



College Athletes' Rights & Empowerment  
Faculty Coalition

**College Sport Reform Calls for a Focus on College Athletes' Rights<sup>1</sup>**

In the 2013 documentary, *Schooled: The Price of College Sport*, author Taylor Branch said before an audience of athletics administrators that he did not doubt that people care about college athletes. Addressing the issue of reform, however, Branch said, "...if you care about somebody, deal first with their rights". Otherwise, "everything else is an adjustment".

Substantive and meaningful change in the business practices that are used to run the industry of college sport are needed. We argue that any discussion regarding college sport reform must begin with a focus on college athletes' rights. We also suggest that efforts to reform college sport warrant new approaches that avoid tinkering with the existing structure which has proven to be exploitative. Continued work on a failed system merely perpetuates the underlying problems (Karcher, 2012; Otto, 2014; Staurowsky, 2014a, 2014b, 2014c, 2015a, 2015b; Southall & Staurowsky, 2014; Staurowsky & Southall, 2015).

Some have argued that genuine reform is complex, it will takes years of study, billions of dollars, and protracted implementation plans. We argue there has been more than ample time to study these issues and that the historical facts offer a clear path to move forward. These issues will be resolved when college athletes in the sports of FBS football and NCAA Division I basketball, as U.S. citizens, are recognized for their labor, are compensated appropriately, are afforded appropriate medical coverage, are assured safe work environments, are offered access to a legitimate education, and are treated with the dignity and respect they deserve.

There simply is no moral or ethical foundation that supports permitting the sellers of the products of FBS Football and D-1 Men's Basketball to enrich themselves with multi-million dollar salaries, via *conspiratorial* and *unilateral* compensation restraints on the labor who generate the profits. Indeed, college sport is the only industry in our country that operates in this unjust and fundamentally unfair manner (Karcher, 2012; Otto, 2014; Staurowsky, 2015a).

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## **Recognizing the College Sport Labor Force Will Not Impede Their Academic Success**

Contrary to concerns expressed by those who seek to maintain the existing business model of college sport, acknowledging that college football and men's basketball players are employees will not have a detrimental impact on their educational interests. Denying employee status to these athletes serves the industry, not the athletes. The systemic limitations on their voice in the workplace prevent athletes from proposing salutary changes for the industry and, at the same time, impede their academic success.

### **The College Sport Workplace: Not All College Athletes Are Alike**

College sport officials prefer for public policy makers and average Americans to believe that all college athletes are alike. However, an Ohio State or Oregon football player who competed in a national championship game that draws the largest viewing audience in cable television history (33.4 million) or player on the court during the NCAA Division I men's basketball March Madness® semi-finals that garnered an audience of 41.7 million, does not lead the same kind of life as all other college athletes (Exener, 2015; NCAA Men's Basketball, 2015).<sup>2</sup> These performers generate revenue not just for the college sport industry but also support a number of other industries, including gambling, sporting goods and apparel, television, and tourism. During the 2015 NCAA men's basketball tournament, the American Gambling Association estimated that 70 million brackets were filled among 40 million individuals. Gambling action on teams participating in the tournament were projected to be as high as \$9 billion (more than double what it was for the NFL Super Bowl) (Marino, 2015). That kind of gambling interest drives viewership for TNT and CBS (March Madness broadcasters), who were able to negotiate \$1.1 billion in advertising. The economic impact of hosting the Men's Final Four in Indianapolis in 2015 was projected to be \$71 million with nearly 70,000 visitors anticipated for that event (Alesia, 2015).<sup>3</sup>

The relationship that athletic shoe and apparel companies have with college teams has fueled corporate growth and competition. It is no accident that Nike, whose basketball shoe division generated \$16.2 billion in 2014, maintains 90% of that market. Under Armour, a company challenging that space, was projected to receive \$3.9 million in exposure during the 2015 NCAA men's basketball tournament because six of "their" schools were in it (Levinson & Townsend, 2015). In the realm of college football, Nike's exclusive agreement to outfit the four semi-final teams in the College Football Playoff received media exposure estimated in value at nearly \$16 million (Kish, 2014).

College sports television networks rank about the most lucrative in the United States. According to an analysis by Clay Travis (2015) of *Fox Sports*, the value of individual college sport networks are as follows: SEC Network (\$547.3 million in 69.1 million homes); Big Ten

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<sup>2</sup> According to Kang (2015), the College Football semi-final games featuring Oregon versus Florida State drew 28.2 million viewers while the game between Ohio State and Alabama, drew 28.3 million.

<sup>3</sup> Sport economists caution that economic impact studies for major sporting events may report inflated figures. The revenue generated from visitors drawn to a city for a major sporting event should be considered within the context of what the city paid out for those events. In 2014, for example, Dallas (TX) reportedly incurred over \$10 million in expenses when the NCAA Final Four was hosted there. While the figures reported here may not provide a full representation of what the 2015 Men's Final Four cost Indianapolis, they do offer insight as to the level of tourism activity that occurred.

Network (\$290.2 million in 62 million homes); ESPNU (\$74.9 million in 74.9 million homes); and Pac 12 Network (\$57.6 million in 12.3 million homes). Given that college football and basketball comprises a considerable portion of sports television coverage, it also serves to buoy major sports networks, including CBS, ESPN, FOX, NBC, and Turner. For example, in the fall of 2014

ABC, ESPN, ESPN2, ESPNU and ESPNEWS combined to televise 272 FBS contests, reaching more than 185,687,000 viewers. If those viewers who watched college football games on an ESPN platform formed a country, it would be the seventh most populous in the world, larger than countries such as Russia, Japan, Mexico, Germany, France, United Kingdom, Italy, Spain and Canada (Humes, 2014).

The scrutiny and pressure to perform that comes from competing in that kind of public media entertainment spectacle speaks to a college sport workplace that is very different from that of other college athletes. Meaningful reform discussions need to acknowledge this difference and to acknowledge the labor force that fuels the college sport industry itself and the companion industries that rely on their labor.

### **The Financial State of College Athletics: Flush With Cash, Not Cash Constrained**

H.R. 275 puts forth that “recent events pose grave threats to the financial stability of athletic programs at institutions of higher education and create pressure on institutions of higher education to consider eliminating non-revenue Olympic sports or increasing general fund, student fee, and donor subsidies to athletics at a time when such resources are needed for priority academic programs”. We counter this narrative with the fact that at the highest levels of competition NCAA profit sports (football and men’s basketball)<sup>4</sup> generate revenue streams so immense that this sub-category of the industry should be described not as resource constrained, but rather flush with cash. Furthermore, changes in spending allocations by the revenue producing sports will have no foreseeable bearing on the resources and means of non-revenue sports or the university as a whole.

Football and men’s basketball, the so called “revenue sports”, are immensely popular consumer products and the NCAA and its member conferences and universities treat it exactly as such. Over the last 30 years, these sports have experienced 7- to 8-percent annual revenue growth, far outpacing the listed cost of a grant-in-aid scholarship (GIA) provided to the players as their maximum compensation. In the last decade, with record value broadcast rights contracts obtained by the five major conferences, this gap between revenues and (listed) GIA costs has diverged yet farther. The difference between revenues and GIA costs represent the universities’ return on investment (ROI) to its sport labor. In this sense the “profit margins” of the revenue sports are greater than ever. However, these funds are largely reinvested into revenue sports in

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<sup>4</sup> One of the challenges in addressing issues in college sport is the shifting sands of financial accounting that occur in college sport organizations. Labeled “non-profits”, there are incentives to spend in excessive ways so as to maintain that status. Expenses and revenues are often reported for entire departments rather than by individual sports. Thus, while the NCAA reported that only 20 Division I athletic departments reported revenues in excess of expenses in 2013-2014 academic year, 61 out of 63 football programs in the Power Five conferences reported revenues in excess of expenses (based on Equity in Athletic Disclosure Report data). Use of the term “profit” here refers to the profit generated by college football and men’s basketball programs and to the profitability of the industry itself.

the way of facilities upgrades and coaches' salaries. If the "profit" from revenue sports were actually being devoted to developing and sustaining non-revenue sports, we should have seen rapid growth of those offerings over this time period. In fact, the opposite is true, as more programs have been cut than added since 1985.

Universities offered a full menu of non-revenue and Olympic sports long before the revenue to GIA cost margin reached anywhere near its current level. It is fallacy to think University athletic departments require funds from football and basketball to maintain Olympic and non-revenue sports. These sports are valuable to the university in their own right as opportunities for student participation, vehicles for recognition and publicity, means to enhance alumni relations, and (of course) Title IX compliance. These sports can still be appreciated even if the expenditure imbalance between coaches' salaries and facilities, and players is corrected. Moreover, those values will not change regardless of how spending on revenue sports may become reallocated between coaches, facilities and players. One only has to look at the vast array of universities and colleges that produce little or no revenue from football and men's basketball, yet offer a plentiful menu of Olympic sports, which often exceeds the offerings of a majority of members in the five major football conferences (otherwise known as the Power 5 conferences).

In short, basic economic analysis predicts that given the outcomes of the various legal disputes, any alterations of financial conditions in college sports will amount to reallocations primarily within directly affected sports. In other words, if more resources are directed to the big-time college football and basketball players (e.g., in the form of better health care, direct compensation, or other benefits) such reallocation will be offset elsewhere (by reductions in coaches' pay, facilities upgrades within those sports). There is no reason to believe non-revenue sports will be affected, nor would any other constituency within the university.

### **The Myth of the "Student-Athlete"**

Since the 1930s, college football and men's basketball players have challenged their institutions to provide fair compensation and recognition for their work, threatened work stoppages, and pursued relief from the expense of long-term medical care for injuries sustained while playing (Gurney & Southall, 2012; Karcher, 2012, 2014; Oriard, 2009; Southall, Eckard, Nagel, Keith, & Blake, 2014; Staurowsky, 2014a, 2014b). Until recently, that history has largely been obscured through the strategic execution of a propaganda campaign on the part of the National Collegiate Athletic Association (NCAA) to cast college football and men's basketball players in mass-media televised events as "student-athletes" whose primary role on college campuses is to earn college degrees while playing their sports as an avocation. The "student-athlete" term of art was originally crafted to aid the NCAA in avoiding worker's compensation claims for injured athletes and/or their families (McCormick & McCormick, 2006; McCormick & McCormick, 2008; Sack & Staurowsky, 1998; Staurowsky & Sack, 2005; *University of Denver v. Nemeth*, 1953; *Van Horn v. Industrial Accident Commission*, 1963). The first full-time executive director of the NCAA, Walter Byers, explained in his memoir that in response to "the dreaded notion" that athletes might gain worker's compensation coverage,

[W]e crafted the term student-athlete, and soon it was embedded in all NCAA rules and interpretations as a mandated substitute for such words as players and athletes. We

told college publicists to speak of ‘college teams,’ not football or basketball ‘clubs,’ a word common to the pros (p. 69).

In its quest to devise a status for college athletes unlike any other in American labor, the “amateur student-athlete” classification leaves college football and men’s basketball players in a netherworld where their rights are blocked by definitional subterfuge (Staurowsky, 2014b). As Rosado Marzan (2014) wrote in an amicus brief filed by 19 law professors from around the United States in support of college football players at Northwestern,

...the terms “student” and “employee” are not opposites; you can be both one and the other simultaneously. In fact, many are: it is extremely common for students to work jobs, including ones on the campus cafeteria, for example. But the difference between the student school cafeteria worker and the football player is that there are immense profits in college football, and the Employer will continue to try to convince society that these players are “student-athletes,” which for some magical reason apparently means they have no statutory rights (p. 33).

Moreover, the framing of college sport participation as a “privilege” provided by paternalistic institutions of higher education, forces college athletes to relinquish their rights to engage freely in public dialogue on matters of their own interest. Consequently, viewed by some as ungrateful and entitled, these athletes are not only denied employee status, but are also prevented from exercising their rights to due process, to seek their value freely within the college sport marketplace, and to advocate effectively on their own behalf.

To sustain this unique status, the NCAA regulatory scheme recasts payment for athletes’ services as “grants-in-aid” (more commonly known as “athletic scholarships”). While NCAA officials have long argued this characterization was established to create a “clear line of demarcation between intercollegiate athletics and professional sports so as to prevent the exploitation of athletes by commercial entities”, Byers described it as just another payment system. Writing in 1995, he stated: “in 1956, the colleges, acting through the NCAA in the name of ‘amateurism’, installed their own pay system called the athletics grant-in-aid or athletics ‘scholarship.’” (p. 65). Protestations aside, the NCAA and its members are not opposed to paying athletes under the principle of amateurism. As its own definition of pay reveals, the opposition is to paying athletes anything above what the NCAA wishes to pay (Staurowsky, 2004; Smith & Hattery, 2011).

That this significant conflict of interest has served the NCAA’s and its member schools’ power structure to the detriment of college athletes is revealed in the observation of Fritz Crisler, athletic director at the University of Michigan at the time the NCAA’s pay for play system was codified in 1956 (Staurowsky, 2015a). He is reported to have observed, “We’re saying that these youngsters are amateurs . . . and nobody should be permitted to professionalize them except the colleges. The colleges can pay them to play” (Quoted in Byers, p. 74).<sup>5</sup> Byers noted further that

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<sup>5</sup> The NCAA’s Principle of Amateurism (Bylaw 2.9) stipulates that “the athlete shall be an ‘amateur’ . . . protected from exploitation”. The logical inconsistency, of course, is that while the athlete continues to be an ‘amateur’ *it is also the case that* the ‘amateur’ is exploited (p. 261)—by the very entity [the NCAA] charged to protect no less (Otto & Otto, 2013).

the NCAA's action on the athletic scholarship amounted to "...foreswearing old amateur principles without admitting it" (p. 74).

Writing about the college labor market in a 1972 letter to Amherst College President, John William Ward, Byers stated:

Athletic programs[,] which depend on huge media-oriented audiences[,] compel college athletes to perform like professionals without anything near commensurate compensation. In the marketplace such practices run counter to standard labor ethics; in an educational context they affront common sense. The medium of exchange in the business of big time semiprofessional intercollegiate athletics is the grant-in-aid or scholarship ... (as quoted in Solomon, 2014).

Over time, the athletic scholarship became a tool of control over the college athlete labor market. This was most vividly demonstrated at the end of the civil rights movement and Vietnam War era, a time when athlete protests on college campuses were threatening the established order, requiring coaches to adjust to athlete requests and demands to be treated humanely (Underwood, 1969, Henderson, 2013; Demas, 2011). Some coaches vigorously resisted athlete protests, characterizing athletes as "uncommitted" and their protests as violating the spirit of the athletic scholarship, which they believed allowed them to run benign dictatorships. The NCAA responded defensively, concerning itself more "with refuting allegations and neutralizing dissent than with actually helping to improve conditions for black athletes" (Henderson, 2013, p. 126).

It is in that climate that college sport officials put forward proposals designed to exert greater authority over college athletes. The first of these was the "fraudulent misrepresentation rule," passed in 1967, which narrowed the terms and conditions for athletic scholarships and allowed coaches to cancel an athletic scholarship at their discretion. As Sack (2008) reported, "The fraudulent misrepresentation rule allowed coaches to 'fire' athletes for insubordination and for not taking their athletic responsibilities seriously" (p. 70). Any athlete compelled by conscience to boycott practice as a way of expressing concern about his treatment was vulnerable to dismissal under this requirement. Indicative of the prevailing sentiment of the time, the fraudulent misrepresentation rule received overwhelming support from the NCAA membership, with 214 institutions voting in favor and only 13 opposed (Sack & Staurowsky, 1998). Five years later, in 1972, the NCAA moved away from the four-year athletic scholarship to a one-year award, a move designed to further contain and quell athlete unrest which had reached an apex in 1968 with 130 publicized black athlete protests on predominantly white campuses and which had continued into the early 1970s. The new threat of being able to withhold renewal of the athletic scholarship gave coaches unparalleled power over athletes. Notably, the college sport community's response to the athlete activism of the late 1960s and early 1970s was to ensure that athletes, black and white, would be silenced through the adoption of a one-year scholarship (Hartmann, 2008; Oriard, 2009; Staurowsky, 2014b; Wiggins, 1988). And even in 2015, as college sport authorities are again opening the door to a four-year athletic grant-in-aid, the award still hinges on job performance on the athletic field with the power to award or revoke left in the hands of employers. Further, athletes continue to be subject to the effects of the fraudulent misrepresentation rule.

## **Disparate Impact on Racial Minorities and Failure to Educate**

The overwhelming majority of players affected by this system are racial minorities. According to the NCAA Race and Gender Demographics Database, in 2013-2014, 46.5% of football players and 57.6% of men's basketball players competing on NCAA Division I sponsored teams were black. When other racial minority groups are included (American Indian/Alaska Native, Native Hawaiian/Pacific Islander, Asian, and individuals identifying with two or more races), the figures go up even more, to 52.8% for football players and 61.7% for men's basketball players.

When examining the college sport industry through a racial lens, "Black athletic talent is [revealed to be] a necessity to this enterprise's survival" (Lanter & Hawkins, 2013). Of the 472,625 athletes the NCAA claims "go pro in something other than sports" (Irick, 2014), less than 1% – men's basketball players – generates 90% of the NCAA's revenue, the revenue that pays for not only the salaries of 700 NCAA employees, but that also contributes to an \$18 billion economy supporting countless industries as diverse as higher education (college athletic departments); gaming; manufacturing (athletic shoe and apparel companies); television; and travel and tourism (bowl games and events). Of that 1% whose performances generate the bulk of the NCAA's revenue, 60% are African-American male athletes (Lanter & Hawkins, 2013).

Similarly, top-tier college football teams that qualify for post-season bowl appearances and harvest the associated revenues, employ a significant percentage of Black male athletes. Two examples highlight the degree to which this occurs.

- In the 2012 Allstate BCS National Championship game between LSU and Alabama, Black male athletes comprised 71% and 70% of the respective teams' rosters (Hawkins, 2013).
- During one of the 2014-15 semi-final College Football Playoff games, Florida State University (FSU) started 100% black players on both offense and defense, and the special teams included two more Black players (punt returner and kick returner) along with only two White players (punter and long snapper) and one Latino (kicker). African-Americans comprise only 9% of students at FSU (Hawkins' analysis).

In 2010 within the 76 schools that comprised major conferences, male athletes of color were a majority in the football and men's basketball labor force, but a minority in all other settings on predominantly White campuses (Harper, Williams, and Blackman, 2013; Smith & Hattery, 2015). While only 2.8 percent of full-time undergraduates at those schools were Black, the football and men's basketball teams were 57.1% and 64.3% Black men, respectively. Tellingly, over 96% of these schools graduated football and men's basketball players at rates lower than athletes in other sports, while 97.1% graduated those same athletes at rates lower than the general student body.

A racial dynamic is also present within big-time college-sport's leadership structure. More often than not, players in these sports report to White head coaches and athletics administrators. NCAA Division I football coaching staffs are dominated by White coaches (89% of head coaches; 90.5% of offensive coordinators; 80% of defensive coordinators). In NCAA Division I men's basketball, more than 76% of head coaches and 51.5% of assistant coaches are White.

Similarly, nearly 80% of athletic directors and 90% of conference commissioners are White (NCAA Race & Gender Demographics, 2014).

During the 2013-2014 college football season, 80% of those who tuned in to watch NCAA-sanctioned post-season bowls were White males (Thompson, 2014). Of the 15.2 million television viewers who watched the 2013 NCAA Men's Basketball Final Four, less than 20% were racial minorities (14-15% African-American, 4% Asian) (Bibel, 2013).

The racial context within which these players live their lives and attempt to navigate their current employment circumstances and future prospects is important (Agyemang, Singer, & DeLorme, 2010; Polite & Hawkins, 2011). Already under pressure to perform in order to retain athletic compensation and their place on teams, athletes lack consistent and sustained access to an external advocacy framework to help negotiate conflicts of interest that arise in their work lives. This lack of advocacy leaves these athletes vulnerable to dismissal for job underperformance, subject to quiet relocation through transfer, open to both subtle and overt forms of coercion, overly dependent on information given to them by those who govern their lives. Tellingly, because avenues of negotiation are foreclosed, these young men are systemically denied equitable opportunities to learn about alternatives and determine their rightful value (Huma & Staurowsky, 2013). Among the myriad ways these inequities manifest themselves is lower graduation rates among college football and men's basketball players.

The most recently reported Federal graduation rates (2003-2007) showed 57% and 59% of football players at FBS and FCS institutions completed their degrees, while only 47% of NCAA Division I men's basketball players did so. The NCAA Research Staff (2014) has conceded: "In the sports of men's basketball and FBS football, the overall rates lag behind the rates of males in the student body" (Slide 5). Black college athletes experience social isolation and alienation as a result of systems in place to support them in achieving academic success on predominantly White campuses (Carter, Hart, and Steward, 2013).

With time demands that exceed those of other full-time employees, college football and men's basketball players – the players who are the industry's economic engine – have a more difficult time completing their college educations. Contrary to assertions that college athletes are integrated into the student body and are just like all other students, their collective designation as "student-athletes" creates a separate and unequal status in which they are denied both educational and employment access.

In a report circulated by Big Ten Commission Jim Delany on April 17, 2015 entitled "Education First, Athletics Second: The Time for a National Discussion is Upon Us", acknowledged that "the educational experience for football and basketball players is not healthy". Further,

There are, without a doubt, examples of exceptional students who have also excelled at the highest levels of college football and basketball. There are also football and men's basketball teams that regularly demonstrate high levels of academic performance. On the whole, however, there is evidence to suggest that there is an imbalance between the "student" side and "athlete" side of the "student-athlete" equation, with the "athlete" side carrying the day. To illustrate, football and men's basketball student-athletes have

remarkably high expectations that they will be able to compete professionally, they spend more time on their sports than student-athletes in other sports, yet in a variety of academic metrics, *they lag behind all other sports – not by a little, but by a lot. Consequently, we have no choice but to view the individuals and teams that are academic high achievers not as the norm but as outliers.* Further, we have no choice but to worry about the health of the educational experience (i.e., the “student” side of the equation) in those two sports (p. 2).

## Conclusion

We firmly believe there will be no genuine reform in the college sport industry until college football and basketball players are accorded status as employees with the attendant legal and civil rights that accrue. The foundational principle for college sport reform should be a commitment to remedying the injustice of denying college football and basketball players their rightful status as employees and addressing the systemic mechanisms that have been used to control them. To that end, we stand behind and with college football and men’s basketball players in their efforts to be treated humanely and with dignity.

Should H.R. 275 be approved and a Presidential Commission on Intercollegiate Athletics, CARE-FC offers its assistance in informing deliberations that will lead to meaningful college sport reform that places the basic rights and interests of college football and basketball players at the center.

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