

Nos. 20-512, 20-520

IN THE
Supreme Court of the United States

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Petitioner,

v.

SHAWNE ALSTON, *et al.*,
Respondents.

AMERICAN ATHLETIC CONFERENCE, *et al.*,
Petitioners,

v.

SHAWNE ALSTON, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF FOR *AMICI CURIAE* DR. ELLEN J.
STAUROWSKY, DR. EDDIE COMEAUX,
DR. JOSEPH N. COOPER, DR. BILLY HAWKINS,
DR. AMANDA PAULE-KOBA, DR. RICHARD M.
SOUTHALL, AND DR. ROBERT W. TURNER, II
IN SUPPORT OF RESPONDENTS**

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QUESTION PRESENTED

Whether the Ninth Circuit erroneously held, in conflict with decisions of other circuits and general antitrust principles, that the National Collegiate Athletic Association eligibility rules regarding compensation of college athletes violate federal antitrust law.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF CITED AUTHORITIES	iv
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	5
I. The NCAA does not adhere to an “athletes-must-not-be-paid” conception of amateurism	5
A. The NCAA’s claim to a “no pay” conception of amateurism conflicts with the NCAA’s own “Principle of Amateurism” ...	6
B. The NCAA’s claim to a “no pay” conception of amateurism conflicts with its authorization of ever-increasing financial benefits for college athletes	9
II. The NCAA does not adhere to the avocational conception of amateurism reflected in its “Principle of Amateurism”.....	14
A. Plaintiffs pursue sports as a vocation.	15

Table of Contents

	<i>Page</i>
B. Plaintiffs are the foundation of a multi-billion-dollar commercial enterprise	24
III. The injunction does not compromise the NCAA's actual conception of amateurism	32
CONCLUSION	35

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.</i> , 468 U.S. 85 (1984).....	5, 6, 15
<i>O'Bannon v. Nat'l Collegiate Athletic Ass'n</i> , 7 F. Supp. 3d 955 (N.D. Cal. 2014), <i>aff'd</i> <i>in part, vacated in part</i> , 802 F.3d 1049 (9th Cir. 2015).....	<i>passim</i>
Statutes and Other Authorities	
<i>A Day in the Life of a Division I Football Player</i> , Next College Student Athlete (Oct. 3, 2017).....	17
Allen L. Sack & Ellen J. Staurowsky, <i>College Athletes for Hire: The Evolution and Legacy of the NCAA Amateur Myth</i> 18 (1998).....	7, 10
Andrew Lisa, <i>The Money Behind the March Madness Tournament</i> , YahooSports.com (Mar. 9, 2020) . . .	27
Bill King, <i>Race for Recruits</i> , SportsBusiness Journal (Dec. 5, 2005)	31
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	<i>Page</i>
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	<i>Page</i>
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Eddie Comeaux, <i>Toward a More Critical Understanding of the Experiences of Division I College Athletes</i> , Higher Education: Handbook of Theory and Research 6 (L.W. Perna ed.) (2020)	17, 18, 19, 25
Equity in Athletics Disclosure Act Cutting Tool	23
Garrett Mosher, <i>Biggest Brands in College Football – How Brands Are Effectively Activating Their Sponsorships</i> , Hookit.com (Aug. 20, 2019)	27
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Jason Smith, <i>A Scholarship Offer Is Not A Guarantee, So What Is It?</i> , USA Today (Nov. 1, 2017).	23
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	<i>Page</i>
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Kristi Dosh, <i>College Football Playoff Payouts for 2019</i> , Businessofcollegesports.com (Dec. 28, 2019)	27
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Manie Robinson, <i>Staying Power: Clemson Football Has Changed the Game in Facilities</i> , The Greenville News (July 2019)	31-32
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Mark Schlabach, <i>Playoff Approved, Questions Remain</i> , ESPN.com (2012)	27
<i>Merriam-Webster.com</i> (2021)	7
Michael Preston, <i>Could the Next Pac-12 Rights Deal Go Digital?</i> , Cougcenter.com (Apr. 21, 2020)	28

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	<i>Page</i>
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Michelle Brutlag Hosick, <i>Division I Council Tables Proposal on Name, Image, Likeness and Transfers</i> , NCAA Media Center (Jan. 11, 2021) ...	13
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NCAA Division I Manual, Art. 2.9 (2020)	7
NCAA Manual, Art. 1.3.1	7
NCAA Manual, Art. 12.01.2.....	7
NCAA Manual, Art. 12.02.10.....	9-10
NCAA Manual, Art. 17.1.7	16
NCAA Manual, Art. 17.1.7.3.2	17
NCAA Manual, Art. 20.9.2(e)	15
NCAA Salaries: 2020 NCAAAB Coaches' Pay	30
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Cited Authorities

	<i>Page</i>
NCAA Salaries: NCAAF Power Five Assistant Coaches Salaries (Dec. 16, 2020)	30
NCAA’s “Principle of Amateurism”	<i>passim</i>
Remarks of President Emmert, <i>NCAA 2012 State of Association</i> 11	17
Richard. M. Southall & Ellen J. Staurowsky, <i>Cheering on the Collegiate Model: Creating, Disseminating, and Embedding the NCAA’s Redefinition of Amateurism</i> , <i>J. Sport and Soc. Issues</i> (2013)	8
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INTEREST OF AMICI CURIAE¹

Amici are Dr. Ellen J. Staurowsky, Dr. Eddie Comeaux, Dr. Joseph N. Cooper, Dr. Billy Hawkins, Dr. Amanda Paule-Koba, Dr. Richard M. Southall, and Dr. Robert W. Turner, II. One is a former director of college athletics, three are former college coaches, and all but one are former college athletes. Most relevant here, all are professors at major research universities who focus their scholarship on college athletics and college athletes, particularly in the revenue-generating sports of FBS football and Division I basketball.

Collectively, amici have engaged in well over a century of quantitative and qualitative research on the demands placed upon college athletes, the sprawling commercial enterprise big-time college sports has become, and the concept of “amateurism” in college sports. Amici’s research has consistently confirmed what the lower courts in this case and *O’Bannon v. NCAA* found: the NCAA’s conception of amateurism is malleable, and for more than 70 years, it has not meant that “athletes must not be paid.” Moreover, amici’s research shows that, for the revenue-generating sports, the NCAA and its members have abandoned the traditional avocational conception of amateurism expressed in the NCAA’s rules and turned it on its head. Schools fervently recruit football and basketball players—who are disproportionately Black—for their athletic prowess and earn billions of dollars from

1. The parties have consented to the filing of this brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

their undercompensated labor based on the promise of an education. Yet because sports dictate every facet of their college experience, the education they are provided is an impoverished one. FBS football and Division I basketball players are not “amateurs” pursuing sport as an avocational supplement to their schoolwork.

Amici’s interests are not limited to their scholarship. Because they are passionate about college athletes’ success as athletes, students and citizens, amici spend considerable time teaching and mentoring athletes. Their discussions include the performance pressures athletes face, the consequences of underperforming, the near impossibility of navigating such challenges to obtain a fulfilling education, and the burdens of racial injustice. Amici see first-hand how all-encompassing big-time college sports is and how the NCAA and its members profit off athletes without providing them either a full educational experience or a just share of the money their hard work generates. Through their scholarship and their university positions, amici advocate for college athletes to receive a meaningful education, complemented by, rather than sacrificed for, athletic pursuits.

Based on their decades of experience, amici believe that permitting college athletes to receive compensation related to their education will not only preserve the NCAA’s real-world conception of amateurism, but also help to address the unfairness that taints college sports. This Court should affirm the judgment below.

SUMMARY OF THE ARGUMENT

I. The NCAA's bid for antitrust immunity turns on the assertion that amateurism means "athletes must not be paid." A district court, upheld on appeal, thoroughly and correctly rejected that linchpin claim on a full trial record not only in this case, but also in *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 7 F. Supp. 3d 955 (N.D. Cal. 2014) ("*O'Bannon I*"), *aff'd in part, vacated in part*, 802 F.3d 1049 (9th Cir. 2015) ("*O'Bannon II*"). The District Court's unchallenged fact findings reflect the reality that the NCAA does not adhere to a "no pay" conception of amateurism in either word or deed. First, under the NCAA Constitution's own "Principle of Amateurism," amateurism means that sports are an avocational pursuit, a complement to a college athlete's education. The "Principle" is silent on the issue of pay. Second, for the past century, the NCAA has authorized ever-expanding financial benefits for college athletes. As the courts below determined, these benefits are "pay" under any coherent definition of the term.

II. The NCAA also does not adhere to the avocational conception of amateurism reflected in its "Principle of Amateurism." Consistent with the "Principle," the NCAA refers to college athletes as "student-athletes," a term that long-time NCAA President Walter Byers admitted he coined to avoid having to pay workers' compensation to athletes who got injured and to recharacterize the "pay for play" system many thought was established with the advent of the previously outlawed athletic scholarship in 1956.² The notion conveyed by the term "student-athlete" is that college athletes are students first and athletes

2. Walter Byers, *Unsportsmanlike Conduct: Exploiting College Athletes* 69 (1995).

second—that sports really are an avocational supplement to education, as the “Principle” envisions.

For FBS football and Division I basketball players (“plaintiffs”), this is a fiction. By every objective measure—recruitment, basis of scholarship, time commitment, course scheduling, coursework rigor, and graduation rates—plaintiffs are engaged in a vocation. Valued for their athletic (not academic) prowess, they are athletes first. The NCAA effectively sought to deny this reality at trial, arguing that its anticompetitive rules enhance athletes’ educational experience by integrating them into the student community. But the District Court rejected this justification, and the NCAA did not appeal.

Moreover, plaintiffs, who are disproportionately Black, are the foundation of a multi-billion-dollar business that is anything but “amateur.” Yet because of the challenged NCAA rules, they are the only participants in this enterprise who are restricted from receiving compensation commensurate with their value. The NCAA’s “Principle of Amateurism” holds that “student-athletes should be protected from exploitation by professional and commercial enterprises.” But as a “professional and commercial enterprise” that exploits college athletes—using the money they generate for skyrocketing coaches’ salaries, palatial facilities, and intensive recruitment efforts—the NCAA and its members betray this supposed core tenet.

III. The NCAA, therefore, does not adhere either to its asserted “no pay” conception of amateurism or to the avocational conception reflected in its “Principle of Amateurism.” The conception it does embrace is the

one the District Court found based on a full trial record: with noteworthy exceptions, it tries to distinguish college athletes from professional athletes by tying the benefits they can receive to their education.³ The injunction the District Court issued will not violate, and is fully consistent with, this conception. In fact, as the NCAA's own expert testified, the more financially secure college athletes are, the better they will perform academically. If anything, the remedy the District Court ordered is too modest to realize the NCAA's stated objective of fostering the education of college athletes.

ARGUMENT

I. The NCAA does not adhere to an “athletes-must-not-be-paid” conception of amateurism.

According to the NCAA, *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85 (1984), validated the “no pay” conception of amateurism by stating that, to preserve the NCAA's product, college athletes “must not be paid.” That is untrue. As the Ninth Circuit ruled, *Board of Regents* discussed the NCAA's payment rules to explain why the restraint challenged there—which did *not* implicate the payment rules—should be analyzed under the Rule of Reason, rather than invalidated *per se*. *O'Bannon II*, 802 F.3d

3. This conception is unfounded. What distinguishes college athletes from the pros, and what consumers value, is not that their pay reflects malleable educational costs, but rather that they are students who attend schools that claim the loyalty of millions of regional supporters and alumni. *O'Bannon I*, 7 F. Supp. 3d at 1001. The challenged NCAA rules do not implicate college athletes' status as university students.

at 1069. *Board of Regents*' statement about the "no pay" conception of amateurism "was not based on any factual findings in the trial record[,] ... did not serve to resolve any disputed issues of law," and even contradicted the NCAA's own counsel's assertion at oral argument that the NCAA was not relying on any theory of amateurism as a procompetitive justification. *O'Bannon I*, 7 F. Supp. 3d at 999-1000.

Since *Board of Regents*, the authenticity of the NCAA's claim to a "no pay" conception of amateurism has been tested twice in the crucible of trial, first in *O'Bannon* and again here. Each time, the District Court found the NCAA's claim to be unconvincing. Pet. App. 84a-92a⁴; *O'Bannon I*, 7 F. Supp. 3d at 999-1000. These findings reflect obvious truths. For a century, the "Principle of Amateurism" in the NCAA Constitution has been about the pursuit of sport as an avocation—a complement to education—not about "no pay." And in rearguard accommodations to the burgeoning professionalization of college sports, the NCAA has sanctioned a growing number and amount of financial benefits for college athletes.

A. The NCAA's claim to a "no pay" conception of amateurism conflicts with the NCAA's own "Principle of Amateurism."

The "Principle of Amateurism" in the NCAA Constitution holds that "[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation

4. Citations to "Pet. App." are to the Appendix in No. 20-512. Citations to "ER" are to the Excerpts of Record in the Ninth Circuit.

should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”⁵ As the District Court observed, this principle is “circular” because it uses the word “amateur” to define amateurism. Pet. App. 82a. But as to the NCAA’s asserted fidelity to a “no pay” conception of amateurism, it is illuminating. It says nothing about compensation or pay. Pet. App. 82a. Also, unlike the “no pay” conception, it describes what amateurism *is*, rather than what it is not. And what it is, under this affirmative theory, is the pursuit of sport as an avocational supplement to education. In this way, the NCAA’s principle of amateurism draws on the aristocratic 19th Century British ideal of amateurism⁶ and resembles the dictionary definition of “amateur”—“one who engages in a pursuit, study, science, or sport as a pastime rather than as a profession.” *Merriam-Webster.com* (2021) (last visited March 8, 2021).

The companion to the NCAA’s “Principle of Amateurism” is the “Clear Line of Demarcation,” which holds that college athletics are distinct from professional sports because athletes are “an integral part of the student body.”⁷ Like the “Principle,” the “Clear Line”

5. NCAA Division I Manual, Art. 2.9 (2020), <https://www.ncaapublications.com/productdownloads/D121.pdf> [hereinafter NCAA Manual].

6. Allen L. Sack & Ellen J. Staurowsky, *College Athletes for Hire: The Evolution and Legacy of the NCAA Amateur Myth* 18 (1998) [hereinafter *College Athletes for Hire*].

7. NCAA Manual, Arts. 1.3.1 & 12.01.2.

says nothing about pay. It distinguishes college athletes from professional athletes not because they do not receive “pay,” but rather because they are supposed to be *students* first—“an integral part of the student body.”

As explained in Section II, big-time college football and basketball do not resemble the idyllic conception of amateurism presented in the “Principle” and the “Clear Line.” Indeed, in the late 2000s, the NCAA acknowledged the public perception that college sports are not a pastime, while still touting their connection to education, by abandoning the term “amateur athletics” and adopting the term “the collegiate model of athletics” instead.⁸ Correspondingly, when NCAA officials talk about amateurism now, they assiduously avoid saying what they claim amateurism is and instead, as in this case, describe what they claim it is not—*i.e.*, “not pay.” Former NCAA President Myles Brand had this exchange with *Sports Illustrated* (SI) in 2010, the year after *O’Bannon* was filed:

Brand: They can’t be paid.

SI: Why?

Brand: Because they’re amateurs.

SI: What makes them amateurs?

Brand: Well, they can’t be paid.

8. Richard. M. Southall & Ellen J. Staurowsky, *Cheering on the Collegiate Model: Creating, Disseminating, and Embedding the NCAA’s Redefinition of Amateurism*, *J. Sport and Soc. Issues*, 403-429 (2013).

SI: Why not?

Brand: Because they're amateurs.

SI: Who decided they're amateurs?

Brand: We did.

SI: Why?

Brand: Because we don't pay them.⁹

Nonetheless, the avocational conception of amateurism has remained a central feature of the NCAA's rules for a century. *O'Bannon I*, 7 F. Supp. 3d at 974. That is why it is remarkable that, although its argument for antitrust immunity turns on "amateurism," the NCAA does not mention its own "Principle of Amateurism" anywhere in its brief. Then again, because the "Principle" contradicts the NCAA's linchpin claim to a "no pay" conception of amateurism, the omission is not that remarkable.

B. The NCAA's claim to a "no pay" conception of amateurism conflicts with its authorization of ever-increasing financial benefits for college athletes.

An equally fatal problem for the NCAA's claim is that, under NCAA rules, "pay" means whatever the NCAA says it means. Under Article 12.02.10 of the

9. Michael Rosenberg, *Change is Long Overdue: College Football Players Should Be Paid*, *Sports Illustrated* (Aug. 26, 2010), <https://www.si.com/more-sports/2010/08/26/pay-college>.

NCAA Bylaws, “Pay is the receipt of funds, awards or benefits *not permitted by the governing legislation of the Association for participation in athletics.*” And, what the NCAA considers “pay” has morphed repeatedly to permit athletes to receive ever-increasing financial benefits that constitute “pay” under any intelligible definition of the word. Pet. App. 84a-90a.

For fifty years after enacting its first set of bylaws in 1906, the NCAA forbade athletic scholarships, called “grants-in-aid,” deeming them “pay” that violated traditional amateur norms. Pet. App. 141a-142a. However, in the absence of an enforcement regime, many schools sought to gain a competitive advantage by compensating players under the table, giving them make-work jobs, or providing them loans that did not require repayment.¹⁰ In 1956, after tolerating unauthorized payments for decades, the NCAA finally permitted schools to offer grants-in-aid covering tuition, fees, room, board, and incidental costs. *O’Bannon II*, 802 F.3d at 1054.

What the NCAA previously said was a blatant violation of amateur ideals became part of the fabric of college sport, with schools providing each scholarship athlete a grant-in-aid package that, depending on the institution, totaled tens of thousands of dollars every year.¹¹ For the rest of the 20th century, the NCAA tinkered with the grant-in-aid as an acceptable form of pay, for instance eliminating incidental expenses in 1976, Pet. App. 69a, and establishing a Student Assistance Fund in 1991 to help athletes with exceptional financial needs.

10. *College Athletes for Hire*, *supra* note 6, at 35-40.

11. *Id.* at 18.

In recent years, acceptable forms of pay (or “not pay” in the NCAA’s lexicon) have increased. Grants-in-aid now include the full cost of attendance, a federally determined amount for each school that covers not only tuition, but also fees, books, room and board, and additional expenses associated with attending school. Pet. App. 9a-10a. The difference between the old grant-in-aid and the so-called “full cost-of-attendance grant-in-aid” is thousands of dollars, provided in the form of an unmonitored cash stipend. Pet. App. 9a-10a.

The NCAA also has permitted schools to provide athletes unlimited food, necessary medical care up to two years post-eligibility, and un-itemized \$30 per-diems during travel for championship events. Pet. App. 10a. Further, schools may now provide full cost-of-attendance grants-in-aid to athletes who already receive Pell Grants (up to \$6,000), which are themselves calculated to cover the cost of attendance. Pet. App. 90a.

The NCAA authorizes other benefits above the full cost-of-attendance grant-in-aid. With money from the once modest Student Assistance Fund and a similar Academic Enhancement Fund, schools can pay athletes to meet financial needs both related and unrelated to their education, including money for academic achievement or graduation awards, school supplies, post-eligibility aid for graduate school or additional undergraduate study, internship fees, career assessments, clothing, travel, grocery reimbursements, family expenses, loss-of-value insurance policies, car repair, legal services, parking tickets, and magazine subscriptions. Pet. App. 89a-90a. The only limit on the amount an athlete may receive is the aggregate amount the NCAA makes available for

distribution each year, which is now over \$120 million between the two funds. Pet. App. 9a n.3. Since 2015, individual athletes have received Student Assistance Fund disbursements in the tens of thousands of dollars above the full cost-of-attendance grant-in-aid and as much as \$50,000 in premiums for insurance against the loss of future professional earnings. Pet. App. 88a-89a.

There is more. The NCAA permits each school to give \$10,000 Senior Scholar Awards to two athletes each year for post-eligibility graduate school at any institution. Pet. App. 9a n. 2. Athletes who perform well in the Olympics can receive unlimited compensation for their performance, with some athletes earning six figures. Pet. App. 113a. Significantly, an athlete whose team qualifies for post-season competition now may receive “performance awards” in cash-equivalent Visa cards valued at several hundred dollars per award, for a possible total of up to \$5,600 per year. Pet. App. 10a.

The NCAA is poised to go further. In November 2020, the Division I Council issued a proposal that would allow athletes to receive compensation for the use of their names, images and likenesses, including by promoting products, signing autographs, providing instruction, and crowdfunding for educational expenses.¹² In January 2021, the Council tabled the proposal but resolved to enact “new rules allowing student-athletes to benefit from their

12. Steve Berkowitz, *NCAA Unveils Proposed Rules Changes Related to Athletes’ Name, Image and Likeness*, USA Today (Nov. 13, 2020), <https://www.usatoday.com/story/sports/college/2020/11/13/ncaa-nil-name-image-likeness-proposal/6281507002/>.

name, image and likeness and expanding opportunities.”¹³ The Division I Board of Directors approved the Council’s decision, “reaffirm[ing] the Association’s commitment to providing name, image and likeness opportunities to all its student athletes at the first practicable opportunity.”

Because all of these benefits are “not pay” in the NCAA’s eyes, it is easy to see why the District Court concluded that “[t]he rules that permit, limit, or forbid student athlete compensation and benefits do not follow any coherent definition of amateurism, including Defendants’ proffered definition of no ‘pay for play,’ or even ‘pay.’ The only common thread underlying all forms and amounts of currently permissible compensation is that the NCAA has decided to allow it.” Pet. App. 92a. The *O’Bannon* District Court, on a similar factual record, made the same historically accurate finding about the “malleab[ility of] the NCAA’s definition of amateurism.” *O’Bannon I*, 7 F. Supp. 3d at 1000.

NCAA officials have themselves confirmed the fallacy of the NCAA’s claim to a “no pay” conception of amateurism. Former NCAA Vice President David Berst observed that the NCAA’s definition of “amateur” is “not steeped in any sacred absolute principle that had to be preserved” and “continues to be a balancing of vocation vs. avocation influences and can be modified as views change while preserving the line between us and the pros.” ER681. In a 2018 interview, NCAA President

13. Michelle Brutlag Hosick, *Division I Council Tables Proposal on Name, Image, Likeness and Transfers*, NCAA Media Center (Jan. 11, 2021), <https://www.ncaa.org/about/resources/media-center/news/division-i-council-tables-proposals-name-image-likeness-and-transfers>.

Mark Emmert similarly conceded that “the concept [of amateurism] has evolved and constantly does,” explaining that the NCAA’s “representative governmental system sits and makes all the rules and they evolve that definition, and likely will continue to.” ER685.

For over a century, the NCAA’s conception of amateurism has constantly “evolved” to permit college athletes to receive escalating—though still significantly suppressed—benefits based on their participation in sports. The trial record in this case, like the trial record in *O’Bannon*, proved that the NCAA does not adhere to the view that “athletes must not be paid.”

II. The NCAA does not adhere to the avocational conception of amateurism reflected in its “Principle of Amateurism.”

Although the NCAA does not embrace a “no pay” conception of amateurism, it does not promote an avocational conception of amateurism either. Its “Principle of Amateurism” is a myth.

Plaintiffs’ lived experience establishes that they are athletes first, pursuing sports as a vocation. They are recruited for their athletic ability, retained on scholarship based on their athletic achievement, devote dozens of hours every week to their sports, subordinate their academic commitments, and graduate at rates well below the rates of their peers.

Moreover, although the “Principle of Amateurism” purports to protect plaintiffs from commercial exploitation, the NCAA itself exploits plaintiffs to fuel a multi-billion-

dollar business. This is the stark opposite of an amateur endeavor, and it is by design. In 1973, when reorganizing its members into Divisions I, II, and III, the NCAA stated its objective of having Division I schools “sponsor[] at the highest feasible level of intercollegiate competition one or both of the traditional spectator oriented, income-producing sports of football and basketball.”¹⁴ The NCAA and its members have succeeded beyond their wildest dreams. The business of college football and basketball has proliferated to the point that it looks nothing like it did in 1984, when this Court decided *Board of Regents*.

It is no wonder that, for public relations and litigation purposes, the NCAA has abandoned defining amateurism according to its own “Principle” and has sought to advance the “no pay” conception instead.

A. Plaintiffs pursue sports as a vocation.

By every meaningful indicator, sports occupy a position of primacy in the lives of FBS football and Division I basketball players. Contrary to the NCAA’s “Principle of Amateurism,” they do not take a backseat to education.

Athletic commitment. Despite the fact that they must take a full course-load, plaintiffs spend as much time on sports as their professional counterparts, both in-season and out-of-season. According to a 2015 NCAA survey, FBS football players spent 42 hours per week on athletic activities in-season, while men’s and women’s basketball players spent 34 and 35 hours, respectively. ER674.

14. NCAA Manual, Art. 20.9.2(e).

Football and men’s basketball players spent more time on sports than academics in-season, and women’s basketball players spent only two hours more on academics than athletic activities. ER676. Further, 76% of FBS football players, 71% of men’s basketball players, and 59% of women’s basketball players spent as much or more time on athletics out-of-season versus in-season.¹⁵

These figures far exceed the 20 hours per week that the NCAA, in a nod to the avocational ideal, permits college athletes to devote to sports in-season and the eight hours per week allotted out-of-season.¹⁶ The NCAA circumvents these blatant rule violations through creative accounting. Under the rules, “countable” activities include practice, games, coach-initiated athletic meetings, game film review, required participation in camps or clinics, and individual out-of-season instruction with a coach. But many effectively obligatory activities are “uncountable,” including travel to and from competition, compliance meetings, training room treatments, injury rehabilitation, medical visits, recruiting activities, non-supervised weight training, and team promotional and media activities team community service.¹⁷ Significantly, on game day, no more than *three hours* may be counted, even though athletes spend far more time traveling to, preparing for, meeting

15. Growth, Opportunities, Aspirations, and Learning of Students in College (GOALS) Study, NCAA 39 (2015), https://www.ncaa.org/sites/default/files/GOALS_convention_slidebank_jan2016_public.pdf [hereinafter GOALS Study].

16. NCAA Manual, Art. 17.1.7.

17. Katie Lever, *Flaws of the 20-hour Rule*, The Huddle (June 4, 2020), <https://www.lrt-sports.com/blog/flaws-of-the-20-hour-rule/>; NCAA, *Defining Countable Athletically-Related Activities* (May 13, 2009), <https://www.ncaa.org/sites/default/files/Charts.pdf>.

after, and returning from every game.¹⁸ As a result of all of these “uncountable” hours, one study found that a football player’s in-season day typically includes a regimented 19 hours of activities, but only 5.5 of those hours count toward the 20-hour rule.¹⁹

NCAA President Emmert remarked in January 2012 that “[t]he model of scholarship support ... is now more than 40 years old. But 40 years ago student-athletes weren’t putting in 40 to 50 hours a week working on their sport and competing at the highest levels.”²⁰ Dr. Emmert’s use of the word “working” to describe what college athletes do is as illuminating as his acknowledgment that they are putting in “40 to 50 hours a week”—not 20 hours a week—“on their sport.”

School attendance, scheduling, and performance. Although the time commitment alone is grueling, plaintiffs also endure intense physical activity, frequent injuries, including a risk of traumatic brain injuries, and mental fatigue.²¹ All of this often leaves them unable to focus on academics, even if their schedules permitted them to attend class regularly, which they don’t. The business

18. NCAA Manual, Art. 17.1.7.3.2.

19. *A Day in the Life of a Division I Football Player*, Next College Student Athlete (Oct. 3, 2017), <https://www.ncsasports.org/blog/2017/10/03/day-life-division-football-player/>.

20. Remarks of President Emmert, *NCAA 2012 State of Association* 11, <https://www.ncaa.org/sites/default/files/Final%2BState%2Bof%2BAssociation%2Btranscript.pdf>

21. Eddie Comeaux, *Toward a More Critical Understanding of the Experiences of Division I College Athletes*, Higher Education: Handbook of Theory and Research 6 (L.W. Perna ed.) (2020).

of college sports requires extensive travel for televised games. In 2015, FBS football players reported missing an average of 1.3 classes per week in-season, while Division I men's and women's basketball players reported missing 2.2 and 2.5 classes per week—with 21% and 22% missing over three classes per week.²² The predictable result is that big-time football and basketball players simply “do not perform as well in the classroom as their nonathlete counterparts.”²³ At least one study has demonstrated that it is athletic demands, rather than athlete aptitude, that leads to lower performance, a conclusion reinforced by data showing that athletes in revenue-producing sports perform better on their coursework during the off-season.²⁴

Athletic obligations also preclude plaintiffs from taking both typical course loads and courses they might otherwise choose. When course schedules and practice schedules conflict, plaintiffs know practice comes first.²⁵ In 2015, 50% of FBS football players, 34% of men's basketball players, and 51% of women's basketball players self-reported that sports prevented them from taking classes they wanted to take.²⁶ Relatedly, to accommodate athletic demands and remain academically eligible, college athletes are often clustered in courses and academic programs that are less rigorous. In a 2017 survey of NCAA

22. GOALS Study, *supra* note 15, at 41.

23. Comeaux, *supra* note 21, at 6.

24. *Id.* at 30.

25. Kevin Ayers, et al., *The 20-Hour Rule: Student-Athletes Time Commitment to Athletics and Academics*, 33 VAHPERD 1, 22-26 (2012).

26. GOALS Study, *supra* note 15, at 13.

Division I academic advisors, nearly three-quarters of participants (72.6%) expressed a belief that athlete clustering occurs, primarily at the Division I level and especially among large football programs. Over 90% indicated that clustering occurs from a moderate to a very frequent level and 66% reported witnessing clustering “first-hand.”²⁷

Clustering has consequences antithetical to the Principle of Amateurism’s emphasis on education. First, athletes might not be interested in the programs and courses recommended to them, which will result in reduced engagement and less chance of long-term success. Second, clustering limits athletes’ access and exposure to the full spectrum of educational opportunities enjoyed by their non-athlete peers. Third, clustering reduces the potential benefits athletes can obtain from their education because it can limit their future employment options.²⁸ As with so much of the big-time college athlete experience, the harms of clustering disproportionately affect Black athletes.²⁹ A 2009 study “found that White players in general were overrepresented in business programs, whereas non-White players were overrepresented in general studies and behavior sciences.”³⁰

Graduation rates. Reflecting the outsize role that sports play in their collegiate experience, big-time football

27. Robert Case et al., *An Examination of The Nature and Scope of Academic Clustering in College Athletic Programs*, J. of Contemp. Athletics 11 (1), 47-57 (2011).

28. Comeaux, *supra* note 21, at 27.

29. *Id.*

30. *Id.*

and basketball players graduate at lower rates than other athletes and other students under every known evaluation measure. The disparities for Black football and basketball players are even more pronounced. Graduation rates for football and basketball players have improved in recent years, but the significant gaps between them and other students persist.

Each year, the Department of Education calculates the Federal Graduation Rate (FGR) to track students who graduate within six years of enrollment at their schools. The recent FGR analysis for the four-year 2017-2020 cohort shows that, whereas the graduation rate for both athletes overall and students overall was 69% at Division I universities, the graduation rates for football and men's and women's basketball were 62%, 50%, and 60%. The figures for Black football and men's basketball players were even less favorable—57% and 48%—while they were equivalent for women's basketball players, 60%.³¹ All of these are consistent with historical trends.³² Taking a snapshot of these trends, a study of players from the 64 teams who participated in the NCAA's 2017 men's basketball tournament showed that the players' collective FGR was 21.5% lower than the collective FGR of the student population at their schools.³³

31. Todd Petr, *Trends in Graduation Success Rates and Federal Graduation Rates at NCAA Division I Schools* 41 (2020), https://naaorg.s3.amazonaws.com/research/gradrates/2020/2020D1RES_FedGSRTrends.pdf.

32. *Id.* at 49-52.

33. Dave Sheingold, *March Madness Players Graduating Less Than Their Peers*, northjersey.com (Mar. 23, 2017), <https://www.northjersey.com/story/sports/college/basketball/2017/03/23/>

The NCAA objects to the FGR because it counts students who leave school early or transfer to another school while in academic good standing. The NCAA thus has devised its own Graduation Success Rate (GSR), which excludes athletes who leave early or transfer from a school and includes athletes who transfer to a school. But by excluding athletes who leave early, the GSR artificially inflates graduation numbers. Moreover, the GSR does not compare athlete graduation rates with graduation rates for students overall. Nonetheless, even using the GSR, FBS football and basketball players graduate at lower rates than athletes overall, and Black football and basketball players graduate at lower rates still.³⁴

The College Sport Research Institute has devised a graduation measure that seeks to resolve the part-time student bias in the FGR (which includes part-time students, though college athletes are full-time) and the athlete-only bias of the GSR by calculating and comparing graduation rates for athletes and full-time students. CSRI's "Adjusted Graduation Gap" analysis shows that graduation rate disparities between FBS football and Division I basketball players and full-time students overall are even greater than the FGR indicates.

Consistent with AGG analyses for the past decade, the most recent analysis of FBS football players shows that players at Power Five schools graduate at rates 16.5% lower than full-time male students, with the disparity

[march-madness-basketball-tournament-players-graduating-less-graduation-rates/99509216/](https://www.scribd.com/document/99509216/march-madness-basketball-tournament-players-graduating-less-graduation-rates/99509216/).

34. Petr, *supra* note 31, at 41; Sheingold, *supra* note 33.

for Black players at 21.6%.³⁵ The most recent analysis for Division I men's and women's basketball, also consistent with a ten-year trend, shows they graduate at rates 23.6% and 12.9% lower than full-time male and female students, respectively, at their schools, with the disparity for Black men's and women's players at major conference schools at 37% and 20.6%.³⁶ In contrast to the NCAA's narrative that gaps are narrowing, the athlete/full-time student gaps have widened for men's and women's basketball players over the past decade.³⁷

Scholarships based on athletic, not academic, prowess. Plaintiffs are recruited and awarded scholarships based on their athletic performance, not their academic performance. They are effectively commodities—as athletes, not students. Their value in the college sports marketplace is tracked through indices such as The Rivals 150, a prospect ranking system for high school basketball players, MaxPreps High School Football Recruiting 100 run by CBS Sports, and ESPN's 300 ranking for high school football players.

35. Richard M. Southall et al., *2020 Adjusted Graduation Gap Report: NCAA FBS Football 6* (Jan. 10, 2020), <https://static1.squarespace.com/static/5de5182fe743cb648d87d098/t/5e3491d8e35b7148dd0bde49/1580503512081/2019-20+CSRI+NCAA+FBS+FB+AGG+Report.pdf>.

36. Richard Southall et al., *2020 Adjusted Graduation Gap Report: NCAA Division-I Basketball 2* (Apr. 7, 2020), https://static1.squarespace.com/static/5de5182fe743cb648d87d098/t/5eceb461bcf8b9772c6fb77c/1590604898519/2019-20+Basketball+AGG+Report_5-24-2020.pdf.

37. *Id.*

The value placed on plaintiffs' athletic talent is evidenced by the ever-increasing amount of money dedicated to recruitment. Big-time programs now spend millions of dollars every year to recruit the best athletes. Collective recruiting expenses in the Power Five—the Atlantic Coast, Big Ten, Big 12, Pac-12 and Southeastern Conferences—increased respectively by 228%, 475%, 229%, 131%, and 238% in the 15-year period between 2003-04 and 2018-19. For many elite football and basketball schools, including Clemson, Louisville, Indiana, Michigan, Penn State, Baylor, Texas A&M, Alabama, Georgia, and Kentucky, recruiting expenses at least tripled during that period.³⁸

Prized for their athletic ability, plaintiffs retain their scholarships based on athletic performance. A coach may decline to renew an annually renewable scholarship if an athlete who remains academically eligible gets injured, or fails to perform as expected, or if there is a new coach and a change in team plans or better players are recruited in subsequent years. At the same time, a coach can retain scholarships for athletes who become academically ineligible.³⁹

The primacy of plaintiffs' value as athletes, rather than students, has been reinforced over the past year, as many schools responded to the COVID-19 pandemic by converting to online learning and removing students from

38. Equity in Athletics Disclosure Act Cutting Tool, <http://ope.ed.gov/athletics/>.

39. Jason Smith, *A Scholarship Offer Is Not A Guarantee, So What Is It?*, USA Today (Nov. 1, 2017), <https://usatodayhss.com/2017/a-scholarship-offer-is-not-a-guarantee-so-what-is-it>.

campus, while keeping football and basketball players on campus to practice and compete, even as virus outbreaks mushroomed and forced cancellation of practices and games.⁴⁰ Although athletes theoretically have had the opportunity to opt out, the reality has been different—and not simply because of the inherent pressure and desire players feel to participate. Utah State football coach Greg Anderson explained that the reason none of his players opted out was because “it’s not an option. If you opt out, you’re not with us.”⁴¹ In a less explicit example, in June 2020, at the height of the pandemic, Henry Bazakas, a University of California football player recognized three times for earning the team’s highest grade-point average, contacted the head coach to opt out of his final year of eligibility because of the pandemic. Within nine days, he received a bill for \$24,000 and a notice that his summer-term scholarship had been rescinded. After Bazakas appealed and won, the athletics department, which fought the appeal, claimed there had been a clerical error—but only after *The New York Times* inquired about the matter.⁴²

B. Plaintiffs are the foundation of a multi-billion-dollar commercial enterprise.

Big-time football and basketball are a vast business enterprise that rivals the business of professional sports.

40. Billy Witz, *A Cal Football Player Opted Out Because of the Virus. Then Came the Tuition Bill*, N.Y. Times (Nov. 20, 2020), <https://www.nytimes.com/2020/11/20/sports/ncaaf/football/cal-walk-on-scholarship.html>.

41. *Id.*

42. *Id.*

The combined revenues for the NCAA and its largest members—approximately \$10.21 billion annually—would make American college sports the second largest sports league in the world.⁴³ Like professional sports, the primary sources of this revenue are television rights and merchandising. And like professional sports, the profits pay for multi-million-dollar coaching salaries, expansive facilities, scouting, and recruiting. The critical difference is, unlike in professional sports, the NCAA and its members do not have to share the revenue with the players responsible for generating it. The only participants in this enterprise who are “amateurs” are the players.

The casualty of this arrangement is the final leg of the NCAA’s “Principle of Amateurism,” which provides that athletes “should be protected from exploitation by professional and commercial enterprises.” The NCAA itself is a “professional and commercial enterprise” that exploits college athletes. The system it has established disproportionately benefits “(privileged) White athletic power brokers—for example, coaches, athletic directors, conference commissioners, and externalities such as sponsors” by “relying on the sweat and undercompensated athletic labor of amateur athletes, who more often than not are Black students.”⁴⁴ NCAA officials make the assertion that “student-athletes are amateur, intercollegiate

43. David Hedlund & Michael Naylor, *Determinants Impacting Why College Sports Fans Purchase Merchandise*, *J. Contemp. Athletics* 14(1), 17-35 (2020).

44. Comeaux, *supra* note 21, at 4; *see also* Billy Hawkins, *The New Plantation: Black Athletes, College Sports, and Predominantly White Institutions* 134 (2010).

athletics is not,”⁴⁵ but even they acknowledge the contradiction. As NCAA Vice President Wally Renfro advised then-incoming President Emmert in 2010:

There is a general sense that intercollegiate athletics is as thoroughly commercialized as professional sports. Some believe that athletics departments study how to emulate the pros on marketing their sports (primarily football and basketball), and sometimes lead the way. And the public would generally agree that has all taken place at the expense of the student-athlete whose participation is exploited to make another buck for a bigger stadium, the coaches, the administrators or for other teams who can't pay their own way. It is a fairness issue, and along with the notion that athletes are students, is the great hypocrisy of intercollegiate athletics.

O'Bannon II, Nos. 14-11601, 14-17068 (9th Cir.), Supp. Excerpt of Record, at SER413-414 (Jan. 21, 2015) (Dkt 36-4).

Where the money comes from. The lifeblood of the college sports industry is television rights. For its March Madness championship basketball tournament, NCAA originally entered into a \$10.8 billion, 14-year contract with CBS Sports and Turner Broadcasting and later

45. Wallace Renfro, *Amateurism, Professionalism, Commercial Activity and Intercollegiate Athletics: Ambivalence About Principles*, Proceedings from the Santa Clara Institute of Sports Law and Ethics Sports Law Symposium (Sept. 6, 2012).

negotiated an eight-year extension worth \$8.8 billion, set to expire in 2034.⁴⁶ The College Football Playoff, consisting of just seven games, has a similarly lucrative deal with ESPN, which agreed to pay over \$5 billion, or roughly \$470 million annually, to televise Playoff games from 2014-2025.⁴⁷ The Playoff has actually exceeded expectations: the total payout to participating conferences in 2019 was more than \$674 million.⁴⁸

These massive deals are not limited to post-season competition. The conferences have lucrative television rights contracts for regular season games. For example, “between July 1, 2016 and June 30, 2017, the SEC conference alone generated almost \$967 million in revenue and the 2017-18 college athletics season saw \$1.24 billion spent on sponsorship with football leading the way.”⁴⁹ The SEC also negotiated a record-breaking contract during

46. Andrew Lisa, *The Money Behind the March Madness Tournament*, YahooSports.com (Mar. 9, 2020) <https://www.yahoo.com/now/money-behind-march-madness-ncaa-194402803.html>.

47. Mark Schlabach, *Playoff Approved, Questions Remain*, ESPN.com (Jun. 26, 2012), http://espn.go.com/college-football/story/_/id/8099725/college-football-playoff-approved-questions-remain.

48. Kristi Dosh, *College Football Playoff Payouts for 2019*, Businessofcollegesports.com (Dec. 28, 2019), <https://businessofcollegesports.com/football/college-football-playoff-payouts-for-2019/>.

49. Garrett Mosher, *Biggest Brands in College Football – How Brands Are Effectively Activating Their Sponsorships*, Hookit.com (Aug. 20, 2019), <https://www.hookit.com/insights/biggest-brands-in-college-football-how-brands-are-effectively-activating-their-sponsorships/>.

the pandemic. With its existing contract with CBS ending in 2023-2024, it entered into a \$3 billion, 10-year contract with ESPN for its football games.⁵⁰ The other Power Five conferences have similarly remunerative agreements with their media partners: the ACC for \$3.6 billion over 15 years, an average of \$240 million per year; the Big Ten for \$2.64 billion over six years, an average of \$433 million per year; the Big 12 for \$2.73 billion over 13 years, an average of \$222 million per year; and the PAC-12 for \$3 billion over 12 years, an average of \$250 million per year.⁵¹

Beyond selling television rights, the college sports industry recognizes billions in revenue from merchandising and apparel. CLC Learfield IMG College Licensing—with a client list of over 550 of the nation’s top colleges and

50. Kevin Draper & Alan Blinder, *SEC Reaches \$3 Billion Deal With Disney, Drawing CBS Ties Toward An End*, N.Y. Times (Dec. 10, 2020), <https://www.nytimes.com/2020/12/10/sports/ncaafootball/sec-disney-deal.html>.

51. Luke Decock, *ACC’s Financials, Including Lowest Power 5 Payouts to Schools, A Window Into Its Past*, News and Observer (July 24, 2020), <https://www.newsobserver.com/sports/spt-columns-blogs/luke-decock/article244461752.html>; Roman Stubbs, *Big Ten formally announces six-year media rights deal with ESPN FOX and CBS*, Wash. Post (July 24, 2017), <https://www.washingtonpost.com/news/terrapins-insider/wp/2017/07/24/big-ten-formally-announces-six-year-media-rights-deal-with-espn-fox-and-cbs/>; Dennis Dodd, *New Rights Deal Gets Big 12 As Close as Possible to Its Own Network with Football Title Games on ESPN*, CBSSports.com (Apr. 10, 2019), <https://www.cbssports.com/college-football/news/new-rights-deal-gets-big-12-as-close-as-possible-to-its-own-network-with-football-title-games-on-espn/>; Michael Preston, *Could the Next Pac-12 Rights Deal Go Digital?*, Cougcenter.com (Apr. 21, 2020), <https://www.cougcenter.com/2020/4/21/21230390/pac-12-tv-deal-pac-12-network-larry-scott-apple-amazon-netflix>.

universities, plus bowl games, athletic conferences, the Heisman Trophy, and the NCAA—has conservatively returned \$2 billion to its clients through licensing merchandise agreements.⁵² The annual value of Power Five school contracts with three footwear and apparel companies—Adidas, Nike, and Under Armour—is estimated at more than \$212 million.⁵³

The sum total of all of these revenue streams has created football and basketball programs that are valued in the hundreds of millions of dollars. Among the top 30 football programs, valuations range from a high of over \$1 billion for Texas, Ohio State and Alabama to a low of \$270 million for Oklahoma State.⁵⁴ Putting these figures in perspective, the Buffalo Bills, an NFL franchise, sold for \$1.1 billion in 2014.⁵⁵

Where the money goes. Spared by the NCAA's anticompetitive rules from having to share their revenue with the predominantly Black athletes whose efforts produce it, athletic departments engage in a budgetary

52. Hedlund & Naylor, *supra* note 43, at 17-35.

53. Clare Duffy, *The Top NCAA Apparel Deals for 2017-2018*, Portland Business Journal (Apr. 27, 2018), <https://www.bizjournals.com/portland/news/2017/08/31/see-the-top-ncaa-apparel-deals-for-2017-18.html>.

54. Ryan Brewer, *College Football Value Rankings*, Wall St. J., https://graphics.wsj.com/table/NCAA_2019.

55. Brian Rauf, *Here's The Purchase Price Of The Last 10 NFL Franchises Sold—And Who Bought Them*, Chat Sports (Dec. 18, 2017), <https://www.chatsports.com/nfl/a/heres-purchase-price-last-10-nfl-franchises-sold-and-who-bought-them-36635>.

arms race.⁵⁶ They pay more and more for the best coaches and the best facilities, trying to lure away the best players from their competitors so that they can field even better teams—and make even more money.

Head coaches in the major football and basketball conferences earn multi-million-dollar salaries that match those of their peers in professional sports. The 64 highest paid football coaches earn at least \$2.3 million per year, with Nick Saban of Alabama topping the list at over \$9 million.⁵⁷ The 58 highest paid men’s basketball coaches make at least \$2 million per year, with Kentucky’s John Calipari earning over \$8 million.⁵⁸ It does not end with head coaches. Over 25 assistant football coaches earn over \$1 million per year and 175 earn at least \$500,000 per year.⁵⁹ It is a well-known fact that, in most states, the highest paid public employee is either a college football or men’s basketball coach.⁶⁰

56. Robert Litan et al., *The Empirical Effects of Collegiate Athletics: An Interim Report*, National Collegiate Athletic Association (Aug. 2003), https://www.ncaa.org/sites/default/files/empirical_effects_of_collegiate_athletics_interim_report.pdf.

57. NCAA Salaries: 2020 NCAAF Coaches Salaries (Nov. 17, 2020), <https://sports.usatoday.com/ncaa/salaries>.

58. NCAA Salaries: 2020 NCAAB Coaches’ Pay, <https://sports.usatoday.com/ncaa/salaries/mens-basketball/coach>.

59. NCAA Salaries: NCAAF Power Five Assistant Coaches Salaries (Dec. 16, 2020), <https://sports.usatoday.com/ncaa/salaries/football/assistant>.

60. *Who’s the Highest-Paid Person in Your State?*, ESPN.com (Mar. 20, 2018), https://www.espn.com/espn/feature/story/_/id/22454170/highest-paid-state-employees-include-ncaa-coaches-nick-saban-john-calipari-dabo-swinney-bill-self-bob-huggins.

These extravagant coaching salaries are matched only by the lavish facilities that schools build to recruit players. The decade between 1995 and 2005 was marked by an “... unprecedented building boom for athletic programs on campuses across the United States, with at least \$15.2 billion spent on sports facilities,”⁶¹ Over the past 15 years, these amounts have only grown. An analysis of 48 Power Five schools in the single year of 2014 revealed a total of \$772 million spent on upgrading or building athletic facilities, an increase of 89% from what was spent in 2004.⁶² In 2019, Louisiana State opened a \$28 million football locker that features sleep pods similar to a first-class airline seat, a pool, and a mini-theater.⁶³ Clemson University’s \$55 million football facility has hydrotherapy pools, pool tables, TVs, easy chairs, snacks, drink dispensers, a barber shop, a mini-golf course, a two-lane bowling alley, a slide between floors, and an outdoor lounge area with fire pits and beach volleyball.⁶⁴

61. Bill King, *Race for Recruits*, SportsBusiness Journal (Dec. 5, 2005), <http://www.sportsbusinessdaily.com/Journal/Issues/2005/12/20051205/SBJ-In-Depth/Race-For-Recruits.aspx>.

62. Will Hobson & Steven Rich, *Why Students Foot the Bill For College Sports, and How Some Are Fighting Back*, Wash. Post (Nov. 20, 2015), https://www.washingtonpost.com/sports/why-students-foot-the-bill-for-college-sports-and-how-some-are-fighting-back/2015/11/30/7ca47476-8d3e-11e5-ae1f-af46b7df8483_story.html.

63. Jessica Lee, *LSU’s Football Team Has a New \$28 Million Locker Room — Complete With Sleep Pods, a Pool, and a Mini Theater*, Business Insider (Aug. 30, 2019), <https://www.businessinsider.com/louisiana-state-university-football-locker-room-athletic-facility-2019-8>.

64. Manie Robinson, *Staying Power: Clemson Football Has Changed the Game in Facilities*, The Greenville News (July

The supposed “clear line of demarcation” that the NCAA says it seeks to maintain between college and pro sports does not exist. Big-time college football and basketball are every bit as professionalized as the NFL, NBA, and WNBA. The NCAA’s “Principle of Amateurism” and its admonition against the commercial exploitation of college athletes is an empty husk. It is untenable for the NCAA and its members to realize ever-increasing revenues from football and basketball while paradoxically claiming that the mostly Black athletes whose efforts generate the income are “amateurs.”

III. The injunction does not compromise the NCAA’s actual conception of amateurism.

The District Court determined that the evidence did not support the NCAA claim that amateurism means “athletes must not be paid.” Pet. App. 92a. The District Court instead found that the NCAA embraces a “narrower” conception of amateurism, which hinges on restricting athlete pay “unrelated to education, akin to salaries seen in professional sports leagues.” Pet. App. 37a (citing Pet. App. 108a). Holding that this conception has certain pro-competitive benefits, the District Court entered an injunction that “remove[s] limitations on most education-related benefits provided on top of a grant-in-aid, while allowing the NCAA to limit cash or cash-equivalent awards or incentives for academic achievement or graduation to the same extent it limits athletics awards.” Pet. App. 163a. The Ninth Circuit agreed with the District Court’s analysis and affirmed.

2019), <https://www.greenvilleonline.com/story/sports/college/clemson/2019/07/30/staying-power-clemson-football-facility-college-athletics-facilities/1839960001/>.

The lower courts were correct in finding that the NCAA's hews to a different, narrower conception of amateurism than the one it claimed and, further, that the injunction would not undermine it. As explained in Section I, plaintiffs already receive certain financial benefits related to education, as well as some not related to education. As explained in Section II, plaintiffs pursue their sports as a vocation and power a massive commercial enterprise. The education-related benefits that the injunction permits will hardly compromise the conception of amateurism that reflects these realities. By allowing the NCAA to continue to restrict unlimited payments unrelated to education, the injunction preserves the very distinction—the only distinction—that the NCAA, in practice, seeks to maintain between college and professional athletes.

If anything, the injunction is too limited to realize the NCAA's stated goal of improving the education of college athletes. The NCAA's own expert, Dr. James Heckman, "conceded that additional compensation could improve outcomes for student-athletes, belying the notion that the challenged compensation limits, as they currently stand, are necessary to achieve positive student-athlete outcomes. Additionally, other evidence shows that student-athlete achievement, as measured by graduation rates, has increased since 2015, when permissible athletics-related compensation increased." Pet. App. 150a.

Amici agree that educational outcomes for athletes improve when athletes have greater financial security.⁶⁵

65. Some of the college athlete amici who support the NCAA's position appear to agree that payments to college athletes would

A 2020 study by the Pell Institute found that “estimated bachelor’s degree attainment rates by age 24 based on CPS household survey data were 4 times greater for dependent family members from the highest family income quartile than for those from the lowest family income quartile (62 percent vs. 16 percent).”⁶⁶ Likewise, according to an Urban Institute study, “High-wealth youth have a 70 percent chance of completing at least two years and a 43 percent chance of completing at least four years of college. Similar young people in low-wealth families have only a 41 percent chance of completing at least two years and a 24 percent chance of completing at least four years.”⁶⁷

By permitting schools to offer plaintiffs enhanced education-related benefits, the injunction is likely to bolster, rather than harm, their scholastic achievement. In fact, if the injunction is vulnerable to any criticism, it is that it does not go as far as it could to support plaintiffs’ education. As the evidence in this case and the above-cited

be beneficial. Daniel Libit & Michael McCann, *Pro-NCAA Athletes Petitioning SCOTUS Struggle to Stay on Message*, Sportico (Mar. 2, 2021), <https://www.sportico.com/leagues/college-sports/2021/pro-ncaa-athletes-petitioning-scotus-struggle-to-stay-on-message-1234623765/>.

66. Margaret Cahalan et al., *Indicators of Higher Education Equity in the United States: 2020 Historical Trend Report 142* (2020), http://pellinstitute.org/indicators/downloads/dialogues-2020_presentations_Shared_Dialogue_Discussion_Guide.pdf.

67. Breno Bragam et al., *Wealth Inequality is a Barrier to Education and Social Mobility*, Urban Institute, 1 (Apr. 28, 2017), https://www.urban.org/sites/default/files/publication/89976/wealth_and_education_4.pdf.

research show, allowing plaintiffs—many of whom are from financially insecure families—to receive greater benefits than the injunction authorizes would likely increase the probability of their success as students.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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Dated: March 10, 2021