Manning would have earned well over $1 million. In comparison, Brian Lee of the University of Wyoming, a first team All-American and first team Academic All-American football player, would have received about $28,000 for his academic and athletic achievements.

264. See THE 1997 INFORMATION PLEASE SPORTS ALMANAC, supra note 260, at 584; see also Chengelis, supra note 260, at D1. Therefore, pursuant to Part VI.C of the revenue-sharing Plan, these athletes could receive anywhere from $400,000 to $800,000 from endorsements.

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student-athlete such as Charles Woodson or Peyton Manning could have received anywhere from $500,000 to over $1 million in endorsements. See THE 1997 INFORMATION PLEASE SPORTS ALMANAC, supra note 260, at 584; see also Chengelis, supra note 260, at D1. Therefore, pursuant to Part VI.C of the revenue-sharing Plan, these athletes could receive anywhere from $400,000 to $800,000 from endorsements.
However, just because a university does not produce successful athletic teams does not mean that they cease to exist. Many schools break even or lose money on their athletics programs, yet remain viable. The revenue-sharing Plan's focus on "profits" allows smaller schools to survive within the present commercial system. Smaller schools can adapt to the current environment by not relying on the athletics department as their primary means of support. Instead, they can look towards other more traditional elements, such as private donations or student tuition to generate the revenue they need to operate.

Some critics may object to the fact that a revenue-sharing plan destroys amateurism and turns the focus away from true notions of education. However, the demise of education and true notions of amateurism within collegiate athletics is connected to the growing commercialism inherent in the present environment. The current focus on commercialism has driven universities to recruit money-making "athletes" instead of "students." In addition, certain NCAA athletic rules focus more on limiting a student-athlete's economic opportunities rather than their educational growth.

265. Ivy League schools have chosen not to bid for student-athletes' services by not providing athletic scholarships. See Goldman, supra note 4, at 248. However, it is unreasonable to believe these schools go unnoticed just because of their lack of athletic tradition.

266. For example, the University of Connecticut athletic department lost over $70,000 in 1996-97, but continues to be widely regarded both academically and athletically. See UConn Disclosure Report, supra note 230, tbl. 10.

267. Certain schools have chosen to deflect reliance on their athletics programs. Those schools, like those in the Ivy League, that do not offer athletic scholarships put themselves at a recruiting disadvantage with other schools offering athletic scholarships. Consequently, the schools belonging to the Ivy League will generally not recruit the best high school athletes from year to year. Because their teams are less talented than those of recognizable schools, it is more difficult for these athletic teams to profit from post-season tournaments or endorsements. Thus, the Ivy League schools accept that their athletic teams will not generate huge profits and adjust their budgets around this fact.

268. Certain bowl games, like the Orange Bowl, pay each participating team $8.47 million. See With Bowl Lineups Decided, supra note 235, at 478. Because of these monetary rewards, coaches are pressured into producing winning teams under the threat of getting fired. See Goldman, supra note 4, at 241. This pressure leads to coaches recruiting students who may not be ready for a college curriculum, but who are chosen solely for their academic talents. Id.

269. The NCAA Division I Manual has only one section and two subdivisions covering the academic performances of student-athletes. See NCAA MANUAL, supra note 3, art. 14, §§ 14.01.2, 14.4. Additionally, these rules fail to specify what steps a university should take in helping a failing student succeed academically. Id. In relation, the Manual contains numerous sections restricting student-athletes from receiving any compensation above that approved by the NCAA. See id. art. 12 (defining amateurism), art. 15 (determining financial aid), art. 16 (restricting award benefits), art. 19 (enforcing NCAA rules), and art. 22 (setting forth football television plan regulations). Therefore, it is apparent that the NCAA is implicitly more concerned with keeping money away from student athletes than they are with providing them...
If the NCAA was concerned with promoting amateurism, they would have to throw away all vestiges of commercialism, compel its member schools to recruit "students" over "athletes," and focus budgets on education. However, it is unlikely that the NCAA will throw away its $1.7 billion television contract with CBS or $270 million in projected revenues from other TV contracts and licensing deals. It could be argued that the revenue sharing plan may be the lesser of two evils. However, it is the product of an evil—the NCAA’s exploitation of student-athletes—that current NCAA policies fail to address.

In the current commercial environment, it is more equitable to sacrifice notions of amateurism in order to allow student-athletes to share in the revenues they generate, instead of allowing certain schools to flaunt the hypocrisy of education in order to keep costs down. Perhaps the real answer is for the NCAA to destroy all commercialism present in collegiate athletics so that athletic departments would make just enough to pay for their needs, instead of producing huge profits each year. Consequently, student-athletes could not complain that they are not receiving a "fair" share of the revenues they generate. Some believe that, realistically, this is an option that the NCAA is unlikely to consider.

C. Title IX Implications on the Revenue-Sharing Plan

Perhaps the most pressing problem related to the implementation of the revenue-sharing Plan is that it may force universities to violate Title IX of the Education Amendments Act of 1972. Title IX was enacted to combat gender discrimination in educational programs and activities receiving federal funding. Concerns may be raised that the implementation of the revenue sharing plan would inhibit universities from achieving true gender equity in their athletic programs.

with a good education.

270. This deal allows CBS to telecast the Men’s Basketball Tournament through 2002. Finney, supra note 14, at D1.


272. Tom McMillen, a member of the Knight Foundation Commission on Intercollegiate Athletics, which unsuccessfully attempted to reform college sports, summed up his current pessimism with NCAA policies when he said, "[M]oney drives [the NCAA], ... greed drives it." Id.; see also Study Discovers NCAA is Quite a Money Machine, L.A. TIMES, Oct. 5, 1997, at C20.

273. See Schott, supra note 1, at 49.

1. Judicial Interpretation of Title IX

In *Cohen v. Brown University*, a district court explained the impact Title IX could have upon an entire collegiate athletic program. The District Court concluded that Brown University violated Title IX by failing to provide women athletes with an equal opportunity to participate in intercollegiate athletics. In coming to this conclusion, the District Court developed the “policy interpretation” test consisting of three prongs: (1) substantial proportionality; (2) continuing practice of program expansion; and (3) full and effective accommodation. In applying the test to Brown University’s athletic program, the court found that Brown failed to satisfy any of the three prongs.

Courts have generally relied on the three-prong policy interpretation test to determine whether intercollegiate athletic programs are in compliance with Title IX. Courts applying the test implicitly demonstrate that proportionality is the key to Title IX compliance. Under present conditions it is difficult to effectively accommodate women without first achieving gender equality. Therefore, if an institution does not achieve gender equality, it cannot effectively accommodate women athletes.

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278. *Id.* at 989. Substantial proportionality can be satisfied if the university can show that athletic participation opportunities for men and women are provided in proportion to the enrollment ratio between men and women. *See Cohen v. Brown Univ.*, 991 F.2d 888, 896 (1st Cir. 1993). Program expansion can be proven if the university can show a history and continuing practice of program expansion that is responsive to women. *Id.* Finally, the university can prove effective accommodation by showing that the interests and abilities of women have been fully and effectively accommodated by the present program. *Id.*
279. *Cohen*, 809 F. Supp. at 981. Brown University failed the first prong of the test because a 11.6% disparity existed between the percentage of women enrolled and the number of participating women athletes at the university. *Id.* Brown University also failed the second prong by not providing a continuing practice of program expansion for women’s athletics. *Id.* Finally, by denying the women’s volleyball and gymnastics teams full varsity status, Brown University was not accommodating the interests and abilities of female athletes. *Id.*
280. See, e.g., *Favia v. Indiana Univ. of Pa.*, 7 F.3d 332 (3d Cir. 1993) (holding that when a university is faced with program cuts, it will not be allowed to terminate any women’s sports when it has failed to comply with Title IX); *Roberts v. Colorado State Univ.*, 814 F. Supp. 1507 (D. Colo. 1993) (allowing a preliminary injunction reinstating the Colorado State University women’s softball team).
282. *Id.* at 297. To date, no school has successfully shown effective accommodations
not comply with the proportionality aspect of the three-prong test, the institution likely violates Title IX.  

2. Revenue Sharing and Proportionality

Many intercollegiate athletic programs do not comply with the proportionality requirements of Title IX. Consequently, the fear is that a revenue-sharing plan would take money away from the athletic department in favor of the student-athletes, making it impossible for the athletic department to fund women's teams and thus come within the guidelines imposed by Title IX. Therefore, this section will focus on four alternatives that may be implemented to help achieve gender equity while providing for economic balance.

a. Raising Revenues, Cutting Waste

The NCAA and its member schools should concentrate on other revenue-raising techniques. In order to raise new revenue, the NCAA could place a surcharge on the price of admission tickets and stadium concessions. Each university could use the money generated from the ticket tax to fund existing women's programs, or to create more athletic opportunities for women. Furthermore, the NCAA could create its own fund of ticket tax revenues that could be distributed to those schools with serious proportionality problems.

where gender equity does not exist. Id.

283. Id.
284. At the University of Michigan, men make up 50.4% of all undergraduates, and women make up 49.6%. See Michigan Disclosure Report, supra note 230, at 1. However, when it comes to athletics participation, men make up 55.1% of all student-athletes while women make up 44.9%. Id. UCLA has 48% male undergraduates and 52% female undergraduates, but 61% male student-athletes, compared to 39% female student athletes. UCLA Disclosure Report, supra note 256, at 1. USC has 52% male undergraduates, 48% female undergraduates, but 57.5% male student-athletes compared to 42.5% female student-athletes. USC Disclosure Report, supra note 256, at 1.

285. See Sherman Act Invalidation, supra note 4, at 1317. If colleges pay certain student-athletes, they will have less money to fund non-revenue producing sports. Id. Most women's athletics programs do not make money. See, e.g., UCLA Disclosure Report, supra note 256, tbl. 10. During the 1996-97 season, the UCLA women's basketball team operated at a deficit of $491,691. Id.

287. The NCAA could create these sums by taxing the tickets sold for the NCAA Men's and Women's Basketball Tournaments. The two tournaments are run exclusively by the NCAA, and therefore these figures would not be considered as part of any university's individual profit. See McGraw et al., supra note 123, at A1. In 1997, the NCAA made $4.1 million from ticket sales for the "Final Four" (the Final Four includes the Men's and Women's Basketball
In addition, the NCAA could use some of the profits gathered from miscellaneous sources to help create gender equity. The NCAA is currently under a $1.7 billion television contract with CBS for the exclusive rights to televise the men’s and women’s basketball tournament. The NCAA is also slated to receive $50 million in cash as an incentive to move its offices from Kansas City, Kansas to Indianapolis, Indiana. It is imperative for the NCAA to share these profits with their member schools in order to comply with Title IX.

Finally, there is tremendous opportunity for the NCAA to generate funds for gender equity programs if it discontinues its wasteful spending practices and huge administrative benefits. For example, the manual for cities holding the Final Four requires a series of gifts to be delivered to the hotel rooms of NCAA officials. These momentos cost the city of Indianapolis an estimated $25,000 when it hosted the 1996 Final Four. In addition, the NCAA mandated that 10% of all tickets to the Final Four be distributed to their employees and commandeered some of the best luxury boxes for their own officials. Consequently, instead of gathering ticket revenue for these tickets and luxury boxes, all of which could be used to aid member schools, the NCAA distributed these seats to their loyal followers for free.

The NCAA is not the only entity engaged in wasteful indulgences. Most of its member schools spend huge amounts of money to have their teams travel in style. The University of Nebraska spent $1.7 million to send 730 people, including coaches, athletic administrators, the board of regents, the marching band, and 160 players—ninety-seven of whom didn’t play—to Florida for the 1997 Orange Bowl. Additionally, Kansas University spent an estimated $47,000 to have its own football team stay at a local hotel before every home game. By eliminating such

Tournaments semifinal games and the national championship game). Id. The NCAA sold 47,000 tickets to account for this revenue. Id. However, if the NCAA could place a $5 surcharge on each of these tickets, they could raise $235,000 to distribute to schools in need of funding to achieve gender equity. In addition, during the tournament, temporary souvenir shops peddled officially licensed NCAA goods with 7.5% of sales going to the NCAA. Id. Assuming that $1 million worth of merchandise was sold, the NCAA would have an additional $75,000 to use to promote equality in college athletics.

288. Id.
289. Id.
290. McGraw et al., supra note 123, at A1. These gifts include a Samsonite suit bag, a Final Four ticket embedded in Lucite, a Limoges porcelain basketball, and Steuben glass. Id.
291. Id.
292. Id.
293. Id.
294. Id.
295. Id. Not staying on campus the night before the game supposedly helped the team
unnecessary expenses, the NCAA and its member schools can provide themselves with a substantial sum of money that could be used to promote women's athletics.

b. Cutting Men's Sports

A more drastic way to generate money for women's sports while reducing the gap between gender enrollment and athletic participation figures is to cut men's sports. While male student-athletes argue that this is reverse discrimination, courts have allowed universities to disproportionately cut men's programs. Court decisions have demonstrated that elimination of athletic programs, rather than expanding programs that provide women with additional opportunities, is an acceptable method of achieving compliance with Title IX. The university would be able to use the savings to expand women's varsity teams, thereby bringing the athletic program into compliance with Title IX.

c. Cutting the Size of Football Programs

For most universities, the men's football team is the largest of all teams in the athletic program and accounts for the bulk of the expenditures. Most football programs at large universities across the country have eighty-five athletes on scholarship and numerous other walk-ons. However, arguments can be made that college football teams do not have to be this large in order to be successful. A reduction in the size of present-day college football teams would make more money available to women's sports and would reduce the gap between undergraduate enrollment of women and their participation in athletics.

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focus on what they were doing, yet the football team only won one of their home games all year. 

Id.


297. Forseth, supra note 274, at 92.

298. Id.

299. UCLA reported in 1996–97 that its football team consisted of 117 student-athletes and had operating expenses of over $7 million. UCLA Disclosure Report, supra note 256, tbl. 7.

300. Susan M. Shook, The Title IX Tug-of-War and Intercollegiate Athletics in the 1990's: Nonrevenue Men's Teams Join Women Athletes in the Scramble for Survival, 71 IND. L.J. 773, 810 (1996); see also NCAA MANUAL, supra note 3, art. 15, § 15.5.5.2. This NCAA rule allows a maximum of 85 counters (i.e., scholarships) for each NCAA Division I-A football team. Id.
College football coaches claim that student-athletes are more susceptible to injuries because their academic requirements limit their physical training time.\(^{301}\) Therefore, coaches argue that college players may compromise their safety if the teams are reduced in size.\(^{302}\) However, certain factors bring into question the credibility of this line of thought. First, while National Football League ("NFL") teams limit rosters to only forty-seven players, the league maintains the highest competitive level of football in the country.\(^{303}\) In addition, most intercollegiate football teams take "travel squads" of sixty to sixty-five players to away games, and usually no more than forty-five players actually participate in the game.\(^{304}\) Therefore, if coaches believe that a sixty-five-man-squad is enough to handle any injuries during a road game, it would logically follow that a competitive football team could consist of only sixty-five members.\(^{305}\)

The benefits of limiting football teams to sixty-five players are numerous. First and foremost is the fact that the team will save a substantial amount in equipment costs.\(^{306}\) These savings could be passed on to expand existing women's sports or to create new women's teams. In addition, reducing the size of the football squads will bring each university closer to the level of substantial proportionality mandated by Title IX.\(^{307}\) Finally, reducing the number of football players per team may increase the level of competition in college football.\(^{308}\) The average level of player ability at each university will rise as some of the "bench-warmers" at the more successful schools become starting players at others.\(^{309}\) This in turn would raise the parity in college football and may generate more interest, and consequently more revenues, for traditionally less competitive universities.

\(^{301}\) Shook, supra note 300, at 811.

\(^{302}\) Id. Coaches argue that if there are smaller squads, injured players would have to continue playing because of the lack of available replacements. See id.

\(^{303}\) Id.

\(^{304}\) Id.

\(^{305}\) Id.

\(^{306}\) For example, USC spent $2,432,492 on the equipment costs for 91 football players in 1996, an average of $26,730 per player. See USC Disclosure Report, supra note 256, tbl. 4. If the football team was cut to sixty-five players, the savings in equipment costs would equate to $694,980.

\(^{307}\) See Forseth, supra note 274, at 96. For example, at UCLA, reducing the number of football players to 65 would decrease the male participation in athletics from 55.1% to 51.8%. See UCLA Disclosure Report, supra note 256, at tbl. 1. Women athletics participation on the other hand would be increased from 44.9% to 48.1%. Id. As a result, UCLA is closer to satisfying the substantial proportionality test because undergraduate enrollment consists of 50.4% men and 49.6% women. Id.

\(^{308}\) Shook, supra note 300, at 813.

\(^{309}\) Id.
d. Effective Accommodation as a Substitute for Substantial Proportionality

Although traditionally difficult to prove, the policy interpretation test announced in Cohen allows universities to come within the boundaries of Title IX if they can show that they are effectively accommodating the needs of women athletes. One commentator argues that as long as universities fund similar men’s and women’s sports equally, they are effectively accommodating the needs of their female student-athletes and satisfying Title IX requirements. For example, if a university budgets the same amount of money for both men’s and women’s soccer teams, the university has effectively accommodated all of its students’ needs. This view is supported by Blair v. Washington.

In Blair, the Washington Supreme Court found that nothing in Washington law required Washington State University ("WSU") to use funds generated by football to support other sport programs. Instead of construing “equality of opportunity” to include equal access to another sport’s profits, the court construed it to mean equal opportunity to raise revenue.

Relying on the holding in Blair would establish some credibility to the revenue-sharing Plan. As presented, the Plan allows members of each men’s and women’s athletic teams to receive a portion of the profits they generate. The revenue-sharing Plan affords both male and female student-athletes with an equal opportunity to raise the revenues they will share with the university. Consequently, under the reasoning in Blair, such a plan would be consistent with Title IX.

311. See Deidre G. Duncan, Gender Equity in Women’s Athletics, 64 U. Cin. L. Rev. 1027, 1053 (1996).
312. Id. at 1053–54.
313. 740 P.2d 1379 (Wash. 1987).
314. Id. at 1383–85. The plaintiffs in Blair brought suit under the Equal Rights Amendment of the Washington State Constitution and Washington’s “Law Against Discrimination” rather than Title IX. Id. at 1379. Although the Washington court’s ruling cannot bind federal courts, the dicta is useful in providing a compromise between Title IX regulations and revenue-producing sports. Duncan, supra note 311, at 1053.
315. Blair, 740 P.2d at 1383–85. Under Blair, in order to evaluate whether a university is in compliance with Title IX, the nonrevenue-producing sports should be compared to each other. Duncan, supra note 311, at 1053. Schools should compare the amount of money spent for women’s soccer to men’s soccer, instead of comparing the whole men’s athletic budget with the whole women’s athletic budget. Id. A claim for Title IX violations should be raised only if there are differences between male and female funding within a particular sport. Id.
The arguments raised in *Blair* may be criticized for implicitly allowing sexist practices. Due to the fact that women's sports generally do not generate profits, it is unlikely that female student-athletes would have the same opportunities as their male counterparts to share in the revenues they generate. However, the growth and popularity of women's sports have allowed some universities to profit from their women's teams. For example, at the University of Connecticut the women's basketball team ended the 1996–97 school year with over $800,000 in profits. Consequently, these women would be able to receive some economic benefits under the revenue-sharing Plan. In addition, reliance on the other alternatives used to create substantial proportionality within athletic programs may help create more economic profits for women's athletics. Reducing waste and the size of football teams allows more money to be spent on women's athletic programs. This money can be used to buy better equipment, hire more coaches, and help promote women's athletics in general. As the competition level in women's athletics rises, so does fan interest. Eventually, this fan interest may translate into substantial profits and monetary bonuses for women athletes.

**VI. CONCLUSION**

The college experience presents many interesting avenues for student-athletes to explore. They are able to meet new people, participate in the sports they enjoy playing, and ideally, earn a degree. But one of the more painful lessons each student-athlete must face is that they are subject to some degree of exploitation. To be certain, a type of indentured servitude taints college sports when universities profit from the achievements of their student-athletes without adequately compensating them for their time and effort. The arguments for restricting compensation to student-athletes have become out-dated. The NCAA's alternatives to providing compensation do not furnish most student-athletes with an adequate means to survive through four years of college. In addition, the NCAA's rules and regulations do more to destroy the notion of amateurism than to foster it. If the courts applied either the traditional or quick look rule of reason tests under federal antitrust law to the NCAA rules, these regulations could be found to restrict competition unreasonably. If anything, additional judicial pressure may entice the NCAA and its member schools to change its system voluntarily.

316. For example, women's basketball at UCLA only generated $149,778 in revenues and incurred expenses of $641,469. UCLA Disclosure Report, *supra* note 256, tbl. 10.
A compelling solution to this problem exists in the form of revenue sharing. A system of revenue sharing would provide student-athletes with more equitable compensation, while still promoting both academics and athletics. A revenue-sharing plan would not unnecessarily burden all universities, but would ensure that those universities making a profit fairly distribute these revenues to the student-athletes who helped raise the funds. Finally, reliance on a revenue-sharing system would break the chains of exploitation binding present-day collegiate athletics.
PROPOSAL FOR THE IMPLEMENTATION OF A REVENUE SHARING PLAN BETWEEN NCAA MEMBER INSTITUTIONS AND STUDENT-ATHLETES

PART I—GOALS OF THE PLAN

The National Collegiate Athletic Association ("NCAA") seeks to create a balance between education and athleticism in intercollegiate sports. The NCAA also seeks to promote justice and equality for all of its male and female student-athletes. The NCAA recognizes the important role student-athletes play in the promotion of intercollegiate athletics and acknowledges the time and sacrifice each student-athlete contributes to their respective intercollegiate team.

In the current commercial environment, the student-athlete is not equitably compensated for the contributions they make to intercollegiate sports. Therefore, this Plan seeks to create an equitable financial balance through the sharing of profits between the universities and their student-athletes.

In doing so, the NCAA purports to fulfill its goals of creating a balance between education and athletics, while providing for the protection and equality of student-athletes. To ensure the continued fair promotion of intercollegiate athletics, each student-athlete shall be able to participate in the proceeds of their athletic contributions according to the specifications set forth by this plan.

PART II—THE BASE SYSTEM

The revenue sharing plan acknowledges the important role that athletic scholarships play in the educational and athletic growth of student-athletes. Therefore, under the Plan, each university must provide athletic scholarships for each deserving student-athlete. Each scholarship must cover the yearly costs of tuition and comparable living expenses at the university.

However, if the contributions of student-athletes lead to an additional profit over the expenses needed to sustain the team, the university is compelled to distribute this revenue fairly. In order to determine whether a particular university-sponsored athletic team has generated a profit, each university must produce a detailed accounting of the yearly revenues and
expenses generated by each team. Each university must present this accounting pursuant to the guidelines established by the Equity in Athletics Disclosure Act of 1994. If these figures display a profit, the university shall distribute the revenue among its student-athletes according to the specifications set by Parts III through VI of this plan.

PART III—LENGTH OF SERVICE AWARDS

A major aspect of intercollegiate sports is the focus on helping student-athletes earn an undergraduate degree. In order to foster this notion, it is important to reward student-athletes for their continued academic persistence and loyalty to their university-sponsored athletic team. Therefore, if the student-athlete’s team finishes the year with a profit, the university shall initially distribute these funds depending on his or her length of service.

Pursuant to the Equity in Athletics Disclosure Act of 1994, each university’s annual report is only required to state each athletic team’s expenses and revenues. In their present form, these reports do not distinguish between regular season and post-season revenues. Part IV of the Plan focuses on the distribution of post-season revenues. Therefore, before computing the figures for this part, each university must first distinguish the revenues attributable solely to post-season play. The distribution of the remaining “net profits” (after compensating the university for the expenses associated with the team) are as follows: (1) each student-athlete in the fourth year of active participation on the team receives 1% of all revenues generated for that year; (2) each student-athlete in the third year of active participation on the team receives 0.75% of all revenues generated for that year; (3) each student-athlete in the second year of active participation on the team receives 0.5% of all revenues generated for that year; and (4) each student-athlete in the first year of active participation on the team receives 0.25% of all revenues generated for that year.

This part focuses on the “active” participation of student-athletes. Therefore, student-athletes who did not participate on the team for one of four eligible years as a result of being “red-shirted” shall not have this year counted as an official year of participation.

Any profits remaining after the distribution of these revenues is to be returned to the university’s athletic department to be used for the development or continuance of the existing university-sponsored athletic teams.
PART IV—POST-SEASON COMPENSATION

Each university-sponsored athletic team strives to reach both academic and athletic success. One of the measures for the athletic success of a team is the opportunity to become the national champion, though participation in post-season tournaments. To declare a national champion, most sports use a post-season tournament that sometimes produces lucrative monetary rewards. These awards translate into additional profits earned by each respective athletic team for their university. Consequently, this part focuses on the fair distribution of these post-season revenues.

In recognition of the costs needed to send athletic teams to post-season tournaments, each university that has an athletic team participating in post-season play is entitled to 65% of all the profits generated by its team. The remaining 35% is to be distributed to the student-athletes as follows: (1) 50% of the remaining profits shall be equally divided among the "starters" on the team; (2) 35% of the remaining profits shall be equally divided among the "key reserves" on the team; and (3) 15% of the remaining profits shall be equally divided among the remaining members of the team.

For the purposes of this part, the coaching staff of each team is compelled to determine which student-athletes are the "starters" and "key reserves" of the team. The university is to make the distribution of profits solely on the designations agreed to by the coaching staff. In the best interests of all coaching staffs, this part recommends these designations for student-athletes: (1) "Starters" are those who are placed in the starting lineup for over 70% of the games during both regular and post-season play; (2) "Key Reserves" are those who either start less than 30% of every regular and post-season play, or any student-athlete who does not start, yet receives a substantial amount of playing time. In addition, student-athletes who do not receive a substantial amount of playing time, but who the coaching staff deems to be integral to important parts of each game shall also be considered Key Reserves; and (3) any player not placed in either of the two aforementioned categories is to be designated into his or her own category.

PART V—ATHLETIC AND ACADEMIC ALL-AMERICANS

In order to promote an equitable balance between athletic and academic success, the NCAA finds it crucial to compensate student-athletes who succeed in both fields. Part V focuses on the distribution of
funds for those student-athletes who achieve both athletic and academic success.

**Section A—Athletic All-Americans**

The NCAA sponsors "Official" All-American teams for each sport. Student-athletes named to the All-American team for their respective sports are to receive an award as specified in this subsection. Student-athletes named as a First Team All-American in their respective sport shall receive a $2500 award. Student-athletes named as a Second Team All-American in their respective sport shall receive a $1000 award.

**Section B—Academic All-Americans**

The NCAA officially recognizes GTE as the sponsor of the NCAA’s Academic All-American Team. In addition, GTE officially recognizes the College Sports Information Directors of America ("CoSIDA") as the governing body responsible for choosing the student-athletes for the Academic All-American Teams in each respective sport. Any student-athlete named as an Academic All-American in his or her respective sport shall receive a $2500 award.

**Section C—Athletic and Academic All-Americans**

Student-athletes who achieve success both academically and athletically display the ideal spirit behind intercollegiate sports. Therefore, any student-athlete who is named to both the First Team All-American and the Academic All-American Team in his or her respective sport shall have the awards doubled to produce a $10,000 award.

**PART VI—ENDORESEMENTS**

In recognition of the contribution each student-athlete plays in the marketability of each university, this Part focuses on the equal distribution of sponsorship and endorsement money generated by individual student-athletes, and the combined partnership of student-athletes and their universities.

**Section A—School-Sponsored Endorsements**

Student-athletes and their universities are an important partnership in creating endorsements opportunities. Universities allow deserving student-athletes to participate on university-sponsored athletic teams and
student-athletes wear the official uniform of the university. Student-athletes, through their athletic success, increase the marketability and recognizability of their respective universities. In consideration of this mutually beneficial relationship, each university that signs a licensing agreement with an athletic sponsor shall apportion 35% of the proceeds from these agreements to their athletic departments. The athletic department shall distribute these proceeds among student-athletes participating on university-sponsored athletic teams. The remaining 65% of the proceeds shall be retained by the university for use either in its athletic department or for its general fund.

Section B—Individual Team Sponsorship

Certain university-sponsored athletic teams receive individual sport sponsorships due to their marketability and popularity. As discussed in Subsection A, this popularity stems from a partnership between the university and the student-athletes on these particular athletic teams. Therefore, if a certain university-sponsored athletic team receives an individual endorsement contract, that team shall receive 20% of the proceeds generated from the contract to be distributed equally among its student-athletes. The remaining proceeds shall go to the university for use either in its athletic department or in its general fund.

Section C—Individual Student-Athlete Sponsorship

The academic and athletic achievements of certain student-athletes enable them to be nationally recognized. This national and local recognition allows these student-athletes to be valuable endorsers for certain sponsors. In acknowledgment of these individual opportunities, each university that is approached by a prospective sponsor shall allow their student-athletes to endorse the sponsor’s products if the restrictions set forth in this subsection are met: (1) both the student-athlete and the university shall approve the product and endorsement offered by the sponsor; (2) the student-athlete is in academic good standing pursuant to the university’s academic standards; (3) the student-athlete is in good standing pursuant to all of the university’s other student conduct standards; (4) the sponsor agrees to appropriate only five hours of the student-athlete’s time per week for the endorsement of its products (in addition, during the mid-term and finals period of each quarter or semester, the sponsor agrees not to appropriate any time from the student-athlete); (5) if the student-athlete is to travel to events away from the university, the travel time needed to transport the student-athlete to and from the
university shall be counted against the weekly allocation of time; (6) the university and student-athlete must mutually agree to the terms set by the endorsement agreement; (7) if the student-athlete and/or sponsor violates any of the restrictions mentioned in this section, the university reserves the right to cancel the remaining portion of the endorsement contract with the sponsor.

If the student-athlete, university, and sponsor can agree to these terms, the sponsor shall be able to contract with the student-athlete to endorse its products. Twenty percent of all proceeds generated by the student-athlete pursuant to this contract are to be donated in the student-athlete's name to the university's general fund. The remaining eighty percent is to be given to the student-athlete.

Michael P. Acain *

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