

2013

Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering

Caitlin D. Buckstaff

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/jetlaw>



Part of the [Entertainment, Arts, and Sports Law Commons](#), and the [Gaming Law Commons](#)

Recommended Citation

Caitlin D. Buckstaff, *Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering*, 16 *Vanderbilt Journal of Entertainment and Technology Law* 133 (2020)

Available at: <https://scholarship.law.vanderbilt.edu/jetlaw/vol16/iss1/5>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Journal of Entertainment & Technology Law* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering

ABSTRACT

Sports gambling is an extremely lucrative, but scrutinized, industry. Athletic organizations contend that any form of sports wagering adversely affects players, teams, and spectators. They argue that intermingling gambling with sports turns spectators into skeptics and taints honest and fair competition. Congress enacted legislation limiting the scope of permissible sports wagering, but this legislation is under attack by many states advocating its repeal. The expansion of legalized sports wagering poses a threat, particularly on collegiate athletics. By definition, college athletes are amateurs. The definition of amateurism forms the foundation for the regulations governing intercollegiate competition. But, this status coupled with the transformation of collegiate athletics into a billion-dollar industry intensifies college athletes' vulnerabilities to external threats associated with sports wagering. This Note argues that applying a definition of amateurism strictly premised on the prohibition of compensation harms rather than protects the core values of the student-athlete. In light of the evolution of sports wagering, the Note calls for an internal audit of the governing institution, the National Collegiate Athletic Association (NCAA). Utilizing its authority to promulgate binding regulations on its member institutions, the NCAA should redefine amateurism to protect itself and the ideal of the student-athlete from the threats of sports wagering.

TABLE OF CONTENTS

I.	SPORTS GAMBLING'S ROLE IN AMERICAN SOCIETY	137
	A. <i>History of Government Oversight of the Gambling Industry</i>	137
	B. <i>Questions of Integrity and Corruption in College Sports</i>	138

	<i>C. The Professional and Amateur Sports Protection Act of 1992</i>	140
	1. Challenges to PASPA.....	142
	2. New Jersey's Sports Wagering Act.....	143
	3. Organizations Opposing the Repeal of PASPA ...	144
	<i>D. The NCAA and Sports Wagering</i>	146
	1. Protecting the Integrity of the Game	146
	2. Preserving the Ideal of Amateurism	148
	3. Understanding the Boundaries of Its Authority.	151
II.	THE INFLUENCE OF SPORTS WAGERING ON THE MODERN STUDENT-ATHLETE	152
	<i>A. The Potential Effect of the Expansion of Legalized Sports Wagering on the NCAA</i>	152
	<i>B. The NCAA's Response to the Persistence of an Illegal Market for Sports Wagering</i>	154
	<i>C. The NCAA's Actions May Perpetuate the Issues it Is Trying to Resolve</i>	156
	1. Undervaluing the Financial Vulnerability of Student-Athletes.....	157
	2. Perception that the NCAA Exploits Student-Athletes	159
III.	A CALL FOR INSTITUTIONAL REFORM.....	161
	<i>A. Refocus the Definition of Amateurism</i>	162
	<i>B. Close the Gap: Create a Stipend as a Supplement to Athletic Scholarships</i>	164
	<i>C. Increase Oversight Function by Creating Partnerships.</i>	166
IV.	CONCLUSION	168

Sports gambling is a multibillion-dollar industry.¹ The American Gaming Association estimates that legal sports gambling yields \$3 billion in wagers,² while illegal sports gambling generates nearly \$500 billion annually.³ This impressive disparity illustrates a

1. See NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 2-14 (1999) [hereinafter NGISC FINAL REPORT], available at <http://www.ncfpc.org/specialngisc.html>; see also AM. GAMING ASS'N, STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT 33 (2012) [hereinafter STATE OF THE STATES], available at http://www.americangaming.org/sites/default/files/uploads/docs/sos/aga_sos_2012_web.pdf (noting Nevada's casinos alone accounted for more than \$2.8 billion worth of wagers on sporting events in 2011).

2. See STATE OF THE STATES, *supra* note 1 (noting that football wagers accounted for \$1.3 billion, basketball wagers accounted for \$737 million, and baseball wagers accounted for \$557 million).

3. See Chad Millman, *Authorities Expose \$50M Betting Ring*, ESPN (Oct. 25, 2012, 5:52 PM), http://espn.go.com/espn/story/_/id/8550476/new-york-issues-25-indictments-50-million-betting-ring (stating that some estimate that illegal wagers generate \$500 billion annually).

shortage of outlets through which individuals can legally place wagers on sporting events.⁴ Currently, only Nevada and Delaware allow sports-wagering schemes.⁵ But many states, like New Jersey, recognize the potential for economic stimulation and want to create sports-wagering schemes to capitalize on this lucrative market.⁶ Despite their willingness to offer more legal sports-wagering outlets, the current federal regime prevents any state from entering into this profitable industry.⁷

Changing the status quo may allow states to directly profit from new sources of revenue, but there is strong opposition to reform efforts.⁸ The media's glamorization of gambling distorts gambling's often-harsh realities.⁹ While there are big winners, there are also big losers, many of whom are innocent bystanders.¹⁰ Sport fans occupy a class of innocent bystanders harmed by gambling's threat to the "integrity of the game," particularly the notion of fair play.¹¹ Potential corruption or even the appearance of corruption in sports tarnishes their reputations

4. *But see infra* notes 152–55 and accompanying text (suggesting that the disparity also illustrates lack of public awareness of the illegality and risks of sports wagering). People gamble for many reasons, *see, e.g.*, R. Randall Bridwell & Dr. Frank L. Quinn, *Joy to Misfortune: The Merger of Law and Politics in the World of Gambling*, 72 MISS. L.J. 565, 693–94 (2002), so increasing legalized sports wagering outlets may not likely displace an equivalent amount of illegal outlets.

5. *See* STATE OF THE STATES, *supra* note 1.

6. *See* Chris Sieroty, *California Looking to Legalize Sports Bets*, LAS VEGAS REVIEW JOURNAL (July 29, 2013, 2:03 AM), <http://www.reviewjournal.com/sports/betting/california-looking-legalize-sports-bets>; STATE OF THE STATES, *supra* note 1, at 23–27 (discussing communities' perspectives on the economic benefits related to gambling). *But see* NGISC FINAL REPORT, *supra* note 1, at 2-14 ("Unlike casinos or other destination resorts, sports wagering does not create other economic sectors.").

7. *See generally* 28 U.S.C. §§ 3701–04 (2012) (defining the narrow scope of legalized sports wagering).

8. *See* discussion *infra* Part I.C.3. This Note treats "gambling," "wagering," and "betting" as synonymous terms in the context of sporting contests and events.

9. *See* R. Randall Bridwell & Frank L. Quinn, *From Mad Joy to Misfortune: The Merger of Law and Politics in the World of Gambling*, 72 MISS. L.J. 565, 688, 729 (2002) (associating gambling with inevitable damage and corruption). Many studies link gambling to organized crime, drug abuse, gambling addictions, and bankruptcy. *See* John Warren Kindt, *The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance*, 27 S. ILL. U. L.J. 221, 223, 226–27, 240–41 (2003). For a discussion on the costs and benefits of gambling policy, *see* Guy Calvert, *Gambling America: Balancing the Risks of Gambling and Its Regulation*, 349 CATO POLICY ANALYSIS 1 (1999).

10. *See supra* note 9 and accompanying text.

11. *See* John Warren Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L.J. 221, 221 (2002) ("[S]ports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling [which] raises people's suspicions about point-shaving and game-fixing." (citing NGISC FINAL REPORT, *supra* note 1, at 3-8, 3-9 (1999) (statement of Sen. Bill Bradley))).

and weakens fans' respect for the programs, leagues, and players.¹² As athletic organizations defend the integrity of their respective games, they must assess the particularized risks of sports gambling.

College athletics is a multibillion-dollar industry.¹³ Yet, college athletes only receive a limited share of the profits, and only in the form of athletic-based scholarships.¹⁴ In fact, the National Collegiate Athletic Association (NCAA), in its capacity as the governing institution of intercollegiate athletics, explicitly forbids any form of player compensation.¹⁵ Accepting any form of performance-related compensation—including promises of future payment—costs the college athlete her amateur status, rendering her ineligible for intercollegiate competition.¹⁶ This constraint on pay exposes college athletes' inherent vulnerability to threats posed by sports wagering.¹⁷ Thus, as the NCAA seeks to maintain the integrity of intercollegiate competition, it must tackle sports wagering's particularized threat to the preservation of amateurism.¹⁸

In light of New Jersey's recent attempt to expand legalized sports wagering in the United States, this Note argues that the NCAA should focus on an internal reform honoring the ideal of amateurism while addressing the vulnerability of student-athletes. Part I discusses the history of legal and illegal sports wagering, the tension surrounding sports-wagering regulations, and the NCAA's anti-gambling stance. Part II analyzes the potential effects of the legalization of sports wagering on the NCAA's authority, the degree to which sports wagering poses a legitimate threat to the integrity of college athletics, and the implications of the NCAA's definition of amateurism on the vulnerability of student-athletes. Part III proposes a solution that allows the NCAA to reduce student-athletes'

12. See *id.*

13. See Christina L.L. Martin et al., *An Analysis of Collegiate Marketing Strategies and Evaluation Process*, 4 J. ISSUES INTERCOLLEGIATE ATHLETICS 42, 44 (2011) (stating that college athletics grew from \$282 million in 1999 to \$7 billion in 2009); *The Business of College Football*, FORBES, http://www.forbes.com/special-report/2012/business-of-college-football_rank.html (last visited Aug. 25, 2013) (estimating that the top 20 college football programs collectively generated \$1.296 billion in revenue for 2012).

14. *Compare College Athletics Revenues*, ESPN.COM, <http://espn.go.com/ncaa/revenue> (last visited Oct. 30, 2013) (detailing the revenues of college athletic departments), with *College Athletics Expenses*, ESPN.COM, http://espn.go.com/ncaa/revenue/_/type/expenses (last visited Oct. 30, 2013) (breaking down college athletic departments' expenses and distributions of revenues).

15. See NAT'L COLLEGIATE ATHLETIC ASS'N, 2012–13 NCAA DIVISION I MANUAL § 12.1.2 (2012) [hereinafter NCAA MANUAL], available at http://grfx.cstv.com/photos/schools/geot/genrel/auto_pdf/2012-13/misc_non_event/12-13-ncaa-manual.pdf (defining the rule on amateurism).

16. See *id.*

17. See *infra* Parts I.D.2, II.C.1.

18. See *infra* Part I.D.2.

vulnerabilities associated with sports wagering without forfeiting the ideal of amateurism.

I. SPORTS GAMBLING'S ROLE IN AMERICAN SOCIETY

Sports wagering, and other forms of gambling in the United States, exist in both legal and illegal markets.¹⁹ The fact that Americans illegally wager billions of dollars annually validates descriptions of illegal gambling as “a thriving illegal business hiding in plain sight.”²⁰ The potential for substantial payouts without the burdens of regulation or taxation attracts individuals to illegal markets.²¹ Moreover, the Internet has played an important role in making illegal gambling more accessible and convenient to the public at large.²²

A. History of Government Oversight of the Gambling Industry

Prior to the 1960s, the federal government deferred to states in gambling-related matters.²³ But in response to public outcry, the federal government expanded its role and began taking measures in 1961 aimed at reducing the role and presence of organized crime in the gambling industry.²⁴ Congress's first significant restriction on the gambling industry, the Wire Act,²⁵ criminalizes the transmission of wagers, information to place wagers, and money or credit resulting from the placement of wagers through wire communications.²⁶ The second

19. See NGISC FINAL REPORT, *supra* note 1, at 1-1 (estimating that forty-eight states permit a form of legalized gambling).

20. See *id.*

21. See S. REP. NO. 102-248, at 7 (1991).

22. See Richard Finger, *Online Gambling: A Pastime Whose Time Has Come*, FORBES (June 30, 2013, 9:27 AM), available at <http://www.forbes.com/sites/richardfinger/2013/06/30/online-gambling-a-pastime-whose-time-has-come>. The topic of online gambling falls beyond the scope of this Note.

23. See NGISC FINAL REPORT, *supra* note 1, at 3-10. The federal government still allows state-authorized lotteries. See *id.* at 3-4. In 1999, thirty-seven states and the District of Columbia exercised this authority. See *id.* at 2-3. In 2013, forty-three states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands operate state lotteries. See *Lottery Results*, USA.GOV, <http://www.usa.gov/Topics/Lottery-Results.shtml> (last updated Sept. 4, 2013).

24. NGISC FINAL REPORT, *supra* note 1, at 3-3.

25. Pub. L. No. 87-216, § 2, 75 Stat. 491 (1961) (codified as amended at 18 U.S.C. § 1084 (2012)).

26. See 18 U.S.C. § 1084(a). But Congress allows wire transmissions of information for purposes of news reporting sporting events as well as information for purposes of placing wagers on sporting events, provided that wagering on the sporting event is legal in both states in which the transmission occurs. 18 U.S.C. § 1084(b).

significant restriction, the Travel Act,²⁷ criminalizes the use of interstate and foreign commerce to further “any unlawful activity,” which explicitly includes any activity related to illegal gambling.²⁸

Although Congress designed the Wire Act and the Travel Act to apply to persons engaged or intending to engage in illegal sports wagering, neither act diminished the states’ authority to legalize such wagering activities.²⁹ The federal government deferred to states for thirty more years, allowing each to decide whether to legalize wagering on sporting events.³⁰

B. Questions of Integrity and Corruption in College Sports

Anyone reading the sports section of the newspaper, logging on to a sports news page on the Internet, listening to a sports radio station, or watching ESPN knows that the world of sports is not immune to scandal.³¹ But gambling-related scandal, particularly involving collegiate sports, is also not a recent phenomenon.³² For instance, as early as the 1950s, the public witnessed point-shaving scandals involving Men’s Division I basketball players attempting to influence the final scores of games.³³ In 1951, a New York district attorney

27. Pub. L. No. 87-228, § 1(a), 75 Stat. 498 (1961) (codified as amended at 18 U.S.C. § 1952 (2012)).

28. Travel Act, 18 U.S.C. § 1952(a)–(b) (2012). The broad applicability of the Travel Act enables federal criminal prosecution of organized crime and misconduct of state and federal elected officials as it pertains to gambling. See Barry Breen, *The Travel Act (18 U.S.C. § 1952): Prosecution of Interstate Acts in Aid of Racketeering*, 24 AM. CRIM. L. REV. 125, 125 (1986). Congress further restricted the gambling industry by barring interstate transportation of wagering paraphernalia, but it exempted states with legalized sports wagering. See 18 U.S.C. § 1953(b) (2012).

29. See 18 U.S.C. §§ 1084, 1952 (2012) (indicating Congress only intended to restrict certain gambling activities).

30. See NGISC FINAL REPORT, *supra* note 1, at 3-9.

31. See, e.g., Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix? I Wouldn’t Bet on It*, 8 MARQ. SPORTS L.J. 401, 403 (1998) (describing the 1919 Black Sox Scandal where eight White Sox players received lifetime bans for fixing the Baseball World Series); Steve Wyche, *NFL Shows Evidence of Saints’ ‘Bounty’ Program to Media*, NFL.COM (Aug. 3, 2012, 1:37 AM), <http://www.nfl.com/news/story/09000d5d829f19d3/article/nfl-shows-evidence-of-saints-bounty-program-to-media> (discussing a scandal involving financial bonuses paid to professional football players for injuring opponents); *Most Significant College Sports Scandals*, USA TODAY SPORTS, <http://www.usatoday.com/picture-gallery/sports/ncaaf/2013/09/13/most-significant-college-sports-scandals/2792053> (last visited Oct. 21, 2013) (describing scandals involving college athletes and coaches spanning from 1950 to 2013); *Sports Scandals*, ECONOMIST, <http://www.economist.com/topics/sports-scandals> (last visited Oct. 21, 2013) (detailing recent sport scandals involving doping and cheating at the college, professional, and international level).

32. See *Most Significant College Sports Scandals*, *supra* note 31; *infra* text accompanying notes 33–37; see also Kindt & Asmar, *supra* note 11, at 236–38 (discussing the point shaving scandals that occurred during the 1990s).

33. See Joe Goldstein, *Explosion: 1951 Scandals Threaten College Hoops*, ESPN CLASSIC (Nov. 19, 2003), http://espn.go.com/classic/s/basketball_scandals_explosion.html. Point-shaving is “an attempt (as by a member of the team favored to win) to influence the final score of a game so

arrested two players on the Manhattan College men's basketball team for manipulating the point margin in several games in exchange for money.³⁴ Over the next few months, the district attorney uncovered point-shaving scandals involving thirty-two players from seven colleges, who had "fixed" eighty-six games.³⁵ These convictions, and their dissonance with the celebrated ideal of the amateur student-athlete, shocked the public.³⁶ In light of these scandals, the public began to scrutinize athletic institutions and schools for inadequately supervising their student-athletes.³⁷

Despite the point-shaving scandals' negative impact on the public's perception of sports wagering, the industry generally avoided regulation through the 1980s.³⁸ In 1992, however, Congress recognized a "distinct [f]ederal interest in protecting sports from corruption" and enacted restrictive gambling-related legislation.³⁹ This legislation altered the status quo, discontinuing the federal government's

that the predicted winner wins by less than the point spread." *Point-shaving*, MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/point%20shaving> (last visited Sept. 3, 2013). To understand the betting aspect of point-shaving and fixing games:

[A]ssume that the game [a better] fixed was between Team A and Team B. Team A was favored to win by 10 points. That meant bookies would accept your bet if you thought Team A would win by more than 10 points. [The better] had told his bribed player—on Team B—that his team must lose by at least 15 points. Therefore, [the better] bet, confidently, on Team A, giving 10 points.

Jeremiah Tax, *The Facts About the Fixes*, SPORTS ILLUSTRATED, Mar. 27, 1961, at 18.

34. See Goldstein, *supra* note 33 (noting that some players received thousands of dollars to shave points).

35. See *id.* (listing the players and their punishments). Fixing techniques ranged from shaving points off the spread to throwing games entirely. See *id.*

36. See *id.*

37. See *id.* This scrutiny continued through the eighties as college basketball experienced more point-shaving scandals. See Tax, *supra* note 33, at 19; see, e.g., Aaron J. Slavin, Comment, *The "Las Vegas Loophole" and the Current Push in Congress Towards a Blanket Prohibition on Collegiate Sports Gambling*, 10 U. MIAMI. BUS. L. REV. 715, 727–32 (2002) (discussing three scandals that occurred in the 1980s and 1990s); Jeff Merron, *Biggest Sports Gambling Scandals*, ESPN PAGE 2, <http://sports.espn.go.com/espn/page2/story?page=merron/060207> (last updated Feb. 7, 2006) (discussing the alleged Boston College mob connection during the 1978–79 basketball season and the accusation that five Tulane basketball players engaged in point-shaving schemes in 1985).

38. But see 18 U.S.C. §§ 1961–68 (2012). In 1971, Congress enacted the Racketeer Influenced and Corrupt Organizations Act (RICO) to combat the operation of sophisticated criminal business enterprises, which includes the operation of sports betting rings. See *id.*; Press Release, U.S. Attorney's Office, Members of Alleged Sports Betting Ring Charged with Racketeering, E. Dist. of Pa. (Aug. 8, 2012), <http://www.fbi.gov/philadelphia/press-releases/2012/members-of-alleged-sports-betting-ring-charged-with-racketeering>.

39. See S. REP. NO. 102-248, at 6 (1991). The representatives noted that "[t]he House Judiciary Committee called such corruption 'a challenge to an important aspect of American life—honestly competitive sports.'" *Id.* Furthermore, the legislators recognized sports as national institutions and made the act of bribery or the attempt to influence or bribe in any sporting event or contest a federal crime under Title 18 because of the distinct federal interest. See *id.*

deference to states in favor of a federal regime regulating the legalization of sports wagering.⁴⁰

C. The Professional and Amateur Sports Protection Act of 1992

In response to public concern about gambling's effects on the legitimacy of amateur and professional sporting events and pressure from professional and amateur sports organizations, Congress enacted the Professional and Amateur Sports Protection Act of 1992 (PASPA).⁴¹ Legislators intended PASPA to "serve[] an important public purpose, to stop the spread of State-sponsored sports gambling and to maintain the integrity of [the] national pastime."⁴² Since its enactment over twenty years ago, PASPA has operated as a de facto federal ban on sports wagering.⁴³ The Act declares it unlawful for a government entity or a person to:

[S]ponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.⁴⁴

But Congress included a significant caveat: the ban exempted states with legalized sports-wagering schemes in operation at the time of PASPA's enactment.⁴⁵ Of the fifty states, only four—Delaware,

40. See *infra* Part I.C. (discussing the history, scope, and enforcement of the federal law prohibiting sports wagering).

41. See Pub. L. No. 102-559, § 2(a), 106 Stat. 4228 (1991) (codified at 28 U.S.C. §§ 3701–3704 (2012)); S. REP. NO. 102-248, at 3, 5, 8 (1991) (citing legislative history that representatives of the National Football League (NFL), the National Basketball Association (NBA), the National Hockey League (NHL), and Major League Baseball (MLB), testified in favor of PASPA). The representatives testified that:

Sports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling. It undermines public confidence in the character of professional and amateur sports . . . [and] will promote gambling among our Nation's young people. . . . Governments should not be in the business of encouraging people, especially young people, to gamble.

Id. at 5.

42. S. REP. NO. 102-248, at 6 (1991).

43. See 28 U.S.C. §§ 3701–04 (2012).

44. 28 U.S.C. § 3702 (2012). It is also unlawful for a government entity to advertise or license such activity. See *id.*

45. See 28 U.S.C. § 3704 (2012); S. REP. NO. 102-248, at 8 (1991). Congress included the grandfather provisions because it recognized, and was sensitive to, PASPA's potential adverse economic impact on states operating legal sports wagering schemes at that time. See S. REP. NO. 102-248, at 8. Congress' concern of the impact on Nevada led some to refer to PASPA as the "Las Vegas Loophole." See Slavin, *supra* note 37, at 720, 735.

Montana, Nevada, and Oregon—satisfied the exemption provision.⁴⁶ But, recognizing the foreclosure of opportunities for the remaining forty-six states, Congress provided a one-year window during which states could have qualified for the exemption by establishing their own sports-wagering schemes.⁴⁷ Congress specifically intended New Jersey's Atlantic City as the primary beneficiary of this provision.⁴⁸ But neither New Jersey nor any other state exercised this option.⁴⁹ Therefore, only Delaware, Montana, Nevada, and Oregon are exempt from PASPA's prohibition.⁵⁰

Of the four exempted states, only Nevada and Delaware currently exercise their sports-wagering allowances.⁵¹ Pursuant to Delaware's allowance, individuals in Delaware may participate in NFL parlay betting only, excluding other betting schemes, betting on other professional leagues, and betting on collegiate sports.⁵² Unlike Delaware's single allowance, Nevada's allowance encompasses a broad range of sports-wagering schemes, permitting wagering on both professional and collegiate sporting events.⁵³ Only in Nevada may an individual place a legal single-game wager on a collegiate sporting

46. See Ronald J. Rychlak, *A Bad Bet: Federal Criminalization of Nevada's Collegiate Sports Books*, 4 NEV. L.J. 320, 323 (2004).

47. See 28 U.S.C. § 3704(a)(3). The one-year window began January 1, 1993 and expired January 1, 1994. See *id.* Effectively, New Jersey, or any other state, would qualify for the exemption by enacting legislation and actually operating a sports wagering scheme during that window. See 28 U.S.C. § 3704(a)(3)(A)–(B).

48. See David Waddell & Douglas L. Minke, *Why Doesn't Every Casino Have a Sports Book?: An Overview of the Professional and Amateur Sports Protection Act*, GLOBAL GAMING BUS., July 2008, at 35, available at <http://www.michigangaming.com/docs/Why%20doesnt%20every%20casino%20have%20a%20sports%20betting.pdf>. The Casino Association of New Jersey actively participated in the legislative process for the enactment of PASPA when it testified against the legislation, yet, did not assume an active role after PASPA's enactment by taking advantage of the one year window. See S. REP. NO. 102-248, at 3 (1991); Waddell & Minke, *supra*, at 35.

49. See Waddell & Minke, *supra* note 48, at 35.

50. See *Sports Betting*, AM. GAMING ASS'N, <http://www.americangaming.org/government-affairs/key-issues/past-issues/sports-betting> (last visited Sept. 5, 2013).

51. See STATE OF THE STATES, *supra* note 1, at 33. Oregon repealed its sports wagering scheme in 2007. OR. REV. STAT. § 461.213 (repealed 2007); H.R. 2466, 73d Leg., 1st Sess. (Or. 2005). Montana offers sports wagering "between pigs, gerbils, or hamsters." MONT. CODE ANN. § 23-5-502(1)(b) (2013). Therefore, in the context of sports wagering on events involving human participants, Montana is not included for the purposes of this Note, even though the state does have a legal sports-wagering regime. See MONT. CODE ANN. § 23-5-502 (2013).

52. See *Office of the Comm'r of Baseball v. Markell*, 579 F.3d 293, 304 (3d Cir. 2009). Parlay betting is where a bettor places a single wager on one event that joins other individual wagers, and whether a bettor wins depends upon all of the individual wagers winning. See *Parlay*, MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/parlay> (last visited Sept. 6, 2013).

53. See S. REP. NO. 102-248, at 10 (1991); Kindt & Asmar, *supra* note 11, at 222, 232.

event.⁵⁴ Therefore, PASPA prohibits any type of wagering on collegiate sporting events in the other forty-nine states and prevents any of those states from legalizing such a scheme.⁵⁵

1. Challenges to PASPA

The persistence of illegal sports wagering led many states and critics to question PASPA's constitutionality and effectiveness.⁵⁶ Critics proclaim that PASPA was controversial even before its enactment, citing key constitutional concerns that included violations of federalism principles and the Commerce Clause.⁵⁷ They question how the government can enforce a federal ban when it does not hold all states to the same standards.⁵⁸ Proponents for PASPA's repeal argue that the provisions fail to serve their original purpose—stopping the spread of illegal gambling—thus rendering the regulation ineffective.⁵⁹ Accordingly, these critics advocate a level playing field that would allow other states' casinos to play by the same rules as their counterparts in Nevada.⁶⁰

Since its enactment, PASPA has faced a few challenges, but only the most recent challenges from New Jersey have constituted a legitimate threat to the law.⁶¹ In 2009, New Jersey Senator Raymond Lesniak challenged the constitutionality of PASPA, but the US District

54. See Suzette Parmley, *New Jersey Makes its Final Appeal for Sports Betting*, PHILLY.COM (June 28, 2013), http://articles.philly.com/2013-06-28/business/40235411_1_amateur-sports-protection-act-paspa-legalized-sports-wagering.

55. See Rychlak, *supra* note 46, at 323; *cf.* U.S. CONST. art. VI, § 2.

56. See, e.g., Michael Levinson, *A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering*, 13 SPORTS L.J. 143, 169 (2006); Rychlak, *supra* note 46, at 323–24.

57. See S. REP. NO. 102-248, at 12 (1991); see also Levinson, *supra* note 56, at 170 (quoting Senator Charles Grassley's statement insisting that PASPA's passage "was an unconstitutional infringement on states' rights and it unjustly discriminated among the states").

58. See Coltan Totland, *New Jersey Puts Money on Legalizing Sports Betting*, WASH. TIMES (Aug. 13, 2012), <http://www.washingtontimes.com/news/2012/aug/13/nj-makes-constitutional-case-sports-betting/?page=all>.

59. See Rychlak, *supra* note 46, at 323–24.

60. See, e.g., ASSOCIATED PRESS, *New Jersey Sued Over Sports Betting*, ESPN.COM (Aug. 7, 2012, 5:47 PM) [hereinafter *New Jersey Sued Over Sports Betting*], http://espn.go.com/espn/story/_id/8243013/ncaa-4-pro-leagues-sue-new-jersey-sports-betting.

61. Prior to the challenge by New Jersey, Delaware unsuccessfully expanded its allowance under PASPA beyond NFL parlay betting. See *OFC Comm. Baseball v. Markell*, 579 F.3d 293, 295–96 (3d Cir. 2009). In *Markell*, Delaware challenged the application of section 3704(a)(1), an exemption provision. See *id.* at 301. The Third Circuit held that Delaware's proposed sports lottery would clearly violate federal law, as the exemption only applies to the extent such scheme was actually conducted prior to PASPA's enactment. See *id.* at 304. The Third Circuit's unwillingness to read PASPA broadly suggests that the exemption is to be construed narrowly—only the states originally exempted have the authority to legalize sports wagering provided that such scheme matches the characteristics of the scheme actually conducted prior to PASPA's. See *id.*

Court for the District of New Jersey dismissed the complaint for lack of standing.⁶² In response to the dismissal, New Jersey amended its Constitution, granting its state legislature the power to authorize wagering “on the result of any professional, college, or amateur sport or athletic event.”⁶³ Wanting to revive Atlantic City, New Jersey changed its strategy in 2012 and opted to ignore PASPA outright rather than challenge its constitutionality.⁶⁴

2. New Jersey’s Sports Wagering Act

On January 17, 2012, New Jersey Governor Chris Christie signed into law the Sports Wagering Act, permitting single-game sports wagering at Atlantic City’s casinos and racetracks.⁶⁵ Legislators chose to ignore the federal ban in favor of the large potential upside sports wagering could bring to New Jersey’s economy.⁶⁶ The Act’s proponents contend that this allowance “could generate an additional \$225 million a year for Atlantic City’s casinos and racetracks.”⁶⁷ Similar to Nevada’s allowances, the Sports Wagering Act permits wagering on both professional and collegiate sporting events.⁶⁸ However, the Act prohibits placing wagers on “any collegiate sport or athletic event that takes place in New Jersey or a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.”⁶⁹

Legalizing sports gambling in the state without first attempting to nullify PASPA put New Jersey’s state law in clear conflict with PASPA.⁷⁰ Nevertheless, Governor Christie argues the legislation is

62. Interactive Media Entm’t & Gaming Ass’n v. Holder, No. 09-1301, 2011 WL 802106, at *10 (D.N.J. Mar. 7, 2011). The district court concluded that plaintiffs failed to satisfy the injuries and redressability requirements—finding that they were at best speculative—because New Jersey lacked any sports wagering legislation. *See id.* at *6.

63. N.J. CONST., art. IV, § 7, para. 2 (amended 2011).

64. *See* Chris Mondics, *N.J.’s Legal Strategy in Its Sports-Betting Plan*, PHILLY.COM (Aug. 13, 2012), http://articles.philly.com/2012-08-13/business/33168171_1_amatuer-sports-protection-act.

65. *See* N.J. STAT. ANN. § 5:12A-1-6 (2012); *see also* *New Jersey Sued Over Sports Betting*, *supra* note 60.

66. *See* Mondics, *supra* note 64 (suggesting New Jersey was “under pressure to revive Atlantic City and boost state revenue”); *see also* Erin McClam, *New Jersey Wages Federal Court Battle to Allow Gambling on Sports*, NBCNEWS.com (July 15, 2013, 4:24 AM), http://usnews.nbcnews.com/_news/2013/07/15/19437131-new-jersey-wages-federal-court-battle-to-allow-gambling-on-sports (noting that Atlantic City Casinos are down 40 percent).

67. *See* Mondics, *supra* note 64.

68. N.J. STAT. ANN. § 5:12A-1 to -2 (2012). This would make New Jersey the only state besides Nevada that permits sports wagering on collegiate sports. *See* Kindt & Asmar, *supra* note 11, at 222, 232.

69. N.J. STAT. ANN. § 5:12A-1.

70. *See* *New Jersey Sued Over Sports Betting*, *supra* note 60.

justifiable on fairness grounds because the federal government limits such activity to only certain states for no legitimate purpose.⁷¹ He cites the federal government's failure to "acknowledge that there is illegal sports gambling going on in every state in America." And he asks "why [legal gambling in New Jersey is] more injurious than illegal sports gambling to the operations of the [professional] league[s] or the NCAA?"⁷²

In conjunction with New Jersey's legislation authorizing sports wagering within the state, two New Jersey congressmen proposed bills to the US House of Representatives that would amend section 3704(a) of PASPA.⁷³ The New Jersey Betting and Equal Treatment Act (BET Act) calls for Congress to add New Jersey to the list of states exempted from the federal prohibition of sports wagering.⁷⁴ The Sports Gaming Opportunity Act creates a four-year window applicable to all states, analogous to the one-year window originally provided in section 3704.⁷⁵

3. Organizations Opposing the Repeal of PASPA

Consistent with their focus on the integrity of their respective games, the NHL, the NFL, the NBA, MLB, and the NCAA (collectively, "the Leagues") have sought to curtail or ban all state-sponsored gambling on sporting events.⁷⁶ Predictably, neither the New Jersey's

71. *See id.*

72. *See id.* (noting that Christie refers to the four main professional leagues: MLB, the NBA, the NHL, and the NFL).

73. *See* Sports Gaming Opportunity Act of 2012, H.R. 3797, 112th Cong. (2012) ("To amend chapter 178 of title 28 of the United States Code to permit during a 4-year period States to enact statutes that exempt from the operation of such chapter, lotteries, sweepstakes, and other betting, gambling, or wagering schemes involving professional and amateur sports."); New Jersey Betting and Equal Treatment Act of 2012, H.R. 3809, 112th Cong. (2012) ("To amend title 28 of the United States Code to exclude the State of New Jersey from the prohibition on professional and amateur sports gambling to the extent approved by the legislature of the State.").

74. *See* H.R. 3809. This narrowly tailored amendment applies to the allowance of "lottery, sweepstakes, or other betting, gambling, or wagering scheme" specifically in New Jersey. *Id.*

75. *See* H.R. 3797. The bill addresses the issue by providing every state the opportunity to join the four exempted states and authorize sport-wagering schemes. *Compare id.* (creating a four-year window), *with* 28 U.S.C. § 3704 (2012) (creating a one-year window). If passed, the Sports Gaming Opportunity Act provides states interested in legalizing gambling the opportunity to do so. H.R. 3797. While not an immediate effect, the potential spread of sports wagering could create a gambling environment much like that in Great Britain, where small betting parlors cover city blocks. *See* Dan Wetzel, *Multinational Companies Lining Up to Cash in Big if American Gambling Sports Landscape Opens*, YAHOO! SPORTS (Oct. 15, 2012), <http://sports.yahoo.com/news/nfl--multinational-companies-lining-up-to-cash-in-big-if-american-gambling-sports-landscape-opens25191010.html>.

76. *See* Complaint for Declaratory and Injunctive Relief at 3, *NCAA v. Christie*, No. 12-4947 (D.N.J. Dec. 21, 2012), 2012 WL 6698684 ("Gambling on amateur and professional sports . . . is fundamentally at odds with the principle . . . that the outcomes of collegiate and professional

Sports Wagering Act, nor the proposed BET Act gained approval by the sports community at large.⁷⁷ On August 7, 2012, four professional sports organizations and the NCAA⁷⁸ filed suit in the US District Court for the District of New Jersey seeking declaratory and injunctive relief to enjoin the state of New Jersey from implementing and enforcing the Sports Gambling Law and Sports Gambling Regulations.⁷⁹ The Leagues contend that permitting the Sports Wagering Act, which effectively would repeal PASPA, will “engender the very ills that PASPA sought to combat.”⁸⁰

In their complaint in *NCAA v. Christie*, the Leagues allege that permitting New Jersey to legalize sports wagering will cause irreparable damage to the integrity of, and fans’ respect for, the game.⁸¹ Although legal, sports-gambling schemes produce negative stereotypes and reputations that may yield long-term economic harm to the Leagues.⁸² This potential economic harm is separate and distinct from the message such schemes convey to America’s youth—the youth who aspire to compete at the collegiate level.⁸³ Due to these concerns, the NCAA embraces a broad opposition to sports wagering.⁸⁴

athletic contests must be determined, and must be perceived by the public as being determined, solely on the basis of honest athletic competition.”).

77. See generally *id.* at 1–4, 10–11 (detailing the arguments made on behalf of the Leagues to enjoin New Jersey’s law).

78. All five organizations have standing to bring the action. See 28 U.S.C. § 3703 (2012).

79. See Complaint for Declaratory and Injunctive Relief, *supra* note 76, at 11.

80. *NCAA v. Christie*, No. 12-4947, 2012 WL 6698684, at *24 (D.N.J. Dec. 21, 2012) (noting that the “very ills” refers to government sponsorship and advertising sports gambling).

81. *E.g.*, Complaint for Declaratory and Injunctive Relief, *supra* note 76, at 3. In response to a 2009 survey conducted by the NBA, “17% of the Leagues’ fans responded they would spend less money on the Leagues if they placed a professional sports team in close proximity to legalized sports gambling.” *NCAA v. Christie*, No. 12 4947 (Dec. 21, 2012), 2012 WL 6698684, *9.

82. See Richard H. McLaren, *Is Sport Losing Its Integrity?*, 21 MARQ. SPORTS. L. REV. 551, 559–60 (2011).

83. See S. REP. NO. 102-248, at 5–7 (1991); See Complaint for Declaratory and Injunctive Relief, *supra* note 76, at 3.

We must do everything we can to keep sports clean so that the fans, and especially young people, can continue to have complete confidence in the honesty of the players and the contests. Scandals in the sporting world are big news and can have a devastating effect on the outlook of our youth to whom sports figures are heroes and idols.

S. REP. NO. 102-248, at 6 (statement of Sen. Kenneth B. Keating of New York).

84. See NCAA MANUAL, *supra* note 15, §§ 10.02.1–2, 10.3.1–2 (prohibiting the placement, acceptance, or solicitation of a wager on any practice or competition, assisting in a gambling scheme, and the provision of information to individuals participating in sports wagering, even if done through an intermediary party).

D. The NCAA and Sports Wagering

Since its inception in 1906, the NCAA has framed its primary goal as the protection of student-athletes from exploitation on- and off-the-field.⁸⁵ In furtherance of this goal, the NCAA commits to fostering clean and fair competition among member schools.⁸⁶ The NCAA links this notion of competitive equity to the integrity of college sports.⁸⁷ An athlete who plays for the love of the game, who seeks “to be worthy of admiration” by winning fairly without inviting “skepticism and innuendo” upholds the integrity of the game.⁸⁸ But when surprising or even extraordinary outcomes provoke skepticism rather than admiration, suspicions that a game is rigged can overshadow good-faith performances on the playing field.⁸⁹

1. Protecting the Integrity of the Game

To maintain competitive equity, “[t]he NCAA believes sports should be appreciated for the benefits of participating or watching, not the amount of money that can be won or lost depending on the outcome of games.”⁹⁰ The NCAA cannot control whether the public gambles on the outcome of games; however, it can control how the games are played—with honesty and sportsmanship.⁹¹ In light of these principles,

85. See *About the NCAA*, NCAA (Sept. 4, 2013), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/history>. In 1905, a group of thirteen University Presidents met to discuss solutions to remedy the public’s concern about the violent nature of football and demand for reform or absolute abolishment. See *id.* Responding to their concerns, the University Presidents established an institution to govern intercollegiate athletics, thus creating the “American marriage of academics and athletics,” a framework still in use today. See JOHN U. BACON, *THREE AND OUT: RICH RODRIGUEZ AND THE MICHIGAN WOLVERINES IN THE CRUCIBLE OF COLLEGE FOOTBALL* 15 (2011).

86. See NCAA MANUAL, *supra* note 15, § 2.10 (defining the principle of competitive equity); *Enforcement*, NCAA (Nov. 12, 2012), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/enforcement/index.html>.

87. See *Enforcement*, *supra* note 86 (“The NCAA upholds that principle by enforcing membership-created rules that ensure equitable competition and protect the well-being of student-athletes at all member institutions.”).

88. Cf. McLaren, *supra* note 82, at 557.

89. *Id.* (addressing concerns about performance-enhancing drugs and their effect on the perception of player integrity); see also Slavin, *supra* note 37, at 715 (“And while we may never know if that missed shot at the buzzer was intentional, to think that it couldn’t happen would be both foolish and [naive].”).

90. *Behind the Blue Disk: Gambling on College Sports – What’s the Big Deal?*, NCAA (Oct. 15, 2010) [hereinafter *Gambling on College Sports*], available at <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Behind+the+Blue+Disk/Behind+the+Blue+Disk+-+Gambling+on+College+Sports>.

91. See NCAA MANUAL, *supra* note 15, § 10.01.1 (recognizing the “honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports”).

the NCAA implemented regulations focused specifically on holding players and coaches accountable for their unethical conduct.⁹² Pursuant to NCAA Bylaw 10.3, it is unethical for certain individuals to engage in sports wagering.⁹³ The bylaw prohibits student-athletes and school officials from “knowingly participat[ing] in sports wagering activities [and] provid[ing] information to individuals . . . concerning intercollegiate, amateur, or professional athletics competition.”⁹⁴ The NCAA defines sports wagering as:

[P]lacing, accepting or soliciting a wager (on a staff member’s or student-athlete’s own behalf or on the behalf of others) of any type with any individual or organization on any intercollegiate, amateur or professional team or contest. Examples of sports wagering include, but are not limited to, the use of a bookmaker or parlay card; Internet sports wagering; auctions in which bids are placed on teams, individuals or contests; and pools or fantasy leagues in which an entry fee is required and there is an opportunity to win a prize. . . . A wager is any agreement in which an individual or entity agrees to give up an item of value (e.g., cash, shirt, dinner) in exchange for the possibility of gaining another item of value.⁹⁵

The NCAA severely punishes any student-athlete violators by permanently rescinding their eligibility to participate in intercollegiate competition in any sport.⁹⁶ The NCAA also shares the results of sports-wagering investigations with the FBI, adding federal prosecution to the list of potential repercussions for a student-athlete’s

92. See *id.* § 10.1 (providing examples of prohibited unethical conduct).

93. *Id.* § 10.3. The NCAA defines individuals as “(a) Staff members of an institution’s athletics department; (b) Nonathletics department staff members who have responsibilities within or over the athletics department (e.g., chancellor or president, faculty athletics representative, individual to whom athletics reports); (c) Staff members of a conference office; and (d) Student-athletes.” *Id.* § 10.3(a)–(d). The NCAA extends its regulations to referees and requires background checks on referees officiating certain championship sporting events. See McLaren, *supra* note 82, at 566; *Gambling on College Sports*, *supra* note 90. Scandals involving referees illustrate the impact of such malfeasance on fans’ suspicions of unfair play and the possibility that someone besides players can affect the outcome of an athletic competition. See McLaren, *supra* note 82, at 566.

94. *Id.* § 10.3; see *Sports Wagering: Frequently Asked Questions*, NCAA, <http://www.bsubeavers.com/media/Compliance/Student%20Athlete%20Wagering%20FAQs.pdf> (last visited Sept. 4, 2013) [hereinafter *Sports Wagering FAQs*] (including disclosure of injury updates, disciplinary actions, and new plays or schemes as part of the prohibition for sharing information).

95. NCAA MANUAL, *supra* note 15, § 10.02.1 to .2.

96. See *id.* § 10.3.2 (describing different sanctions depending on the degree of involvement in sports wagering activities). The NCAA established a set of broad enforcement policies and procedures in order to accommodate for the breadth of violations and degree of severity. See *id.* §§ 19.3–19.5. The magnitude of the punishment may depend on factors like the frequency of the incident, if the incident occurs in isolation, or if there was a general blatant disregard of the NCAA’s governing rules. See *id.* § 19.01.5.

involvement in gambling.⁹⁷ Each season, the NCAA educates student-athletes on the consequences of participating, in any degree, in sports-wagering activities.⁹⁸ It stresses to student-athletes that the stigma of participating in illegal sports-wagering activities follows them after leaving college and could adversely affect job prospects and foreclose opportunities that would have otherwise been available to them.⁹⁹ Yet, underlying the threat of sports wagering to the integrity of the game is the unique threat to the NCAA's foundational ideal of amateurism.¹⁰⁰

2. Preserving the Ideal of Amateurism

The NCAA's founders designed the NCAA to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports."¹⁰¹ In furtherance of this demarcation, the NCAA forbids student-athletes from receiving benefits, monetary or non-monetary, as a result of performing in a sport.¹⁰² The NCAA stands firmly on this prohibition in spite of critics and current and former student-athletes calling for a change to the status quo.¹⁰³

The dispute over whether student-athletes should receive payment is the essence of *O'Bannon v. NCAA*, an antitrust lawsuit filed by former and current players pertaining to the licensing and use of players' names and likenesses.¹⁰⁴ In *O'Bannon*, the players claim they are entitled to compensation for the licensing and use of their names

97. See *Latest News*, NCAA (Apr. 11, 2011), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2011/April/NCAA+point+shaving+threatens+college+sports>.

98. The Committee on Sportsmanship and Ethical Conduct is responsible for "promoting sportsmanship and ethical conduct," which the NCAA described to include equitable competition and prohibition of sports wagering activities. See NCAA MANUAL, *supra* note 15, § 21.2.8.2.

99. See *Sports Wagering FAQs*, *supra* note 94. Furthermore, organized crime often funds sports wagering, rendering it a possible gateway into further exploitation. See *id.*

100. See *infra* Part I.D.2.

101. NCAA MANUAL, *supra* note 15, § 1.3.1. The NCAA devoted Article Twelve of the Division I NCAA Bylaws to defining amateurism, and listing the types of behavior and conduct that cause a student-athlete to lose his amateur status, and thus become ineligible for intercollegiate competition. See *id.* § 12.

102. See *id.* §§ 12.1.2, 12.1.2.1.5.

103. See *O'Bannon v. NCAA*, No. C 09-1967 CW, 2010 WL 445190 (N.D. Cal. Feb. 8, 2010); see also Andy Staples, *Delany: Big Ten Could De-Emphasize Athletics if O'Bannon Plaintiffs Win*, SI.COM (Mar. 19, 2013, 9:52 AM) [hereinafter Staples, *Big Ten Could De-Emphasize Athletics*], <http://sportsillustrated.cnn.com/college-football/news/20130318/big-ten-jim-delany-ncaa-obannon>.

104. See *O'Bannon*, 2010 WL 445190, *3.

and images in a college-football based video game.¹⁰⁵ While the players acknowledge that the payment may interfere with the NCAA's promotion of amateurism, they propose that the NCAA establish a trust that would pay student-athletes for the use of their images during their collegiate career, accessible upon graduation.¹⁰⁶ But neither the NCAA nor many of the athletic conferences approve of a trust, because it constitutes a performance-related payment.¹⁰⁷ From their perspective, "educational and lifetime economic benefits associated with a university education are the appropriate quid pro quo for its student-athletes."¹⁰⁸

The ideal of amateurism distinguishes the NCAA's apprehension towards sports gambling from that of professional sport leagues.¹⁰⁹ Unlike professional athletes, student-athletes may not receive any performance-related compensation.¹¹⁰ In addition to

105. See *id.* The suit, originally filed in 2009, emphasizes the common sentiment felt by players, that they should receive compensation for the universities' and the NCAA's use of their images. See *id.* In light of the *O'Bannon* case, the NCAA announced in July of 2013 its decision to not to renew a licensing contract with EA Sports for the use of the NCAA's name and logo in the NCAA Football video game. Press Release, NCAA, NCAA Will Not Renew EA Sports Contract (July 7, 2013), available at <http://www.ncaa.org/wps/wcm/connect/public/ncaa/resources/latest+news/2013/july/ncaa+will+not+renew+ea+sports+contract>.

106. See Notice of Motion and Motion by Antitrust Plaintiffs for Class Certification and Memorandum of Points and Authorities in Support Thereof, in re NCAA Student-Athlete Name & Likeness Licensing Litigation, 2012 WL 4043912 (N.D. Cal. Aug. 31, 2012) (No. 4:09-cv-1967 CW (NC)). Granting class certification with respect to the injunctive relief sought in *O'Bannon*, US District Court Judge Wilken addressed the possibility of student-athletes pursuing "group licensing deals for the use of their names, images and likenesses in videogames and game broadcasts." In re NCAA Student-Athlete Name & Likeness Licensing Litigation, No. C 09-1967 CW, 2013 WL 5979327, at *5 (N.D. Cal. Nov. 8, 2013). This procedural partial-victory for current athletes provoked speculation about an eventual trade associations or union that might represent students' interests by facilitating these collective licensing arrangements. See, e.g., Michael McCann, *Judge Partially Certifies Class Action Status in O'Bannon Suit*, SI.COM (Nov. 9, 2013, 12:41 AM), <http://sportsillustrated.cnn.com/college-basketball/news/2013/11/09/obannon-ncaa-class-action-lawsuit>. No such trade association exists; however, the certification and the speculation it triggered suggest that change to the status quo is inevitable, even if its ultimate form is unpredictable.

107. See Staples, *Big Ten Could De-Emphasize Athletics*, *supra* note 103 ("[A]ny outcome that results in athletes getting a piece of the schools' television revenue could force the schools of the Big Ten to de-emphasize athletics."); NCAA MANUAL, *supra* note 15, § 12.1.2(b) (prohibiting the "accept[ance] of pay even if such pay is to be received following completion of intercollegiate athletics participation").

108. Staples, *Big Ten Could De-Emphasize Athletics*, *supra* note 103.

109. See NCAA MANUAL, *supra* note 15, § 2.9 ("Student-athletes shall be amateurs . . . motivated primarily by education and by the physical, mental and social benefits to be derived. . . . [S]tudent-athletes should be protected from exploitation by professional and commercial enterprises.").

110. Compare *id.*, § 12.02.4 (defining professional athlete as "one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the Association"), with *id.* § 12.1.2(a)–(g) (listing the various reasons when an individual loses amateur status, including when an individual "uses his or her athletics skill (directly or indirectly) for pay in any form in that sport"). Article 15 of the NCAA manual regulates the receipt of financial aid, providing the maximum limits, the permissible types, and the terms

receiving a substantial salary for their performance,¹¹¹ professional athletes retain the opportunity to increase their incomes through endorsement deals—an opportunity not afforded to college athletes.¹¹² The financial incentive for players to participate in illegal schemes is therefore proportionally higher for college athletes than for professional athletes.¹¹³ The NCAA recognizes that “[f]inancially troubled student-athletes are viewed by organized gambling as easy marks for obtaining inside information or affecting the outcome of a game.”¹¹⁴ Thus, the NCAA and member institutions actively educate student-athletes to increase their awareness of sports-wagering activities.¹¹⁵

and conditions of awarding institutional financial aid. *See id.* § 15. The NCAA does not consider athletic scholarships as a prohibited financial benefit, allowing such aid to cover tuition and institutional fees, room and board, books, and other expenses related to attendance so long as the aid does not exceed the value of the cost of attendance. *See id.* §§ 15.1, 15.2.1 to 2.4. The NCAA even allows the combination of athletic scholarships, academic scholarships, and permitted additional financial aid so long as the total receipt of aid does not exceed the value of the cost of attendance. *See id.* § 15.1.

111. For example, in 2012 the minimum base salary for a rookie in the NFL was \$390,000. *See* DJ Gallo, *NFL Should Pay Players in Bounties*, ESPN (Mar. 5, 2012), http://espn.go.com/espn/page2/story/_/id/7647758/nfl-pay-all-players-performance-based-bounties.

112. Student-athletes may pursue endorsement deals, or even professional contracts for that matter; however, the consequence of such action is the loss of their eligibility to participate in intercollegiate competitions. *See* NCAA MANUAL, *supra* note 15, § 12.1.2. The NCAA permits the use of a student-athlete’s likeness on sports related educational materials like books and films provided that the student-athlete does not “expressly or implicitly endorse a commercial product or service.” *Id.* § 12.5.1.5(b). Due to the NCAA’s strict rules governing eligibility and amateurism, some athletes forgo their college eligibility to see immediate economic returns on their athletic ability by signing professional contracts. *See* Tim Layden, *Catch Her If You Can*, SPORTS ILLUSTRATED, June 9, 2003, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1028917/index.htm>.

113. Professional athletes obviously still have financial incentives to engage in illegal gambling activities. *See* McLaren, *supra* note 82, at 565. But, the absence of legitimate avenues for student-athletes to earn money while retaining their eligibility makes student-athletes uniquely vulnerable. For a look into the vulnerability of professional athletes, *see* *ESPN 30 for 30: Broke* (ESPN television broadcast 2012).

114. *Gambling on College Sports*, *supra* note 90. Three reasons student-athletes are easy targets include:

- (1) the money and goods that fixers promise to supply in exchange for their cooperation,
- (2) the players are invariably young, and this lack of maturity may have some part in their willingness to assume the risks entailed in illegal schemes presented to them, and
- (3) many are from modest socio-economic backgrounds and lack alternative means for earning money.

See Rychlak, *supra* note 46, at 332.

115. *See* *Gambling on College Sports*, *supra* note 90; *College Sports Betting: NCAA Official Statement*, <https://admin.xosn.com/pdf8/769641.pdf> (last visited Sept. 5, 2013). The NCAA created website, “Don’t Bet On It,” educates athletes, coaches, and staff on the risks associated with sports wagering. For example, it provides the consequences and punishments for violations with the NCAA’s ban, therefore eliminating the excuse that they did not know the rules and repercussions. *See* DON’T BET ON IT, <http://dontbetonit.org/index.aspx> (last visited Sept. 5, 2013). In addition to educational presentations during the season, the NCAA partners with the FBI to conduct

3. Understanding the Boundaries of Its Authority

The NCAA strives to promote the ideal of the student-athlete through its rule-making and enforcement regime.¹¹⁶ The NCAA's promulgation of rules and regulations derive from its "mission . . . to be an integral part of higher education and to focus on the development of [its] student-athletes."¹¹⁷ Thus, to establish uniformity across member schools, the NCAA created a Constitution and Bylaw Manual to provide a baseline for governing intercollegiate competition, student-athlete conduct, and staff conduct.¹¹⁸ When joining the NCAA, each member agrees to adhere to the manual, which means that in the realm of collegiate sports, this manual is the law.¹¹⁹ But the manual is also the NCAA's Achilles' heel because it binds only its member schools and student-athletes and not the other parties involved in sports gambling.¹²⁰

The NCAA functions as a legislative body, but it wields no authority beyond its member schools.¹²¹ It may educate the public, politicians, and legislators, but it cannot force its rules on them.¹²² Unfortunately for the NCAA, the greatest sanction it may impose is the expulsion of a member school.¹²³ Recognizing that illegal gambling is a federal offense, and its own inability to prosecute individuals and enterprises outside of its jurisdiction, the NCAA cooperates with the FBI and other law-enforcement agencies to combat unlawful gambling.¹²⁴ Similarly, the NCAA recently established a relationship

education presentations to teams competing in championship games. *See College Sports Betting, supra*.

116. *See Enforcement, supra* note 86; *About the NCAA, supra* note 85 (discussing the implementation of a divisional regime, control of television rights, and creation of the NCAA Council to deal with violations of the NCAA rules).

117. *On the Mark*, NCAA (Oct. 5, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/NCAA+President/On+the+Mark>.

118. *See NCAA MANUAL, supra* note 15.

119. *See id.* § 1.3.2 ("Member institutions shall be obligated to apply and enforce this legislation . . .").

120. *See infra* notes 121–23 and accompanying text.

121. *See NCAA v. Tarkanian*, 488 U.S. 179, 197 (1988) (noting that the NCAA enjoys no governmental powers when conducting investigations); *NCAA MANUAL, supra* note 15, §§ 5.2–5.4 (establishing the procedures for creating constitutions, operating and administrative bylaws, enforcement policies and procedures, and resolutions).

122. *See Tarkanian*, 488 U.S. at 197 ("[The NCAA] had no power to subpoena witnesses, to impose contempt sanctions, or to assert sovereign authority over any individual.").

123. *See id.*

124. *See Latest News, supra* note 97. The NCAA informs the FBI and US Attorney General advisory groups on suspicions of sports wagering and organized crime. *See id.* The NCAA engages in its investigation only after the FBI and U.S. Attorney General conclude their investigation. *See id.* This Note treats the NCAA's jurisdiction as limited to its member institutions, which includes those individuals defined in section 10.3 of the NCAA's Manual.

with Nevada gaming officials to develop “a better mutual understanding of the wagering activity and trends on NCAA contests in sports books.”¹²⁵ Although lacking binding authority beyond academia is an obvious weakness, the NCAA can implement a regime to directly protect its members from any sports-wagering scheme.¹²⁶

II. THE INFLUENCE OF SPORTS WAGERING ON THE MODERN STUDENT-ATHLETE

A. *The Potential Effect of the Expansion of Legalized Sports Wagering on the NCAA*

Although the district court’s ruling in *NCAA v. Christie* was unfavorable for states interested in legalizing sports wagering, states will not throw in the towel yet.¹²⁷ New Jersey appealed the district court’s ruling, feeling “confident that the [US Court of Appeals for the Third Circuit] will conclude that New Jersey should be treated equally with other states.”¹²⁸ The Third Circuit, however, affirmed the district court’s determination that New Jersey’s law must yield to PASPA.¹²⁹ Despite the Third Circuit’s decision, other interested states are in positions to improve on New Jersey’s strategy when preparing their own contentions against PASPA.¹³⁰ While New Jersey attacked the validity of the asymmetrical federal ban by passing an instantly preempted state law, other states may abandon a direct challenge entirely and propose bills like the Sports Gaming Opportunity Act to

125. *Id.*; see NGISC FINAL REPORT, *supra* note 1, at 3-6 (“State regulators often rely upon the casinos to maintain logs that document irregularities and to ‘self-report’ violations.”).

126. Despite its inability to create law, the NCAA operates as a rulemaking body for its members, creating committees and promulgating procedures for investigation and enforcement of infractions. See *Behind the Blue Disk: NCAA Rules Enforcement: For the Good of the Game*, NCAA (June 21, 2011), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Behind+the+Blue+Disk/NCAA+Rules+Enforcement+For+the+Good+of+the+Game> [hereinafter *For the Good of the Game*].

127. Many states besides New Jersey desire to capitalize on the lucrative sports wagering industry and they eagerly sat on the sidelines waiting to see how New Jersey’s anti-PASPA litigation strategy played out in federal court. See, e.g., Sieroty, *supra* note 6 (noting California’s consideration of a bill that will legalize sports betting).

128. Hillary Russ, *NJ to Appeal Ruling that Keeps Ban on Sports Betting*: Christie, REUTERS (Mar. 1, 2013, 7:51 PM), <http://www.reuters.com/article/2013/03/02/us-newjersey-gambling-sports-idUSBRE92100020130302>.

129. *NCAA v. Governor of New Jersey*, 730 F.3d 208, 215 (3rd Cir. 2013), *affg* *NCAA v. Christie*, 926 F. Supp. 2d. 551 (D.N.J. 2013).

130. See Waddell & Minke, *supra* note 48, at 36; see also Joe Drape, *Cash-Hungry States Eye Sports Betting, to Leagues’ Dismay*, N.Y. TIMES (Mar. 27, 2013), <http://www.nytimes.com/2013/03/28/sports/more-states-look-to-get-in-the-sports-betting-game.html> (discussing how states like Illinois and California are considering introducing bills to allow sports wagering).

amend section 3704(a) of PASPA to create a new window for states to grandfather in their desired sports-wagering schemes.¹³¹

Despite the narrow scope of the NCAA's binding authority, the NCAA still has a defense against states that choose to legalize sports gambling: prohibiting the performance of championship athletic events within the state.¹³² The NCAA's antagonism towards legalized sports wagering is most focused in its opposition to wagering on collegiate sporting events.¹³³ New Jersey insists that a legalized sports-wagering regime would not threaten the integrity of the game and that the real threat is illegal wagering.¹³⁴ New Jersey claims the Leagues can avoid any harm by policing their players and referees.¹³⁵ But New Jersey fails to recognize that "[t]he Leagues' referees and players need not actually engage in gambling or game fixing in order for fans to have an increased perception that the integrity of the game is suffering due to the expansion of legalized gambling."¹³⁶

The substantive implications of New Jersey's Sports Wagering Act seem to validate, rather than discredit, the Leagues' evaluation of risk.¹³⁷ The state's exclusion of its own teams from its allowance might reflect an effort to insulate its teams from the implicit threat of sports

131. Cf. Sport Gaming Opportunity Act of 2012, H.R. 3797, 112th Cong. (2012) (proposing an amendment to section 3704(a) that creates another window in which states could legalize sports wagering).

132. See *Sports Wagering Law Forces NCAA to Remove Championships from New Jersey*, NCAA (Oct. 12, 2012), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2012/October/Sports+wagering+law+forces+NCAA+to+remove+championships+from+New+Jersey> (removing six Division I, II, and III championship events from New Jersey pursuant to NCAA policy). The NCAA also requires men's and women's basketball event certification to ensure that the "event shall not be conducted in a venue where sports wagering on intercollegiate athletics is permitted, or on property sponsored by an establishment that permits sports wagering." NCAA MANUAL, *supra* note 15, §§ 13.18(g), 13.19(g), 13.20(g).

133. Although the NCAA's prohibition includes wagering on professional sporting events, see NCAA MANUAL, *supra* note 15, § 10.3.1, the NCAA does not prohibit Nevada or Delaware from hosting championship events.

134. See Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Complaint at 18, *NCAA v. Christie*, No. 3:12-cv-4947 (D.N.J. Dec. 21, 2012), 2012 WL 4804067 [hereinafter Plaintiffs' Memorandum].

135. *NCAA v. Christie*, No. 12-4947, 2012 WL 6698684, at *8 (D.N.J. Dec. 21, 2012). Even during the discussion of enacting PASPA, the legislators acknowledged that "[l]egalization of sports gambling would not reduce illegal sports gambling in a State." S. REP. NO. 102-248, at 7 (1991).

136. *Christie*, 2012 WL 6698684, at *8. According to a 2009 NBA Integrity Study, "[s]pecifically, 33% of NBA fans, 15% of NFL fans, 13% of MLB fans, 7% of NHL fans, 18% of NCAA Basketball fans and 15% of NCAA Football fans thought game fixing was problematic. Gambling was cited as a problem among 36% of NBA fans, 26% of NFL fans, 28% of MLB fans, 15% of NHL fans, 22% of NCAA Basketball fans and 22% of NCAA Football fans." *Id.* at 6 (citations omitted).

137. Cf. N.J. STAT. ANN. § 5:12A-1 (2012) (prohibiting the placement of wagers on any sporting event in New Jersey or involving a New Jersey college team); *supra* text accompanying notes 81–83 (discussing the Leagues' concerns).

wagering on the integrity of college sports.¹³⁸ Perhaps if a state adopted a legalized sports-wagering scheme that banned *all* collegiate sports wagering, then the NCAA would not remove championship events from the state.¹³⁹ This would be reasonable if the NCAA was only interested in discouraging states from adopting collegiate sports wagering.¹⁴⁰ But, the NCAA's refusal to allow championship games in Oregon—an exempted state—while it operated a wagering scheme limited to NFL games suggests a broader campaign.¹⁴¹ Even with a narrowly tailored allowance for a professional sporting scheme, the NCAA's campaign against sports wagering created public pressure for Oregon to repeal the legislation.¹⁴²

Whether or not federal or state legislation prohibits sports wagering after any given case or legislative session, the NCAA cannot guarantee the laws will remain in effect any more than it can expect illegal gambling to disappear entirely.¹⁴³ The NCAA cannot stop people beyond its reach from placing wagers.¹⁴⁴ The billions of dollars that US gamblers wager each year illustrate that an illegal market does not just survive, it thrives.¹⁴⁵ In short, the NCAA should not celebrate a favorable outcome in the courtroom; rather, the NCAA should anticipate future challenges to PASPA as well as persistent illegal gambling because “[a]s long as you have a prohibition you’re going to have bootleggers.”¹⁴⁶

B. The NCAA's Response to the Persistence of an Illegal Market for Sports Wagering

The key question before the NCAA is whether the legalization of sports wagering poses a *legitimate* threat to the NCAA's mission to protect and preserve the integrity of its games and the

138. See Complaint for Declaratory and Injunctive Relief, *supra* note 76, at 7.

139. Cf. N.J. STAT. ANN. § 5:12A-1 (limiting, but not banning outright, wagering on collegiate sports).

140. But see NCAA MANUAL, *supra* note 15, §§ 10.02.1–2, 10.3.1–2 (defining prohibition of sports wagering broadly); Waddell & Minke, *supra* note 48, at 36 (noting that regardless of a state's strategy, the state “should expect a well-funded and determined battle from the NCAA . . . [since it is] vehemently opposed to expansion”).

141. See Waddell & Minke, *supra* note 48, at 35.

142. See H.R. 3466-73, 73d Leg., 1st Sess. (Or. 2005); Waddell & Minke, *supra* note 48, at 35.

143. See *supra* Part I.D.3.

144. See *supra* notes 121–23 and accompanying text.

145. See *The Big Business of Illegal Gambling*, CNBC, http://www.cnbc.com/id/34039744/Crime_Inc_The_Big_Business_of_Illegal_Gambling (last visited Sept. 5, 2013).

146. *The NCAA's Black Market*, NATIONAL COLLEGE PLAYERS ASSOCIATION [hereinafter *NCAA's Black Market*], available at http://assets.usw.org/ncpa/The_NCAAs_Black_Market.pdf (last visited Sept. 5, 2013).

student-athletes.¹⁴⁷ One argument is that because illegal markets exist, legalizing sports wagering would add little, if any, harm.¹⁴⁸ This argument is flawed.¹⁴⁹ Just because the NCAA cannot feasibly rid society, or even college campuses, of all forms of illegal gambling does not mean it cannot eliminate one risk particular to collegiate sports. For example, the NCAA forbids players and coaches from engaging in sports-wagering activities; however, its limited influence prevents it from targeting outsiders who take advantage of vulnerable student-athletes.¹⁵⁰ Yet, if sports wagering is legalized, players may succumb to an illusion that their participation in it is acceptable, believing that widespread legalization displaces the NCAA's prohibition.¹⁵¹

The amount of money wagered illegally significantly exceeds legal wagers on collegiate sporting events.¹⁵² Part of this large discrepancy derives from the lack of public awareness of the legal implications of illegal sports wagering.¹⁵³ While the NCAA and member institutions expend resources to educate student-athletes on the risks of sports wagering,¹⁵⁴ many members of the general public engage in illegal sports wagering casually by participating in office pools for basketball championships or filling in squares for the Super Bowl.¹⁵⁵ Since forty-eight states authorize legalized gambling in one form or another,¹⁵⁶ the public may also find it difficult to distinguish the risks

147. See *supra* Parts I.D.1–2 (describing the basis of the NCAA's mission).

148. See Plaintiffs' Memorandum, *supra* note 134, at 18–19.

149. See *id.*

150. See NCAA MANUAL, *supra* note 15, § 10.3(a)–(d); *supra* Part I.D.3 (discussing the NCAA's limited authority).

151. Cf. Kindt, *Failure to Regulate*, *supra* note 9, at 230 (“[S]ports gambling [is] causing adolescents to become ‘the first U.S. generation in 100 years raised to believe that legalized gambling [is] an acceptable activity and [has] career opportunities.’”). In the 2012 NCAA Study, the majority of Division I male and female student-athletes surveyed agreed with the statements “most athletes in college violate NCAA rules prohibiting sports wagering” and “people can consistently make a lot of money gambling.” 2012 NCAA GAMBLING STUDY, NCAA RESEARCH (2013), available at http://fs.ncaa.org/Docs/public/pdf/ncaa_wagering_prelim_may2013.pdf. This result should be troubling to the NCAA. If student-athletes acknowledge the potential financial upside when sports gambling is unlawful, it seems like more athletes would be at risk of participating in sports-wagering activities should such activities become legal.

152. For example, during the 2000 NCAA Men's Division I Basketball Championship Tournament, popularly known as March Madness, Nevada recorded \$172.4 million dollars in legal sports wagers. See Goldstein, *supra* note 33. More impressively, however, the FBI estimates that on average more than \$2.5 billion is wagered illegally during March Madness each year. See Drape, *supra* note 130.

153. See NGISC FINAL REPORT, *supra* note 1, at 2-14.

154. See *supra* note 115 and accompanying text.

155. See *Gambling on College Sports*, *supra* note 90 (“Does the NCAA really oppose the harmless small-dollar bracket office pool for the Men's Final Four? Yes! Office pools of this nature are illegal in most states.”).

156. See NGISC FINAL REPORT, *supra* note 1, at 1-1.

associated with gambling in general, and those specifically related to sports wagering.¹⁵⁷

Relatedly, the deepening normative nature of sports wagering on college campuses, and society as a whole, poses significant problems for educators.¹⁵⁸ Despite the educational campaigns and regulations prohibiting participation in sports-wagering activities, a 2012 NCAA study reported that the percentage of male student-athletes who self-reported engaging in social gambling increased in the last decade.¹⁵⁹ Those student-athletes who self-reported engaging in sports wagering ranked NCAA presentations and NCAA educational materials as two of the least effective methods for influencing student-athletes to stop engaging in sports-wagering activities.¹⁶⁰ Even though the study suggests that the NCAA's educational efforts are less effective than desired, the NCAA should not slow down its efforts. Given the increased accessibility of student-athletes through social media, student-athletes become increasingly susceptible as targets to outsiders seeking inside information.¹⁶¹

C. The NCAA's Actions May Perpetuate the Issues it is Trying to Resolve

While the NCAA stresses the importance of maintaining its student-athletes' amateur status, many scholars critique, and some blame, its model of amateurism for the black market in collegiate sports.¹⁶² The NCAA states that “[s]tudent participation in

157. See *id.* at 2-14.

158. See NCAA RESEARCH, *supra* note 151 (noting that the majority of collegiate student-athletes believe that “sports wagering is a harmless pastime.”). Moreover, 41 percent of male and 26 percent of female student-athletes indicated their agreement with the statement that “[c]ollege coaches [believe] sports wagering [is] acceptable so long as you don’t bet on your own games.” *Id.*

159. See *id.* The survey defines three categories of gambling: social, frequent, and heavy. *Id.* Social gambling refers to gambling on one or more occasions in the past year; frequent gambling refers to gambling on one or more occasions each month during the past year; and heavy gambling refers to gambling on one or more occasions each week during the past year. *Id.* Although the percentage of males participating in social gambling increased over the last decade, the preliminary statistics illustrate that the percentage of males engaging in frequent and heavy gambling has decreased. *Id.*

160. *Id.* The top four methods ranked by male and female student-athletes as the most effective ways to influence them were: coaches, teammates, NCAA penalties, and pro-athlete presentations. *Id.* Female student-athletes listed law enforcement presentations as the fifth most effective method, whereas male student-athletes listed their parents. *Id.*

161. See *id.*

162. See NCAA's *Black Market*, *supra* note 146 (“Through the NCAA, college presidents mandate impoverished conditions for young, valuable players and throw money around to all other college sports stakeholders when those players perform well, a formula that drives the powerful black market that thrives at so many universities . . .”).

intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”¹⁶³ But, the NCAA is itself a massive commercial enterprise.¹⁶⁴ And, based on the significant expectations imposed on student-athletes, characterizing their participation as a mere hobby is, at best, misleading.¹⁶⁵ In light of the NCAA’s strict no-settlement stance in *O’Bannon*, its own actions lend support to the argument that the NCAA must protect student-athletes from itself.¹⁶⁶ Finding an appropriate solution comes down to understanding which values the NCAA prefers more: the financial stability of its student-athletes or the demarcation between professional and collegiate sports.

1. Undervaluing the Financial Vulnerability of Student-Athletes

Despite recognizing of the financial vulnerability of student-athletes, the NCAA does not accept responsibility for student-athletes’ financial position in the first place.¹⁶⁷ According to a study conducted by the National College Players Association (NCPA) and Drexel University, many college players live below the federal poverty line.¹⁶⁸ The study compared players’ scholarships to a player’s cost of living and concluded that most athletic scholarships failed to cover the essentials like food and clothing.¹⁶⁹ Student-athletes who come from lower-income families may be more financially vulnerable, and thus more at risk, because they lack the funds to cover the

163. NCAA MANUAL, *supra* note 15, § 2.9.

164. See *College Athletics Revenues*, *supra* note 14 (listing the 2008 revenues of Division I athletic departments); *infra* notes 182–86 and accompanying text.

165. See *infra* notes 176–77 and accompanying text (discussing student-athletes’ eligibility requirements, class obligations, and team schedules).

166. See discussion *infra* Part II.1.2.

167. Cf. BACON, *supra* note 85, at 350 (pointing out the argument that the NCAA and member institutions’ provisions of athletic scholarships to student-athletes allow some student-athletes to continue their education past high school when they would not otherwise have the means to do so).

168. See Ramogi Huma & Ellen Staurowsky, *Study: College Athletes Worth 6 Figures, Live Below Federal Poverty Line*, NAT’L COLLEGE PLAYERS ASS’N, http://www.ncpanow.org/releases_advisories?id=0015 (last visited Feb. 11, 2013); Sheryl Nance-Nash, *NCAA Rules Trap Many College Athletes in Poverty*, DAILY FINANCE (Sept. 13, 2011, 4:00 PM), http://m.aol.com/dailyfinance/default/articleStory.do?category=main&url=http://www.dailyfinance.com/2011/09/13/ncaa-rules-trap-many-college-athletes-in-poverty/&cid=dsf_df_news.

169. See *NCAA’s Black Market*, *supra* note 146. Scholarships generally cover tuition, room, board, and books, but do not cover incidents like the cost of living (i.e. phone bills, travel expenses, groceries, etc.). See Tom Farrey, *NCAA Might Face Damages in Hundreds of Millions*, ESPN, <http://sports.espn.go.com/ncaa/news/story?id=2337810> (last updated Feb. 21, 2006, 3:03 PM). The scholarship package generally amounts to \$2,500 per year less than the actual cost of attending the university. See *id.* Over the course of four years, the small shortfall amounts to \$10,000, which the players must account for somewhere. See *id.*

difference between their scholarships and living expenses, and their student-athlete status deprives them of the opportunity to earn those funds legally.¹⁷⁰ Because of the strict training and studying schedules student-athletes must follow, they have little time for paid work.¹⁷¹ Although some student-athletes may receive additional financial aid, others must find creative ways to compensate for a scholarship's shortfall.¹⁷² For instance, some take on credit card debt, while others resort to criminal activity, like gambling, to cover their debts.¹⁷³

The NCAA plays a large role in student-athletes' financial statuses, as its rules govern the amount of athletic-based financial aid student-athletes may receive and limit their ability to receive funding while competing in collegiate sports.¹⁷⁴ The NCAA strictly regulates student-athletes' ability to receive money and benefits, further complicating their efforts to cover the shortfall of their scholarships.¹⁷⁵ These rules and restrictive schedules limit student-athletes in their pursuit of employment opportunities during the academic year.¹⁷⁶ Although the NCAA does not directly prohibit student-athletes from seeking employment, often it comes down to a matter of time—if

170. See Lawrence M. Kahn, *The Economics of College Sports: Cartel Behavior vs. Amateurism*, (Forschungsinstitut zur Zukunft der Arbeit Institute for the Study of Labor (IZA), Discussion Paper No. 2186) (June 2006), available at <http://ftp.iza.org/dp2186.pdf> (“[T]he widespread incidence of under the table payments for top college athletes suggests that total allowable direct compensation plus the value of training and exposure are less than these players’ [marginal revenue products].”); see Farrey, *supra* note 169.

171. Cf. BACON, *supra* note 85, at 347–60 (detailing the daily schedule of a student athlete); *infra* notes 176–77 and accompanying text.

172. See Rychlak, *supra* note 46, at 332 (positing reasons why student-athletes may engage in sports wagering, which includes “lack[ing] alternative means for earning money”). Student-athletes may receive financial aid beyond their athletic scholarships in the form of certain exempted government grants, aid from parents or legal guardians, or aid from an established and continuing program so long as the aid is unrelated to athletic ability and does not exceed the cost of attendance. *NCAA Manual*, *supra* note 15, §§ 15.1, 15.2.5 to 15.2.6. However, there are limitations on a student-athlete’s ability to take out a loan to cover the gap. *Id.* §§ 16.11.1.2 to 16.11.1.3.

173. See, e.g., Farrey, *supra* note 169 (“As a UCLA linebacker in the late 1990s, Ramogi Huma left college after four years with \$6,000 in credit card debt.”).

174. Compare *Behind the Blue Disk: How Do Athletic Scholarships Work?*, NCAA (June 11, 2011), available at <http://www.ncaa.org/wps/wcm/connect/public/ncaa/pdfs/bluedisks/nov+2012/ncaa+athletics+scholarships> (“The average value of a full scholarship at an in-state, public school is \$15,000 a year. For an out-of-state public school, the average value is \$25,000 a year. Full scholarships at private schools average \$35,000 a year.”), with *NCAA MANUAL*, *supra* note 15, § 12.1.2 (describing the types of non-permissible financial benefits).

175. See *NCAA MANUAL*, *supra* note 15, § 12.1.2.

176. See Kahn, *supra* note 170 (“According to NCAA rules, athletes are limited to receiving a scholarship and stipend, supplemented by up to \$2,000 of earnings from a job during the school year.”).

student-athletes are students first and athletes second, when do they have time to be employees?¹⁷⁷

Additionally, the NCAA forbids student-athletes from receiving any external economic benefits.¹⁷⁸ External benefits are not limited to payments for performance; rather, the NCAA has gone so far as to include receipts of groceries and airline tickets from neighbors as violations of NCAA rules.¹⁷⁹ The lack of legitimate avenues open to student-athletes in need of money may lead them to participate in sports wagering as a method of last resort.¹⁸⁰ In this respect, the NCAA's rules—rules designed to protect student-athletes—actually make student-athletes vulnerable. People beyond the NCAA's reach will reliably exploit that vulnerability, drawing relatively immature student-athletes into illegal schemes that they are ill-equipped to resist with risks that they may not fully comprehend.¹⁸¹

2. Perception that the NCAA Exploits Student-Athletes

In light of the NCAA's and its conferences' television contracts, some question how NCAA schools receive millions of dollars in profit,

177. The NCAA states that it designs rules governing playing and practice time to minimize "interference with [student-athletes'] opportunities for acquiring a quality education in a manner consistent with that afforded the general student body." NCAA MANUAL, *supra* note 15, § 2.14. But, the general student body possesses something that the student-athletes do not—time. For a complete description of the requirements of student-athletes during and outside of playing season, see NCAA MANUAL, *supra* note 15, § 17. To be eligible to practice, student-athletes must be enrolled as a full-time student pursuing a degree. *Id.* § 14.1.7.1. To be eligible to participate in competitions, student-athletes must be enrolled as a full-time student *and* the program must not be less than twelve credit hours. *Id.* § 14.1.7.2. During the season, the NCAA allows member institutions to require practice time of a maximum of four hours a day, and twenty hours a week. *Id.* § 17.1.6. Therefore between the twelve hours of class time (not including time allotted for studying), twenty hours of practice time (not including compliance or academic meetings), and travel time if the competition is away, there is little time remaining for student-athletes to seek employment. *E.g.* BACON, *supra* note 85, at 347–60.

178. See NCAA MANUAL, *supra* note 15, § 16.11.2. However, the NCAA makes exceptions for participation and championship awards available to student-athletes. See *id.* at fig.16-1. For example, underclass student-athletes who win their conference championships and NCAA championships have the opportunity to receive a combined participation and championship award of \$1,715 from their school and NCAA. See *id.*

179. See, *e.g.*, *Boise State WR Violates NCAA Rules*, ASSOCIATED PRESS, <http://msn.foxsports.com/collegefootball/story/boise-state-wr-gerald-boldewijn-to-miss-4-games-for-ncaa-violation-080312> (updated Aug. 4, 2012, 12:08 AM) (describing suspension for accepting financial assistance from host family to purchase flight to visit his family for the holiday).

180. Cf. Rychlak, *supra* note 46, at 332 (noting that a student-athlete's inability to find other avenues to earn money makes her susceptible to engaging in sports wagering); *supra* notes 176–79 and accompanying text (discussing the lack of time to hold down a job during the season, the salary limitations if a student-athlete finds a job, and the restrictions placed on receiving any financial benefit, including anonymous gifts).

181. See Rychlak, *supra* note 46, at 332.

pay their coaches high salaries, but pay players nothing.¹⁸² In many instances, student-athletes scrounge for pennies while the NCAA records millions of dollars in media revenue.¹⁸³ Recently, the NCAA signed television contracts with CBS valued at over \$10 billion.¹⁸⁴ This \$10 billion figure does not even include the millions of dollars of revenue from the television contracts the NCAA's individual conferences signed,¹⁸⁵ which is estimated at \$1.4 billion for the 2013–14 season alone.¹⁸⁶

The juxtaposition of scholarship shortfalls with the billions of dollars generated by the NCAA and its member schools through commercial and broadcasting ventures triggers allegations of student-athlete exploitation.¹⁸⁷ Exploitation through the use and licensing of players names and likenesses is the heart of the plaintiffs' complaint in *O'Bannon*.¹⁸⁸ Although the case against the NCAA is ongoing, the NCAA's co-defendant, EA Sports, reached a

182. See Craig Harris, *BCS Brings in Big Money, But Is Under Scrutiny for Spending*, USA TODAY (Sept. 27, 2011), <http://www.usatoday.com/sports/college/football/story/2011-09-27/bcs-spending-investigation-arizona-republic/50567498/1>; Scott Mayerowitz, *Millionaire Coaches, Billion-Dollar TV Contracts and Zip for Players*, ABC NEWS (Apr. 2, 2007), <http://abcnews.go.com/Business/story?id=3000177&page=1>.

183. Unfortunately, this is a common pattern. For example, the Fab Five, a nickname given to five University of Michigan basketball players during the early 1990s, caught the national media's attention. "Fans of all races and demographics spent millions of dollars on Michigan jerseys, shorts and the like, trying to capture a tiny slice of the group's mystique." Thomas Neumann, *Michigan's Fab Five in Their Own Words*, ESPN (Mar. 11, 2011), http://sports.espn.go.com/espn/page2/story?page=neumann/110311_fab_five_documentary&sport=Cat=ncb. The University of Michigan profited from marketing the Fab Five, but the players received no share of the revenue, and often times could not even afford to buy hamburgers at McDonald's. See Dan Wetzel, *Chris Webber Deserves Apology from Michigan, NCAA for Disassociation Treatment*, YAHOO (May 8, 2013), <http://sports.yahoo.com/news/ncaab-ncaa-michigan-should-be-apologizing-to-chris-webber-for--scarlet-letter--treatment-210316392.html>.

184. Steve Berkowitz, *Parts of NCAA's TV Contract with CBS, Turner Go Public*, USA TODAY SPORTS (Oct. 16, 2012, 8:04 PM), <http://www.usatoday.com/story/sports/ncaab/2012/10/16/ncaa-tournament-turner-cbs-contract/1637179>.

185. For a breakdown of the conference television deals, see Chris Smith, *The Most Valuable Conferences in College Sports*, FORBES.COM (Jan. 16, 2013, 10:57 AM), <http://www.forbes.com/sites/chris-smith/2013/01/16/the-most-valuable-conferences-in-college-sports>. The SEC's deal with CBS and ESPN is worth around \$205 million per year, but the Big Ten conference is currently the holder of the highest paid television contract, valued at \$38 million per year more than the SEC's contract. See *id.* The Big 12 and ACC conferences signed contracts that will pay \$17 million and \$20 million per member school respectively. See *id.*

186. See *id.* ("The five most valuable conferences are set to collect over \$1.4 billion this year from bowls, tournaments and television; the bottom five . . . have racked up a measly \$175 million from the same sources.")

187. See, e.g., *O'Bannon v. NCAA*, No. C 09-1967 CW, 2010 WL 445190 (N.D. Cal. Feb. 8, 2010).

188. See *id.*

\$40 million settlement.¹⁸⁹ Despite the NCAA's unwillingness to settle the dispute over players' access to the television revenues, EA Sports' settlement brings the issue into the spotlight.¹⁹⁰ Can the named current players retain their amateur status and eligibility if settlement money is placed in a trust?¹⁹¹

Aside from the NCAA's immediate concerns with respect to the establishment of a trust for the current players named in *O'Bannon*, the implications of class certification are far reaching.¹⁹² Given the partial grant of certification, the NCAA remains open to liability, with the issue of how to pay players any potential damages without jeopardizing their amateur status at center court.¹⁹³ But certification coupled with a loss for the plaintiffs would indirectly contribute to student-athletes' financial vulnerability, as it would foreclose another avenue of relief through which student-athletes may lessen the burden of their scholarship deficiencies.¹⁹⁴ In either case, the aftermath of *O'Bannon* will significantly impact whether the NCAA must reconsider its definition of amateurism.

III. A CALL FOR INSTITUTIONAL REFORM

During the century of the NCAA's existence, the public witnessed significant rule changes to enhance player safety, growth in the number of sports and scholarships member schools offer, and the commercialization of college sporting events.¹⁹⁵ Despite these adaptations to evolving societal norms, one thing remained constant—the NCAA's definition of amateurism.¹⁹⁶ But the emergence of a culture that accepts sports wagering, its implication on the

189. See Chris Fuhrmeister, *\$40 Million EA Sports, CLC Settlement Could Mean a Couple Hundred Per Player*, SBINATION.COM (Sept. 27, 2013, 1:41 PM), <http://www.sbnation.com/college-football/2013/9/27/4777412/ea-sports-ncaa-players-settlement-40-million>.

190. See *id.* The NCAA views any payment as amoral and in violation of the principle of amateurism, so it seems unlikely that it will choose to forgo litigation and willingly establish a trust without a fight. See *id.*

191. See *id.* ("The NCAA hasn't said whether or not it will allow current players to accept money from the settlement. After all, that would compromise their amateur status, which really illustrates the point of how dysfunctional the current structure of college athletics is.")

192. See, e.g., Andy Staples, *Ed O'Bannon v. the NCAA: A Complete Case Primer*, SI.COM (Apr. 2, 2013, 12:17 PM), <http://sportsillustrated.cnn.com/college-football/news/20130402/ed-obannon-ncaa-case-primer> (discussing what may happen if the judge grants certification and if the NCAA settles the case).

193. See *id.*

194. Cf. *supra* Part II.C.1 (addressing the shortfall in athletic-based scholarships).

195. See, e.g., BACON, *supra* note 85, at 19–22, 349–50 (providing examples of such changes such as the legalization of the forward pass in football to prevent collisions and the increase in cost of tuition and value of scholarships).

196. See *supra* Part I.D.2 (discussing the NCAA's emphasis on the importance of preserving of amateurism).

vulnerability of student-athletes, and the deepening conversation about player compensation through *O'Bannon*, suggests that the NCAA's conception of amateurism must now adapt.¹⁹⁷

The NCAA's main threat is not the *legalization* of sports wagering but rather sports wagering generally.¹⁹⁸ Whether it is legal or illegal, sports wagering threatens the integrity of collegiate athletics.¹⁹⁹ While the degree of the risk may change depending on the legality of gambling involved, the susceptibility of student-athletes' involvement in such schemes remains two-fold—as targets of people beyond the NCAA's reach and as active participants.²⁰⁰

In light of the NCAA's binding authority over member schools and criticisms that it exploits student-athletes, the NCAA is not only the cause, but also the solution to its problems.²⁰¹ Rather than continuing to invest resources in an attempt to enjoin the legalization of sports wagering, the NCAA should concentrate on improving the welfare of its student-athletes by refining its antiquated rules and procedures.²⁰² Focusing specifically on financial vulnerability enables the NCAA to mitigate the threats sports wagering poses to student-athletes. Adopting a reasonable stipend to supplement athletic scholarships would allow the NCAA to counter these threats without abandoning its ideal of amateurism.²⁰³

A. Refocus the Definition of Amateurism

Since a student-athlete's financial status contributes to her vulnerability, arguably, improving student-athletes' financial stability

197. See *infra* Part III.A (proposing a relaxation on the NCAA's definition of amateurism).

198. See Udovicic, *supra* note 31, at 403 ("Sports gambling itself might not be evil, but when the integrity of the sporting contests, that so many enjoy is questioned, something should be done.").

199. In the Senate Report, the legislators acknowledged:

[I]llegal entrepreneurs can always "outmarket" their legitimate counterparts, offering credit, better odds, higher payout, and . . . tax-free winnings. For this reason, legalized sports gambling would likely draw new recruits to illegal gambling. As Francis T. Vincent, Jr., the commissioner of baseball, testified, "once the moral status of sports betting has been redefined by legalization, . . . many new gamblers will be created, some of whom inevitably will seek to move beyond lotteries to wagers with higher stakes and more serious consequences."

S. REP. NO. 102-248, at 7 (1991).

200. See *supra* Parts II.C.1–2.

201. See *supra* Parts II.B, II.C.1.

202. Even though the NCAA and professional leagues succeeded in enjoining New Jersey's enforcement of the Sports Wagering Act, the battle is not over as many states and private interests are attracted to the potential economic benefits associated with the repeal of PASPA. See *supra* note 130 and accompanying text. Likewise, illegal gambling continues to exist despite federal regulation. See *supra* notes 1–2 and accompanying text.

203. See *infra* Part III.B.

will make them less vulnerable.²⁰⁴ But the NCAA's rules so completely inscribe student-athletes that improving their financial statuses requires affirmative action by the NCAA to change those rules.²⁰⁵ Since the NCAA holds the authority to amend and create new rules and regulations, no external barrier prevents the NCAA from allowing member schools to increase the funds available to student-athletes during their academic careers.²⁰⁶ But, the NCAA ties its own hands through its strict enforcement of an outdated model of amateurism that ill-serves many student-athletes.²⁰⁷

Publicly, the NCAA champions the ideal that student-athletes be scholars first, athletes second.²⁰⁸ This ideal embraces students from varying socio-economic backgrounds who spend their day studying, practicing, and competing for the love of the game, not the prospect of making money.²⁰⁹ It exists separate and distinct from the rigid definition and continued eligibility requirements the NCAA describes in its bylaws.²¹⁰ The NCAA fears that adding money to the equation will jeopardize the innocence and honesty associated with this ideal, blurring the line between professional and collegiate athletics.²¹¹

The NCAA, its member schools, and their commercial partners already crossed that line by aggressively commercializing college athletics.²¹² The lingering question in *O'Bannon* on how to allocate any potential settlement money without jeopardizing student-athletes' eligibility, further implies that the NCAA should relax its definition by de-emphasizing its demarcation of professional and collegiate athletics.²¹³ In redefining amateurism, the NCAA should focus on solely reflecting the ideal of a student-athlete—an ideal that can exist with controlled payments to student-athletes.

204. See *supra* Part II.C.1.

205. See, e.g., NCAA MANUAL, *supra* note 15, §§ 12, 16 (regulating forms of “pay” student-athletes may receive).

206. See *id.* § 5.3.

207. See *id.* § 12.01.2.

208. See *id.* §1.3.1.

209. Cf. *supra* text accompanying note 88 (describing how a student-athlete upholds the integrity of the game).

210. Compare NCAA MANUAL, *supra* note 15, § 2.9 (“Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived.”), with *id.* § 12.01.2 (“The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports.”).

211. See *supra* notes 108–09 and accompanying text.

212. See NCAA's *Black Market*, *supra* note 146 (quoting former NBA star Charles Barkley, “How in the world can they call it amateur if the pay \$11 million to broadcast the NCAA Tournament?”).

213. See, e.g., Fuhrmeister, *supra* note 189.

B. Close the Gap: Create a Stipend as a Supplement to Athletic Scholarships

The NCAA posits that compensating student-athletes for their performance in sporting events is superfluous because student-athletes receive the benefits of a college education in exchange for their participation.²¹⁴ But the \$40 million settlement in *O'Bannon* forces the NCAA and member schools to confront the reality that they may not be able to dodge distributing some of the revenue generated from commercializing collegiate sports to student-athletes.²¹⁵ In light of this reality check, the NCAA should balance any potential equitable solutions for reallocating revenue to student-athletes with its mission to promote the ideal of the student-athlete.²¹⁶

In theory, the plaintiffs' proposition in *O'Bannon* for the establishment of a trust conditional upon graduation enables the NCAA to maintain its stance that collegiate athletes should not be paid for their performance while participating in intercollegiate competition.²¹⁷ Pragmatically, however, the implementation of a trust and the condition that student-athletes must graduate in order to access the trust provides only future financial security—and then only for the student-athletes who actually graduate.²¹⁸ And what about student-athletes who leave school early, forgoing graduation, because of financial pressure to pursue more lucrative professional careers?²¹⁹

214. See, e.g., Staples, *Big Ten Could De-Emphasize Athletics*, *supra* note 103.

215. See, e.g., Fuhrmeister, *supra* note 189.

216. See *NCAA's Black Market*, *supra* note 146 (quoting NCAA president that "to protect student-athlete success, there must be substantive change to the enterprise").

217. See NCAA MANUAL, *supra* note 15, § 16; *supra* notes 106–08 and accompanying text.

218. See Notice of Motion and Motion by Antitrust Plaintiffs for Class Certification and Memorandum of Points and Authorities in Support Thereof, in re NCAA Student-Athlete Name & Likeness Licensing Litigation, 2012 WL 4043912 (N.D. Cal. Aug. 31, 2012) (No. 4:09-cv-1967 CW (NC)).

219. This touches upon a third obstacle: Which athletes should benefit? *Cf.* In re NCAA Student-Athlete Name & Likeness Licensing Litigation, No. C 09-1967 CW, 2013 WL 5979327, at *8-10 (N.D. Cal. Nov. 8, 2013) (explaining manageability issues stemming from uncertainties with respect to which former student-athletes would have benefited from group licensing). For example, if the majority of the revenue comes from the licensing of a basketball player's image and likeness, should that revenue only be directed toward trust funds for that specific basketball player, all basketball players at that institution, or all student-athletes regardless of their sport? Judge Wilken addressed a related concern in her partial denial of class certification in *O'Bannon*. *Id.*; see Steve Berkowitz, *Judge Allows Challenge of Amateurism Rules*, USA TODAY SPORTS (Nov. 8, 2013, 12:30 AM), <http://www.usatoday.com/story/sports/college/2013/11/08/ncaa-class-action-lawsuit-obannon-amateurism/3479501>. Judge Wilken ruled that the plaintiffs can challenge the NCAA's restrictions on player benefits, but denied class certification for the entitlement of damages from the NCAA's improper use of licensing player images and likenesses. In re NCAA Student-Athlete Name & Likeness Licensing Litigation, No. C 09-1967 CW, 2013 WL 5979327, at *10 (N.D. Cal. Nov. 8, 2013) Judge Wilken's decision prompted discussion about the possibility of creating trade associations responsible for entering into licensing deals for student-athletes, provided that any

Generally, the student-athletes leaving to pursue professional careers are the marquee players who generate the lion's share of revenue for their respective sports—the revenue that the NCAA would be required to allocate to the trusts.²²⁰ Thus, establishing a trust neither provides an immediate remedy for the shortfall in scholarships nor improves a student-athlete's ability to cover her necessary living expenses.²²¹

Instead, the NCAA should create a stipend to supplement the athletic scholarships to remedy the immediate problem of a gap between scholarships and living expenses, thereby reducing the financial vulnerability of student-athletes while participating in college athletics. Unlike the trust, a stipend would benefit any student-athlete while she competes at the collegiate level, thus eliminating the distinction between student-athletes who graduate and those who leave early.²²² In another respect, the stipend would offset student-athletes' inability to balance school and practice with work.²²³ The expectations of student-athletes are significant—they must enroll in at least twelve credit hours a semester, perform well in the classroom, practice twenty hours per week, and attend weekly compliance and academic meetings.²²⁴ Once a student-athlete commits time to studying, eating, and sleeping, so little time remains that one cannot expect a student-athlete to hold down a job.²²⁵

The NCAA owes a duty to student-athletes to protect their well-being and promote the importance of education.²²⁶ Creating a stipend would help the NCAA fulfill that duty because it would minimize the distractions student-athletes face relating to their financial burdens.²²⁷ With the financial burden relieved, a student-athlete could compete fairly—on the field and in the classroom—with less temptation to engage in sports wagering and less

profits from such deals would be dispersed equally among all players. See McCann, *supra* note 106. While exploring the inequities of this obstacle is beyond the scope of this Note, the discussion of trade associations for licensing deals suggests the ruling in *O'Bannon* will dramatically affect the landscape of college athletics and demand a fundamental change to the NCAA's concept of amateurism.

220. See, e.g., BACON, *supra* note 85, at 350 ("Only a few, like Denard Robinson[, former quarterback for the University of Michigan,] make more money for their school than their school spends on them.").

221. See *supra* notes 218–20 and accompanying text.

222. Cf. *supra* notes 218–21 and accompanying text (discussing certain disadvantages of establishing a trust).

223. See *supra* notes 176–77 and accompanying text.

224. See *supra* note 177 and accompanying text.

225. See, e.g., BACON, *supra* note 85, at 347–60 (following the day in the life of a Division I quarterback).

226. See NCAA MANUAL, *supra* note 15, § 1.3.1.

227. Student-athletes could focus on studying and competing, rather than worrying about how they will cover their expenses. See, e.g., Kahn, *supra* note 170.

vulnerability to bad actors beyond the NCAA's reach.²²⁸ By limiting the external burdens on student-athletes, a stipend puts student-athletes in a better position to exemplify the modern ideal at the heart of NCAA athletics: students first, athletes second.²²⁹

One factor weighing against a stipend is the uncertainty of the source of the money to fund the stipend. Schools with larger athletic programs may be able to afford an increase in the scholarship amounts; however, this would put schools with smaller, less flexible budgets at a disadvantage.²³⁰ This is where the legalization of sports wagering could actually benefit the NCAA.²³¹ If—or when—states begin to legalize sports-wagering schemes, the NCAA should use its influence over state legislatures to invest a portion of the revenue in funds supporting intercollegiate competition.²³² This would increase the amount of money available to each member institution within the state operating a legal sports-wagering scheme, which could then fund the stipends.²³³ Similarly, the public may react positively if it understands that the distribution of sports-gambling revenue prioritizes higher education and intercollegiate athletic purposes.²³⁴ The NCAA would preserve the fans' respect, and thus the integrity of the game.

C. Increase Oversight Function by Creating Partnerships

Although relaxing its standard governing amateurism and creating a stipend would reduce the risk that student-athletes will resort to sports-wagering activities to cover the costs of attending college, it would not eliminate the risk entirely.²³⁵ It may reduce the risk to those that “succumb to financial pressures,” but there are some student-athletes who either “break NCAA rules without knowing it” or

228. Cf. Rychlak, *supra* note 46, at 323 (providing reasons behind student-athletes' participation in sports wagering).

229. See *supra* text accompanying note 208.

230. See Kahn, *supra* note 170.

231. But see *supra* Part I.D.1 (discussing the risk of sports wagering to the integrity of the game).

232. The impact of the NCAA's influence over state legislatures assumes the NCAA will experience the same success as when it employed the mechanism of withholding NCAA championships from Oregon and New Jersey. See *supra* notes 132, 141–42 and accompanying text.

233. For example, if New Jersey expects to generate an additional \$225 million a year in revenue, then a portion of that amount would significantly benefit the member institutions in New Jersey. See Mondics, *supra* note 64.

234. See, e.g., Steve Brandon, *Sports Action Game Off Slowly as State Takes First Football Bets*, OREGONIAN (Sept. 7, 1989), <http://archive.is/T0MpS> (“[An Oregon constituent] said he liked knowing that 34 percent of the Sports Action wagering [went] for athletics and scholarships at Oregon colleges and universities” while Oregon operated the Sports Action gambling scheme.).

235. See Farrey, *supra* note 169 (suggesting student-athletes may face substantial credit card debts after graduating).

simply do not believe sports wagering is a big deal.²³⁶ Thus, the NCAA should prepare to address the subsistence of sports wagering and the risks it imposes on student-athletes by forming partnerships with other administrative institutions.²³⁷

To address its lack of binding authority over non-members, the NCAA can increase oversight of sports wagering by further developing its relationship with gaming commissions and the FBI.²³⁸ Gaming commissions, the FBI, and the NCAA share a desire for two things: clean sporting events and an end to illegal gambling.²³⁹ By engaging gaming commissions and the FBI, the NCAA should take advantage of their resources and become aware of any irregularities in wagering schemes.²⁴⁰ It is a mutually beneficial relationship—the NCAA offers additional oversight for the FBI in exchange for use of resources not otherwise available to it.²⁴¹ While the NCAA has taken a step in the right direction by reaching out to the Nevada Betting Commission, it should be prepared to reach out to any state if there is a change in the sports-wagering status quo.²⁴²

But, in order for the NCAA to uphold its end of the exchange, it must first strike a balance between securing the financial stability of its student-athletes and maintaining its current definition of amateurism. That determination requires the NCAA to conduct an internal audit of its antiquated rules and regulations to see which rules best fit modern times.²⁴³

236. See *NCAA's Black Market*, *supra* note 146.

237. *E.g. College Sports Betting*, *supra* note 115.

238. Although the NCAA currently partners with the FBI to conduct educational presentations during the men's and women's NCAA national championship basketball tournament, it would be beneficial to extend their partnership beyond this context in order to take advantage of the FBI's resources. *See id.*

239. *See, e.g., United States v. Burke*, 700 F.2d 70 (1983) (providing an example of the FBI's efforts to stop sports bribery); *Gambling on College Sports*, *supra* note 90 (“[T]he NCAA and Las Vegas sports wagering officials work closely together to identify instances in which the integrity of college sports may threatened”).

240. *See Gambling on College Sports*, *supra* note 90.

241. *See id.* The commissions want to maintain the legitimacy of their sports wagering schemes because the exposure of scandals could damage the legal gambling industry and the NCAA wants to utilize the commissions' expansive resources that are otherwise unavailable to the NCAA. *See Latest News*, *supra* note 97; NGISC FINAL REPORT, *supra* note 1, at 3-6.

242. *See Latest News*, *supra* note 97; NGISC FINAL REPORT, *supra* note 1, at 3-6.

243. Recently, the NCAA began the process of internal reform by revamping its enforcement structure, creating a four-tier hierarchy, designed to assist investigations of infractions, enhance coach accountability, and emphasize a culture of “shared responsibility for upholding the values of intercollegiate athletics.” Gary Brown, *Board Adopts Tougher, More Efficient Enforcement Program*, NCAA (Oct. 30, 2012), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2012/October/Board+adopts+tougher+more+efficient+enforcement+program>.

IV. CONCLUSION

Although New Jersey's challenge to PASPA failed on its merits, it succeeded in generating criticism of PASPA's validity and modern applicability. So long as PASPA remains the law, states will continue to explore ways to gain access into the exclusive, lucrative sports-wagering market. Moreover, the persistence of illegal wagering suggests that the NCAA should adopt a proactive strategy that focuses on how to persevere in an emerging culture of sports wagering. Recognizing the connection between its enforcement of rigid rules and regulations and the vulnerability of student-athletes, the NCAA should conduct an internal reform to lessen student-athlete exposure to any threats related to sports wagering. The NCAA should utilize its quasi-legislative authority to redefine amateurism to focus on the ideal of the student-athlete, eliminating any distinction based on compensation, and establish a stipend to reduce the shortfall in scholarship coverage. By doing so, the NCAA can equip itself to tackle the issue of an emerging culture of sports wagering head on.

*Caitlin D. Buckstaff**

* J.D. Candidate, Vanderbilt Law School, 2014; B.A., University of Michigan, 2011. The Author would like to thank her family and friends for their patience, enthusiasm, and support through the entire process. Lastly, the Author would like to thank the editors and staff of the VANDERBILT JOURNAL OF ENTERTAINMENT & TECHNOLOGY LAW for their hard work and critical input in the publication of this Note.