Documents for the Record

03.04.2025 CMT Hearing

"Moving the Goal Posts: How NIL is Reshaping College Athletics"

1. Letter from Green and Spigel LLC and Law Office of Amy Maldonado LLC, submitted by the Majority.
2. Letter from the University of Nevada, submitted by the Majority.
3. Article from the Atlanta Journal, "The Peach Bowl is more than just a football game," submitted by the Minority.
4. Letter from the Women's Sports Foundation to Judge Wilken, submitted by the Minority.
5. Letter from Charlotte North to Judge Wilken, submitted by the Minority.
6. House Settlement Objection Title IX (Kacie Breeding), submitted by the Minority.
7. Letter from the Infectious Diseases Society of America to Chairman Guthrie and Ranking Member Pallone, submitted by the Minority.
8. In Re Collegiate Athlete NIL Litigation, Objection to Settlement Agreement, submitted by the Minority.
9. NCAA External Gender Equity Review, Phase I: Basketball Championships, by Kaplan Hecker & Fink LLP, submitted by the Minority.
10. NCAA External Gender Equity Review, Phase II, by Kaplan Hecker & Fink LLP, submitted by the Minority.
11. Expert Report of Barbara Osborne to House Filing, submitted by the Minority.
12. Article from the Washington Post, "Hiring freezes, fewer grad students: Funding uncertainty hits colleges," submitted by the Minority.
13. Letter from Michele Roberts, Richard Ford, and Casey Floyd to Judge Wilken, submitted by the Minority.
14. Post on X by Robert Griffin III, submitted by Rep. Pfluger.

The Honorable Gus Bilirakis, Chairman
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC, 20515-6115

February 28, 2025

RE: **Urgent Need for Legislative Action on Immigration Compliance for Institutions Involved in Collegiate Sports**
March 4, 2025
March 4, 20253/4/20253/4/2025
Dear Chairman Bilirakis and Members of the Subcommittee on Commerce, Manufacturing and Trade,

We would like to bring to the attention of Congress an urgent legal issue affecting international student-athletes playing intercollegiate sports. Given the imminent shift toward a "direct payment" compensation model in intercollegiate athletics, there is a very high likelihood that universities will not be able to keep international student-athletes on the rosters of revenue-generating sports while also being compliant with immigration law. This issue, which stems from the limited employment authorization available to F-1 student visa holders, first arose in 2021, and has been exacerbated by both recent developments in NCAA athletics and the inaction of the Biden Administration. The Biden Administration and former Secretary of the Department of Homeland Security Alejandro Mayorkas never issued guidance or policy on immigration compliance in the context of NIL or direct payments, despite this issue coming about while they were in power.

Historically, NIL-related immigration compliance was seen as a concern only for individual athletes. If international student-athletes violated the terms of their F-1 visa, the consequences—visa revocation, deportation, or reentry denial—were theirs alone to bear. Universities operated largely on the sidelines, uninvolved and unaffected. The proposed *House vs. NCAA* settlement and legal efforts to classify student-athletes as employees not only shift the burden of compliance to universities but also create the impossibility of compliance, as discussed below.

Direct institutional payments to student-athletes

- On October 7, 2024, Federal Judge Claudia Wilken granted preliminary approval of the *House vs. NCAA* settlement , the terms of which call for direct revenue-sharing payments from the school to student athletes. If final approval is granted following a fairness hearing schedule for April of 2025, at the beginning of the 2025-26 academic year, schools will commence the distribution of $20-21 million in direct payments to student-athletes per school While the settlement leaves the manner and amount of distribution to the schools, stakeholders project that the funds will be allocated primarily or exclusively to athletes on

the rosters of "revenue-generating sports," broadly understood to include men's and women's basketball and football.

Several states, including the Commonwealth of Virginia, have passed laws allowing direct payments, in anticipation of the *House v. NCAA* settlement. And schools like Virginia Commonwealth University have already announced their intention to commence payments this fall.[1]

Many universities hope to mitigate risks by structuring direct payments to athletes as independent contractor agreements, avoiding the "employment" label to sidestep compliance challenges. Potential "misclassification" issues under labor law aside, immigration law makes no distinction between independent contractors and employees. Thus, the independent contractor approach not only fails to protect international student-athletes but also leaves universities vulnerable to liability for "knowing hire" violations under DHS regulations.

Student-athletes as employees

While direct payments may be sustainable under a rubric of disingenuously applied terms that obfuscate the reality[2] that this is pay-for-play compensation, tied directly to the athletic value of the recipient, the classification of athletes as "employees" leaves no such room for interpretation. If student-athletes are classified as employees and receive payments for their services, they are blatantly in violation of the terms of their F-1 status, and their respective employers are liable for hiring unauthorized workers.

On February 5, 2024, the National Labor Relations Board Region 01 issued a Decision determining that Dartmouth's NCAA D1 men's varsity basketball team players are "workers" under the National Labor Relations Act eligible to unionize. We have attached the decision for your review.[3]

The NLRB appeared to have no awareness that while *membership* in an *organization* such as a union does not violate F-1 nonimmigrant status, *working without authorization does constitute such a violation*, and jeopardizes future visa renewals which may not be reviewed or appealed.

The current regulations authorizing employment for F-1 nonimmigrant students do not cleanly encompass compensation related to participation in a collegiate athletics program.

While Dartmouth men's varsity basketball team ultimately decided not to unionize, the characterization of F-1 international student-athletes as workers, or employees, makes urgent the

[1] https://www.si.com/fannation/name-image-likeness/nil-news/virginia-commonwealth-opts-into-house-settlement-revenue-sharing#:~:text=Virginia%20Commonwealth%20will%20begin%20to,reportedly%20be%20about%20%245%20million.

[2] *Johnson v. NCAA*, No. 22-1223 (3d Cir. 2024) (*"As scholars have noted, the term is an NCAA marketing invention, designed to 'conjure the nobility of amateurism,' assert 'the precedence of scholarship over athletic[s],' and 'obfuscate the nature of the legal relationship at the heart of a growing commercial enterprise.'")*

[3] The NLRB rejected Dartmouth's reliance on another case involving graduate students at MIT, stating, "The Decision and Order applied only to the particular graduate fellows at issue in that matter and did hold not that no international students can be members of a labor organization without compromising their immigration status." The Decision further stated in FN 29, "Indeed, many of the research assistants and teaching assistants who are members of MIT's existing graduate student union are international students. Some of the graduate fellows at issue in Massachusetts Institute of Technology were themselves members of that union because they were employed as research assistants in addition to being graduate fellows."

need to clarify what F-1 international student-athletes may and may not do without violating their F-1 nonimmigrant student status and jeopardizing future visa renewals.

As a result, it critically important that guidance be issued by DHS and State as soon as possible to the more than 20,000 international student collegiate athletes (who may now be found retroactively to have violated status by USCIS, ICE, CBP or State based on the recharacterization of at least some of their athletics program activities as "employment").

Lack of guidance on NIL/F-1 maintenance of status issues since 2021

Questions regarding maintenance of status issues for NCAA F-1 international student-athletes due to unauthorized employment have arisen since the 2021 Supreme Court decision in *NCAA vs. Alston*, 141 S. Ct. 2141 (2021) paved the way for NCAA athletes to earn money for use of their Name, Image and Likeness (NIL). States immediately started passing legislation to that effect.

On June 21, 2021, U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (SEVP) issued a Broadcast Message stating:

The Student and Exchange Visitor Program (SEVP) is aware of and actively monitoring proposed federal and state legislation pertaining to the use of name, image and likeness for student-athletes, including F and M nonimmigrant students. The program is working with its partners within the U.S. Department of Homeland Security to review how this legislation affects international student-athletes and will provide updated guidance via Broadcast Messages, Study in the States, social media and SEVP field representatives.

Misinformation has proliferated, as no guidance has ever been issued whatsoever from the U.S. Department of Homeland Security (agencies U.S. Citizenship and Immigration Services or ICE SEVP) or the U.S. Department of State as to what these F-1 student-athletes are and are not allowed to do.

In response to the attached March 23, 2023 letter from Senators Richard Blumenthal and Chris Murphy raising this issue to DHS, DHS Secretary Alejandro Mayorkas testified before the Senate Judiciary Committee on March 28, 2023, "*Senator, thank you for your letter on this subject which brought the issue to my attention. I was not aware of it previously. We are indeed of looking at the issue very carefully. And I hope quickly. And we will move with deliberate speed…We'll move as quickly as we can, Senator*."

No action was ever taken or guidance issued by the Biden Administration.

Issues with workarounds

While some immigration attorneys have been able to obtain EB-1A extraordinary ability immigrant visas, O-1 or P-1 visas for international student-athletes to benefit from NIL, the vast majority do not qualify. In addition, USCIS under the Biden Administration took untenable positions in the absence of guidance in the USCIS Policy Manual, such as NCAA Division 1

basketball does not constitute an internationally recognized level of competition for P-1 purposes, despite the fact that:

1. Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition is one of the ways in which an individual athlete may evidence that he or she has achieved international recognition in a sport.

2. The NCAA earned $1.14 billion in revenues in 2022, with roughly a billion of these earnings made from March Madness (NCAA D1 Basketball).

3. Broadcast rights continue to be a good source of income for the NCAA with $873 million generated in 2023; CBS Sports and Turner Broadcasting found their returns profitable enough to extend their contract until 2032.

We are part of a legal team that challenged the Biden Administration's denial of a P-1A visa to Last-Tear Poa, an NCAA D1 women's basketball player at LSU. When we raised the issue of "arbitrary and capricious" decisions by the agency in the absence of legal guidance by highlighting other P-1A filings which have been approved.

International Athletes are an Integral Part of the Athletic Success of US Universities

There are currently nearly 25,000 international athletes competing in the NCAA. Most of these international athletes hail from countries that many consider our closest allies, including the United Kingdom, Canada, and Germany. For many programs, international athletes have been instrumental in their recent success. For example, the last two Consensus Player of the Year awards have gone to foreign nationals – Zach Edey of Purdue and Oscar Tshiebwe of Kentucky. Currently, between the top 5 ranked teams in Men's Division I Basketball, there are 14 international players.

In 2023, the University of Texas women's Track & Field team won the national championship with 83 points, 78 of which were scored by international athletes. To address the concern that we may be "training our competition," it is worth noting that at the 2023 World Athletics Championships, the US comfortably led the medal count with 29, with the next country on the list having only 12.

Urgent Congressional Action is Required

This is not just a niche issue affecting a handful of athletes but a pressing institutional compliance challenge with far-reaching consequences. If Congress and/or DHS fail to act ahead of the implementation of direct payments, universities will bear the significant risk of violating DHS regulations concerning the use of unauthorized labor. And while there is palpable tension in the industry between those who favor federal regulation of NIL and those who prefer to regulate NIL at the State level, consistent with the Plenary Doctrine, the immigration aspects of NIL and direct payments can ***only*** be regulated by the federal government. As such, Congress is uniquely positioned to create an avenue for compliance for the academic institutions involved in collegiate sports. While broader immigration legislation may face partisan hurdles, all Americans, regardless of their political affiliation revere their alma maters and love college sports.

Therefore, we urge Congress to take immediate action to provide universities with a clear, lawful pathway to comply with federal immigration regulations while maintaining the integrity and competitive advantage of their athletic programs. Legislative action is necessary to create a visa framework that accommodates international student-athletes in the evolving landscape of collegiate athletics, ensuring that both universities and athletes are not forced into an untenable position. We stand ready to work with lawmakers to craft a viable solution that upholds the principles of both immigration law and fair competition in intercollegiate sports.

Respectfully submitted,

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March 3, 2025

Chairman Bilirakis
2306 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Bilirakis:

In anticipation of Tuesday's "Moving the Goalposts: How NIL is reshaping college athletics" hearing, the University of Nevada wishes to express our unequivocal support for the need for and passage of federal legislation relating to Name, Image, & Likness ("NIL") within college athletics. To the extent possible, potential legislation should (1) preempt any and all state law pertaining to NIL and (2) provide limited liability safe harbor protections so that college athletics can create and enforce reasonable and uniform national rules. While we acknowledge that much more support will be needed in this space in the coming years, these initial concepts will go a long way toward providing stability to what is a volatile college sports landscape.

At a time when the NCAA finds itself under scrutiny on a variety of fronts including but not limited to paying student-athletes and eligibility requirements, the current state of college athletics is not recognizable. While a majority of college administrators are genuinely supportive of student-athletes being able to make a profit off their name, image, and likeness, that was based on the idea that student-athletes would engage in their local communities and find real opportunities to promote local ventures via their platforms. Instead, we saw the creation of entities (collectives) whose primary purpose was to incentivize recruits with unenforceable financial promises as well as provide what amounted to pay-for-play arrangements for current student-athletes dressed up as NIL opportunities. That reality, coupled with the proliferation of unlimited transferring, has created an environment that actively encourages the breaking of NCAA rules (e.g. tampering) that were originally enacted for the purpose of fair play. Today, there is a general acceptance that the NCAA is unable to enforce their own rules while they face down what amounts to a never-ending number of legal challenges.

It's against this backdrop that we again emphasize the importance of federal legislation that will help mitigate the significant challenges facing college athletics. Currently, there are over 30 states who have passed laws regulating aspects of college sports. Depending on the state, you could enjoy a significant advantage or face adverse conditions. Regardless, the current setup has made it nearly impossible to provide a level playing field for college athletes. Your ability to succeed should not be tied to what state your institution resides. Yet, that is where we find ourselves today. Federal legislation preempting these disparate state laws would go a long way in providing some level of equal footing as it relates to name, image, and likeness.

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Intercollegiate Athletics/Department
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Additionally, the need for some level of limited liability safe harbor protection is equally important. Many of the biggest issues facing college sports are the result of legal actions that the NCAA is currently unable or ill equipped to properly handle. The current playbook for anyone who doesn't like an NCAA decision is to pursue legal remedies in strategically identified forums. When relief is provided, temporary or otherwise, it sends massive ripples throughout the industry that isn't always applied correctly by member institutions. It's a poor system that will continue to be exploited absent some level of protection afforded to the NCAA that will allow them to actually enact and enforce sensible rules without the threat of subsequent legal proceedings.

No institution is immune from the many challenges that accompany the current NIL landscape. The issues faced, while varied in some respects, are relatively similar and generally only differ as a matter of scale. As a member of the Mountain West conference and a participant within the group of six conferences, we are not exempt from those challenges. However, one aspect that is unique to similarly situation institutions is the unchecked tampering and pilfering of top-level talent by institutions who enjoy greater financial resources. This reality is only going to become more pronounced with the anticipated implementation of "revenue sharing" payments from the House settlement. The current landscape truly is the wild west as institutions with financial means freely engage athletes who are not in the transfer portal without fear of consequence due to the NCAA's limited enforcement abilities. These realities need to change and change immediately for the sake of college athletics.

We recognize the difficulty facing this subcommittee as you wrap your arms around this nuanced matter. It's complicated, varied, and constantly evolving. As a long-time administrator, I have witnessed this thing that we've dedicated our careers to, effectively go off the rails in a matter of five short years. We cannot emphasize enough how sensible federal legislation is needed at this point in time. The current state of college athletics needs your leadership to bring common sense changes that can bring stability to an industry desperate in need of it.

Thank you for your time.

Stephanie Rempe
Director of Athletics
University of Nevada

OPINION

The Peach Bowl is more than just a football game

Through football, we find common ground and rally around a shared mission of driving meaningful impact in our communities.

By Percy Vaughn

Percy Vaughn

In an era when division often dominates the national dialogue, sports – and especially college football – stand as a unifying force that bridges cultural, social, economic and political divides. At the heart of this is Peach Bowl Inc., an Atlanta-based organization that hosts the Chick-fil-A Peach Bowl, the Aflac Kickoff Game, the Southern Company Peach Bowl Challenge charity golf tournament and operates The Dodd Trophy, presented by PNC Bank.

This season, in the first year of the expanded 12-team College Football Playoff, the Chick-fil-A Peach Bowl will host two of the nation's top teams to compete on Jan. 1 in its first-ever CFP quarterfinals, leading up to the national championship in Atlanta. And to open the season, it hosted Clemson and Georgia, two playoff teams, in the Aflac Kickoff Game.

Additionally, Peach Bowl Inc. was the original recruiter and founding sponsor that helped bring the Chick-fil-A College Football Hall of Fame to Atlanta and has invested $13 million into the facility. Needless to say, Peach Bowl Inc. has played a massive role in establishing Atlanta as the "Capital of College Football."

With this recognition comes influence, and Peach Bowl Inc. President and Chief Executive Officer Gary Stokan has embraced the unifying power of football not only to stand apart from other bowl organizations and deliver thrilling matchups on the field but also to create profound, positive change off the field for our community.

Through donating more than $65 million in charity and scholarships since 2002, Peach Bowl Inc. has earned its title as college football's most charitable bowl organization. In fact, for the past 18 consecutive years, the bowl has surpassed $1 million in charitable giving. For 2024, it pledged $2 million to a wide array of initiatives, including disaster relief, education and pediatric health care, standing as the largest donation by any bowl game in the country.

Fans attend the 2023 Chick-fil-A Peach Bowl at Mercedes-Benz Stadium. This year's game on Wednesday is part of the first-ever College Football Playoff quarterfinals as No. 5 Texas plays No. 4 Arizona State. AJC FILE

As fans gather to cheer for their favorite teams, the Peach Bowl reminds us that football is more than a game; it's a platform for compassion, community and connection. The bowl's unparalleled philanthropic efforts are proof that, through football, we can find common ground and rally around a shared mission of going beyond what happens on the field to drive meaningful impact in our communities.

The Peach Bowl was created in 1968 as a fundraiser for the Georgia Lions Lighthouse Foundation, so its involvement in philanthropy goes all the way back to its beginning and is a part of its mission. A commitment to scholarship, charity and using football for the greater good in our community is what truly drives our hometown bowl game.

The bowl's impact is perhaps most visible in its fight against childhood cancer through the Peach Bowl LegACy Fund. Established with a $20 million gift to the Aflac Cancer and Blood Disorders Center of Children's Healthcare of Atlanta in 2019 – the largest single donation in bowl history – the fund honors the life of Anna Charles "AC" Hollis, the daughter of Peach Bowl Inc. Vice President of Sales Benji Hollis. AC died from leukemia in 2018. This initiative focuses on funding the most promising clinical drug trials for children, offering hope and new treatment options to families in need.

Through its Touchdowns for Children's program, fans also play a role in this mission, giving them the opportunity to pledge a donation based on how many touchdowns their team scores throughout a season. Over the past eight seasons, this initiative has raised nearly $3.8 million for patients at Children's Healthcare of Atlanta, including $1.9 million in matching funds contributed by Peach Bowl Inc.

Through the original $20 million gift and the additional $3.8 million in donations, Peach Bowl Inc. is now funding 14 clinical trials in five hospitals across four states in an effort to eradicate childhood cancer.

The bowl exemplifies its commitment to education, community and compassion through impactful initiatives and partnerships. Its collaboration with the College Football Playoff Foundation's Extra Yard Makeover initiative provided funds to upgrade media and technology centers at eight underserved metro Atlanta schools, and a 2017 partnership funded a $2 million, three-year early childhood literacy initiative, equipping 1,500 Atlanta Public School teachers with enhanced literacy instruction methods for 25,000 students.

The bowl also supports education through its John Lewis Legacy of Courage Scholarship, which has $8.9 million in endowment assets across 35 universities for Georgia students from Title 1 high schools.

Beyond education, the Peach Bowl extends its reach to crisis relief, contributing to efforts after the 2007 Virginia Tech shooting, as well as after hurricanes Katrina, Rita, Harvey, Helene and Milton – including a recent donation of $500,000 to aid Southeastern communities affected by Helene and Milton. These actions showcase its commitment to fostering hope and resilience nationwide.

Football can change lives, and the Peach Bowl is driven to do what it can to help people in need. It shows us that football has the power to unite and provides an example of how a bowl game can create a deep-set tie to its community. Whether it's rallying fans to support childhood cancer research, helping schools create better learning environments or providing relief to disaster victims, the Peach Bowl turns moments of collective passion into meaningful impact.

Football might be just a game, but Peach Bowl Inc. and Stokan recognize the sport's ability to bring people together and create positive change in people's lives through football. Its impact will long outlive the memory of the game and will create a legacy we can all embrace and be proud to call a part of the Atlanta community.

Percy Vaughn, the vice president of Southern region operations for Kia America, was chairman of Peach Bowl Inc. from 2015 to 2018.

College athletes should have employee rights

The NCAA's bogus argument uses prison labor 'slavery exception' to object to employee status for athletes.

By Paul L. McDonald

Paul L. McDonald

NCAA sports are Big Business, wholly dependent on college athlete performance. In December 2023, the NCAA reported 2022 revenue of almost $17.5 billion from Division I athletics. More than the NBA or MLB. Second only to the NFL.

Still, the NCAA insists – in court and Congress – that college athletes be denied the same employee status as students selling popcorn at games.

In court, the NCAA compares college athletes to prison labor under the 13th Amendment "slavery exception" discussed in Ava DuVernay's Netflix documentary "13th."

I'm not kidding.

Read the case cited by the NCAA: Vanskike v. Peters.

The 3rd Circuit did, and it issued a stunning rebuke in Johnson v. NCAA: "We disagree with [the] comparison of college athletes to prisoners and refuse to equate a prisoner's involuntary servitude, as authorized by the Thirteenth Amendment, to 'the long-standing tradition' of amateurism in college athletics."

It turns out that Comedy Central's South Park plantation satire "Stu-dent ATH-O-LEETS" accurately depicts the NCAA's argument. It's a racist argument, and NCAA President Charlie Baker must be held accountable.

Students selling popcorn at NCAA games are employees, but the ones on the field are denied that status. The NCAA's argument that students should not be college employees ignores the success of work study programs, writes attorney Paul L. McDonald. AJC 2024

In Congress, the NCAA says college athletes must be denied employee status "to keep them students," suggesting students are not – and should not be – college employees.

But that is a lie.

For more than 50 years, students have been employed and paid hourly on a minimum wage scale in work study-style programs – including students on academic scholarship. There are student employees in campus offices, libraries and dining halls – and, again, at NCAA games. Benefits to families are significant. Hourly pay is fungible "walking-around" money that can be spent on anything – not just academic expenses, as scholarship funds are delimited. Hourly pay provides money that otherwise must come out of parents' pockets.

The lawsuit Johnson v. NCAA maintains college athletes meet employee criteria under the Fair Labor Standards Act more than students in work-study-style programs.

The most important student employee criterion is degree of control by college supervisors. The more control, the more likely an employee. This criterion precludes employee status for activities listed in student-run group directories – publications, social clubs, drama, bands and club sports – because, by definition, colleges lack supervisory control of student-run groups. The benchmark is work study-style programs, and, by comparison, college athletes are far more controlled by NCAA bureaucracies.

The kicker: Under NCAA Division I bylaws, college athletes must keep time sheets, just like students in work-study-style programs.

So, what could be the objection to folding college athletes into existing programs on par with existing student employees?

Objection cannot be a compliance "parade of horribles" never noted in decades of work-study-style programs. For example, student employment by colleges is exempt from FICA taxes.

Objection cannot be affordability. There are no complaints that work-study-style pay, on a minimum wage scale, is unaffordable. On the other hand, colleges are overpaying athletic staff – and overspending on athletic facility amenities – because college athlete labor has been free.

In lieu of adding reasonable hourly pay for college athletes to budgets, colleges could maintain budget neutrality, at no extra cost, by reallocating a fraction of the combined, highest salaries of athletic staff. Former Michigan football coach Jim Harbaugh was on board, stating at the 2023 Big Ten Championship media call: "Who could be against the players being compensated for what they do? At least even minimum wage. ... I would take less money for the players to have a share."

And remember, 2022 NCAA Division I revenue was almost $17.5 billion, i.e., pro league levels. Like pro leagues, richer college programs could provide financial assistance to smaller programs akin to "luxury taxes" or NBA subsidies to the WNBA.

Objection cannot be the spurious claim that athlete employees could be "fired" for dropping a pass or missing a shot. The NCAA well knows its employment contract would prohibit such "firing," just like NCAA Division I bylaws prohibit reduction or cancellation of a scholarship "[o]n the basis of a student-athlete's athletics ability, performance or contribution to a team's success."

Moreover, the Johnson case is fair to all college athletes.

The case values all men's and women's sports – not just football and basketball. It recognizes that, by law, degree of profitability is irrelevant to employee status. For example, in-house legal, human resources, purchasing, records, information technology and maintenance departments are "nonrevenue" – as are work-study-style jobs.

"Johnson base pay" for all, based on standardized hours of NCAA Countable Athletically Related Activities (20 hours per week), addresses pay disparities attributable to separate name, image and likeness (NIL) sponsorships and revenue sharing offered to fewer athletes, based on individual and sport popularity.

For Congress, denying college athletes the same student employee status as students selling popcorn at games should be a nonstarter. Not only because such NCAA-lobbied legislation is premised on the NCAA's racist "slavery exception" argument and the "keep them students" lie contradicted by decades of work-study-style programs, but also because it violates equal protection under the Constitution, which prohibits the government from treating students differently in this manner.

When the NCAA, spurred on by legislatures and courts, finally permitted college athletes to exercise NIL rights, colleges acknowledged that athletes should have the same rights enjoyed by other students.

College athletes should have the same student employee rights, too, and the Constitution requires it of any NCAA legislation.

Paul L. McDonald is co-counsel for the college athlete plaintiffs in Johnson v. NCAA and was named by Sports Illustrated as one of the 20 Most Influential Black Figures in College Football.

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RECEIVED
FEB -5 2025
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

January 31, 2025

The Honorable Claudia Wilken
United States District Court
Northern District of California
Ronald V. Dellums Federal Building & United States Courthouse
c/o Class Action Clerk
1301 Clay Street
Oakland, CA 94612

Re: House v. NCAA, Case No. 4:20-cv-03919-CW

Dear Judge Wilken,

As organizations concerned about gender equity in sports, we are writing to urge you to more fully scrutinize the impact on women resulting from the proposed settlement agreement in *House v. NCAA*. We are concerned that there is a misrepresentation of Title IX protections contained within the settlement and that calculations for past damages allocations will be assumed permissible for future payments. In order for this settlement to fairly and adequately serve student-athletes, the interest of *all* eligible student-athletes must be equitably respected.

Release of Title IX Claims

The initial filing of *House v. NCAA* noted the historic mistreatment of women athletes, yet women athletes, for whom there is no separate class representation, are expected to receive less than 5% of back pay[1]. At the September 5, 2024 hearing, counsel for both Plaintiffs and Defendants represented to this Court that the settlement would not include a Title IX release. This was confirmed in Plaintiffs' Supplemental Brief: "In further response to the Court's questions and directions, the parties also have amended the Settlement Agreement to expressly provide that the release of claims by class members does not extend to any Fair Labor Standards Act or similar labor law claims, any claims asserted against the Ivy League rule in the Choh litigation, or any Title IX claims."[2] **Nonetheless, the subsequent Amended Settlement Agreement submitted to this Court contradicts these prior statements by releasing all Title IX claims related to payment of *past damages*.** More specifically, as preliminarily approved, the amended settlement agreement lists as unreleased: "Claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., other than any claims arising out of or relating to the distribution of the Gross Settlement Fund."[3]

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[1] SI.com. (September 5, 2024). Current and former college athletes claim House v. NCAA settlement 'undercompensates female athletes.' Retrieved from: https://www.si.com/college/gonzaga/basketball/current-and-former-college-athletes-claim-house-v-ncaa-settlement-undercompensates-female-athletes-01j71hrwngsn

[2] Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Settlement Approval at 5, House v. NCAA, Case No. 4:20-cv-03919-CW. (Emphasis added.)

[3] Amended Stipulation and Settlement Agreement at 15, House v. NCAA. Case No. 4:20-CV-03919.

Using Settlement Distributions for Future Payments

We fear that schools, which have historically inequitably allocated resources to men's sports, will continue this pattern by using the allocation of past damages as permission to allocate future payments similarly. In fact, many schools have begun to share their plans on revenue distribution, with some intending to distribute as much as 75% to men's football players and 18% to men's basketball players.[4] This distribution will violate Title IX. In fact, guidance published by the Office for Civil Rights on January 16, 2025[5] states "compensation provided by the school for the use of a student-athlete's NIL constitutes athletic financial assistance under Title IX." And, it further states that financial assistance must be made available to male and female student-athletes in a manner that is substantially proportionate to the number of students of each sex participating in intercollegiate athletics at that school. The intent expressed by many schools to provide at least 90% of the revenue share to male athletes clearly contradicts this guidance. **We ask you to make clear that the allocation of settlement funds should not be used as the default formula for future payments nor presumed compliant with Title IX.**

Insufficient Representation

Finally, given the absence of separate legal representation for women athletes, we are concerned that women have not received sufficient information regarding their rights to opt-out, object, or submit a claim. The January 31, 2025 deadline for submissions to the court of exclusions and objections, when paired with such momentous consequences, provides a woefully inadequate window during which thousands of women athletes are expected to be notified and informed of the implications of the preliminary *House* settlement terms. Forfeiting the right to submit Title IX claims in exchange for an estimated 5% of past due damages is not only an exorbitant price to pay, but it also highlights the absence of representation for the interests and rights of women athletes.

The final approval of the settlement must grant *all* student-athletes the academic, athletic, and financial benefits of their endeavors without forfeiting their legal rights. Title IX has created pathways of opportunity for women athletes for over 50 years and those opportunities should not be negated in this settlement. We urge you to only approve a final settlement which contains clear language that no Title IX rights are released and specifies the allocation of settlement funds should not be used as the default formula for future payments nor be presumed to be compliant with Title IX.

We thank you for your attention to this matter.

Sincerely,

Danette Leighton
CEO, WSF

Neena Chaudhry
Vice President and General Counsel, NWLC

Sarah Axelson
Vice President, Advocacy, WSF

Shiwali Patel
Senior Director of Safe and Inclusive Schools, NWLC

---

[4] Atozsports.com. (December 17, 2024). Texas Athletics' revenue sharing model likely similar to what Texas Tech is planning for Red Raiders' athletes. Retrieved from: https://atozsports.com/college-football/texas-longhorns-news/texas-athletics-revenue-sharing-model-likely-similar-to-what-texas-tech-is-planning-for-red-raiders-athletes/

[5] Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities at 8. United States Department of Education Office for Civil Rights. Retrieved from: https://www.ed.gov/media/document/ocr-factsheet-benefits-student-athletes

Case 4:20-cv-03919-CW Document 67-1 Filed 02/05/25 Page 1 of 2

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FROM:
Women's Sports Foundation
Attn: S. Axelson
247 W. 30th St.
5th Floor
New York, NY 10001

TO:
Ronald V. Dellums Federal Building + United States Courthouse
C/O Class Action Clerk
1301 Clay Street
Oakland, CA 94612

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Oakland, CA 94612

FILED
JAN 31 2025
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
OAKLAND OFFICE

FROM: **Charlotte North**
Duke University – Women's Lacrosse (2017-19)
Boston College – Women's Lacrosse (2020-22)
USA Lacrosse Women's National Team (2022-Present)
NCAA Eligibility Center ID # 1602420503

CC: **Leigh Ernst Friestedt**

RE: **Objection**
In re: College Athlete NIL Litigation, Case No. 4:20-cv-03919 (N.D. Cal)

DATE: January 29, 2025

Dear Judge Wilken:

My name is **Charlotte North**, and I was a NCAA Division I student-athlete at **Duke University** for my freshman and sophomore years (2017-2019) and transferred to **Boston College** ("BC") for my junior, senior and graduate years (2020-2022). As Captain of the BC Women's Lacrosse team, our team advanced to consecutive NCAA Championship Games (2021-22). In 2021, BC Women's Lacrosse was the first team in our school's history to capture a NCAA National Championship.

During my career as a student-athlete at BC and Duke, I achieved the highest levels of recognition for my accomplishments both on the lacrosse field and in the classroom including: Tewaaraton Award (Best College Lacrosse Player), First Team All-American, ACC Athlete of the Year, ACC Lacrosse Scholar-Athlete of the Year, Eagle of the Year Award (Highest Honor for BC Athlete), ESPY Nominee (Best College Athlete – Women's Sports), and National Player of the Year.

I am currently a member of **USA Lacrosse Women's National Team** (World Champions 2022), **USA National Box Lacrosse Team** (World Champions 2024), and play professional women's lacrosse for the Women's Lacrosse League. Additionally, I am an **ESPN broadcaster** for NCAA DI Men's and Women's Lacrosse. My full player biography, athletic and academic achievements are detailed in **Appendix A**.

I am writing you today on behalf of not only myself, but more importantly, the millions of female student-athletes who deserve an equal opportunity to play sports in college and receive equal treatments and benefits under **Title IX of the Education Amendments Act of 1972** ("Title IX").

Based on the terms set forth in the Amended Settlement Agreement, I object to *In re: College Athlete NIL Litigation - House* Settlement, Case No. 4:20-cv-03919 (N.D. Cal), and request that you not approve the *House* Settlement at the Final Approval Hearing, scheduled for April 7, 2025.

According to the website www.collegeathletecompensation.com, my **Estimated Allocation** as a member of the **Additional Sports Class** (Women's Lacrosse) at BC and Duke are detailed below. Note, despite contacting Duke University, I have been unable to obtain my Estimated Allocation information for my freshman and sophomore years at Duke, so it is missing below.

Type of Damage	Charlotte North – Est. Allocation		
Name, Image & Likeness (NIL)	**Boston College**	**Duke**	
Broadcast NIL	Not Eligible	Not Eligible	**Object**
Videogame NIL	Not Eligible	Not Eligible	---
Lost NIL Opportunities	$2,019.45	Missing	**Object**
Athletic Services	$286.92	Missing	**Object**
***Hubbard* Academic / (*Alston* Award)**	$3,140.17	Missing	**Object**
Total Estimated Settlement Payment	**$5,446.54**	**Missing**	

The *House* Distribution Plan is based on three **Settlement Damage Classes**:

1. **Football & Men's Basketball** – Power 5
2. **Women's Basketball** – Power 5
3. **Additional Sports**: Football, Men's Basketball, Women's Basketball and Other Sports

As illustrated by the chart below, my Estimated Allocation of **$5,446.54** is significantly lower than the average payment for other Classes: **Football & Men's Basketball**, and **Women's Basketball**.

Type of Damage	Estimated Settlement Damages		
Name, Image & Likeness (NIL)	**Football & Men's Basketball – P5**	**Women's Basketball – P5**	**Charlotte North**
Broadcast NIL	$91,000	$23,000	Not Eligible
Videogame NIL	$300 - $4,000	---	Not Eligible
Lost NIL Opportunities	$17,000	$8,500	**$2,019.45**
Athletic Services - Additional	$40,000	$14,000	**$286.92**
Total	**~$150,000**	**$45,500**	**$5,446.54**

Source: Exhibit A – Settlement Recovery Information by Class and Type of Claimed Damages *House v. NCAA*, Plaintiff's Motion for Preliminary Settlement Approval, July 26, 2024.

As the preeminent women's lacrosse player during the class period, I believe my Estimated Settlement Allocation is considerably lower than the actual value of my NIL, Athletic Services and Academic Achievements as a student-athlete at Duke and BC. Additionally, I believe the low valuation of my Estimated Allocation reflects longstanding gender equity issues in intercollegiate athletics and is a violation of Title IX.

Title IX is a federal civil rights law passed in 1972, to prohibit sex-based discrimination in any education program or activity, which includes intercollegiate athletics. Title IX states:

> *"No person in the United States, shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."*

According to the *House* **Distribution Plan**, the allocation of the Gross Settlement Fund **$2.576 Billion** is divided into: (1) **NIL** Claims Settlement Amount ($1.976 billion), and (2) **Additional Compensation** Claims Settlement Amount ($600 million). The Settlement Amount is calculated using a percentage (NIL *67.4%*, Additional Compensation *31.6%*) of the Total Estimated Damages provided in an economic report prepared by Dr. Daniel Rascher ("**Rascher**").

Claims	Total Est. Damages	Settlement %	Settlement Amount
NIL	$2,933	*67.4%*	$1,976
Athletic Services - Additional	1,898	*31.6%*	600
Total *House* Settlement	$4,831	*100%*	**$2,576**
Alston* Academic - *Hubbard	$200		$200
($ in millions)	**Total Settlement (*House* + *Hubbard*)**		**$2,776**

As illustrated by the charts below, the *House* Settlement significantly benefits men who would receive ***94%*** **($2.425 billion)** compared to women who would only receive ***4%*** **($102 million)** of the total *House* Settlement Damages **($2.576 billion)**.

($ in millions)	Broadcast		Video		Lost NIL		Total NIL	
Men	$1,748	*96%*	$72	*100%*	$65	*73%*	**$1,885**	***95%***
Women	68	*4*	---	---	5	*5*	**72**	***4%***
Other	---	---	---	---	19	*22*	19	*1%*
Total	**$1,816**	*100%*	**$72**	*100%*	**$90**	*100%*	**$1,976**	*100%*

($ in millions)	Athletic Services		**NIL + Athletic Services =**	Total *House*	
Men	**$540**	***90%***		**$2,425**	***94%***
Women	**30**	***5***		**102**	***4%***
Other	30	*5*		49	*2%*
Total	**$600**	*100%*		**$2,576**	*100%*

Source: *House v. NCAA*, Declaration of Daniel A. Rascher (July 26, 2024).

The reason for the significant disparities between the amounts allocated to men and women in the *House* Settlement was explained by the Class Counsel (Steve Berman and Jeffrey Kessler) in the Factual Allegations of the Third Consolidated Amended Complaint dated Sept. 26, 2024.

"Female Athletes Have Been Especially Adversely Impacted by NIL Restrictions and Will Profit in the New NIL Era"

> "The ***NIL rules adversely impacted female athletes more than their male counterparts*** because (1) they have fewer professional opportunities and they must use their time in school to monetize, and (2) because the ***NCAA promotes female sports less than it does male sports*** and thus many female athletes are not as well known…"
>
> "There was an unanswered demand for the use of NIL of female athletes before interim NIL rules..."
>
> "A study conducted by the website AthleticDirectorU and the marketing firm Navigate Research found that 13 of the 25 college athletes with the greatest annual endorsement potential between **$46,000** and **$630,000** were female athletes."
>
> *Source*: *House v. NCAA*, Third Cons. Am. Class Action Complaint, p. 74.

The NCAA's failure to promote women's sports equitably is also supported by an independent gender equity review of all NCAA Championships in 2021. The law firm Kaplan Hecker & Fink ("**Kaplan**") found significant disparities between men's and women's intercollegiate sports. The source of the disparities is the NCAA structure, which is designed to maximize revenues from the most lucrative source of funding for the NCAA and its members – Division I Men's Basketball. According to Kaplan,

> "The NCAA's broadcast agreements, corporate sponsorship contracts, distribution of revenue, organizational structure, and culture all prioritize Division I Men's Basketball over everything else in ways that create, normalize, and perpetuate gender inequities."
>
> *Source*: Kaplan Hecker & Fink LLP, *NCAA External Gender Equity Review* (2021).

Despite these gender inequities, Rascher used revenue-generating men's sports as a basis to calculate the *House* Settlement Damages awarded to each Settlement Class. As a result of this sex-based analysis, the *House* Settlement has a disparate impact on all female Class Members.

I believe that I am an excellent example of a female student-athlete who was adversely impacted by NIL restrictions and the NCAA's failure to promote female sports equally to men. Therefore, based on my **Estimated Allocation** in the amount of **$5,446.54**, I object to the following:

1. ***House* Settlement Damages**
   i. **Name Image Likeness**: Broadcast NIL and Lost NIL Opportunities
   ii. **Athletic Services – Additional Compensation**
2. ***Hubbard* Academic Achievement (*Alston* Award)**, and
3. **Title IX Release**

OBJECTIONS: ***House*** **Settlement Damages**

Name, Image & Likeness ("NIL") – Broadcast NIL
#8 North – Duke University (Nike, STX)
#8 North – Boston College (New Balance, Under Armour, Gait Lacrosse)
#10/#8 North – Team USA Lacrosse (Nike, Gait Lacrosse)

According to the *House* Settlement, Women's Lacrosse is classified as an **Additional Sports Class** and is "**Not Eligible**" to receive a Broadcast NIL payment. The classification of my sport – rather than the actual commercial use of my NIL – establishes whether I am eligible for a Broadcast NIL payment. Based on my Broadcast NIL valuation of $0, I object to the *House* Settlement.

During my lacrosse career at Duke and BC, my NIL was broadcast on ESPN, ESPNU, ESPN+, ESPN3 and the ACC Network. As the leading scorer at Duke and BC, my goals were featured on the jumbotron of each stadium in which my teams played and broadcast on air and the over internet for thousands of fans to watch my regular season games and high-profile post-season tournaments: ACC Championships (2018, 2019, 2021, 2022), NCAA Final Four (2021, 2022), and NCAA Championships (2021, 2022).

As the top women's lacrosse player on a National Championship team, I was featured in countless interviews, promotional materials, social media, photographs, and video highlights to promote telecasts, broadcasts, and other electronic distributions of Women's Lacrosse for the NCAA, ACC, BC and other Universities that my team competed against.

As a Duke Blue Devil, my bright blue jersey displayed "**North 8**" on my back. My uniform and cleats featured **Nike** logos, and I used a **STX** lacrosse stick to score 59 goals (64 points) as a freshman, and 82 goals (105 points) as a sophomore. During my first year at Duke, I developed a signature free position shot from the eight-meter featuring a unique wind up and forceful whip of the lacrosse stick to shoot the ball over 70 miles per hour at the goal.

As a BC Eagle, my maroon and gold jersey displayed "**North 8**" on my back. Many girls and boys would attend BC games wearing a Boston College #8 North jersey. My uniform and cleats were sponsored by **New Balance**, I used a **Gait Lacrosse** stick and wore **Under Armour** googles above my signature eye black streaks across my face. In addition to being the leading scorer at BC, I also took the draw. As a draw specialist, my NIL appeared at the center of the field to start the game and second half and every time after a goal was scored.

During 2021 and 2022, I was featured multiple times on the covers of *USA Lacrosse* and *Inside Lacrosse* magazines, profiled in *Forbes*, and threw out the first pitch at the Texas Rangers MLB game using a Gait Lacrosse stick to throw the baseball from behind my back – the post generated over 100,000 likes on ESPN Instagram and over 10 million views on Texas Rangers TikTok. My NIL has extended beyond my collegiate career. I am the cover photo for *USA Lacrosse* to promote the 2026 World Lacrosse Women's Championship in Tokyo, and I rang the opening bell at the **New York Stock Exchange** on January 18, 2025, as Ambassador for the Women's Lacrosse League.

Based on the significant use of my NIL – my name, picture, signature shots, draw controls, jersey and other identifiable features (e.g., eye black streaks on my face) – which were used to promote and help distribute NCAA DI Women's Lacrosse during my five-year career at BC and Duke, I believe that I am entitled to a significant NIL Broadcast payment which is currently not reflected in my Estimated Allocation of "Not Eligible".

Full Grant-in-Aid ("GIA") Scholarship vs. Equivalency Athletic Scholarship

Pursuant to current NCAA Rules, Football, Men's Basketball and Women's Basketball are Head Count sports providing those DI student-athletes with Full scholarships. The *House* Settlement limits Broadcast NIL payments to **Full Grant-in-Aid ("GIA")** scholarships for the two Classes: (1) **Football and Men's Basketball**, and (2) **Women's Basketball**.

Pursuant to NCAA Rules, DI Women's Lacrosse is limited to 12 **Equivalency** scholarships per team, which are divided into Partial scholarships for many players on a team. During my career at Duke and BC, our roster size was approximately 40 female student-athletes. Therefore, due to the NCAA Scholarship Cap of 12 Equivalency scholarships, it is very unusual for a DI Lacrosse student-athlete (male of female) to receive a Full scholarship.

My athletic scholarships at Duke and BC are summarized below:

- Duke (2017-18) – 25%
- Duke (2018-19) – 40%
- BC (2019-20) – 100%
- BC (2020-21) – 45%
- BC (2021-22) – 40%

Despite being the top female lacrosse player on the National Championship Team in 2021, I was only awarded an Equivalency scholarship of 45% in 2021 and 40% in 2022. The fact that I only received a Partial scholarship did not reflect my athletic ability, but rather the limitations set forth by current NCAA scholarship cap rules.

According to the *House* Settlement, as an Equivalency sport, I am "*Not Eligible*" to receive a Broadcast NIL. This limitation is based on the classification of Women's Lacrosse as an Additional Sport and the amount of my athletic scholarship (Full vs. Partial), rather than the commercial use of my NIL. The **classification** of sports established by the *House* Settlement Classes appears to violate the **Policy Interpretation** of Title IX, which prohibits classifying sports in a manner that *disproportionately offers benefits* or *opportunities* to members of one sex. See **Appendix C**.

One of the key issues the *House* Settlement seeks to remedy are NCAA rules limiting scholarships available to college athletes. The *House* **Injunctive Relief** (Article 4) states that all NCAA DI athletic scholarship limits will be eliminated, and all scholarships will be equivalency awards. Accordingly, the NCAA would move from a scholarship cap to a roster cap model that would permit all student-athletes on any team to be eligible for a full GIA scholarship. Under new NCAA Injunctive Relief rules, I would have received Full GIA scholarships for all five of my years as a DI athlete, like the Football and Basketball Settlement Damages Classes. Therefore, I believe that I should be eligible to receive a Broadcast NIL payment based on the commercial use of my NIL, and object to the *House* Settlement.

Name, Image & Likeness ("NIL") – Lost NIL Opportunities

Pursuant to the *Alston* Supreme Court decision on June 21, 2021, the NCAA implemented an Interim NIL policy on June 30, 2021, permitting DI athletes to monetize from their NIL. As a result of this policy change, I signed several NIL deals with major brands and engaged in other NIL activities that produced income to me of approximately $118,000 during my college playing

career. My NIL deals included shoes, apparel, equipment, trading cards, social media, video messages and sports camps. A redacted summary of my NIL deals is detailed in **Appendix B**.

According to my Estimated Allocation, my **Lost NIL Opportunities** are valued at **$2,019.45** based on one reported "*NIL Amount Unknown Year*" in the amount of **$1,000**. This valuation is significantly lower than the total value of my NIL deals that I signed between July 1, 2021, and May 29, 2022, when I played my final game as a BC Eagle in front of a sold-out crowd of 15,000 at the NCAA Women's Lacrosse Championship, which was televised on ESPN and reached a peak viewership of 590,000.

My estimated Lost NIL Opportunities of $2,019.45 based on one NIL reported deal in the amount of $1,000 is not accurate. Post *Alston* (2021-22), during my college playing career I earned approximately **$118,000** in income from NIL deals and other activities that is not properly reflected in my current calculation. Therefore, I object to the *House* Settlement. If this Settlement is approved, I request that my Estimated Allocation to be recalculated to fully compensate me for my Lost NIL Opportunities.

Athletic Services – Additional Compensation

My Estimated Allocation for **Athletic Services** is valued at **$286.92**. This amount is significantly lower than the average payments for other Classes: (1) **Football and Men's Basketball ($40,000)**, and (2) **Women's Basketball ($14,000)**. Based on my estimated hours of NCAA permitted athletic services (20 hours per week), I played ~2,500 hours of lacrosse over my five-year career at BC and Duke, which equates to approximately $0.11 per hour. This does not include the hundreds of hours I trained beyond the official practice field, the rehabilitation I undertook to maintain my body, and the promotional engagements I participated in to help promote lacrosse.

The proposed *House* Settlement of **$600 million** for **Athletic Services** disproportionally favors male student-athletes, as illustrated by the chart below providing **Football & Men's Basketball $540 million** representing ***90%*** of the Settlement amounts.

House Settlement – Athletic Services – Additional Compensation		
Damages Class	**Amount**	*%*
Football & Men's Basketball - P5	**$540 Million**	***90%***
Women's Basketball – P5	30	*5*
Additional Sports	30	*5*
Estimated Total	**$600 Million**	

According to NCAA rules, all DI student-athletes are limited to a **maximum of 20 hours per week** of countable athletically related activities ("CARAs") during the playing season. During the off-season, student-athletes are allowed significantly lower CARAs, typically 8 hours per week. Therefore, if DI student-athletes are participating in athletics an equal number of hours per week (20 regular season, 8 off-season), then all DI athletes should be compensated equally for their Athletic Services under the *House* Settlement.

Instead of using current NCAA rules which limit athletic participation for all DI athletes to calculate Athletic Services, the *House* Settlement relies on an economic report prepared by Rascher. Estimated settlement amounts for Athletic Services are calculated using a "**yardstick**"

approach by obtaining a "*but-for-price*" from a "*comparable market*." This comparable market analysis uses a distribution of salaries in professional leagues to derive an estimate salary for college athletes.

The comparable market analysis is fundamentally flawed because it is **sex-based**, using collective bargaining agreements from the professional male leagues: NFL, NBA and NHL, as a yardstick, and then estimating athlete compensation to be 50% of a professional league revenue. Professional sports operate to make a profit which is fundamentally different than the NCAA, athletic conferences and universities who operate not-for-profit business models. The resulting analysis is further sex-based because it allocates damages based on the estimated share of the value each sport contributes to regular season broadcast deals. This sex-based allocation is the same proportion Rascher used to calculate NIL damages and explains why there is a disparate impact on female student-athletes. Therefore, I object to the *House* Settlement and believe the Athletic Services calculations are a violation of Title IX.

I believe that I should receive an Athletic Services payment based on the number of hours that I participated in athletically related activities per week, not based on the Classification of Women's Lacrosse as an Additional Sport and a yardstick that relies on historical gender inequities. Therefore, pursuant to NCAA Rules limiting all DI student-athletes' athletic activities, I believe that my Athletic Services payment should be equal to the amounts awarded to Football and Men's Basketball. Additionally, I believe that Women's Basketball and all other women's sports should receive equal Athletic Services payments based on their participation in NCAA DI sports.

***Hubbard* Academic Achievement (*Alston* Award)**:

My Estimated Allocation values my *Hubbard* Academic Achievement ("*Alston*") Award in the amount of **$3,140.17**. Note, this amount does not include my academic achievements for my freshman and sophomore years at Duke. A summary of my Academic Achievements at Duke and BC are listed below.

Academic Achievements:

- **ACC Lacrosse Scholar-Athlete of the Year** (2021, 2022)
- BC: Cumulative GPA 3.87 (Master of Science in Sports Administration)
- BC: Cumulative GPA 3.73 (Bachelor of Arts Sociology – *Cum Laude*)
- Duke: Cumulative GPA 3.59 (Sociology)

Although I did not receive any *Alston* Award payments at BC, I was the **ACC Lacrosse Scholar-Athlete of the Year** in 2021 and 2022 and believe I should receive the highest amount of any ACC male or female student-athlete for the *Hubbard* Settlement. My academic achievements and transcripts are detailed in **Appendix A**.

Title IX Release – Gross Settlement Fund:

The *House* Settlement contains a specific provision releasing a Class Member's **Title IX** rights with respect to the **Gross Settlement Fund**. **"Unreleased Claims"** is defined in the Amended Stipulation and Settlement Agreement (not defined in the Class Action Notice) as the following:

> *"The Settlement Agreement does not release... claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.,* ***other than any claims arising out of or relating to the distribution of the Gross Settlement Fund.****"*

The referenced terms associated in the Title IX Release are further defined in the Amended Stipulation and Settlement Agreement (not in the Class Action Notice) as the following:

> Gross Settlement Fund is defined as "*the* ***NIL*** *Claims Settlement Amount and* ***Additional Compensation*** *Claims Settlement Amount plus any interest that may accrue."*
>
> NIL Claims Settlement Amount = **$1.976 Billion**
>
> Additional Compensation Claims Settlement Amount = **$600 Million**

Simply stated – this is **confusing language on an important point which adversely impacts all past, current and future female Class Members.** All DI student-athletes who are or will be Class Members need to understand: (1) What is Title IX (nowhere is the federal law explained or defined), and (2) What Title IX claims is a Class Member releasing.

For a Class Member to properly understand his or her Title IX claims under the Gross Settlement Fund, there needs to be full transparency with respect to the Estimated Allocation amounts. While the Rascher report provides a framework for the calculations, based on my comparison with other lacrosse players, the amounts vary significantly and are difficult to understand. A helpful reference point would have been to provide the Estimated Allocation amounts for the named Plaintiffs in the *House* Settlement, but according to Class Counsel these amounts are "*confidential*."

Both the *House* Settlement Damages (NIL Claims $1.976 billion + Additional Compensation Claims $600 million = $2.776 billion) and future **Injunctive Relief** of Shared Revenues from a ***"Benefits Pool"*** created by a university who participates ($20 million per year) violate Title IX as a form of "***financial assistance,***" which must be "*proportional*" to athletic participation rates, or "***benefits***" that must be "*equivalent*" to those provided for a men's athletic program. The Dept. of Education Office for Civil Rights ("OCR") recently issued a Fact Sheet to ensure an equal opportunity, regardless of sex, for NIL activities in athletic programs. The OCR stated that NIL agreements between a university and student-athletes constitute a form of athletic "*financial assistance"* under Title IX. See **Appendix C.**

The Title IX Release in the *House* Settlement is unreasonable for women because neither of the Plaintiff's experts (Edwin Dresser, Daniel Rascher) factored Title IX into their financial analysis to calculate the Settlement amounts or opinions to justify them. The failure to include Title IX in the calculations of the Estimated Allocation amounts explains why there is such a significant disparity between the amounts for men versus women. As stated by both experts at deposition:

> Q: Have you tried to account for Title IX in any of your damage's models in this case?
>
> A: **No.**
>
> *Source*: Rascher Dep. Tr. at 64:12-19.

Q: Have you given any consideration to the Title [IX] in your preparation of this report?

A: That's not within the scope of what I was assigned to work on.

Q: So, the answer is: 'No' you have not given any consideration to it, because you weren't asked to do that?

A: **No, I have not.**

Source: Desser Dep. Tr. at 64:12-19.

The Plaintiff's experts justify their calculations based on the proportion of revenues generated by a sport. Revenue generation by a sport, however, has never been a basis to exempt compliance with Title IX. The *House* Settlement calculations contradict the **legislative history** of Title IX. Since the inception of Title IX legislation, advocates for men's sports tried to exclude revenue-generating sports from Tile IX coverage. Opponents proposed multiple amendments to exclude athletics and limit the reach of the federal law. However, Congress repeatedly rejected these efforts and refused to carve out revenue-generating sports from Title IX coverage. See **Appendix C**.

Congress enacted Title IX to prevent the use of federal funds to support discriminatory practices in education. The *House* Settlement payments are funded by the NCAA, Power Five Conferences and NCAA DI member institutions (universities/colleges). It is well established that universities are a *"recipient of federal financial assistance"* and, therefore, are subject to Title IX. While the NCAA and Athletic Conferences are not a "*direct*" recipient of federal financial assistance, there is a strong argument that athletic conferences are an "*indirect"* recipient of federal funds and, therefore, should be subject to Title IX.

Justice Ginsburg in the landmark U.S. Supreme Court case *NCAA v. Smith* (1999), found that the NCAA's receipt of **membership dues** from educational institutions did not constitute "receipt" of federal aid. Based on this narrow ruling, the NCAA was not subject to Title IX. As a result of this "*recipient loophole*," the NCAA has been operating *"above the law"* for decades, resulting in significant gender disparities detailed in the Kaplan Report and directly impacting the *House* Settlement calculations. However, Justice Ginsburg left open an alternative legal theory to bring the NCAA and athletic conferences under the scope of Title IX. The mere receipt of membership dues, without something "***more,***" was insufficient to trigger Title IX coverage in *Smith*. However, the NCAA's ***"controlling authority"*** over federally funded educational institutions athletic programs is the something "*more*" that brings the NCAA under the scope of Title IX as an "***indirect recipient.***" See **Appendix C**.

The class action lawsuit, *In re: College Athlete NIL Litigation*, exemplifies how the NCAA's Eligibility Rules had controlling authority over student-athletes participation in college sports, limited the use of their NIL, and limited the availability of athletic scholarships. The NCAA, Power Five Conferences and DI NCAA member institutions were "*pervasively entwined*" and conspired together to enact and enforce the NCAA's anticompetitive Eligibility Rules. To the extent the NCAA and Power Five Conferences try to circumvent coverage of Title IX under the *"recipient loophole,"* I request that the Court carefully consider Justice Ginsburg's alternative *"controlling authority"* theory.

Antitrust (Sherman Act) is a fundamentally different issue than antidiscrimination (Title IX), so it incomprehensible why a female student-athlete would be required to release her Title IX rights to participate in an antitrust settlement. In the landmark U.S. Supreme Court Case, *NCAA v. Alston*

(2021), Justice Kavanaugh in his concurring opinion specifically raised this issue, ***"How would any compensation regime comply with Title IX?"*** Title IX was enacted to prevent the unequal treatment of female student-athletes which is precisely what the *House* Settlement would do if approved. Therefore, I object to the *House* Settlement and believe it is a violation of Title IX.

I object to releasing my Title IX claims *"arising out of or relating to the distribution of the Gross Settlement Fund."* There is a significant disparity between *House* Settlement Amounts based on the sex of an athlete, with male athletes receiving a disproportionately higher amount than women. Therefore, I object to the *House* Settlement and request that the Court consider this matter very carefully given the significant consequences of approving the Title IX Release for all female Class Members.

Future - Injunctive Relief:

If the Court approves the *House* Settlement, and a university decides to participate in the $20 million "revenue sharing" pool for student-athletes, I request that "revenue sharing" payments comply with Title IX, and that universities be required to provide full disclosure to the Court and Equity in Athletics Disclosure Act ("EADA") so that there is full transparency on these payments.

Request to Speak at Final Hearing – Legal Representation:

I have retained an independent attorney because I believe there is a conflict of interest with the Class Counsel (Winston & Strawn LLP and Hagens Berman Sobol Shapiro LLP) who has negotiated a *House* Settlement that disproportionately favors men and failed to take Title IX into consideration. I am currently being represented by **Leigh Ernst Friestedt**, a New York attorney who specializes in Title IX and sports law matters. Leigh is also a former DI Women's Lacrosse player, who has a strong understanding of the issues raised in my objection. I will be training with the USA National Team and working as an ESPN broadcaster this spring, so unable to attend the Approval Hearing. In my absence, I request that Leigh be permitted to speak on my behalf at the Final Approval Hearing, schedule for April 7, 2025.

Leigh's full contact information is listed below. Please include her on any future correspondence.

Leigh Ernst Friestedt
Equity IX, LLC
40 Mercer St. #15
New York, NY 10013
leigh@equityix.com
(917) 513-5541

Claim Forms

I have updated my contact and payment information and submitted Claim Forms that would be required to participate in the *House* and *Hubbard* Settlements. Should the Court approve the *House* Settlement, I request that the Court recalculate my Estimated Allocation amounts to reflect my full information, including my freshman and sophomore years at Duke (2017-19).

If you need any additional information, please feel free to contact me – my full contact information is listed below.

Charlotte North
[redacted]

Thank you for your consideration of my objections.

Sincerely,

Charlotte North
Duke University – Women's Lacrosse (2017-19)
Boston College – Women's Lacrosse (2019-22)
USA Lacrosse Women's National Team (2022-Present)

cc: Leigh Ernst Friestedt

Leigh Ernst Friestedt
1/30/25

APPENDIX A
Charlotte North

Table of Contents

1. Athletic Honors and Academic Achievements
2. Professional Resume
3. Duke – Transcript (Undergraduate)
4. Boston College – Transcript (Undergraduate)
5. Boston College – Transcript (Graduate)

Charlotte North

NCAA Eligibility ID # 1602420503

HONORS AND ACHIEVEMENTS

Women's Lacrosse Honors

World Championship – USA National Box Lacrosse Team	*2024*
World Championship – USA National Team	*2022*
NCAA National Championship – Boston College	*2021*
NCAA National Championship Runner-Up – Boston College	*2022*
Tewaaraton Award (Best College Lacrosse Player)	*2021, 2022*
Most Outstanding Player – NCAA Tournament	*2021*
NCAA All-Tournament Team	*2022*
Player of the Year and Attacker of the Year – IWLCA	*2021, 2022*
National Player of the Year – Inside Lacrosse	*2021*
First Team All-American – IWLCA, Inside Lacrosse, USA Lacrosse Magazine	*2021, 2022*
ACC Athlete of the Year	*2021, 2022*
ACC Lacrosse Scholar-Athlete of the Year	***2021, 2022***
First Team All-ACC	*2021, 2022*
All-ACC Tournament Team	*2021, 2022*
ESPY Nominee, Best College Athlete – Women's Sports	*2022*
Honda Collegiate Women Sports Award for Lacrosse	*2021*
Eagle of the Year Award, Boston College (Highest Honor for BC Athlete)	*2021, 2022*
Offensive Player of the Week – IWLCA (4x), ACC (4x)	*2021*
Offensive Player of the Week – IWLCA (1x), ACC (5x)	*2022*
First Team, Northeast Region – IWLCA	*2021, 2022*
#1 College Lacrosse Player (Men's or Women's) – Inside Lacrosse	*2022*

Women's College Lacrosse Records/Rankings

Career Goals (358) – 2nd Highest All-Time – NCAA
Career Points (433) – 4th Highest All-Time – NCAA
Single Season Goals (102) – 2nd Highest All-Time – NCAA
NCAA Tournament Goals (31)
NCAA Championship Game Goals (6) (Tie)
NCAA Tournament Single Game Goals (8, 2x) – Boston College
Single Game Goals (10) – ACC and Boston College
Single Season Points (105) and Goals (82) – Duke
Freshman Single Season Points (64) and Goals (59)– Duke
Single Game Points (12) – Boston College
Single Game Points (11) (Tie), Goals (8) and Assists (6) (Tie) – Duke

Women's Professional Lacrosse Records/Rankings

Single Season Goals (50) – Athletes Unlimited
Single Season Points (59) – Athletes Unlimited
Single Game Goals (8) – Athletes Unlimited
Career Points (153) – Second Most-All-Time; Fastest Player to Reach 150 Points by 15 Games
Career Two-Point Goals (24) – Highest All-Time – Athletes Unlimited

Charlotte North

1 Park Lane, Apt 908, Boston, MA 02210 | charlotte@ocholacrosse.com | 214-796-3614

EDUCATION

Boston College, Woods College of Advancing Studies Chestnut Hill, MA
Master of Science in Sports Administration *May 2023*
Overall GPA: 3.87

Boston College, Morrissey College of Arts and Sciences Chestnut Hill, MA
Bachelor of Arts in Sociology, Cum Laude *May 2021*
Overall GPA: 3.73

Duke University, Trinity College of Art & Science Durham, NC
Sociology Major *August 2017 – May 2019*
Overall GPA: 3.59

WORK & LEADERSHIP EXPERIENCE

USA Lacrosse - Women's National Box Team Utica, NY
Player *September 2023 – September 2024*
- Selected to 23-member USA women's national box lacrosse team, which won gold medal in World Lacrosse Women's Box Championships in September 2024

Athletes Unlimited Sparks, MD
Player *August 2022, July - August 2024*
- Professional lacrosse player. First player selected in 2022 Athletes Unlimited lacrosse draft. Led the league in goals, two-point goals and points in each of first three seasons.

USA Lacrosse - Women's National Team Towson, MD
Player *January - August 2022*
- Selected to 18-member USA women's national lacrosse team, which won gold medal at World Lacrosse Women's Championships in July 2022

Boston College Women's Lacrosse Chestnut Hill, MA
Captain *August 2020 – May 2022*
Starter (Attack, Draw) *August 2019 – May 2022*
- Transferred from Duke to Boston College in August 2019 to seek more competitive lacrosse experience; deliberately took on the challenge of, and successfully managed, transition to new program and team, including learning to work with, gain the trust and respect of, and ultimately help lead new teammates

Duke University Women's Lacrosse Durham, NC
Starter (Attack) *August 2017 – May 2019*

Self Employed Dallas, TX and Boston, MA
Ocho Lacrosse, LLC (d/b/a Charlotte North Lacrosse) *June 2021 – Present*
- Founded new entrepreneurial vehicle to pursue lacrosse-related opportunities, and to serve as a platform for my other professional athletics-related endeavors, including in-person and online training, sponsorship and licensing opportunities, social media marketing and sports broadcasting and other media ventures

Personal and Club Team Lacrosse Coach and Trainer *June 2017 – June 2021*

- Provided coaching and training to high school and youth players to help them develop lacrosse skills as well as critical leadership, work ethic and character traits through their commitment to the sport

ESPN Bristol, CT
Broadcaster *March 2023 – Present*

- On-air commentator for men's and women's lacrosse games broadcast or streamed on ESPN networks

Boston College Department of Athletics Chestnut Hill, MA
Intern, Marketing Department *June 2021 – December 2021*

- Worked with senior Boston College athletics department marketing staff on multiple projects to increase ticket sales for, and student, alumni and community engagement with, various athletics programs and events

VOLUNTEER EXPERIENCE

Friends of the Heights Fund Boston, MA
Advisory Council Member *November 2022 – Present*

- One of two initial Advisory Council Members for new, alumni-led program for Boston College student-athletes dedicated to helping them capitalize on name, image and likeness ("NIL") opportunities to build their brands and earn compensation

Bridge Lacrosse Dallas, TX
Coach and Mentor *October 2015 – August 2021*

- Coached and trained high school and youth players from under-served local communities, helping them not only develop lacrosse skills but also achieve personal growth and helpful connections to the wider community

Duke University

Official Transcript

Name: Charlotte North Student ID: 2363306
Print Date: 06/13/2019

Academic Program

Program: Trinity College Status:
Active in Program Plan: Sociology (AB)
Plan: Markets and Management (C)

Beginning of Undergraduate Record

2017 Fall Term

Course		Description	Earned	Grade
ECON	22	INTRODUCTORY MACROECONOMICS	1.000	AP

Course		Description	Earned	Grade
ITALIAN	101	ELEMENTARY ITALIAN 1	1.000	A
PSY	101	INTRODUCTORY PSYCHOLOGY	1.000	C+
VMS	353	BLK PERFORM: M. JACKSON/PRINCE	1.000	A-
WRITING	101	ACADEMIC WRITING	1.000	A-
Topic:		LAND OF THE FREE		
Term GPA	3.425	Term Earned	5.000	

2018 Spring Term

Course		Description	Earned	Grade
CULANTH	89S	FIRST-YEAR SEMINAR (TOP)	1.000	A
Topic:		MUSIC AS MIRROR, MEDIATOR		
CULANTH	101	INTRO TO CULTURAL ANTHRO	1.000	B+
ITALIAN	102	ELEMENTARY ITALIAN 2	1.000	A-
SOCIOL	218	SEX, GENDER, AND SOCIETY	1.000	B+
Term GPA	3.575	Term Earned	4.000	

2018 Summer Term 1

Course		Description	Earned	Grade
STA	101	DATA ANALY/STAT INFER	1.000	A-
Term GPA	3.700	Term Earned	1.000	

2018 Fall Term

Course		Description	Earned	Grade
ITALIAN	203	INTERMEDIATE ITALIAN	1.000	A-
SOCIOL	332	METHODS SOCIAL RESEARCH	1.000	A-
SOCIOL	338	THEORY AND SOCIETY	1.000	A-
VMS	267	FILM GENRES	1.000	A
Term GPA	3.775	Term Earned	4.000	

2019 Spring Term

Course		Description	Earned	Grade
MMS	490	SPECIAL TOPICS	1.000	B+
Topic:		BUSINESS COMMUNICATIONS		
SOCIOL	257	MENTAL HEALTH	1.000	A
SOCIOL	344	TECH AND ORG ENVIRONMENTS	1.000	A-
VMS	103	TRADITIONS IN DOC STUDIES	1.000	B+
Term GPA	3.575	Term Earned	4.000	

Undergraduate Career Earned

Cum GPA:

3.594 **Cum Earned** **18.000**

End of Official Transcript

BOSTON COLLEGE

Office of Student Services
Academic Transcript

Boston College
Office of Student Services
Lyons Hall 103
140 Commonwealth Avenue
Chestnut Hill, MA 02467

NAME : CHARLOTTE G NORTH
SCHOOL : MORRISSEY COLLEGE OF ARTS AND SCIENCES
DEGREE : BACHELOR OF ARTS - 05/24/2021 CUM LAUDE
MAJOR : SOCIOLOGY

STUDENT ID#: 34290268
DATE PRINTED: 01/29/2025

EXTERNAL TRANSFER CREDITS

DUKE UNIVERSITY	56
EXTERNAL INSTITUTION	04
EARNED CREDITS :	60

FALL 2019 MORRISSEY COLLEGE OF ARTS AND SCIENCES

COURSE	COURSE TITLE	ATT	EARN	GR
APSY1031	FAMILY SCHOOL&SOCIETY	03	03	A
HIST1083	GLOBALIZATION I	03	03	A-
JOUR2235	SPORTS WRITING	03	03	A
PHIL1070	PHILOSOPHY OF PERSON I	03	03	B+
THEO1421	NEW TESTAMENT	03	03	A-

			ATT	EARN	UNITS
TERM GPA:	3.734	TERM TOTALS:	15	15	15
CUM GPA:	3.734	CUM TOTALS:	75	75	15

SPRING 2020 MORRISSEY COLLEGE OF ARTS AND SCIENCES

COURSE	COURSE TITLE	ATT	EARN	GR
ESSC1187	GEOSCIENCE&PUBLIC POLICY	03	03	P
ENGL1080	LITERATURE CORE	03	03	P
ITAL1114	INTERMEDIATE ITALIAN II	03	03	P
SOCY1001	INTRODUCTORY SOCIOLOGY	03	03	A
THEO1402	GOD, SELF, AND SOCIETY	03	03	A

			ATT	EARN	UNITS
TERM GPA:	4.000	TERM TOTALS:	15	15	06
CUM GPA:	3.810	CUM TOTALS:	90	90	21

FALL 2020 MORRISSEY COLLEGE OF ARTS AND SCIENCES

COURSE	COURSE TITLE	ATT	EARN	GR
CHEM1105	CHEMISTRY AND SOCIETY I	03	03	A
CSCI1101	COMPUTER SCIENCE I	03	03	A-
PHIL1071	PHILOSOPHY OF PERSON II	03	03	A-
SOCY1078	SOC OF HEALTH AND ILLNESS	03	03	A
SOCY3359	SPORTS/AMERICAN SOCIETY	03	03	A-

			ATT	EARN	UNITS
TERM GPA:	3.802	TERM TOTALS:	15	15	15
CUM GPA:	3.807	CUM TOTALS:	105	105	36

SPRING 2021 MORRISSEY COLLEGE OF ARTS AND SCIENCES

COURSE	COURSE TITLE	ATT	EARN	GR
ACCT1021	FINANCIAL ACCOUNTING	03	03	B+
COMM1030	PUBLIC SPEAKING	03	03	B+
HIST1056	GLOBALIZATION II	03	03	A-
SOCY2181	GENDER,IDENTITY,SEXUALITY	03	03	A
SOCY5565	INTRO TO SOCIAL WORK	03	03	B+

			ATT	EARN	UNITS
TERM GPA:	3.532	TERM TOTALS:	15	15	15
CUM GPA:	3.726	CUM TOTALS:	120	120	51

TOTAL CREDITS EARNED : 120 CUM GPA : 3.726

END OF RECORD

Bryan D. Jones
University Registrar

BOSTON COLLEGE

Office of Student Services
Academic Transcript

Boston College
Office of Student Services
Lyons Hall 103
140 Commonwealth Avenue
Chestnut Hill, MA 02467

NAME : CHARLOTTE G NORTH
SCHOOL : WOODS COLLEGE OF ADVANCING STUDIES
DEGREE : MASTER OF SCIENCE - 05/22/2023
GRADUATE DISCIPLINE : SPORTS ADMINISTRATION

STUDENT ID#: 34290268
DATE PRINTED: 10/10/2023

FALL 2021 WOODS COLLEGE OF ADVANCING STUDIES

COURSE	COURSE TITLE	ATT	EARN	GR
ADSA7501	INTRO TO SPORTS MANAGEMNT	03	03	A
ADSA7504	SPORTS LAW & COMPLIANCE	03	03	A
ADSA7585	SPRTSLEADRSHP&IGNATNETHCS	03	03	A
ADSA8010	COACHING-PERF & STDT ATHL	03	03	A-

			ATT	EARN	UNITS
TERM GPA:	3.918	TERM TOTALS:	12	12	12
CUM GPA:	3.918	CUM TOTALS:	12	12	12

SPRING 2022 WOODS COLLEGE OF ADVANCING STUDIES

COURSE	COURSE TITLE	ATT	EARN	GR
ADSA7503	SPORTS FINANCE	03	03	A
ADSA8004	DIVERSITY AND INCLUSION IN SPORTS	03	03	B+
ADSA8008	SPORT PSYCHOLOGY	03	03	A

			ATT	EARN	UNITS
TERM GPA:	3.777	TERM TOTALS:	09	09	09
CUM GPA:	3.857	CUM TOTALS:	21	21	21

SUMMER 2022 WOODS COLLEGE OF ADVANCING STUDIES

COURSE	COURSE TITLE	ATT	EARN	GR
ADSA7502	SPORTS MKTG & COMMUNICATN	03	03	A

			ATT	EARN	UNITS
TERM GPA:	4.000	TERM TOTALS:	03	03	03
CUM GPA:	3.875	CUM TOTALS:	24	24	24

FALL 2022 WOODS COLLEGE OF ADVANCING STUDIES

COURSE	COURSE TITLE	ATT	EARN	GR
ADSA7506	ATHLETE ENTREPRENEURSHIP: OPPORTUNITIES CREATED BY NAME, IMAGE, & LIKENESS	03	03	A-

			ATT	EARN	UNITS
TERM GPA:	3.670	TERM TOTALS:	03	03	03
CUM GPA:	3.852	CUM TOTALS:	27	27	27

SPRING 2023 WOODS COLLEGE OF ADVANCING STUDIES

COURSE	COURSE TITLE	ATT	EARN	GR
ADSA8902	APPLIED RESEARCH PROJECT	03	03	A

			ATT	EARN	UNITS
TERM GPA:	4.000	TERM TOTALS:	03	03	03
CUM GPA:	3.857	CUM TOTALS:	30	30	30

TOTAL CREDITS EARNED : 30 CUM GPA : 3.857

END OF RECORD

Bryan D. Jones
University Registrar

APPENDIX B
Charlotte North
NIL Deals

Charlotte North
NIL Deals
(June 21, 2021 – May 29, 2022)

Charlotte North entered into the following NIL deals valued at **$118,856** post the *Alston* Supreme Court decision (June 21, 2021) until her final game at Boston College for the NCAA DI Women's Lacrosse Championship (May 29, 2022). Note, brand names have been redacted for confidentially.

2021 NIL Deals				
Contract Date	**Brand**	**Description**	**Income 2021**	**Income 2022**
Post *Alston*	Brand A	Video Messages	$635	$1,251
8/24/21	Brand B	Shoes	1,899	966
9/19/21	Brand C	Apparel	---	7,358
9/20/21	Brand D	Apparel	325	4,279
		Sub-Total	**$2,859**	**$13,854**

2022 NIL Deals				
Contract Date	**Brand**	**Description**	**Income 2021**	**Income 2022**
2/1/22	Brand E	Trading Cards	---	$2,500
2/18/22	Brand F	Social Media	---	17,500
2/29/22	Brand G	Sports Camps	---	31,707
3/25/22	Brand H	Licensing	---	142
2021-22	CNL	Sports Clinics	$21,836	28,458
		Sub-Total	**$21,836**	**$80,307**
		Total	**$24,695**	**$94,161**
		TOTAL (2021-'22)	**$118,856**	

APPENDIX C
Title IX

Table of Contents

1. Title IX 1972 Educational Amendments Act
2. Title IX – Regulations
3. Title IX – Policy Interpretation
4. Dept. of Edu cation OCR – Fact Sheet

Title IX of the Education Amendments Act of 1972
20 U.S.C. § 1681, et seq.

In June 1972, President Nixon signed **Title IX of the Education Amendments of 1972** into law. Title IX is a federal law that states:

"No person in the United States shall, on the basis of sex, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681, et seq.

Title IX applies to ***all aspects of education programs or activities*** operated by recipients of federal financial assistance. In addition to educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a "*recipient of federal financial assistance.*"

Civil Rights Restoration Act of 1987

In response to the Supreme Court's decision in *Grove City College v. Bell*, 465 U.S. 555, 571-72 (1984) that Title IX and other similar nondiscrimination statutes were *program-specific* and only applied to the particular portion of a recipient's program that actually received federal financial assistance, Congress passed the **Civil Rights Restoration Act of 1987** which clarified the definition of ***"program or activity"*** to cover **all the operations** of an entity receiving federal financial assistance.

Purpose

Congress enacted Title IX with two principal objectives: to avoid the use of federal resources to support discriminatory practices in education programs, and to provide individual citizens effective protection against those practices. See *Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979).

Congress consciously modeled Title IX on **Title VI of the Civil Rights Act of 1964**, as amended, 42 U.S.C. § 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive federal funds. Title VI's protections are not limited to "*education*" programs and activities, as are those of Title IX.

The two statutes both **condition an offer of federal funding on a promise by the recipient not to discriminate**, in what is essentially a contract between the government and the recipient of funds.

Federal Financial Assistance

Title IX prohibits (limited exceptions) any entity that receives "***federal financial assistance***" from discriminating against individuals on the basis of sex in education programs or activities. 20 U.S.C. § 1681(a) The clearest example of federal financial assistance is the award or grant of money.

Direct and Indirect Receipt of Federal Assistance

Federal financial assistance may be received directly or indirectly. For example, colleges indirectly receive federal financial assistance when they accept students who pay, in part, with federal financial aid directly distributed to the students. *Grove City College v. Bell*, 465 U.S. 555, 564 (1984); see also *Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 603 (D. S.C. 1974), aff'd, 529 F.2d 514 (4th Cir. 1975).

Recipient (Regulations)

A "***recipient***" is an entity that receives federal financial assistance and that operates ***"an education program or activity,"*** and is thus subject to Title IX. The Title IX common rule provides as follows:

The term *recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof. 65 Fed. Reg. 52866 at § 1211.105 (2000).

Indirect Recipient – *NCAA v. Smith*

A recipient may receive funds either directly or indirectly. *Grove City College*, 465 U.S. at 564-65. For example, educational institutions receive federal financial assistance indirectly when they accept students who pay, in part, with federal loans. Although the money is paid directly to the students, the universities and other educational institutions are the indirect recipients. Id.; *Bob Jones Univ.*, 396 F. Supp. at 602.

The U.S. Supreme Court in *NCAA v. Smith*, 525 U.S. 459, 470 (1999), citing both *Grove City* and *Paralyzed Veterans*, stated that while **membership dues** paid to an entity (NCAA) by colleges and universities, who were recipients of federal financial assistance, "at most ... demonstrates that it [NCAA] indirectly benefits from the federal assistance afforded its afforded members." But the Court stated, "This showing, ***without more***, is insufficient to trigger Title IX coverage. *Smith*, 525 U.S. at 468.

Controlling Authority – *NCAA v. Smith*

However, the U.S. Supreme Court in *Smith* did not address the argument that "when a recipient cedes **controlling authority** over a federally funded program to another entity, ***the controlling entity is covered by Title IX regardless whether it is itself a recipient.***" *Smith*, 525 U.S. at 469-471.

Disparate Treatment

Disparate treatment refers to actions that treat similarly situated persons differently on the basis of a prohibited **classification**. In the case of Title IX, the prohibited classification is sex. Under the disparate treatment theory of discrimination, the core question is whether a recipient, through its officials, has *treated people differently on the basis of sex.*

Disparate Impact

In contrast to disparate treatment, which focuses on the intent to cause sex-based results, disparate impact focuses on the consequences of a facially sex-neutral policy or practice. Under this theory of discrimination, the core inquiry focuses on the results of the action taken, rather than the underlying intent. Because of this difference in focus, evidence of a discriminatory intent or purpose is not required. Indeed, "intent" is not an element in the disparate impact analysis.

Source: Civil Rights Division – Title IX – www.justice.gov

Title IX Regulations

§ 1061 Purpose.

The purpose of this part is to effectuate Title IX, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.

§ 1067 Financial assistance.

(a) ***General.*** Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) ***Financial aid established by certain legal instruments.***

(1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) ***Athletic scholarships.***

(1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

§ 10641 Athletics.

(a) ***General.*** No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) ***Separate teams.*** Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) ***Equal opportunity.*** A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
(2) The provision of equipment and supplies;
(3) Scheduling of games and practice time;
(4) Travel and per diem allowance;
(5) Opportunity to receive coaching and academic tutoring;
(6) Assignment and compensation of coaches and tutors;
(7) Provision of locker rooms, practice and competitive facilities;
(8) Provision of medical and training facilities and services;
(9) Provision of housing and dining facilities and services;
(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020; 89 FR 33888, Apr. 29, 2024]

(c) ***Athletic scholarships.***

(1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

Policy Interpretation – Title IX and Intercollegiate Athletics

Title IX - Background

§ 901(a) of Title IX of the Education Amendments of 1972 provides:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

§ 844 of the Education Amendments of 1974 further provides:

> "The Secretary of [of HEW] shall prepare and publish proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Congress passed § 844 after the Conference Committee **deleted** a Senate floor **amendment that would have exempted *revenue-producing* athletics from the jurisdiction of Title IX.**

Purpose of Policy Interpretation

By the end of July 1978, the Department had received nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education. In attempting to investigate these complaints, and to answer questions from the university community, the Department determined that it should provide further guidance on what constitutes compliance with the law. Accordingly, this Policy Interpretation explains the regulation so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs.

Summary of Final Policy Interpretation

The final Policy Interpretation clarifies the meaning of "**equal opportunity**" in intercollegiate athletics. It explains the factors and standards set out in the law and regulation which the Department will consider in determining whether an institution's intercollegiate athletics program complies with the law and regulations. It also provides guidance to assist institutions in determining whether any disparities which may exist between men's and women's programs are justifiable and nondiscriminatory. The Policy Interpretation is divided into three sections:

- ***Compliance in Financial Assistance (Scholarships) Based on Athletic Ability:*** Pursuant to the regulation, the governing principle in this area is that all such assistance should be available on a ***substantially proportional basis*** to the number of male and female participants in the institution's athletic program.
- *Compliance in* ***Other Program Areas*** *(Equipment and supplies; games and practice times; travel and per diem, coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services):* Pursuant to the regulation, the governing principle is that male and female athletes should receive **equivalent treatment, benefits, and opportunities.**
- *Compliance in Meeting the* ***Interests and Abilities*** *of Male and Female Students:* Pursuant to the regulation, the governing principle in this area is that the **athletic interests and abilities** of male and female students must be **equally effectively accommodated.**

Source: U.S. Department of Education, *A Policy Interpretation: Title IX and Intercollegiate Athletics.*

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities

Title IX of the Education Amendments of 1972[1] (Title IX) prohibits discrimination on the basis of sex by schools that receive Federal financial assistance, including K-12 schools, colleges, and universities.[2] If a school receives Federal financial assistance, Title IX's prohibition on sex discrimination extends to all of the school's programs and activities, including its athletic program.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX and its implementing regulations, which require that schools receiving Federal financial assistance provide equal athletic opportunities based on sex—including with respect to publicity, support services, and other benefits, opportunities, and treatment—and that schools not discriminate in the provision of athletic financial assistance.[3] As the types of benefits provided to student-athletes continue to evolve, including in the context of Name, Image, and Likeness (NIL) activities, schools may have questions regarding how NIL activities impact the provision of equal opportunities in their athletic programs.

OCR provides this Fact Sheet to clarify how OCR will evaluate equal opportunity in a school's athletic program under Title IX when student-athletes receive NIL-related compensation and benefits.[4]

Part One of this Fact Sheet describes the Title IX requirements to provide equal athletic opportunity based on sex. Part Two provides a brief background on NIL agreements. Part Three clarifies that Title IX's requirement that a school provide equivalent benefits, opportunities, and treatment in the components of the school's athletic program covers any benefits, opportunities, and treatment that a school provides related to NIL activities (particularly publicity and support services). Part Four explains that compensation from a school for use of a student-athlete's NIL

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[1] 20 U.S.C. § 1681 *et seq.*

[2] Throughout this Fact Sheet, "school" is used generally to refer to elementary, secondary, and postsecondary educational institutions that are recipients of Federal financial assistance. This Fact Sheet uses the term "third party" to refer to an outside organization or individual, which includes a Name, Image, and Likeness (NIL) collective.

[3] 34 C.F.R. §§ 106.41(c) and 106.37(c). *See also* U.S. Dep't of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics (1979 Policy Interpretation), 44 Fed. Reg. 71,413 (Dec. 11, 1979), https://tile.loc.gov/storage-services/service/ll/fedreg/fr044/fr044239/fr044239.pdf.

[4] The general principles of this Fact Sheet apply to both intercollegiate athletics and interscholastic athletics, although NIL activities less frequently involve K-12 schools. The general principles also apply regardless of what athletic association a school is a member of (e.g., National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), National Junior College Athletic Association (NJCAA), a state high school athletic association).

The Department's Title IX regulations assume that the receipt of financial assistance does not transform students, including student-athletes, into employees. *Compare* 34 C.F.R. § 106.37 (requirements regarding financial assistance for students), *with* 34 C.F.R. §§ 106.51-61 (requirements regarding employment). The analysis offered in this Fact Sheet operates under that same assumption. If the legal landscape around this issue changes, OCR would reevaluate this position.

qualifies as athletic financial assistance which, under Title IX, must be made available to male and female student-athletes in a manner that is substantially proportionate to the number of students of each sex participating in interscholastic or intercollegiate athletics at that school. Finally, Part Five addresses NIL agreements between student-athletes and third parties.

OCR evaluates each matter on a case-by-case basis with due regard for the unique facts presented by each case.

1. Title IX and athletic opportunities in school athletic programs

The Title IX regulations require schools to provide equal athletic opportunity, regardless of sex.[5] Equal opportunity in athletic programs is assessed in three main areas[6]:

1. The benefits, opportunities, and treatment given to male and female athletic teams;
2. The athletic financial assistance, including athletic scholarships, that a school awards to student-athletes; and
3. A school's accommodation of the athletic interests and abilities of its students.

Benefits, opportunities, and treatment

The Title IX regulations require a school that operates an athletic program to offer equal athletic opportunity regardless of sex.[7] OCR compares the availability, quality, and kinds of benefits, opportunities, and treatment afforded to male and female student-athletes in the major components of a school's athletic program (e.g., equipment and supplies, facilities, schedules, travel and per diem allowances, housing and dining facilities and services, publicity, and recruitment) in determining whether the school is providing equal athletic opportunities.[8] If the compared program components are equivalent (i.e., equal or equal in effect), OCR considers a school to be in compliance with Title IX.[9] Under this standard, identical benefits, opportunities, or treatment are not required to show that program components are equivalent, as long as the overall effect of any differences is negligible.[10] Even if the benefits, opportunities, and treatment in the components of a school's athletic program are not equivalent in availability, quality, or kind, the school may nevertheless be in compliance with Title IX if the differences are the result

[5] 34 C.F.R. §§ 106.41(c) and 106.37(c).
[6] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71414.
[7] 34 C.F.R. § 106.41(c).
[8] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 ("The Department will assess compliance with both the recruitment and the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes."); *see also, e.g.*, *Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910, 918 (7th Cir. 2012) (deferring to the 1979 Policy Interpretation and stating that the Department assesses compliance "by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes" (quoting 1979 Policy Interpretation, 44 Fed. Reg. at 71,415)); *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 291-92 (2d Cir. 2004) (stating that the 1979 Policy Interpretation governs the court's inquiry and that the Department assesses compliance with "the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes" (quoting 1979 Policy Interpretation, 44 Fed. Reg. at 71,415)).
[9] 1979 Policy Interpretation, 44 Fed. Reg. at 71,415.
[10] *Id.*

of nondiscriminatory factors.[11] Under such circumstances, OCR would still investigate whether any disparity in the benefits, opportunities, or treatment in the school's athletic program—that is not the result of nondiscriminatory factors—is substantial enough in and of itself to result in the denial of equal athletic opportunities with respect to individual program components or the athletic program as a whole.[12]

For example, at one school, the men's teams collectively play significantly more games on Friday nights and Saturdays than the women's teams. These times are considered primetime because attendance is higher, and the school has not offered a nondiscriminatory justification for the scheduling of games in this manner. OCR may find that the school is not providing equal athletic opportunity to members of the men's and women's teams with respect to scheduling games, as required by 34 C.F.R. § 106.41(c)(3).

At another school, there are multiple locker rooms for the men's athletic teams while there is only one locker room for the women's athletic teams. The location of the women's locker room is further away from their practice and competition facilities than the location of the men's locker rooms. The women's soccer, field hockey, and lacrosse teams share a practice field, while each men's team uses a practice field designated for each sport. The school has not offered a nondiscriminatory justification for the provision of locker rooms and practice facilities in this manner. OCR may find that the school is not providing equal athletic opportunity to members of the men's and women's athletic teams with respect to provision of locker rooms, practice facilities, and competitive facilities, as required by 34 C.F.R. § 106.41(c)(7).

The application of Title IX's requirements regarding equal athletic opportunity in the components of a school's athletic program to the NIL context is discussed in Part Three.

Athletic financial assistance

If a school awards athletic financial assistance, the Title IX regulations require the school to "provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."[13] The

[11] For example, OCR has recognized that certain aspects of athletic programs may not be equivalent based on sex because of unique factors related to the operation of particular sports, such as the nature/replacement of equipment and the nature/maintenance of facilities required for competition. If a school is meeting sport-specific needs equivalently in the men's and women's programs, OCR will likely find the differences in particular program components to be justifiable. OCR has also recognized that, in certain circumstances, the operation of a competitive event may give rise to special demands or imbalances in particular program components, due to the costs and support needed to manage events with large crowds (historically associated with football and men's basketball). As long as any special demands are met to an equivalent degree for both men's and women's teams, OCR may find these differences to be nondiscriminatory. Under Title IX, the school must use sex-neutral criteria to determine the levels of event management support and must not limit the potential for women's athletic events to rise in spectator appeal. *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415-16.

[12] *See id.* at 71,417 (stating that OCR considers, in part, "[w]hether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole" and "[w]hether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity").

[13] 34 C.F.R. § 106.37(c).

regulations do not require the same number of awards for male and female student-athletes or that individual awards be of equal value.

When evaluating a school's compliance with the Title IX regulations, OCR assesses whether the total amount of athletic financial assistance made available by the school to men and women is substantially proportionate to the number of students of each sex participating in interscholastic or intercollegiate athletics at that school.[14] OCR may find a school to be in compliance with Title IX if a disparity may be explained by legitimate nondiscriminatory factors, such as actions taken to promote athletic program development, legitimate efforts undertaken to comply with Title IX requirements, and unexpected fluctuations in the participation rates of males and females.[15] In assessing compliance with 34 C.F.R. § 106.37(c), OCR includes the amount of all compensation and other financial assistance provided by a school to its student-athletes when calculating the total amount of athletic financial assistance made available to men and women at a school.

Part Four of this Fact Sheet addresses how Title IX's athletic financial assistance requirements apply to compensation and other financial assistance that a school provides for use of a student-athlete's NIL.

Meeting students' athletic interests and abilities

In determining whether equal opportunities in an athletic program are available, the Title IX regulations also require a school that operates an athletic program to effectively accommodate the athletic interests and abilities of its male and female students. This Title IX athletics requirement is not discussed in this Fact Sheet.[16]

2. NIL agreements in school athletic programs

An NIL agreement is a contract that allows a student-athlete to control the use of their NIL and receive compensation for it.[17] NIL collectives are organizations typically created by booster clubs, fans, alumni, and/or businesses to develop, fund, and facilitate NIL opportunities for student-athletes.[18] Until recently, student-athletes were prohibited from receiving any compensation based on their athletic ability, including "from boosters, companies seeking endorsements, or would-be licensors of the athlete's name, image, and likeness."[19] Following several court decisions striking down limitations on NIL activities and other compensation for student-athletes,[20] the NIL landscape has continued to evolve. States, schools, and athletic

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[14] *See id.*; *see also* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415.
[15] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415.
[16] For information on the three-part test that OCR uses to determine whether a school is effectively accommodating the interests and abilities of its male and female students, please see 1979 Policy Interpretation, 44 Fed. Reg. at 71,417-18.
[17] *See O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015).
[18] *See Tennessee v. Nat'l Collegiate Athletic Ass'n*, 718 F. Supp. 3d 756, 759-60 (E.D. Tenn. 2024); Internal Revenue Service, Whether Operation of an NIL Collective Furthers an Exempt Purpose Under Section 501(c)(3) (June 9, 2023), https://www.irs.gov/pub/lanoa/am-2023-004-508v.pdf.
[19] *O'Bannon*, 802 F.3d at 1055.
[20] *See, e.g.*, *O'Bannon*, 802 F.3d at 1078-79 (holding that the NCAA must permit its member schools to award grants-in-aid up to the full cost of attendance to their student-athletes); *Nat'l Collegiate Athletic Ass'n v. Alston*, 594

associations have responded to the increased interest in NIL activities by enacting laws or policies, which regulate NIL activities involving student-athletes.[21] As student-athletes take advantage of new opportunities to benefit from their NIL, it is important for schools to understand how Title IX may apply to these benefits.

3. Benefits, opportunities, and treatment provided by a school to assist its student-athletes in obtaining and managing NIL agreements (with schools or third parties)

Schools remain responsible for ensuring that they are offering equal athletic opportunities in their athletic programs, including in the NIL context. A school may violate Title IX if the school

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U.S. 69 (2021) (upholding a permanent injunction barring the NCAA from limiting education-related compensation or benefits that member conferences or schools could provide to student-athletes); *Tennessee v. Nat'l Collegiate Athletic Ass'n*, 718 F. Supp. 3d at 766 (issuing a preliminary injunction enjoining the NCAA "from enforcing the NCAA Interim NIL Policy, the NCAA Bylaws, or any other authority to the extent such authority prohibits student-athletes from negotiating compensation for NIL with any third-party entity").

[21] *See, e.g.*, Ark. Code Ann. § 4-75-13 (2021) (student-athletes have the right to enter into a contract and receive compensation for the commercial use of the student-athlete's publicity rights); Fla. Stat. § 1006.74 (2020) (an intercollegiate athlete may earn compensation for the commercial use of their name, image, or likeness commensurate with market value, but such compensation may not be provided in exchange for athletic performance or attendance at a particular postsecondary institution and may only be provided by a third party unaffiliated with the student-athlete's postsecondary institution); Ill. Comp. Stat. act no. 190. sec. no. 110 (2021) (student-athletes have the right to earn compensation commensurate with market value for the use of their name, image, likeness, or voice while enrolled in a postsecondary institution, student-athletes may not earn compensation in exchange for their athletic ability or participation in intercollegiate athletics or sports competition or willingness to attend a postsecondary institution); Tenn. Code Ann. § 49-7-2802(a) (2024) (an intercollegiate athlete may earn compensation and perform diligence for the use of their name, image, and likeness, a postsecondary institution and its affiliated foundations shall not compensate an intercollegiate athlete for their name, image, or likeness unless expressly permitted by Federal law, a court order, or the postsecondary institution's athletic association); NCAA, *DI Council approves NIL reforms, permits school assistance with NIL activity* (Apr. 17, 2024), https://www.ncaa.org/news/2024/4/17/media-center-di-council-approves-nil-reforms-permits-school-assistance-with-nil-activity.aspx (adopting a proposal that allows Division I schools to assist in NIL activities for student-athletes, including identifying NIL opportunities and facilitating deals between student-athletes and third parties); NJCAA Handbook – Bylaws, at Article V, Section 4, D.3.c.i, https://d2o2figo6ddd0g.cloudfront.net/0/q/spevi1jotzaysv/NJCAA_Handbook_-_Bylaws_08-05-24.pdf (member institutions may allow student-athletes to receive NIL compensation, as long as it complies with applicable law and there is an exchange of good or services—but representatives of the institution cannot directly pay the athletes, and the NIL compensation cannot be contingent upon enrollment or based on athletic performance); NAIA, *Name, Image, and Likeness (NIL) Tips & Best Practices*, https://www.naia.org/name-image-likeness/archive-legislative/NIL-FAQ-Document.pdf (student-athletes have the right to profit off their NIL and must report any NIL compensation to their athletic director; an NIL agreement must contain a quid pro quo; institutions have the right to restrict NIL agreements that they view as a conflict of interest with their mission or current sponsorship agreements); California Interscholastic Federation Article 20 Rule 212 (a student-athlete may participate in a commercial endorsement, but may not wear a school team uniform or any identifying school insignia while appearing in any advertisement, promotional activity, or endorsement for any commercial product or service and may not lend their name and team affiliation for purposes of commercial endorsement); Colorado High School Athletics Association (CHSAA) 200.12 (student-athletes are permitted to monetize their name, image, and likeness so long as there is no affiliation with a CHSAA member school); Florida High School Athletic Association (FHSAA) Rule 9.9 (student-athletes may profit from the use of their name, image, and likeness provided they comply with FHSAA Bylaw 9.9, permissible activities include commercial endorsements, promotional activities, social media presence, product, or service endorsements, student-athletes are prohibited from monetizing their name, image, and likeness with the use of their school's uniform, equipment, logo, name, proprietary patents, products, and/or copyrights associated with an FHSAA member school, unless granted authorization by the school).

fails to provide equivalent benefits, opportunities, and treatment in the components of the school's athletic program that relate to NIL activities. Thus, schools must be mindful of their Title IX obligations regarding the components of their athletic programs as they navigate the NIL landscape. These obligations apply regardless of whether student-athletes ultimately secure NIL benefits through their school or with third parties.

Publicity

In determining whether a school is complying with Title IX as to the program component of publicity, OCR examines, among other factors, the equivalence for male and female student-athletes of: (1) the availability and quality of sports information personnel; (2) access to other publicity resources for men's and women's teams; and (3) the quantity and quality of promotional devices that feature the men's and women's teams.[22] This examination may include consideration of the coverage for men's and women's teams and student-athletes on a school's website, in its social media postings, and in its publicity materials (e.g., posters, press guides, recruitment brochures, game programs, pocket schedules). OCR considers the school's efforts to provide equivalent publicity to its men's and women's athletic teams, recognizing that television, newspapers, and other forms of media may not be equally responsive to the school's efforts to provide equivalent publicity.

Even if publicity is not equivalent based on sex, a school may comply with Title IX if the differences are the result of nondiscriminatory factors. For example, the unique circumstances of a particular student-athlete (e.g., a prospective Olympic athlete), team (e.g., the reigning state/national champion), or competitive event (e.g., a national competition) may cause unique demands or imbalances related to publicity.

A school's obligation to provide equivalent publicity based on sex continues to apply in the context of NIL. For example, if a school is not providing equivalent coverage for women's teams and student-athletes on its website, in its social media postings, or in its publicity materials, these student-athletes may be less likely to attract and secure NIL opportunities. In addition, if a school is publicizing student-athletes for the purposes of obtaining NIL opportunities, OCR would examine whether the school is providing equivalent publicity for male and female student-athletes (including by examining the quantity and quality of publications and other promotional devices that feature the men's and women's athletic teams).

Support Services

Some schools offer support services to assist their student-athletes in securing NIL opportunities. Title IX's requirement that schools provide equal athletic opportunity based on sex includes any support services that a school provides to its student-athletes.[23] In determining whether a school is complying with Title IX as to support services, OCR examines, among other factors, the equivalence of the amount of administrative assistance provided to the men's and women's teams.[24]

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[22] 34 C.F.R. § 106.41(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,417.
[23] *See* 34 C.F.R. § 106.41(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,417.
[24] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,417.

A school's obligation to provide equivalent support services continues to apply in the context of NIL activities, including any services that schools provide to assist student-athletes in securing or managing NIL opportunities.[25] For example, if a school provides training sessions to its student-athletes on brand building, finances, reporting, entrepreneurship, or similar topics, OCR would examine whether the school is providing this training equally to men's and women's teams. Likewise, if athletics department employees assist the school's student-athletes by obtaining and negotiating NIL agreements, OCR would examine whether the school is providing this assistance equally to student-athletes on men's and women's teams.

4. NIL agreements between schools and their student-athletes as a form of athletic financial assistance

As part of determining whether a school is providing equal athletic opportunity, OCR considers the total amount of athletic financial assistance made available by the school. Compensation provided by a school for the use of a student-athlete's NIL constitutes athletic financial assistance under Title IX because athletic financial assistance includes any financial assistance and other aid provided by the school to a student-athlete that is connected to a student's athletic participation; it is not limited to scholarships or grants.[26] Thus, the various forms of financial assistance that could be provided by a school to student-athletes include, but are not limited to, scholarships, cost-of-attendance awards, other types of compensation and financial assistance permitted to be provided by schools following a federal court injunction,[27] and compensation

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[25] *See id.* (stating that OCR will consider, in part, "[w]hether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole" and "[w]hether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity").

[26] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 (noting that athletic financial assistance also includes work-related aid and loans); Letter from Catherine E. Lhamon to Marcia D. Greenberger and Deborah Slaner Larkin (Nov. 15, 2015) (stating that cost-of-attendance awards constitute athletic financial assistance under Title IX and noting that athletic financial assistance also includes exhausted eligibility awards and summer aid), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/correspondence/stakeholders/20151112-cost-attendance-ath-scholarships.pdf. This approach is also consistent with postsecondary schools' reporting obligations under the Equity in Athletics Disclosure Act (EADA), 20 U.S.C. § 1092(e). Separate from Title IX, the EADA requires postsecondary institutions to report the amount of athletically related student aid provided to men's, women's, and coed teams. *See also* 34 C.F.R. § 668.47. The User's Guide for the EADA Data Collection explains that "athletically related student aid is any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution." U.S. Dep't of Educ., Office of Postsecondary Educ., User's Guide for the Equity in Athletic Disclosure Act Web-Based Data Collection at 53 (Sept. 2023), https://surveys.ope.ed.gov/athletics2023/wwwroot/documents/2023_EADA_Users_Guide.pdf.

[27] The *NCAA v. Alston* case involved a challenge to the NCAA's restrictions on providing college athletes participating in Division I women's and men's basketball and Football Bowl Subdivision football with non-cash compensation for academic-related purposes. The court ruled that these restrictions violated antitrust law and issued a permanent injunction. *See In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litigation*, No. 14-md-02541, 2019 WL 1593939, at *1 (N.D. Cal. Mar. 8, 2019). Per the injunction, the NCAA can limit cash or cash equivalent payments to student-athletes for academic achievements (e.g., graduating or maintaining a specific GPA) so long as the limit is not lower than the total amount a student-athlete can earn in athletics participation awards. The NCAA cannot limit education-related benefits to student-athletes, including computers, science equipment, musical instruments, and other items not currently included in the cost of attendance but related to the pursuit of a student's educational studies, as well as post-eligibility scholarships for undergraduate, graduate, and

from schools for use of a student-athlete's NIL.[28] When a school provides athletic financial assistance in forms other than scholarships or grants, including compensation for the use of a student-athlete's NIL, such assistance also must be made proportionately available to male and female athletes.[29]

5. NIL agreements between student-athletes and third parties

As discussed in Part Four, compensation provided by a school for the use of a student-athlete's NIL constitutes athletic financial assistance under Title IX. By contrast, OCR does not view compensation provided by a third party (rather than a school) to a student-athlete for use of their NIL as constituting athletic financial assistance awarded by the school that must comply with 34 C.F.R. § 106.37(c).

However, OCR has long recognized that a school has Title IX obligations when funding from private sources, including private donations and funds raised by booster clubs, creates disparities based on sex in a school's athletic program or a program component.[30] The fact that funds are provided by a private source does not relieve a school of its responsibility to treat all of its student-athletes in a nondiscriminatory manner.[31] It is possible that NIL agreements between student-athletes and third parties will create similar disparities and therefore trigger a school's Title IX obligations. Because these NIL agreements vary widely and continue to evolve and because the application of Title IX's equal athletic opportunity requirements is a fact-specific inquiry, this Fact Sheet does not offer specific guidance on Title IX's application in the context of compensation provided for the use of a student athlete's NIL by a third party, including an NIL collective.

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vocational programs at any school, tutoring, study-abroad expenses, and paid post-eligibility internships. The Supreme Court clarified that the NCAA could establish rules and criteria for these benefits, e.g., a "no Lamborghini rule." *Alston*, 594 U.S. at 106.

[28] This refers to compensation from NIL agreements between a school and a student-athlete and does not include payments from NIL agreements between a third party and a student-athlete. See Part Five in this Fact Sheet for information regarding how Title IX applies to NIL agreements between a third party and a student-athlete.

[29] 34 C.F.R. § 106.37(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 ("When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes.").

[30] *See, e.g.*, OCR's Letter to Chief State School Officers, Title IX Obligations in Athletics (1975), https://www.ed.gov/about/offices/list/ocr/docs/holmes ("[T]he fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements.").

[31] *See Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1048 (8th Cir. 2002) ("[A] public university cannot avoid its legal obligations by substituting funds from private sources for funds from tax revenues."); *Cohen v. Brown Univ.*, 809 F. Supp. 978, 996 (D.R.I. 1992) ("[A]ll monies spent by Brown's Athletic Department, whether originating from university coffers or from the Sports Foundation, must be evaluated as a whole under § 106.41(c). Thus, Title IX covers all Sports Foundation funds allocated to Brown athletics. This position is consistent with the Investigator's Manual, which warns that where 'booster clubs' or other fundraising organizations help only members of one sex, the university must balance out these differences." (citing U.S. Dep't of Educ., Office for Civil Rights, Title IX Athletics Investigator's Manual (1990))); *Daniels v. Sch. Bd. of Brevard Cnty.*, 985 F. Supp. 1458, 1462 (M.D. Fla. 1997) (rejecting school district's argument that it cannot be held responsible for unequal booster club fundraising and holding that "[i]t is the Defendant's responsibility to ensure equal athletic opportunities, in accordance with Title IX").

* * *

For more information on benefits, opportunities, and treatment in a school's athletic program, you may find it helpful to review OCR's resources on Supporting Equal Opportunity in School Athletic Programs, Title IX and Athletic Opportunities in K-12 Schools, and Title IX and Athletic Opportunities in Colleges and Universities.

Anyone who believes that a school has engaged in discrimination may file a complaint with OCR. Information about filing a complaint is available on OCR's website at How to File a Discrimination Complaint with the Office for Civil Rights. Information about OCR's process for evaluating, investigating, and resolving complaints is available at How the Office for Civil Rights Handles Complaints.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: COLLEGE ATHLETE NIL LITIGATION

Case No.: 4:20-CV-03919-CW

OBJECTION TO AMENDED SETTLEMENT AGREEMENT AND OPPOSITION TO FINAL SETTLEMENT APPROVAL BASED ON FAILURE TO APPLY TITLE IX AND REQUEST TO SPEAK AT APPROVAL HEARING

Hon. Claudia Wilken

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INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(e), Kacie Breeding, Eden Hardy, Hannah Taylor, Alexis Drumm, Emmie Wannemacher, Savannah Baron, Riley Haas, Emma Appleman, Kate Johnson and Elizabeth Arnold ("Objectors"), by and through their undersigned counsel Hutchinson Black and Cook, LLC and Katz Banks Kumin LLP, hereby submit this objection opposing final approval of the Amended Stipulation and Settlement Agreement (the "Settlement"). ECF No. 535-1. Objectors are ten current and former Division I athletes and members of the Additional Sports Class who will be grossly undercompensated due to the Settlement's fundamentally flawed damages calculations that failed to apply Title IX. Specifically, Objectors maintain that the Settlement's "but for" damages could not have been paid to the athletes as suggested due to Title IX regulations requiring proportionate distribution of benefits and financial aid to male and female athletes.

Plaintiffs' counsel has asserted that Title IX does not and could not apply to the Settlement damages, where over 90% of the damages would be paid to male athletes, because allegedly 1) Title IX does not apply to damages in an antitrust case based upon NCAA and conference rules, and 2) those entities are not required to follow Title IX. Tr. of Videoconference Proceedings at 31:8-17 (Sept. 5, 2024). Yet the question is not only whether Title IX applies to the Settlement distribution, but whether Title IX impacts the amount of damages class members would have incurred. This Objection argues that for the two categories of damages that would have been paid by either the schools or conferences but-for the unlawful restraint on athlete earnings, the Broadcast NIL ("BNIL") and Athlete Services Compensation ("ASC") damages, Title IX would have prevented the athletes from ever incurring such disproportionate damages in the first place and, as such, the damages calculations are grossly inaccurate.

Both the BNIL and ASC damages analyses are predicated on the mistaken assumption that the schools would have paid athletes in some proportion to the media market value of the individual sport in which each athlete participates. However, these calculations are amiss, as any payments

made to class members for BNIL and ASC damages would have been required to be made proportionately to male and female athletes due to Title IX. The result is that most female athletes will take home a meager $125 per year of eligibility, while male athletes will be given tens if not hundreds of thousands of dollars. Accordingly, Objectors ask the court to reject the Settlement as proposed based upon its critically flawed damage calculations or, alternatively, to require the Parties to submit a revised settlement allocation formula consistent with the mandate of Title IX and this Objection.

BACKGROUND

I. The Objectors

- Kacie Breeding was a cross county and track and field athlete competing for the Southeastern Conference's Vanderbilt University from the fall of 2016 to the Spring of 2020. Ms. Breeding has filed a claim and is estimated to receive $188 in ASC. Her NCAA Eligibility ID is 1311528533.

- Eden Hardy was a soccer player at the University of Oregon in the Pac-12 Conference from the summer of 2017 until December 2021. Ms. Hardy's eligibility number was not available but she will supplement this filing.

- Hannah Taylor was a soccer player at the University of Oregon in the Pac-12 Conference from the summer of 2017 until June 2021. Ms. Taylor's estimate was unavailable. Her NCAA Eligibility ID is 1411923749.

- Kate Johnson is a volleyball player at the University of Virginia in the Atlantic Coast Conference from the fall of 2022 to the present. Ms. Johnson's estimate was unavailable. Her NCAA eligibility number is 1903443501.

- Lexi Drumm is a soccer player competing for the College of Charleston from 2021 to the present. Ms. Drumm has filed a claim and is estimated to receive $426 in ASC. Her NCAA Eligibility ID is 2008903787.

- Emmie Wannemacher is a soccer player competing for the College of Charleston from 2021 to the present. Ms. Drumm has filed a claim and is estimated to receive $456 in ASC. Her NCAA Eligibility ID is 2008904246.

- Savannah Baron is a soccer player competing for the College of Charleston from 2021 to the present. Ms. Drumm has filed a claim and is estimated to receive $456 in ASC. Her NCAA Eligibility ID is 2001782845.

- Riley Haas is a soccer player who competed for the College of Charleston from 2020-2024. Ms. Haas has filed a claim and is estimated to receive $312.57 in ASC. Her NCAA eligibility number is 1811344623.

- Emma Appleman is a volleyball player who competed for the College of Charleston from 2021 to the present. Ms. Appleman has filed a claim and is estimated to receive $426 in ASC. Her NCAA eligibility number is 1906611343.

- Elizabeth Arnold is a soccer player competing for the College of Charleston from 2023 to the present. Ms. Arnold has filed a claim and is estimated to receive $222 in ASC. Her NCAA Eligibility ID is 2201426913.

II. The Amended Settlement Agreement

The Settlement in this matter is broken into two primary categories: 1) a past damages settlement for monies owed to athletes for restricting their right to earn money; and 2) future injunctive relief providing a method for the schools to share revenue with athletes for use of their Name Image and Likeness ("NIL") rights. Though Objectors' arguments here will apply equally to any future payments pursuant to the injunctive portion of the Settlement, this Objection itself is limited to the past damages. The past damages are comprised of three types of NIL damages totaling $1.976 billion: 1) Video Game NIL ("VNIL") in an amount of $71.5 million, 2) Broadcast NIL ("BNIL") in amount of $1.815 billion, and 3) Lost NIL Opportunities in an amount of $89.5 million, as well as a separate category of non-NIL damages in the amount of $600 million called Athlete

Services Compensation ("ASC"), which represents money damages for the athletes labor services to the institutions. This Objection pertains to the "BNIL" damages and the "ASC" damages only.[1]

According to Plaintiff's economist, Daniel Rascher, the Settlement suggests that "BNIL" damages represents money owed to the athletes for the use of their NIL rights in broadcasts of the schools' athletic competitions. Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 26. The Settlement's $1.815 billion in BNIL damages pays 90%, or roughly $1.63 billion, to the Football and Men's Basketball Class. The compensation for BNIL varies by conference based on each conference's respective revenue and is then disbursed on a pro rata basis to athletes according to their sport. *See* Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 26.[2] Other than 5% of BNIL damages going to female basketball players, remaining female athletes are collectively being paid nothing out of the $1.815 billion for BNIL settlement damages as "they add little to no value." Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 25 n. 11.

The "ACS" damages category is compensation from schools to its athletes in a but-for world where a labor market existed to pay athletes for their work on behalf of their schools. Mr. Rascher's declaration proposes the same percentage distribution for ASC without any rationale other than the fact that it is his understanding that these damages should be divided similarly to the other damage classes: "I further understand that the proposed allocation across settlement damage classes provides 5% to the Additional Sports settlement damage class and 95% distributed in a ratio of 75/15/5 to athletes across the three sports (football, men's basketball, and women's basketball) in the other two

[1] Arguably, "Lost NIL" and "VNIL" damages represent money that would have been paid directly by third parties (such as private retailers and EA Sports) to the class members but-for the unlawful restraint on earning. Those amounts, though perhaps also unfair and unreasonable for other reasons, are not the subject of this Objection.

[2] In reality, the BNIL damages class functions more like money paid to athletes as a cut of the school's profit off of that athlete's individual sport rather than NIL value. Football players who never played a minute in a game or even suited up in the given year will still get a far larger share of money than even the highest profile female Additional Sports Class members. *See* Ex. A, Decl. of Andrew Zimbalist Regarding the Settlement in *House v. NCAA*.

settlement damage classes." Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 48. Thus, without any analysis, the proposed distribution of ASC is the same as BNIL with 75% to Football, 15% to Men's Basketball, 5% to Women's Basketball, and 5% to the Additional Sports Class. Under this category, some male athletes could be paid over $15,000 while most female athletes will likely earn only $125. Decl. of Daniel A. Rascher, ECF No. 450-4 ¶¶ 61, 81.

LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) requires judicial review and approval of any class settlement. *See* Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval.") In order to pass muster for final approval, a class action settlement must be "fair, reasonable, and adequate to all concerned." *Officers for Justice v. Civ. Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (citing Fed. R. Civ. P. 23(e)). To make this determination, courts consider several factors, including whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). Additionally, the court must evaluate whether the scope of the release may impact class members differently, which could influence the distribution of relief. *Grady v. RCM Techs., Inc.*, 671 F. Supp. 3d 1065, 1082 (C.D. Cal. 2023) (quoting Fed. R. Civ. P. 23(e)(2)(D) advisory committee's note to 2018 amendment).

ARGUMENT

I. The Suggested "But-For" BNIL And ASC Damages Are Fictitious And Would Not Have Been Possible Due To Title IX.

This Settlement suffers from a mistaken assumption that schools or conferences would have paid athletes of the same institution widely varying amounts of money in proportion to their

individual sport's market value contribution to the schools' media rights revenue.[3] Daniel Rascher, with reliance on information from Plaintiffs' media expert Ed Desser, determined the allocation of the Gross Settlement Fund. Notably, both Mr. Desser and Mr. Rascher acknowledge that they were not asked to consider the application of Title IX in their opinions. *See* Defs.' Joint Opp'n to Pls.' Motion for Class Certification, ECF. No 249 at 15-16 ("Neither Desser nor Rascher considered Title IX."); Videotaped Dep. of Edwin Desser, ECF No. 251-6 at 64:9–15 (Title IX considerations are not "within what [he] was assigned to work on"); Dep. of Daniel Rascher, ECF No. 251-7 at 111:19–21 (Rascher has not "tried to account for Title IX in any of [his] damages models in this case."). Had the Settlement applied Title IX, the damages to the athletes would have necessarily been compliant with federal anti-discrimination law and made in proportion by gender.

Put simply, Rascher's analysis based on market value is fundamentally flawed because the damages he valued are athletic benefits and/or financial aid under Title IX and thus not subject to a market value analysis. For an antitrust settlement paying out past "but-for" damages owed to students from their institution or conference, all other laws, including Title IX, must apply when calculating those claimed losses. Prior to reaching a settlement, the Conferences and NCAA wholeheartedly agreed. "The gaping disparity yielded by Plaintiffs' BNIL injury and damages formula violates Title IX—and does so in a way that cannot be solved." Defs.' Joint Opp'n to Pls.' Motion for Class Certification, ECF. No 249 at 16. Counsel for Plaintiffs have been equally circumspect, stating to the media, "We told the court well, we don't think Title IX applies because in our world, this is money that goes to the conferences. And then the conferences are allowing schools to pay it, so it's not directly from schools. Not sure that argument is now going to fly given

[3] Though this issue was addressed in cursory fashion in the Plaintiff's Motion for Class Certification and the Court's order granting that motion, the issue requires deeper analysis for Settlement approval as acknowledged by Plaintiffs' counsel. "[Title IX] is just another argument that goes to the ultimate merits and is totally unrelated to class certification." Pls.' Reply Mem. in Supp. of Mot. for Class Certification, ECF No. 598-3 at 18.

the structure." Kristi Dosh, *10 Things to Know About The NCAA's House Settlement*, FORBES (May 24, 2024, 6:07 PM), https://www.forbes.com/sites/kristidosh/2024/05/24/10-things-to-know-about-the-ncaas-house-settlement/ (quoting Plaintiffs' counsel, Steve Berman). For the following reasons, that argument, in fact, does not fly.

A. Title IX Applies to Any Financial Aid and Educational Benefits Provided by or on Behalf of an Institution That Receives Federal Funding.

The proposed settlement ignores Title IX's application to the but-for damages analysis. In antitrust litigation, the "but-for" framework is utilized to calculate the damages owed to members of a class based upon the earnings they would have made but-for the unlawful conduct of the Defendants. *Grant House v. Nat'l Collegiate athletic Ass'n,* 545 F. Supp 3d 804, 816 (N.D. Cal, 2021) ("A plaintiff can show that it was injured in fact by alleging that it was deprived of the opportunity to receive compensation it otherwise would have received but for the challenged conduct."); *see also ICTSI Oregon, Inc. v. Int'l Longshore and Warehouse Union,* No. 3:12-cv-1058-SI, 2022 WL 16924139, at *6 (D. Or. Nov. 14, 2022) ("The "but-for world" is necessary to calculate damages here and is not used in causation. The real world is required for causation and is the comparator against the "but-for-word" in calculating damages.").

Title IX provides that "[n]o person ... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Title IX's implementing regulations mandate that schools provide equal opportunities for their athletes regardless of sex. 34 C.F.R. 106.41(c). Though the opportunities need not be identical, they must be generally proportionate to the gender composition of the student body. *See* 34 C.F.R. § 106.37(c); *Cohen v. Brown Univ.*, 1010 F.3d 155, 176 (1st Cir. 1996). Where a school provides financial assistance to its athletes, such assistance must be in proportion to the number of students of each sex participating in the institution's athletic programs. 34 C.F.R. § 106.37(c)(1). The federal

regulations governing Title IX's requirements for equal benefits, opportunities and financial assistance unambiguously prohibit disproportionate payments on the basis of sex:

> Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:
>
> (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
>
> AND
>
> (6) Aid or perpetuate discrimination against any person *by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees.*
>
> 34 C.F.R. § 106.31(b)(2), (6) (emphasis added).
>
> Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, *a recipient shall not*:
>
> (1) On the basis of sex, *provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria,* or otherwise discriminate;
>
> (2) Through solicitation, listing, approval, provision of facilities or other services, *assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex.*
>
> 34 C.F.R. § 106.37 (emphasis added).

The regulations require educational institutions receiving federal funds to provide members of both sexes equal athletic financial assistance and equal athletic opportunity. *Anders v. Cal. State Univ.*, No. 1:21-cv-00179, 2021 WL 3115867, at *3 (E.D. Cal. July 22, 2021). Courts have similarly held that Title IX's "equal treatment" standard requires "equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes." *Mansourian*

v. Regents of Univ. of California, 602 F.3d 957, 964 (9th Cir. 2010).

Moreover, despite what Mr. Rascher's damages allocation suggests, there is no exception to Title IX for revenue-generating sports. Though there have long been attempts to carve out special treatment for football and men's basketball, those efforts have been repeatedly quashed. In 1974, Senator John Tower attempted an amendment to Title IX's implementing regulations to exempt "revenue producing sports." *Equity in Athletics, Inc. v. Dep't of Educ.*, 675 F. Supp. 2d 660, 664 (W.D. Va. 2009). The proposed amendment stated that Title IX "shall not apply to an intercollegiate athletic activity to the extent that such activity does or may provide gross receipts or donations to the institution necessary to support that activity." 120 Cong. Rec. 15,322 (1974). In other words, Senator Tower wanted revenue producing sports to be able to keep the money they produced for themselves. Congress flatly rejected both the Senator's first and second proposals and each died in committee. *Id.* In 1987 Congress spoke again, making clear that Title IX applies to all programs under a federal funding recipient, including athletics. *See* Civil Rights Restoration Act of 1987, Pub. L. No. 100-259 (102 Stat. 28). No existing case law or statute holds otherwise.

Here, the Settlement proposes that schools or conferences would have shared $1.815 billion from its media rights deals and distributed at least 90% of the money to male athletes and at least 5% of the remainder to female athletes without any consideration as to whether such a historical but-for payment would have been permissible under Title IX. Instead, the Settlement reflects an analysis that relies on the market value of the relative sports. But federal funding recipients are not private corporations, and behaviors that may be appropriate in a professional sports league are not permissible for federal funding recipients subject to federal civil rights laws. Whether described as benefits or financial aid, payment to athletes by or on behalf of schools must be proportionate to the number of athletes by gender at the institution in order to accurately calculate the damages athletes would have earned but for the Defendants' unlawful conduct.

The Department of Education recently agreed: "When a school provides athletic financial

assistance in forms other than scholarship or grants, including compensation for the use of a student athletes NIL, such assistance must also be made proportionally available to male and female athletes." U.S. Dep't of Educ. Off. For Civ. Rights, Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities, (citing Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,415 (Dec. 11, 1979) ("When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to make and female athletes.")). Conversely, there is no authority to suggest that Title IX would not apply to these payments to the athletes.

B. The Settlement's "BNIL" and "ASC" Damages Violate Title IX Whether Payment Would Have Come from the Schools or the Conferences.

There can be no dispute that the ASC payments are school money paid by the schools directly to their athletes. As such, Title IX's application to those payments is unequivocal. With regard to BNIL, Plaintiffs' counsel asserts that those damages do not implicate Title IX because the money would have been paid by the conferences, despite the fact that conferences have never directly been involved with financial aid or benefits provided to athletes. This suggested "but-for world" has no credible basis. It is merely an attempt to avoid a Title IX roadblock to the settlement. Moreover, the BNIL damages implicate Title IX regardless of whether they would have been paid by the schools or the conferences because the conferences are also subject to Title IX here, both as indirect recipients of federal funding and through their exercise of controlling authority over their member institutions, who are recipients of federal funding. *See Barrs v. Se. Conf.*, 734 F. Supp. 2d 1229, 1234 (N.D. Ala. 2010). Thus, Mr. Rascher's declaration envisions a but-for world of vastly disproportionate damages to male and female athletes that can not pass muster under Title IX.

1. The Settlement's suggestion that conferences would have paid the institutions' athletes directly is an impermissible extension of the "but-for world."

As an initial matter, Mr. Rascher's conclusion that in a but-for world, conferences would have, for the first time ever, provided financial aid and educational benefits *directly* to the athletes at their member institutions exceeds the scope of the but-for analysis. See *ICTSI Oregon, Inc.*, 2022 WL 16924139, at *8 (citing Justine S. Hastings & Michael A. Williams, *What is a "But-for" World?,* 31 ANTITRUST 102, 102 (Fall 2016) ("[T]he but-for world differs from what actually happened *only with respect to the harmful act*, that is, the but-for world holds all other factors except one—the alleged conduct—the same in order to measure what [profits] would have been but for the alleged conduct.")) (emphasis added). "It requires consideration of actual real-world conditions during the entire damages period, with the only fantastical element being that the unlawful conduct did not occur." *Id. See also Litton Systems v. American Telephone and Telegraph Co.,* 700 F.2d 785, 822–23 (2d Cir. 1983); *Bonjorno v. Kaiser Aluminum & Chem. Corp.*, 752 F.2d 802, 812 (3d Cir. 1984) (highly speculative predictions of a but-for world are impermissible). The parties cannot create a fantasy but-for world that changes additional real-world conditions.

Conferences have stated in this litigation that they do not provide and have never provided benefits or financial aid to athletes. ECF 249 at 13. Joint Opposition to Plaintiff's Motion for Class Certification. ("[T]here is nothing to support such a payment model. Schools, not conferences, compete with each other in recruiting, and schools, not conferences, decide what amount of scholarship aid to give to individual students.") *Id.* Schools have always been the provider of educational and financial benefits to their athletes. Thus, this Settlement asks the Court to remove not only the unlawful restraint, but then to manufacture a "fantastical" damages model in which conferences, not schools, would provide aid and benefits for athletes. Such a proposal plainly violates permissible methodology for calculating "but-for" damages and disregards the fundamental and historical process for how schools provide benefits to students. Indeed, even the current operative Complaint filed after the Notice of Settlement blurs the line between conference and school BNIL money alleging that the class members: "On behalf of the previously certified Football

and Men's Basketball Class, as amended herein. Plaintiffs seek the compensation that class members would have received *from their schools or conferences* absent Defendants' unlawful restraints on pay-for-play compensation, a share of game telecast revenue and compensation that these class members would have received from their schools or conferences for their Broadcast NILs ("BNIL"). Third Amended Complaint, ECF No. 533-1 ¶ 9 (emphasis added). The assumption that conferences would have paid athletes for BNIL directly seems to serve little purpose other than to address a Title IX challenge to this settlement.

2. Even if conferences would have paid BNIL to athletes directly, those payments would still be governed by Title IX because the conferences are indirect recipients of federal funding that exercise controlling authority over their member institutions.

Title IX's prohibition against discrimination on the basis of sex applies to BNIL payments made by the conferences because they are indirect recipients of federal funding from their members institutions, and the schools have ceded controlling authority over their athletic programs to the conference. A federal funding recipient is defined as, "[A]ny State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is *extended directly or through another recipient* and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof." 34 C.F.R. § 106.2. Courts have found that athletic associations—including the Southeastern Conference (the "SEC"), a Defendant in this case—are subject to Title IX when they exercise controlling authority over federal funding recipients.[4] In *Barrs v. Southeastern Conference*, the

[4] Title IX's application to the conferences (and even the NCAA) is not foreclosed by *NCAA v. Smith*, which found that membership dues were insufficient to establish federal funding under Title IX, but expressly declined to consider the arguments that the schools had ceded controlling authority over federally funded programs to the NCAA, or the NCAA indirectly or directly received federal funding because they were not raised in the trial court. 525 U.S. 459, 461 (1999).

court held that the plaintiffs had plausibly stated a Title IX claim against the SEC where the conference was alleged to have ceded control over portions of the schools' athletic programs. 734 F. Supp. 2d at 1234; *see also A.B. by C.B. v. Haw. State Dep't of Educ.*, 386 F. Supp. 3d 1352, 1357-58 (D. Haw. 2019) (collecting cases recognizing the controlling authority rule).

Where, as is the case here, the conferences control institutions' rulemaking, tournament schedules, publicity, promotion and, (as proposed) even distribution of financial benefits to a school's athletes, the conferences invariably exercise controlling authority over school programs and are subject to Title IX's anti-discrimination mandate. *See A.B. by C.B.*, 386 F. Supp. 3d at 1358; *see also Williams v. Bd. of Regents of Univ. Sys. of Georgia,* 477 F.3d 1282, 1294 (11th Cir. 2007). Notably, in the context of BNIL payments, a conference could not permissibly distribute broadcasting revenue from its media rights deal—money that ordinarily passes to the schools—directly to the conference's athletes without authorization from its member institutions. *See, e.g.*, Southeastern Conference Constitution & Bylaws (2024) (requiring a vote by the institutions to amend the breakdown on the allocation of media rights revenue to schools). Thus, the result of the parties' suggestion that conferences would have paid BNIL to the class members is simply a shift of controlling authority over athletic payments from the schools to the conferences, thereby implicating the conferences under Title IX.

Title IX cannot be avoided by a mere accounting exercise. Passing the checkbook, and the money, from the institution to the institution-controlled conference does not change Title IX's equity obligation to athletes. *Williams*, 477 F.3d at 1294 (11th Cir. 2007) ("We are persuaded . . . by the analysis of the Western District of Michigan, noting that if we allowed funding recipients to cede control over their programs to indirect funding recipients but did not hold indirect funding recipients liable for Title IX violations, we would allow funding recipients to receive federal funds but avoid Title IX liability."). Moreover, where federal funding recipients acquiesce to a funding system that results in inequitable distribution of benefits, they too are individually liable. *Daniels v. School*

Board of Brevard County, 985 F. Supp. 1458, 1462 (M.D. Fla. 1997) ("This funding system is one to which the Defendant has acquiesced; Defendant is responsible for the consequences of that approach."). The Conferences agree: "There is no basis to ignore Title IX requirements, gender equity considerations, or multiple state laws which outright prohibit conferences (and institutions) from making BNIL payments to student-athletes." Defs.' Joint Opp'n to Pls.' Mot. for Class Certification, ECF No. 249 at 24.

Accordingly, this Court must reject the Settlement because the proposed damages for BNIL and ASC—which combined total approximately $2.415 of the Settlement's past damages—could never have been distributed so grossly and inequitably to male and female athletes in violation of Title IX.

II. The Title IX Release Language Is Unfair To Female Athletes As Legitimate Title IX Claims Exist.

At the preliminary approval hearing, this Court expressed concerns regarding a lack of clarity around whether class members are waiving Title IX claims and asked the parties to address those concerns. The parties essentially responded that Title IX is not affected by the Settlement or its releases. Plaintiffs' counsel assured the Court that there were no Title IX implications:

With respect to Title IX, there is no disagreement about this and it has to do with the release language. The release language is of NCAA rules. NCAA rules cannot be a Title IX violation. What could be a Title IX violation is the decisions by individual schools as to how or not they pay out future benefits or money so there's nothing that releases that at all in the agreement at all. There is no release of any individual school conduct for anything in the current releases or settlement agreement. *So, Title IX is completely preserved.*

Tr. of Videoconference Proceedings at 31:8-17 (Sept. 5, 2024) (emphasis added). But the NCAA had a less assuring response:

I'm not sure I agree with it precisely as Mr. Kessler put it. There are release provisions that apply to individual institutions for the claims that we discussed. But if the question is as relates to *future* Title IX liability, that's not something we are releasing through the settlement.

Tr. of Videoconference Proceedings at 33:25-34:5 (Sept. 5, 2024) (emphasis added).

Following the hearing, the parties submitted a revised motion for settlement approval as well as an amended Settlement Agreement. The revised Settlement Agreement only somewhat clarified the claims released. That language now reads that "Unreleased Claims" include "Claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., *other than any claims arising out of or relating to the distribution of the Gross Settlement Fund*." (emphasis added). Am. Stipulation and Settlement Agreement, ECF No. 535-1 at 15. That means claims contesting the distribution of the settlement fund must be waived by anyone participating in the settlement. It is worth noting that Title IX—the claim that is allegedly "completely preserved"—is the only claim in the entire Settlement that includes this extra release language.

Regardless, such a release is inappropriate here given the rather large Title IX problems in the damages assessment discussed above. And if Title IX is truly not being implicated as represented, then the parties should have no concern about removing that extraneous language.

III. Releasing All Institutions From Liability Is Unfair, Unreasonable, And Inadequate As Legitimate Title IX Claims Exist Against Them.

Though not parties to the litigation, the Settlement improperly releases all 365 Division I institutions from any claims that could have been brought in the litigation along with *any claims arising out of or relating to the distribution of the Gross Settlement Fund*. Whether or not such a release of non-parties is permissible in the Ninth Circuit is contingent upon whether the claims against a third party arise from the same operative facts and theories at issue in the litigation. *In re Stable Rd. Acquisition Corp.*, No. 2:21-CV-5744-JFW(SHKX), 2024 WL 3643393, at *3 (C.D. Cal. Apr. 23, 2024.). However, here, the facts and theories of liability carry a significant distinction.

As stated above, the money payments that constitute the but-for damages are school money merely withheld from its normal distribution to the conferences. And though conferences may dispute whether Title IX applies to them, there is no question that it applies to the schools that directly receive significant federal funding. As such, legitimate related antitrust and Title IX claims may exist against the non-party schools for their part in both the antitrust scheme as well as this discriminatory damage analysis and distribution of the gross settlement fund. Accordingly, Title IX claims against the non-party schools must be preserved.

IV. Opting Out Is Not A Viable Alternative Given The Age Of This Case And The Relevant Statutes Of Limitations.

For many class members, this litigation may be their only opportunity to recover their proportionate share of past NIL damages. The Plaintiffs themselves have recognized that there is historical discrimination against women that is reflected in their disproportionately low damages as calculated in this settlement. Plaintiffs' counsel acknowledged as much and suggested that claims regarding the inherent discrimination against women in collegiate sports might be brought in another forum: "I'm deeply sympathetic to sex discrimination claims. That's not what our damages address. That's not what our antitrust claims address. It is not an antitrust violation to engage in sex discrimination. It may violate Title IX or some other discrimination law, none of which are released. And so, if there are damages claims for that, they should be asserted by someone in some other forum." Tr. of Videoconference Proceedings at 36:17-24 (Sept. 5, 2024).

However, at this late date, only the class members who competed in the most recent years of the classes may be able to bring claims. Though the filing of this matter is likely to toll antitrust claims similar to the ones brought here, that is likely not the case for Title IX claims. *See Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.,* 878 F. Supp. 2d 1009, 1014 (C.D. Cal. 2011) (where a class member relies on the filing of a class action to vindicate their rights, the statute of limitations may be tolled for separate filing of the same claims). Since Title IX does

not have its own statute of limitations, it instead borrows a state's most applicable statute, and most states apply a two- or three-year statute of limitations. *See, e.g., Kane v. Mount Pleasant Cent. Sch. Dist.*, 80 F.4th 101 (2023) (applying New York's three-year statute of limitations for non-specified personal injury claims to claims brought under Title IX), *Ploeger v. Tr. of Univ. of Pa.*, 653 F.Supp.3d 188, 199 ("Under Pennsylvania law, Title IX claims are governed by a two-year statute of limitations."), *Graham v. City of Manassas Sch. Bd.*, 390 F.Supp.3d 702 (E.D. Va. 2019) (applying Virginia's two-year statute of limitations period for personal injury actions to Title IX claims). Many female class members who may have relied on the filing of this lawsuit to vindicate their claims, who will only now find out that their damages are being deeply discounted based upon discriminatory factors, will be out of time. Since their claims to address these deficient damages are based on Title IX, their statute of limitations has likely run.

CONCLUSION

The parties ask this Court to approve a Settlement where over 90% of the damages will go to men's athletes in a manner that is unfair, inadequate, and unreasonable. For the BNIL and ASC damages in particular, that damages allocation plainly ignores that schools and conferences could never have paid male and female athletes in disproportionate amounts without violating Title IX. Accordingly, on behalf of themselves and all other female athletes given short shrift under this Settlement, Objectors ask this Court to reject the Settlement.

Dated January 31, 2025

By: */s/ John Clune*

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FILER'S ATTESTATION

I, John Clune, am the ECF user whose identification and password are being used to file **OBJECTION TO AMENDED SETTLEMENT AGREEMENT AND OPPOSITION TO FINAL SETTLEMENT APPROVAL BASED ON FAILURE TO APPLY TITLE IX AND REQUEST TO SPEAK AT APPROVAL HEARING.** In compliance with Local Rule 5-1(h)(3), I hereby attest that all signatories hereto concur in this filing.

By: */s/ John Clune*
John Clune

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Counsel for Objectors

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: COLLEGE ATHLETE NIL LITIGATION

Civil Action No.: 4:20-CV-03919-CW

DECLARATION OF ANDREW ZIMBALIST REGARDING THE SETTLEMENT IN *HOUSE ET AL. V. NCAA ET AL.*

JANUARY 30, 2025

Hon. Claudia Wilken

I. Introduction

My name is Andrew Zimbalist. I am the Robert A. Woods Professor Emeritus of Economics at Smith College in Northampton, Massachusetts. I received my B.A. in Economics from the University of Wisconsin-Madison in 1969 and my M.A. and Ph.D. in Economics from Harvard University in 1972 and 1974, respectively. I have served as a visiting professor at Doshisha University in Kyoto, Japan, the University of Geneva in Geneva, Switzerland, and Hamburg University in Hamburg, Germany. I have studied and consulted extensively within the intercollegiate and professional sports industry for leagues, teams, players' associations, governments, citizen groups, and athletes for over thirty-three years. I have published twenty-eight books and dozens of articles in the fields of sports economics, comparative economic systems and development economics. Among my books are five on the economics of college sports, including one entitled *Equal Play: Title IX and Social Change*. I am a founding member and serve on the editorial board of the *Journal of Sports Economics*. I have served as an expert witness and consultant in several dozen sports industry cases and given testimony in over twenty-five cases.

II. Opinions

I have been asked to opine on the following in this matter: 1) the aggregate damage calculations that would have made up the gross settlement distribution had Title IX been appropriately considered, and 2) whether the damages labeled BNIL are actual Name, Image, and Likeness damages. While many elements of the damages model and results presented by Dr. Daniel Rascher in *House* are presented with proper methodology and rigorous reasoning, the conclusions reached suffer from two fatal conceptual flaws. The first and most basic flaw is that Dr. Rascher's declaration misconstrues what constitutes an antitrust damage.

An antitrust damage occurs when an illegal restraint of trade precludes a benefit

accruing to a plaintiff that otherwise would have accrued absent the illegal restraint. Stated differently, in the but-for world where no restraint took place, the plaintiff would have received more compensation than he or she did in practice. The difference between these two levels of compensation constitutes antitrust damages.

With regard to the two largest elements in Dr. Rascher's damages estimate (broadcast NIL or BNIL, and athletic services compensation) the plaintiffs would not have received any remuneration even absent any restrictive practices by the NCAA, other than an equitable distribution of revenue as allowed by Title IX and outlined in the Objection.

The distributions presently proposed in the settlement are as follows:

- **BNIL** **$1.815 billion**
- Video Game NIL $71.5 million
- Lost NIL Opportunities $89.5 million
- **Athletic Services Compensation (ASC)** **$600 million**

Assuming these sources were properly identified, $2.415 billion of these funds would have been subject to an equitable distribution absent restrictive NCAA rules. Under both current and then-existing federal law, these monies could *not* have been paid out by market distribution criteria as called for by Dr. Rascher. Therefore, NCAA restrictive practices did not cause the disproportionate damages proposed by Dr. Rascher.

Applying Title IX, Dr. Rascher would have needed to calculate damages proportionate to the men and women participating in college sports. In 2022, for example, women were 47 percent of NCAA athletes in Division I. Any payments to student-athletes for their athletic contributions by their universities (or conferences) would have required approximately 47 percent of such payments to go to women, with the specific breakdown being governed by the gender ratio on a school-by-school basis. Instead, according to the commercial "market value" criteria applied incorrectly by Dr. Rascher, approximately 90 percent of BNIL and ASC monies is being paid to football and male basketball players.

Absent NCAA restrictive practices, during 2016-17 through 2023-24, rather than

male athletes receiving $2.174 billion (90 percent of $2.415 billion) and women receiving $121 million (5 percent of $2.415 billion), men would have received $1.28 billion (53 percent of $2.174 billion) and women $1.14 billion (47 percent of $2.174 billion).[1]

A second conceptual flaw in Dr. Rascher's analysis is that the settlement fund in his largest category of BNIL bears little resemblance to reality or to the underlying professional model that he uses to establish his estimates. Briefly, in pro sports the massive television contracts garnered by the big four leagues are based upon team performance and team brand. To the extent that pro athlete publicity or NIL rights are involved, they are diminutive and basically occur in the form of video clips to promote forthcoming telecasts. The television network signs long-term deals with the leagues and teams, not even knowing the composition of their rosters for many of the covered years. The same pattern of multi-year contracting applies to the sale of telecasting rights by NCAA conferences to the networks, again with little knowledge of the underlying team rosters. The value of these contracts is based on the school's performance, its following, its spirit, its brand, the school's investment in coaches and facilities, the population of sports bettors, and so on. The value of the athletes' name, image and likeness shrinks in comparison to these basic factors. The vast majority of fans do not watch the games to see the face of the quarterback or his name on the back of his jersey. They tune in to watch the competition and root for their team.[2]

Thus, the Dr. Rascher's estimate is based on a false analogy. The plaintiffs have invented a term and acronym, BNIL, that has little basis in economic reality.

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[1] The Rascher analysis leaves undefined how the remaining 5 percent of settlement funds would be distributed among subdivision, sports and men and women.

[2] To be sure, plaintiff's expert Ed Dresser acknowledged that "there have been no prior instances in which BNIL has been negotiated or valued separately from other components of broadcast agreements" either at the collegiate or professional level. *Order Granting Motion for Certification of Damages Classes*, November 3, 2023, at 11.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on information known to me.

/s/ Andrew Zimbalist

Andrew Zimbalist

January 30, 2025

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March 3, 2025

Dear Chair Guthrie and Ranking Member Pallone,

The Infectious Diseases Society of America (IDSA) is deeply grateful for the longstanding bipartisan support for the National Institutes of Health (NIH) and we want to inform you of current and likely impacts of reducing federal support for facilities and administrative costs (F&A or indirect costs) and halting or delaying standard NIH procedures such as study section meetings and advisory council meetings to review grant applications. We request that you urge the Administration to fully resume standard funding procedures at NIH so that critical research and training may proceed without further delay. We oppose cuts to NIH funding and urge that any changes to NIH operations or funding should include a robust congressional process with meaningful opportunities for researchers, clinicians, patients and the public to provide input and work with you to devise innovative solutions. We implore you to protect our nation's biomedical research infrastructure that has long been the global gold standard, has delivered lifesaving cures to millions of Americans and remains an important engine of our economic prosperity.

INFECTIOUS DISEASES RESEARCH

NIH, and particularly the National Institute of Allergy and Infectious Diseases (NIAID), supports essential research on infectious diseases that leads to the development of life-saving vaccines, diagnostic tests and treatments for serious infectious diseases, including:

- Emerging threats like avian flu and other respiratory illnesses (e.g. RSV and seasonal influenza)
- Smallpox, anthrax, and other pathogens categorized as posing the greatest risk to national biosecurity
- Foodborne illnesses
- Mosquito- and tick-borne diseases, including dengue, Lyme disease, West Nile virus and others
- Viruses most likely to cause future pandemics
- Antimicrobial-resistant bacteria and fungi
- Ebola and other hemorrhagic fevers
- HIV
- Tuberculosis
- Sexually transmitted infections that are becoming more common and increasingly resistant to treatment (e.g. syphilis)

Funding cuts and policy changes that limit this research will make Americans significantly less safe, less healthy and less prosperous as pathogens spread through the country affecting multiple areas of daily living.

FACILITIES AND ADMINISTRATIVE COSTS

Reductions to F&A support strike at the heart of our nation's biomedical research infrastructure, which will have ripple effects of halting critical studies, eliminating jobs, driving talent away from the field and hurting efforts to train the next generation of scientists. We are deeply mindful of the need to be good stewards of taxpayer dollars and highlight that investments in biomedical research often yield cost savings by providing breakthroughs that prevent or shorten costly hospitalizations and contain disease outbreaks. Any changes to F&A support should be carefully considered and accompanied by other policies or resources to protect scientific research.

Below are some examples of how F&A reductions are impacting Americans:

- **Layoffs:** At many institutions, support personnel and janitorial staff are being laid off already, with more layoffs expected. This is devastating to the employees and their families and significantly impacts local economies as unemployed individuals are less able to support local businesses.
- **Next Generation of Scientists and Clinicians:** Multiple academic institutions (Dartmouth, University of California San Diego, University of Miami, University of North Carolina at Chapel Hill, University of Pennsylvania, University of Pittsburgh, University of Southern California, University of Texas Health San Antionio, University of Washington, University of Wisconsin-Madison, and Vanderbilt) have had to dramatically reduce or halt graduate school admissions in areas including medicine, public health, microbiology, and more.[1]
    - Resources for current early investigators at many academic institutions are on hold, which could cause many early career researchers—whose training the US has already invested in—to lose their ability to have research careers.
- **Hiring Freezes for Research and Patient Care:** Infectious diseases physician-scientists at multiple academic medical centers have reported hiring freezes for physicians who provide direct patient care as well as for researchers, impacting not only research but access to care. In addition, other clinical care initiatives are being put on hold and re-evaluated, which may further impact patient outcomes. Institutions with hiring freezes include Columbia School of Medicine, Boston University, North Caroline State University, University of Louisville, Northwestern University, University of Maryland School of Medicine, Stanford University, Case Western Reserve University, and Cornell University.[2]
- **Loss of Shared Scientific Information:** Many institutions have halted travel and hosting visiting scientists. This dramatically limits the ability of scientists to share information and collaborate, which is crucial to scientific advances.

A statement from the University of Kentucky indicated that the cap on indirect costs "will cost UK tens of millions of dollars annually and will hit our local and state economies. More important than any numbers, though, it will impact the work we do to advance the health of Kentucky in those areas most critical to our future."[3]

Rutgers University, the largest recipient of NIH funding in New Jersey, stands to lose nearly $22 million this year and close to $58 million annually in the future.[4]

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[1] https://www.nature.com/articles/d41586-025-00608-z#:~:text=Some%20universities%20across%20the%20United,of%20US%20President%20Donald%20Trump.
[2] https://www.nature.com/articles/d41586-025-00608-z#:~:text=Some%20universities%20across%20the%20United,of%20US%20President%20Donald%20Trump.
[3] https://pres.uky.edu/news/potential-impact-federal-research-cuts
[4] https://www.njspotlightnews.org/2025/02/new-jersey-academics-fear-cost-of-trump-nih-health-science-research-fund-cuts/

An ID physician-scientist at University of Washington shared: *"Cuts to overhead %s would cripple our — or any — institution's capacity to continue to conduct high-quality, practice-changing, Nobel-Prize-winning, medical-breakthrough-generating research that happens here. Without the ability to support lab space, equipment, ancillary personnel, facilities, shared computational resources, regulatory, etc — all of which are supported by overhead, we would shut down."*

An ID physician-scientist who was trained at Johns Hopkins shared: *"An NIH-funded training program invests in the medical and research training for students with the expectation that we will remain in academic medicine/public-sector research after graduation, forgoing more lucrative opportunities in the private sector/industry. The US government made this investment in me, for which I am deeply grateful and which I am upholding with my career committed to academic medical research. If NIH funding for ID research is cut, with the consequence that I am forced out of academic research, this will be a loss of the taxpayer's investment."*

An ID physician-scientist at University of Colorado Anschutz Medical Campus shared: *"My NIH grants directly support the livelihood of multiple junior folks. Given the indirect freeze, I am unable to confidently hire new personnel to carry out NIH funded research that will prevent overdoses and prevent disease outbreaks. I have and will continue to apply for grants in hopes that this ship rights its course but have—in all honesty—very much considered leaving medicine and leaving the US altogether."*

Another ID physician-scientist at University of Washington shared: *"I'm a very early career clinician and researcher who has devoted my life/career to understanding the immune mechanisms that help mothers protect their infants. I am the primary breadwinner in our family, now expecting our first child in July and it's unclear if I'll have a job to support us anymore."*

HALTING AN DELAYING NIH FEDERAL REGISTER NOTICES AND GRANT REVIEWS

While reductions in F&A support would be devastating, it is also very important to highlight that the halting and delaying of NIH Federal Register Notices, study sections and advisory council meetings to review new grant applications and funding opportunities are **immediately** delaying all new research. We are heartened by an announcement in late February that the freeze is being partially lifted for some study sections, but it appears that later stages of grant review remain on hold. Impacts of these delays include:

- Stopping clinical trials for new preventive tools, tests and cures
- Halting basic research that is the foundation for breakthroughs
- Pausing translational research that improves patient care
- Jeopardizing our ability to train any new ID physician
- Potential mass job losses for physicians and scientists at all stages of their careers

Thank you for your consideration of these vital issues. We welcome the opportunity to work with you to advance life-saving biomedical research. If we can assist you, please contact Amanda Jezek, IDSA's senior vice president for public policy and government relations at ajezek@idsociety.org.

Sincerely,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGIATE ATHLETE NIL LITIGATION

Case No. 4:20-cv-03919-CW

OBJECTION TO SETTLEMENT AGREEMENT AND OPPOSITION TO MOTION FOR PRELIMINARY SETTLEMENT APPROVAL

Hon. Claudia Wilken
Hearing Date: September 5, 2024
Hearing Time: 2:30 p.m.
Location: Courtroom 2, 4th Floor

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INTRODUCTION

Throughout the history of college athletics, women have been treated as second class citizens. Notwithstanding the high level of competition and the excitement that they generate – one need look no further than Caitlin Clark and Katie Ledecky – women athletes have gotten the short end of the stick. The settlement Class Counsel propose (the "Settlement") is more of the same.

Class Counsel proclaim they have negotiated a "revolutionary settlement agreement" that will "reshape the economic landscape of college sports" and benefit "future college athletes." Dkt. 450 ("Mot.") 1. True – but only for male football and basketball players. The bulk of the Settlement is dedicated to compensation for lost "NIL" opportunities, calculated in a way that vastly favors male athletes (especially football and basketball players). And 90% of the "Additional Compensation" is reserved expressly for football and men's basketball. Mot. 12. Just 5% will be allocated to women's basketball. *Id.* The remaining 5% will be divided among ***every other Division I college athlete***. A male football player may receive hundreds of thousands of dollars, while a female swimmer might receive $125 or less.

The problems do not stop there. The complaint alleges that the NCAA maintained an illegal price-fixing cartel. Instead of remedying that violation, the Settlement simply establishes a new cartel with different terms. A remedy that merely repeats the original illegal conduct is no remedy at all.

The Settlement's release is equally troubling. For four years, the parties have litigated claims based on price-fixing relating to student-athlete ***NIL rights***. But the release sweeps in ***all*** claims arising out of the NCAA and conference rules – including, among others, claims that athletes are entitled to be ***paid a fair wage*** for their labor. Class Counsel's eleventh-hour amendment to the complaint does not cure this asymmetry.

The Settlement is also riddled with conflicts that call into question the adequacy of the class representatives and Class Counsel. No student-athletes were offered a seat at the bargaining table.

The Settlement is deeply flawed and far from "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Preliminary approval should be denied.

BACKGROUND

I. THE OBJECTORS

Objectors are student-athletes who are members of the "Additional Sports Class" and the "Injunctive Relief Settlement Class" as defined in the Settlement. *See* Dkt. 450-3 ("Settlement") ¶1(n)(3), (z).

Grace E. Menke was a member of Yale University's NCAA Division I crew team for four years, serving as its captain during her senior year, 2023-2024. Menke began rowing at Yale in fall 2019, and missed the 2020-2021 season due to the COVID pandemic. Menke is currently preparing to apply to medical school.

Flannery Dunn is a member of George Washington University's NCAA Division I crew team, attending school on an athletic scholarship since fall 2020. Dunn plans to compete in the upcoming 2024-2025 season. Dunn graduated with a B.A. degree in December 2023 and is currently a graduate student in George Washington's School of Media and Public Affairs.

Mia Levy is a member of Yale University's NCAA Division I crew team, and will be rowing as the team's captain during her senior year, 2024-2025. Levy was named the 2023 U.S. Rowing Under-23 Female Athlete of the Year and won a gold medal at the World Rowing Championships as a member of the U.S. Under-23 National Team. Levy is an English major who received Scholar Athlete honors from the Collegiate Rowing Coaches Association in 2024.

Madison Moore is a member of Yale University's NCAA Division I crew team, and will be rowing as a senior in 2024-2025. Among her many accomplishments in the sport of rowing, Moore rowed as a member of the U.S. national team, competing at the Under-23 World Rowing Championships in 2023. Moore is a Psychology major who received Scholar Athlete honors from the Collegiate Rowing Coaches Association in 2024.

Sierra Bishop was a member of Oregon State University's NCAA Division I crew team from 2018 to 2023. Bishop attended Oregon State on an athletic scholarship and was a member

of the 2021 U.S. Under-23 National Team. Bishop won a gold medal at the World Rowing Championships and was honored as an All-American athlete in 2021 and 2022, nominated for NCAA woman of the year in 2022, received Scholar Athlete honors from the Collegiate Rowing Coaches Association in 2022 and 2023, and awarded the PAC-12 Thomas C. Hansen Conference Medal in 2023. Bishop graduated with honors with a B.S. degree in business administration in 2022 and earned a M.B.A. in supply chain and logistics management in 2023.

Etta Carpender was a member of the University of Texas's NCAA Division I crew team from 2018 to 2020 and 2021 to 2024. Carpender competed as both an undergraduate and graduate student and rowed for Texas when it won the NCAA Championship in 2022 and 2024.

II. PROCEDURAL HISTORY

This action began in 2020 as two separate lawsuits challenging the NCAA and conference defendants' restrictions on college athletes' ability to profit from their "name, image, and likeness," or "NIL." *See* Dkt. 164 ¶3 & n.2. In those lawsuits, which were consolidated as *In re College Athlete NIL Litigation*, Dkt. 154, plaintiffs alleged that defendants conspired to fix the compensation that Division I student-athletes could receive for use of their NIL, in violation of the Sherman Act. Dkt. 164 ¶¶96, 322-344. The complaint alleged, among other things, that the NIL restrictions "have adversely affected female athletes more than their male counterparts," because "the NCAA promotes female sports less than it does male sports." *Id.* ¶227.

Based on that complaint, the Court certified three "damages classes": (1) the "Football and Men's Basketball Class," consisting of male football and basketball players at "Power Five" schools (and Notre Dame) who received full scholarships; (2) the "Women's Basketball Class," consisting of female basketball players at the same schools who received full scholarships; and (3) the "Additional Sports Class," consisting of any Division I athletes who had received NIL compensation and were not part of the other two classes. *In re College Athlete NIL Litig.*, No. 20-cv-03919-CW, 2023 WL 8372787, at *3-4, *27 (N.D. Cal. Nov. 3, 2023) ("*NIL I*"). The Court also certified an "Injunctive Relief Class" consisting of all athletes who competed on a Division I athletic team during a specified time period. *In re College Athlete NIL Litig.*, No. 20-

cv-03919-CW, 2023 WL 7106483, at *7 (N.D. Cal. Sept. 22, 2023). The Court appointed Class Counsel to represent all classes. *Id.*; *NIL I*, 2023 WL 8372787, at *27.

In December 2023, after class certification in *NIL Litigation*, Class Counsel filed *Carter v. NCAA*, No. 3:23-cv-6325-RS (N.D. Cal.). Unlike *NIL Litigation*, which focused on NIL restrictions, *Carter* challenged the NCAA's restrictions on compensation for "athletic services." *Carter v. NCAA*, No. 3:23-cv-06325-RS (N.D. Cal. Dec. 7, 2023), Dkt. 1 ¶1. The *Carter* plaintiffs alleged that, due to the defendants' anticompetitive conduct, student-athletes were deprived of their fair share of the "billions of dollars" they generated for the NCAA, the conferences, and their schools. *Id.* ¶¶1, 190-200, 202-212. The *Carter* action is still in its infancy. Defendants have not responded to the complaint, discovery has not begun, and no class has been certified. *Carter*, No. 3:23-cv-06325, Dkt. 100.

Since November 2022, Class Counsel and defendants have engaged in settlement negotiations in *NIL Litigation*. Dkt. 450-2 ("Berman Decl.") ¶4. After *Carter* was filed, Class Counsel and the defendants "included" it in their negotiations to settle *NIL Litigation*, even though the allegations are different and the case is just getting off the ground. Berman Decl. ¶8.

In spring 2024, Class Counsel and defendants reached a settlement covering both *NIL Litigation* and *Carter*. Berman Decl. ¶8. To facilitate settlement approval, Class Counsel prepared a Second Consolidated Amended Complaint in the *NIL Litigation* action. That complaint adds the claims raised in *Carter* relating to "athletic services." *See, e.g.*, Dkt. 448-2 ¶¶6-11. It also seeks to certify essentially the same damages and injunctive relief classes certified in *NIL Litigation* – the only difference being that the "Additional Sports Class" now includes ***all*** Division I athletes, not just those who received NIL compensation, Dkt. 448-1 ¶303. The new consolidated complaint continues to allege that female athletes were uniquely harmed by defendants' anticompetitive conduct due to, among other things, the NCAA's failure to promote female sports. *See id.* ¶¶229-233.

III. THE SETTLEMENT

The Settlement Agreement enacts sweeping changes to NCAA rules and "fully" and "finally" discharges "all claims that have been or could have been asserted against Defendants' rules regarding monies and benefits that may be provided to student-athletes, scholarship limits, and roster limits." Dkt. 450-3 ("Settlement") § B.2, at 2 & Recitals. It awards $2.576 billion to student-athletes – mostly male football and basketball players – and provides injunctive relief allowing schools to compensate their students for athletic services annually up to a defined per-school cap. Settlement § A.1(w), (ee), (c); *id.* § B.2.

A. The Settlement Classes

Under the Settlement, payments would be made to members of three Settlement Classes: (1) the Football and Men's Basketball Class; (2) the Women's Basketball Class; and (3) the Additional Sports Class. Settlement § A.1(n). The members of the Football and Men's Basketball Class and the Women's Basketball Class are student-athletes who (i) have received or will receive full grant-in-aid scholarships, (ii) compete on, competed on, or will compete on a Football Bowl Subdivision ("FBS") football team or a Division I men's basketball team, or a Division I women's basketball team, at a Power Five school (including Notre Dame), and (iii) have been or will be declared initially eligible for competition in Division I at any time from June 15, 2016 through September 15, 2024. *Id.* The members of the Additional Sports Class are all student-athletes (other than members of the Football and Men's Basketball and Women's Basketball Classes) (i) who compete on, competed on, or will compete on a Division I athletic team and (ii) who have been or will be declared initially eligible for competition in Division I at any time from June 15, 2016 through September 15, 2024. *Id.*

There is a single class for the injunctive relief settlement, the Injunctive Relief Settlement Class, that consists of "[a]ll student-athletes who compete on, competed on, or will compete on a Division I athletic team at any time between June 15, 2020 through the end of the Injunctive Relief Settlement Term." Settlement § A.1(z).

B. The Settlement Payments

The Settlement provides for two types of settlement payments: (1) the Name, Image, and Likeness ("NIL") Claims Settlement payments and (2) the Additional Compensation Claims Settlement payments. Settlement § A.1(w). Nearly 77% of the $2.576 billion settlement pool, or $1.976 billion, is allocated to the NIL claims. *Id.* § A.1(ee). The remaining $600 million, broadly labeled the "Additional Compensation Claims Settlement Amount," compensates for so-called "athletic services." *Id.* § A.1(c); Dkt. 450-4 ("Rascher Decl.") ¶3. That amount is intended to cover all other (non-NIL) injuries released under the Settlement. Settlement § C.3.

In support of their Motion for Preliminary Settlement Approval, Class Counsel submitted a declaration from their economic expert Daniel A. Rascher, who previously submitted reports in the litigation related to NIL compensation damages to Division I student-athletes. Rascher proposes an allocation of settlement payments among the members of the three Settlement Classes. Rascher Decl. ¶¶7-81.

1. The NIL Claims Settlement Payments

Rascher divides the $1.976 billion NIL Claims Settlement payments into (1) the Video Game NIL payments ($71.5 million),[1] (2) the Broadcast NIL payments ($1.815 billion),[2] and (3) the Lost NIL Opportunity payments ($89.5 million).[3] Rascher Decl. ¶15. He distributes the NIL Claims Settlement payments among student-athletes based on the market demand for the use of their NIL. *See id.* In focusing solely on student-athletes' ability to achieve NIL earnings, Rascher ignores that men's sports, as compared to women's sports, have historically enjoyed far greater investment from the NCAA and schools, including in the promotion of their events.

[1] The Video Game NIL payments represent the royalty payments student-athletes would receive as compensation for the use of their NIL in video games. Rascher Decl. ¶19 & Exs. 1, 2.

[2] The Broadcast NIL payments represent the share of the Power Five conferences' broadcast revenue student-athletes would receive for the use of their NIL. Rascher Decl. ¶25.

[3] The Lost NIL Opportunity payments are intended to compensate for lost NIL earning opportunities and would be paid only to student-athletes across the three damages Settlement Classes with verifiable third-party NIL compensation after July 1, 2021, that participated in Division I college athletics prior to that date. Rascher Decl. ¶31.

The Settlement reserves the lion's share of the NIL Claims Settlement payments for male football and basketball athletes. One hundred percent of the Video Game NIL payments, or $71.5 million, go to male football and basketball players. *See* Rascher Decl. ¶15; *id.*, Ex. 3. Ninety-six percent of the Broadcast NIL payments – which total $1.815 billion or 92% of the overall NIL Claims Settlement payments – are reserved for male athletes. *See id.* ¶15 & Ex. 5. Almost 60% of the Lost NIL Opportunity payments go to the Football and Men's Basketball Class, less than 4% to the Women's Basketball Class, and approximately 37% to the Additional Sports Class. *See id.* ¶31. Rascher does not state how the payments to the Additional Sports Class are distributed between male and female athletes. *See id.* But even under the conservative (and unlikely) assumption that all the Additional Sports Class payments go to women athletes, the majority (nearly 60%) of the overall Lost NIL Opportunity payments still go to men. And under that same conservative assumption, ***almost 95%*** of the total NIL payments, approximately $1.872 billion, are allocated to male football and basketball players.

2. The Additional Compensation Claims Settlement Payments

The Additional Compensation settlement pool, which is intended to compensate for "athletic services," totals $600 million. Of that $600 million, 90% ($540 million) goes to male Power Five football and basketball players. Rascher Decl. ¶48. Just 5% ($30 million) goes to female Power Five basketball players. *Id.* The remaining 5% ($30 million) is divided among the Additional Sports Class – that is, all other Division I athletes. Assuming again that all the damages to the Additional Sports Class are allocated to female athletes (which, again, is not likely), 90% ($540 million) of the Additional Compensation Claims Settlement Amount would still be expressly reserved for male athletes.

Under Rascher's method for compensating student-athletes for their athletic services, an average football player at a Power Five school is compensated approximately $12,000 to $14,000 per year for "athletic services." *See* Rascher Decl. ¶56. An average men's basketball player is compensated approximately $16,000 to $18,000 per year. *See id.* ¶61. An average women's

basketball player is compensated approximately $4,500 to $5,300 per year. *See id.* ¶66. And a female Division I rower is compensated approximately $125 per year. *See id.* ¶81.[4]

C. The Injunctive Relief Settlement

The injunctive relief component of the Settlement creates new NCAA and conference rules for athlete compensation, effective for the next ten years. Settlement App'x A ("Injunctive Relief Settlement").

The Settlement permits schools to pay students for their athletic services (over and above the scholarships and other benefits currently permitted by the NCAA) up to an annual per-school cap. That cap is set at 22% of the average of the schools' shared revenue, which Rascher estimates at about $23.1 to $32.9 million annually. Injunctive Relief Settlement art. 3, § 1(d)-(e); Rascher Decl. Ex. 25.[5] Within that cap, schools can allocate compensation as they choose. Injunctive Relief Settlement art. 3, § 2.

The Settlement authorizes NCAA and the Power Five conferences to prohibit student-athletes from entering into private NIL agreements with "Boosters" – a term that encompasses "any individual, independent agency, corporate entity (e.g. apparel or equipment manufacturer) or other organization" that has promoted or assisted the school's athletic department or the student-athlete – unless the NCAA or the conferences determine that the agreement is "for a valid business purpose" on "terms commensurate with compensation paid to similarly situated individuals." Injunctive Relief Settlement art. 1, § 1(c), art. 4, § 3(a); NCAA Bylaw 13.02.16 (defining "representative of athletic interests"). Any NIL deals valued over $600 must be

[4] The payout may be significantly less. The table of estimated settlement recoveries appended to Class Counsel's Motion for Preliminary Approval estimates that the vast majority of "Additional Sports" athletes will receive just $50. Mot. 41. The reason for the disparity between that estimate and Rascher's $125-per-year figure is unclear. It is worth noting that only athletes who make claims will be paid, and Rascher estimates a claim rate of just 15%. Rascher Decl. ¶81.

[5] Over the course of the ten-year settlement term, the average shared revenue that serves as the basis for the per-school cap would be recalculated every three years, and in between recalculation years, the average shared revenue would increase annually by 4% over the previous year's amount. Injunctive Relief Settlement, art. 3, § 1(e)-(f).

submitted by the student-athlete to their schools and the NCAA. Injunctive Relief Settlement art. 2, § 4.[6]

STATEMENT OF THE ISSUE TO BE DECIDED

Whether the Court should preliminarily approve the Settlement.

ARGUMENT

In deciding whether to grant preliminary approval to a class action settlement, the Court must consider whether "'the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.'" *Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D. 157, 169 (N.D. Cal. 2019).

Because "'settlement class actions present unique due process concerns for absent class members,'" the court "has a fiduciary duty to look after the interests of those absent class members." *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015). Approval requires a determination that the Settlement is "fair, reasonable, and adequate." In reaching its conclusion, the court must consider whether "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).

[6] The Settlement requires that the disclosure be made to an undefined "Designated Reporting Entity." Media reports explain that this will be an "NCAA clearinghouse." The settlement is unclear as to whether the enforcement and policing of NIL deals will be done by the NCAA, the conferences, or the schools. Dennis Dodd, *Why Revenue Sharing with College Athletes Remains Complicated amid Antitrust Settlement Pushing Forward*, CBS Sports (Aug. 1, 2024), https://bit.ly/3YD7f67; Brandon Marcello, *College Athletes Set To Get $2.8 Billion, Revenue-Sharing Model in Landmark House v. NCAA Settlement*, CBS Sports (May 23, 2024), https://bit.ly/4ddp6F5.

The Settlement fails to meet the standard for preliminary approval. It discriminates against female athletes; establishes a price-fixing cartel; and bargains away claims that have nothing to do with the original complaint in this action. The pervasive intraclass conflicts and attorney-fee provisions suggest potentially collusive negotiation. In short, it is riddled with "preferential treatment" and "obvious deficiencies."

I. THE SETTLEMENT DISCRIMINATES AGAINST WOMEN ATHLETES

As the complaint recognizes, women athletes have been disproportionately harmed by the NCAA's anticompetitive rules and practices. The NCAA's failure to promote women's sports depressed the value of female athletes' NIL over decades, and the NCAA's scholarship cap denied women scholarships that would otherwise have been available under Title IX. Yet, instead of compensating those injuries, the Settlement perpetuates the same inequalities it should remedy. The result is a stunning disparity in compensation – well over ***90%*** of the settlement proceeds will be paid to male athletes. By reinforcing wrongful gender inequities instead of remedying them, the Settlement is a major setback for efforts to achieve gender equity in college athletics.

A. The Settlement Undercompensates Women's NIL Damages

Under the Settlement, nearly all women (aside from select basketball players) will be paid around $125, while thousands of male football players and basketball players will be paid more than $100,000. *See* Rascher Decl. ¶33 & Ex. 6; *id.* ¶51. That disparity occurs because settlement payments are allocated in proportion to historic college sports revenues.[7] But those historic figures are a result of the NCAA's discriminatory practices, which specifically harmed women.

The NCAA historically depressed the value of women athletes' NIL by failing to invest in promoting women's sports. A 2021 report commissioned ***by the NCAA itself*** found that "the

[7] Class Counsel's motion explains that the distributions are allocated across the three Settlement Classes according to Rascher's damages methodology previously presented in his class certification and merits reports. Mot. 11. Rascher's declaration filed in support of the motion similarly refers to the methodology presented in those previous reports. *See* Rascher Decl. ¶¶19, 25, 31. Those reports are sealed or otherwise unavailable to Objectors. In explaining his methodology for dividing the Athletic Services settlement amount across the classes, however, Rascher explains that the skewed allocations heavily favoring football and men's basketball classes track the "estimated share of value each sport contributed to the value of regular reason broadcast deals," which "account for a large share of athletic revenue." *Id.* ¶48.

NCAA's broadcast agreements, corporate sponsorship contracts, distribution of revenue, organizational structure, and culture all prioritize Division I men's basketball over everything else in ways that create, normalize, and perpetuate gender inequities."[8] One high-profile example is the NCAA's exclusion of women's basketball from the highly valuable "March Madness" branding. Prior to 2022, the NCAA reserved "March Madness" for men's basketball.[9] This year's NCAA women's basketball championship game – promoted as part of "March Madness" – drew a television audience of ***18.7 million viewers, a larger audience than the men's final***. Vanessa Romo, *Women's NCAA Championship TV Ratings Crush the Men's Competition*, NPR (Apr. 10, 2024), https://n.pr/3WB04Zv. That example illustrates that, properly promoted, women's sports are capable of generating interest and revenue equaling or surpassing men's sports. But the NCAA's unfair promotion and investment have boosted men's marketability – and NIL rights – while artificially depressing women's.

Absent the NCAA's anticompetitive conduct, women's NIL values would have been higher. Title IX regulations ***require*** schools to spend equal promotional resources on men's and women's teams. *See* 34 C.F.R. § 106.41(c)(10); U.S. Dep't of Educ., Off. for Civil Rights, Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71417 (1979) (codified at 45 C.F.R. Part 86); *Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d 1093, 1107 (S.D. Cal. 2012) (finding Title IX violations for inequitable publicity allocated to girls' athletics). Unquestionably, that hasn't occurred. And but for the NCAA rules, female athletes could have promoted and monetized their own brands. But the NCAA's prohibition on college athletes profiting from their NIL channeled athletes into relying on the NCAA for promotion of their teams, competitive events, and personal brands. Thus, due to the NCAA's practices, women

[8] Kaplan Hecker & Fink LLP, *NCAA External Gender Equity Review Phase I: Basketball Championships* 2 (Aug. 2, 2021) ("Kaplan Hecker Phase I Report").

[9] Kaplan Hecker Phase I Report 8-9, 37-40. The summary of the 2021 report, recounted above, hardly covers all the ways the NCAA failed to capture tens of millions, if not hundreds of millions, in revenue from media contracts for broadcasting women's college basketball. *See id.* at 8-9. The valuations cited in the report, moreover, relied on the independent analysis of the same sports media expert in this litigation, Ed Desser. *See id.*

athletes were systematically and disproportionately injured by the NCAA's anticompetitive conduct.

The lost value of these individual deals cannot be exaggerated. For instance, the plaintiffs allege that as soon as college superstars like Katie Ledecky and Sabrina Ionescu were free of the NCAA's rules, they succeeded wildly – and lucratively – in promoting and monetizing their athletic careers. Dkt. 448-1 ¶¶280-282. But for the NCAA's failure to promote women's sports, more women would have achieved similar opportunities at the college level.

The Settlement fails to account for those harms to women. Instead, it perpetuates the very inequities the NCAA itself created by distributing the NIL damages pool in proportion to the tainted NIL damages figures. The same inequities exist in the Additional Compensation pool, which also favors revenue-generating sports. The thousands of female athletes who are allocated $125 in recognition of the fact that they must have contributed ***some*** value to their schools – even if they did not generate revenues – are penalized because the NCAA and the schools never ***tried*** to monetize those sports. *See* Rascher Decl. ¶48. The deficient NIL calculations thus taint the entire damages settlement.

B. The Settlement Does Not Account for Lost Scholarships

The Settlement also undercompensates women by omitting compensation for lost scholarship opportunities while forcing releases of claims for those losses. *See* Dkt. 448-2 ¶¶110-113, 122-23, 304 (amending complaint to add allegations related to lost scholarships); Settlement § A.1(oo). That omission disproportionately harms women athletes who have been systematically denied athletic scholarships due to the NCAA's anticompetitive scholarship caps.

Historically, NCAA rules have limited the overall number of athletic scholarships schools can offer per sport. Those limits are skewed against women. "While [NCAA] limits let schools place up to 85 football players on full-ride scholarships, no women's sport has a limit higher than 20." *See* Kenny Jacoby, Rachel Axon, Lindsay Schnell & Steve Berkowitz, *Female Athletes Stiffed on Scholarships at Some of the Biggest Colleges in the Country*, USA Today (Aug. 17, 2022), https://bit.ly/4djiN2M ("*Stiffed on Scholarships*"). Schools that exceed the caps are

subject to NCAA penalties, "including championship bans, scholarship reductions, and athletes being ruled ineligible." *Id.*

The NCAA's scholarship caps have reportedly caused many schools to flout their Title IX obligations, which require schools to award athletic scholarships equitably between men and women. *Stiffed on Scholarships*, *supra*; *see* 20 U.S.C. § 1681; 34 C.F.R. §§ 106.37(c), 106.41; U.S. Dep't of Educ. Office for Civil Rights, OCR-00019-20, *Dear Colleague Letter: Bowling Green State University*, at 2-4 (July 23, 1998), https://bit.ly/3SCCRoj. This practice is widespread and highly damaging. In the 2020-2021 academic year alone, most of the 134 members of the NCAA's "Football Bowl Subdivision" were reportedly in violation of Title IX's equal scholarships regulations. *Stiffed on Scholarships*, *supra*. Women lost out on ***$23.7 million*** in scholarships in a single year that they were otherwise entitled to receive under Title IX due to the NCAA's rules. *Id.*

While the Settlement provides ***no damages*** for lost scholarships, it compels class members to release ***all*** scholarship claims against the NCAA and the defendant conferences, preventing any possibility of remedy in a separate suit. Settlement § A.1(oo) (releasing all claims, "known or unknown," "relating in any way to any NCAA or conference limitations on the numbers of scholarships allowed or permitted in any sport"). The glaring omission of ***any*** negotiated damages settlement for the value of denied athletic scholarships is itself an "'obvious deficienc[y]'" that renders the Settlement far outside the "'range of possible approval.'" *Uschold* 333 F.R.D. at 169. It is also obviously unfair to women athletes, who are giving up claims – which are of "astronomical value" to the class – in exchange for nothing at all. Mot. 10.[10]

[10] Plaintiffs pointedly decline to put a value on the additional injunctive relief, including the replacement of scholarship caps with new NCAA rules imposing higher roster limits, insisting only that it is valuable indeed. Mot. 10. But forward-looking injunctive relief does nothing for Additional Sports class members who have already lost scholarships they ***should*** have received, which had concrete dollar values.

II. THE SETTLEMENT SUBSTITUTES ONE ANTICOMPETITIVE AGREEMENT FOR ANOTHER

Under the guise of remedying antitrust violations in the market for student-athletes' labor and NILs, the parties' "ground-breaking injunctive relief" creates a new cartel to stifle the competition that this litigation was meant to restart. Mot. 8. NCAA Division I schools – that compete against each other for top student-athlete talent – have agreed to pay no more than a set sum each year to their student-athletes for more than a decade. While athletes will receive more money than they do now, the Settlement imposes a system that is no less price fixing than the system this lawsuit attacks.

A. The Settlement Creates a Price-Fixing Cartel for Student Athletic Services

The most basic principle of antitrust law is that a horizontal agreement to fix prices violates Section 1 of the Sherman Act. 15 U.S.C. § 1; *see, e.g.*, *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006) ("Price-fixing agreements between two or more competitors, otherwise known as horizontal price-fixing agreements, fall into the category of arrangements that are per se unlawful."). Courts have repeatedly held that the NCAA has violated that Act in fixing compensation that student-athletes can earn. *See, e.g.*, *NCAA v. Alston*, 594 U.S. 69, 90-91 (2021) (agreement to restrict education-related benefits); *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85 (1984) (agreement to fix the price of telecasts of college football); *O'Bannon v. NCAA*, 802 F.3d 1049, 1071-72 (9th Cir. 2015) (agreement to restrict compensation for NILs).

Undeterred, the NCAA seeks to continue to fix and depress the prices for student athletics for ten years through the Injunctive Relief Settlement. The Settlement allows for the "distribut[ion of] additional payments and/or benefits" by each Division I school "***up to a certain amount***" each academic year. Injunctive Relief Settlement, art. 3, § 1(a) (emphasis added). In the words of Plaintiffs' expert, the Settlement creates a "spending cap" that prohibits NCAA Division I schools from paying student-athletes any more than the agreed-upon sum until 2036. Rascher Decl. ¶85. In 2025-2026, the first academic year of the Settlement, that payment is

capped at 22% of the schools' "Average Shared Revenue"[11] – an estimated $23.1 million per school. Injunctive Relief Settlement, art. 3, § 1(g); Rascher Decl. ¶85.

The underpayment created by the spending cap will grow more severe over the Settlement's decade-long term. The effective share of revenues allotted to student-athletes declines in most years. In the first, fourth, and seventh years, each school's spending cap is 22% of the Average Shared Revenue. For most of the Settlement's term, however, increases in the spending cap are not tied to that year's revenue but are fixed and will increase by less than 1% of the prior year's revenue. Injunctive Relief Settlement, art. 3, § 1(g).[12]

The anticompetitive effect of the restraint on student-athlete compensation is all the more clear when considering a market where schools ***do*** compete for talent – the market for head coaches. There is no cap on what coaches are paid, and they are paid a lot. The Consolidated Amended Complaint alleges the University of Michigan's former head football coach, Jim Harbaugh, was paid over $8 million in 2021, Dkt. 167 ("Consol. Am. Compl.") ¶14; Duke University's former head basketball coach, Mike Krzyzewski, was paid $8.98 million in 2017, *id*. ¶167; and the University of Alabama's former head football coach, Nick Saban, was paid $11 million that same year, *id.* Those salaries have increased by double-digit percentages in the years since the Complaint was filed. Tom Schad & Steve Berkowitz, *Why College Football Is King in Coaching Pay – Even at Blue Blood Basketball Schools*, USA Today (Jan. 31, 2024), https://bit.ly/3AinVFQ. A top coach's salary equals about half the value of all the scholarships a school might award in a year. There is no reason student-athletes should be barred from receiving the price that schools are willing to pay for their athletic talent.

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[11] Average Shared Revenues are defined as the sum of the "Shared Revenue for all Conference Defendant Member Institutions, including Notre Dame, from the most recent Membership Financial Reporting System Reports . . . divided by the total number of Conference Defendant Member Institutions plus Notre Dame." Injunctive Relief Settlement, art. 3, § 1(d).

[12] In most years, the settlement is the prior year's payment plus 4% of the payment. Injunctive Relief Settlement, art. 3, § 1(g). That increase would not even keep pace with inflation. *See Historical U.S. Inflation Rate By Year: 1929 to 2024*, Investopedia (July 31, 2024), https://bit.ly/46CuBL3 (noting inflation rates between 1.4 to 8% in the last five years).

The artificially suppressed compensation that class members receive under the Injunctive Relief Settlement – unlike their coaches' free-market compensation – will not be "commensurate with the value that they create." *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1070 (N.D. Cal. 2019). Division I annual revenues are expected to surge far past the incremental gains provided in the Settlement each year. Between 2021 and 2022 alone, NCAA Division I schools reported a 31% increase in their total athletic revenues, jumping to $17.5 billion. *Division I Athletics Finances 10-Year Trends from 2013-22*, NCAA Research (Dec. 2023), https://bit.ly/3WWI8cY.

The Settlement also limits the number of student-athletes that can be compensated. Division I schools cannot award more scholarships than allotted by the sport's "roster," a set number of spots dictated by the Settlement. Injunctive Relief Settlement, art. 4, § 1; *see also* Settlement, App'x B art. 1, § 1(g). For many schools and sports, these roster sizes are below current and projected team sizes, which include walk-ons, and may impact their recruiting strategies. Seth Emerson & Scott Dochterman, *105 Is College Football's New Key Number. What Will It and Other NCAA Roster Caps Change?*, N.Y. Times (July 30, 2024), https://nyti.ms/3yo9wr8. In a free market, schools with the resources and desire to build the best teams presumably would award scholarships beyond the settlement limit.

Moreover, like many cartel agreements, the Settlement threatens punitive discipline for those who step out of line. Schools that seek to offer fair market compensation can suffer reduced distributions from the NCAA. Injunctive Relief Settlement, art. 3, § 1(g). Student-athletes who seek fair market compensation risk their eligibility. *Id.*

That collusive, artificially depressed payment structure is not fair, reasonable, or adequate, even if it provides more compensation than student-athletes could have earned under the NCAA's previous anticompetitive restraints. Fed. R. Civ. P. 23(e)(2); *see Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980) (per curiam). As this Court has held, "[i]t is the fact that the prices of student-athlete compensation are fixed, as opposed to the amount at which these prices are

fixed, that renders the [NCAA's] agreements at issue anticompetitive." *Grant-in-Aid*, 375 F. Supp. 3d at 1095 (Wilkins, J.).

In sum, the Settlement – like the NCAA restrictions at the heart of this lawsuit – unlawfully "decrease[s] the compensation that student-athletes receive compared to what a competitive market would yield." *Alston*, 594 U.S. at 86. By dictating who can receive compensation and the total compensation they can receive, the Settlement limits "competition among schools seeking to land recruits" both in dollar compensation and the number of athletes for which any school can compete. *O'Bannon*, 802 F.3d at 1071 (quotation marks omitted). Thus, in lieu of real competition, the Settlement establishes a decade-long price-fixing cartel, perpetuating the very harm that the Sherman Act and this litigation were designed to remedy.

B. The Settlement Creates a Price-Fixing Cartel for NIL Rights

The Settlement usurps the market's role in determining the fair market value for student-athletes' NIL and vests that power in the NCAA. The Settlement also requires student-athletes to report any deals over $600 to their school and the NCAA. Injunctive Relief Settlement, art 2, § 4. It authorizes the NCAA and Power Five conferences to pass rules giving them veto power over student-athletes' private NIL agreements with "boosters" – a broadly defined term that encompasses "any individual, independent agency, corporate entity (e.g. apparel or equipment manufacturer) or other organization" that has promoted or assisted the school's athletic department or the student-athlete. *Id.* art. 1, § 1(c); *id.* art 4, § 3(a); NCAA Bylaw 13.02.16. Those private agreements are prohibited unless the NCAA or the conference determines that the agreement is "for a valid business purpose" set at "terms commensurate with compensation paid to similarly situated individuals." *Id.* art. 4, § 3(a).

Thus, the Settlement transfers the right to set prices for student-athletes' NILs from the sellers and buyers to the NCAA and conferences, which are not parties to those transactions. "College leaders" have said these provisions empower them to determine "fair market value" for NIL deals. Dennis Dodd, *Why Revenue Sharing with College Athletes Remains Complicated amid Antitrust Settlement Pushing Forward*, CBS Sports (Aug. 1, 2024), https://bit.ly/3YD7f67

("Revenue Sharing Remains Complicated"). But the measure of fair market value should not be set by the NCAA or conferences. "[F]air market value" is "best set by the market itself." *Keener v. Exxon Co., USA*, 32 F.3d 127, 132 (4th Cir. 1994). The Settlement restrains student-athletes' "'ability to sell in accordance with their own judgment.'" *Arizona v. Maricopa Cnty. Med. Soc.*, 457 U.S. 332, 346 (1982) (quoting *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 213 (1951)). That restraint is illegal regardless of whether the NCAA plans to "rais[e], depress[ ], fix[ ], peg[ ], or stabiliz[e] the price" of NILs. *Id.* at 347 (internal quotation marks omitted).

III. THE SETTLEMENT IS A BACKDOOR ATTEMPT TO CUT OFF STUDENT-ATHLETE CLAIMS FOR FAIR EMPLOYMENT COMPENSATION

"The NCAA's business model would be flatly illegal in almost any other industry in America" because it "suppress[es] the pay of student athletes who collectively generate ***billions*** of dollars in revenues for colleges every year." *Alston*, 594 U.S. at 109-10 (Kavanaugh, J., concurring) (emphasis in original). The Settlement does nothing to correct that injustice. It forces class members to release their claims for compensation for their athletic services without sufficient consideration.

A. The Additional Compensation Settlement Fund Does Not Adequately Compensate Student-Athletes for Their Athletic Services

The Settlement purports to provide compensation for NIL and "athletic services" losses through the "Additional Compensation Settlement Fund." *See* Mot. 18; Rascher Decl. ¶47 (noting that the "settlement amount related to compensation for athletic services is $600 million"). Objectors agree with Class Counsel that student-athletes deserve fair compensation for their athletic services to their schools. But the Settlement does not provide that. The vast majority of class members receive far less than the federal minimum wage for the hours of labor they provide to their schools and the NCAA. That is not "adequate" in any sense.

Athletic services are real work. Student-athletes are no different from students who serve as teaching assistants, residential advisors, or dining hall workers. But because of the NCAA's restrictions on student-athlete compensation, student-athletes are not compensated for their labor

in the way other university student employees are. Indeed, they do not receive an hourly minimum wage for their services because such a wage is prohibited by the NCAA.

Both courts and the Executive Branch are beginning to recognize that this situation cannot be squared with federal labor law. As Justice Kavanaugh noted in his concurrence in *Alston*, "[t]he NCAA concedes that its compensation rules set the price of student athlete labor at a below-market rate." *Alston*, 594 U.S. at 109. The Third Circuit recognized just last month that "[p]laying [college] sports can certainly constitute compensable work," holding that student-athletes may qualify as employees under the Fair Labor Standards Act ("FLSA"). *Johnson v. NCAA*, 108 F.4th 163, 178 (3d Cir. 2024). The National Labor Relations Board, too, has recognized that student-athletes are employees under the National Labor Relations Act. *See* N.L.R.B. Gen. Couns. Mem. 21-08 (Sept. 29, 2021).

Student-athletes are at the ***very least*** deserving of minimum wage under the FLSA. But the Settlement's Additional Compensation Settlement Fund – purportedly intended to compensate student-athletes for their athletic services – would leave the majority of student-athletes compensated at well below the federal minimum wage of $7.25 per hour. *See Minimum Wage*, U.S. Dep't of Labor, https://bit.ly/4fvCJRs (last accessed Aug. 7, 2024). The Settlement provides that most student-athletes in the Class – approximately ***380,000*** students, and by far the largest single group of student-athletes overall – would receive a settlement payment of ***only $125***. Mot. 40-41; Rascher Decl. ¶81. That's less than ***seven*** hours of work per year at the federal minimum wage – orders of magnitude less than the number of hours student-athletes provide to their schools in athletic labor. *See* NCAA Convention, *GOALS Study: Understanding the Student-Athlete Experience*, at 19, https://bit.ly/3WE7BXm (citing a 2019 study showing the median number of hours spent by Division I student-athletes on athletic activities in-season was 30 to 40 hours per week).

Moreover, the Additional Compensation Settlement Fund simply adopts the same unequal distribution method used with the NIL Settlement Fund, which unfairly awards the overwhelming majority of money to men in the Football and Basketball Class. *See* p. 10-12, *supra*; *see* Rascher

Decl. ¶48. Thus, despite purporting to compensate student-athletes for their athletic services, the Additional Compensation Settlement Fund fails to account for why schools have student-athletes in the first place. The Settlement assumes the primary value of athletic services is revenue generation, ignoring the fact that schools are non-profit organizations who employ student-athletes for other reasons. Schools often run athletic programs to enhance school spirit or to satisfy alumni and encourage donations to the school. Athletic programs also serve as recruitment tools to attract non-athletes to apply and attend. The Additional Compensation Settlement Fund's inappropriate distribution of funds means that members of the Additional Sports Class – including Objectors – are vastly undercompensated for their labor in the form of athletic services.

B. The Settlement Unfairly Forecloses Student-Athletes from Pursuing Employment-Related Claims Against the NCAA and Its Member Conferences and Schools

The Settlement is an attempt by the NCAA and its member conferences and schools to cut off student-athletes' fair employment compensation claims at a bargain price. Claims for "athletic services" – raised in *Carter* and still undeveloped in discovery and untested through the adversarial process – were only belatedly added to the Second Amended Consolidated Complaint. And they were added ***solely*** for purposes of settlement. *See* p. 4, *supra*. Settling those claims now inappropriately gives up potentially immense value without adequate exploration of the merits. *See, e.g.*, *In re Hewlett-Packard Co. S'holder Derivative Litig.*, No. 3:12-cv-06003-CRB, 2014 WL 7240144, at *5 (N.D. Cal. Dec. 19, 2014) ("The Court is unable to say that it is 'fundamentally fair, adequate and reasonable' to release claims unrelated to the gravamen of this case, claims whose scope and potential merit – and therefore value to the shareholders – cannot possibly be determined at this juncture."); *see also In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK, 2019 WL 387322, at *5 (N.D. Cal. Jan. 30, 2019) (rejecting release of claims not "based on the identical factual predicate" as those in the complaint).

While the athletic services claims have not yet been fully explored, there is every reason to think that settling them now for just $600 million leaves enormous value to the Class on the table. The *Carter* plaintiffs allege that they "received less compensation and fewer benefits than

they otherwise would have received for the use of their athletic services in competitive labor markets." *Carter*, No. 3:23-cv-06325, Dkt. 1 ¶192. And as employees, *see* p. 18-19, *supra*, student-athletes are entitled to compensation for their athletic services and entitled to pursue employment-related claims, such as those available under Title VII, Title IX, FLSA, and NLRA, against the NCAA and its member conferences and schools.

But the Settlement releases those employment-related claims. It prevents student-athletes from ever pursing employment-related claims that could have arisen from the "previously existing NCAA and conference rules regarding monies and benefits that may be provided to student-athletes," including those rules that deprive student-athletes of fair compensation for their labor in the form of athletic services. Mot. 10. The Settlement therefore both severely undercompensates the vast majority of student-athletes while at the same time preventing them from ever pursuing employment-related claims under prior NCAA and conference rules.

IV. OTHER FACTORS CAST SERIOUS DOUBT ON WHETHER THE SETTLEMENT CAN BE APPROVED AS FAIR, ADEQUATE, AND REASONABLE

The Settlement's pervasive intraclass conflicts likewise call its fairness and adequacy into question. The Settlement strikes a single "global compromise" of ***all*** claims arising out of the NCAA and conference rules, regardless of the "diverse groups and individuals affected." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 627 (1997). All classes share one damages pool; all are subject to the same injunctive relief provisions; and all give the same damages and injunctive relief releases. *See* Settlement ¶1(c), (n), (z), (ee), (oo), (pp), (ss). The same Class Counsel negotiated the agreement on behalf of all plaintiff groups. Berman Decl. ¶¶4-9. But the interests of the various class members are in conflict.

For example, the $600 million damages pool for "athletic services" is allocated according to the ***broadcast NIL revenue*** each class generates, even though the value generated by "athletic services" is not coextensive with broadcast NIL revenue. Rascher Decl. ¶¶47-49. That arrangement is clearly in the interests of male football and basketball players, who receive 90% of the "Additional Compensation" settlement pool. But it is clearly not in the interests of all other

athletes – women and non-football and basketball players – who are left to divide up the remaining 10%.

The Settlement likewise favors students at Power Five schools over students from all other schools. Students at Power Five schools are due to receive the lion's share of the damages pool, including ***95%*** of the "Additional Compensation" pool. Rascher Decl. ¶¶ 33, 48. But ***all*** students, from Power Five schools or otherwise, give the same settlement release. Settlement ¶¶ 19-26; *see id.* ¶ 1(n), (z), (oo), (pp). The Power Five conferences are the only defendants other than the NCAA, and plainly have used their influence on negotiations to ensure that their students and former students receive the greatest payouts from funds supplied by the NCAA and all schools with Division I teams.

The injunctive relief class is equally conflicted. By setting a cap on how much each school may pay its athletes, the Settlement entrenches a zero-sum game where class members must compete with one another for a share of the artificially limited compensation pool. *See* pp. 14-17, *supra*. In practice, those limited funds are likely to be allocated overwhelmingly to historically revenue-generating sports – particularly men's football and basketball – at the expense of all other sports. *See, e.g.*, Brandon Marcello, *College Athletes Set To Get $2.8 Billion, Revenue-Sharing Model in Landmark House v. NCAA Settlement*, CBS Sports (May 23, 2024), https://bit.ly/4ddp6F5 ("The unspoken truth among administrators is it seems unlikely they will advocate for equal pay for athletes whose sports earn less than football and men's basketball.").

Those pervasive conflicts suggest a fatal lack of adequate representation. Neither the "terms of the settlement" nor the "structure of the negotiations" here offer any assurance that the named plaintiffs "operated under a proper understanding of their representational responsibilities." *Amchem*, 521 U.S. at 627. Rather, the Settlement's extreme preferential treatment of male football and basketball players suggests that Class Counsel pursued those groups' interests to the near exclusion of the interests of other class members.

The Settlement's fee arrangement reinforces those concerns. The Settlement awards Class Counsel $20 million as an "upfront injunctive fee and cost award," which "Defendants shall not

oppose." Settlement ¶27(a). That is a classic "clear sailing provision" that raises the question what Class Counsel bargained away to get it. *See Briseño v. Henderson*, 998 F.3d 1014, 1026-27 (9th Cir. 2021). The Settlement also contains a reverter. Because the injunctive relief fees are to be paid by the defendants, "any amount not awarded by the Court would effectively revert to Defendants rather than to the benefit of the class." *Yahoo*, 2019 WL 387322, at *7 (N.D. Cal. Jan. 30, 2019). The presence of such a reverter requires "'greater scrutiny.'" *Id.*

Class members have been left in the dark throughout the settlement process. The media has reported that "[n]ot one athlete was at the table with a voice when the deal was hammered out." *Revenue Sharing Remains Complicated*, *supra*. Absent transparency, neither the Court nor the class members can be assured that Class Counsel zealously negotiated on behalf of absent class members – especially the women that the complaint itself recognizes were disproportionately harmed. Based on the face of the Settlement, what they can be assured of is that their interests have not been properly accounted for.

CONCLUSION

The Settlement's serious flaws render it anything but fair, reasonable, and adequate. The Court should deny preliminary approval.

Dated: August 9, 2024

Respectfully submitted,

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NCAA EXTERNAL GENDER EQUITY REVIEW

Phase I: Basketball Championships

August 2, 2021

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EXECUTIVE SUMMARY

On the night of March 18, 2021, University of Oregon basketball player Sedona Prince posted a video on social media contrasting the spacious room full of assorted barbells and other weightlifting equipment provided to the men's NCAA championship participants with the small, single tower of hand weights provided to the women's NCAA championship participants at the start of the NCAA Division I Men's and Women's Basketball Tournaments.[1] Like the contemporary equivalent of "the shot heard round the world," that video immediately went viral, and issues of gender equity at the NCAA took center stage in the news and the public consciousness. While the differences between the experiences of male and female players have been significant for years, seeing the student-athletes play in parallel COVID-19 "bubbles" at the same time this year shined an unprecedented light on those differences for the world to see.

Indeed, as a result of the Sedona Prince TikTok video, even before the tip-off of the first women's game, student-athletes, coaches, and the media began a very public, often photographic comparison on social media and elsewhere of the men's and women's tournaments in Indianapolis and San Antonio, respectively.[2] Nearly every time, the women's tournament fell short. As NCAA President Mark Emmert later acknowledged, "When you lay the men's and women's [Division I basketball] championships side by side, as has been made clear over the past weeks, it is pretty self-evident that we dropped the ball in supporting our women's athletes, and we can't do that."[3]

Although the disparities at this year's Division I Men's and Women's Basketball Championships sparked a wide-ranging public discourse about gender equity within the NCAA, college sports, and sports in general, gender disparity is not something new to any of these areas. The NCAA, for example, did not sponsor a championship for women's basketball, or any other women's sport, until 1982—more than 75 years after the association was founded. And even then, it opposed (ultimately unsuccessfully) the application of Title IX—the federal law prohibiting gender discrimination in educational programs and activities receiving federal funds—to college

[1] Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), https://www.tiktok.com/@sedonerrr/video/6941180880127888646.

[2] *See, e.g.*, Jason Gay, *A TikTok Video Says It All About the NCAA Tournaments*, Wall Street Journal (Mar. 21, 2021), https://www.wsj.com/articles/ncaa-tournament-womens-basketball-mens-basketball-11616344310; Mike Brehm, *South Carolina Women's Basketball Coach Dawn Staley Criticizes NCAA's Mark Emmert Over Disparities Between Tournaments*, USA Today Sports (Mar. 20, 2021), https://www msn.com/en-us/sports/ncaabk/south-carolina-womens-basketball-coach-dawn-staley-criticizes-ncaas-mark-emmert-over-disparities-between-tournaments/ar-BB1eLXwG; Joseph Salvador, *Tara VanDerveer on Inequality in College Sports: 'I Feel Betrayed by the NCAA*,' Sports Illustrated (Mar. 20, 2021), https://www.si.com/college/2021/03/21/tara-vanderveer-calls-out-ncaa-blatant-sexism-tournament-disparities; Juliet Macur and Alan Blinder, *Anger Erupts Over Disparities at N.C.A.A. Tournaments*, N.Y. Times (Mar. 19, 2021), https://www nytimes.com/2021/03/19/sports/ncaabasketball/women-ncaa-tournament-weight-room html; Scott McDonald, *Stanford Coach Exposes Huge Disparity in Men's, Women's Workout Gyms at NCAA Tournaments*, Newsweek (Mar. 18, 2021), https://www newsweek.com/stanford-coach-exposes-huge-disparity-mens-womens-workout-gyms-ncaa-tournaments-1577254.

[3] Heather Dinich, *NCAA President Mark Emmert Admits Inequality But Wants Women's Basketball Leaders To Push Progress*, ESPN (Mar. 31, 2021), https://www.espn.com/womens-college-basketball/story/_/id/31172132/ncaa-president-mark-emmert-admits-inequality-wants-women-basketball-leaders-push-progress.

sports.[4] The NCAA also to date has successfully resisted the application of Title IX to the NCAA itself.[5]

At various points throughout its history, there have been those within the NCAA who have engaged in concerted, salutary efforts to address inequities in women's college basketball (and college athletics generally) including, but not limited to: the creation of a Women's Basketball Discussion Group by former NCAA President Myles Brand in 2006, the hiring of a marketing consultant to advise the NCAA on improving the marketing of women's basketball in 2007, the retention of now-Big East Conference Commissioner Val Ackerman to complete a White Paper on women's basketball in 2013, as well as ongoing internal efforts to achieve gender equity with respect to women's basketball by the NCAA Committee on Women's Athletics, the Gender Equity Task Force, the Women's Basketball Committee, the Women's Basketball Oversight Committee, and the women's basketball staff. But while it is true that some progress has been made, all too often, the proposed reforms that came out of these efforts ended up doing no more than sitting on a shelf. With respect to women's basketball, the NCAA has not lived up to its stated commitment to "diversity, inclusion and gender equity among its student-athletes, coaches and administrators."[6]

The primary reason, we believe, is that the gender inequities at the NCAA—and specifically within the NCAA Division I basketball championships—stem from the structure and systems of the NCAA itself, which are designed to maximize the value of and support to the Division I Men's Basketball Championship as the primary source of funding for the NCAA and its membership. The NCAA's broadcast agreements, corporate sponsorship contracts, distribution of revenue, organizational structure, and culture all prioritize Division I men's basketball over everything else in ways that create, normalize, and perpetuate gender inequities. At the same time, the NCAA does not have structures or systems in place to identify, prevent, or address those inequities. The results have been cumulative, not only fostering skepticism and distrust about the sincerity of the NCAA's commitment to gender equity, but also limiting the growth of women's basketball and perpetuating a mistaken narrative that women's basketball is destined to be a "money loser" year after year.

Nothing could be further from the truth. The future for women's sports in general, and women's basketball in particular, is bright. Television viewership for this year's Division I women's tournament was the highest it has been since 2014. This year, for the first time ever, ESPN nationally televised all 63 games of the women's tournament. And many Division I women's basketball players now have huge followings on social media that are unrivaled by their male counterparts.[7]

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[4] Ellen J. Staurowsky, Title IX and College Sport: The Long Painful Path to Compliance and Reform, 14 Marq. Sports L. Rev. 95, 100-04 (2003).

[5] *See NCAA v. Smith*, 525 U.S. 459, 469 (1999).

[6] NCAA Inclusion Statement (as amended by the NCAA Board of Governors April 2017), https://www ncaa.org/about/resources/inclusion/ncaa-inclusion-statement.

[7] *See, e.g.*, Hanna & Haley Cavinder (@cavindertwins), TikTok (last visited July 23, 2021), https://www.tiktok.com/@cavindertwins (approxately 3.4 million followers); Sedona Prince (@sedonerrr), TikTok (last visited July 23, 2021),

As part of this review, and with the full support of the NCAA, Kaplan Hecker & Fink LLP ("KHF") engaged an independent media expert, Ed Desser, to assess the true value of women's Division I basketball. Desser and his team estimate that the annual broadcast rights for women's basketball will be worth between $81 and $112 million in 2025—a figure multiples higher than what ESPN currently pays for an entire annual broadcast package that includes Division I women's basketball *as well as* 28 other NCAA championships. Even if the NCAA were able to realize only a portion of that estimate as the result of future negotiations, those funds would make a significant difference in the money available to support NCAA championships and the NCAA membership. Further, Desser's expert analysis shows that pursuing gender equity is not only the right thing to do, but also has real and significant long-term financial value—and therefore strategic importance—to the NCAA overall.

Although the gender inequities at this year's Division I basketball tournaments were serious, many student-athletes, coaches, and administrators have expressed their deep gratitude to the NCAA for the opportunity to compete in the tournaments during an unprecedented global pandemic. Hundreds of NCAA staff and volunteers worked long and hard over the months before and during the 2021 men's and women's tournaments, planning the events and working to manage the significant health risks so that thousands of student-athletes could compete on college basketball's biggest stage. Millions of fans were treated to game after exciting game. The Stanford University women's team won the national championship in a showdown with the University of Arizona, and co-Freshman of the Year recipients Paige Bueckers and Caitlin Clark faced off in the women's Sweet Sixteen. Baylor University won the men's championship for the first time, and Gonzaga University's buzzer-beater defeat of UCLA in the men's semi-finals will be replayed for years to come.

While there is near universal support for treating student-athletes equitably, there unfortunately is also deep distrust in the NCAA's willingness and ability to make the necessary changes to achieve that goal. We believe, however, that now is the time. Our investigation has revealed broad consensus within the NCAA—from the operational staff to the most senior leadership, from the committees responsible for planning and overseeing basketball championships to the Board of Governors—that it is time for change. The NCAA has already started having important conversations around several of the gender equity issues discussed in this report. Others will require significant work and commitment over the coming years by the NCAA leadership, Board of Governors, committees, membership, staff, and broadcast and corporate partners.

This report provides concrete recommendations on how the NCAA can address these gender equity issues, with a focus on sustainable, systemic improvements that will enable the NCAA to ensure an equitable student-athlete experience in the future.

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https://www.tiktok.com/@sedonerrr (approximately 2.5 million followers); Paige Bueckers (@paigebueckers), Instagram (last visited July 30 2021), https://www.instagram.com/paigebueckers/ (approximately 900,000 followers); *see also* Kendall Baker, *Eight of the 10 Most-Followed NCAA Elite 8 Basketball Players Are Women*, Axios (Mar. 29, 2021), https://www.axios.com/ncaa-basketball-social-media-followings-a98b2f21-e907-4276-b860-32565654d64a html.

1. Review Process & Scope

As the 2021 Division I Women's Basketball Championship was still being played in San Antonio, the NCAA announced that it had retained KHF to investigate disparities identified between this year's men's and women's tournaments. Our firm's mandate was to conduct a comprehensive and thorough review of gender equity issues in connection with the NCAA, focusing on the NCAA championships, to assess the causes of any gender disparities, and to make recommendations for how the NCAA should address those disparities going forward. The initial focus of our review has been on men's and women's basketball, including Divisions I, II, and III, which will be followed by a second phase that will address the many other NCAA-sponsored sports.

The NCAA guaranteed KHF complete independence in its work and agreed that the firm could gather whatever information we believed necessary. The NCAA fulfilled that promise, cooperating fully in our fact-gathering efforts by providing documents and information requested, making well over a hundred NCAA executives, employees, and committee members available to us, and facilitating as appropriate our interviews with more than a hundred external stakeholders. The NCAA further committed to respect the confidentiality of our communications with, and the anonymity of, any sources who asked not to be identified to the public or the NCAA. The NCAA announced that KHF's independent findings and recommendations would be made public.[8] While NCAA staff were given an opportunity to confirm the accuracy of certain facts (*e.g.*, budgetary numbers), the NCAA did not approve this report or change any of its recommendations before it was issued.

Although intended to be broad, the scope of KHF's review was not unlimited. We did not address every possible disparity that might relate to basketball. KHF did not, for example, examine differences in rules between the men's and women's games, disparities in campus resources dedicated to men's and women's basketball, or the salaries of coaches or referees. Instead, KHF focused on the ways in which the NCAA's policies, practices, and culture impact the student-athlete experience, primarily through the NCAA's administration of the championships.

While the United States Supreme Court has suggested that Title IX does not apply to the NCAA,[9] Title IX, which does apply to the vast majority of the NCAA's members, requires schools to look at whether an institution "provide[s] equal athletics opportunities for members of both sexes."[10] That guidance has provided us with a helpful lens for assessing the gender equity of the NCAA's championships. A similarly useful guide has been the NCAA Gender Equity Task Force's 1992 definition of gender equity: "An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as

[8] Report of the NCAA Board of Governors (Apr. 27, 2021), https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec_boardgov/APR2021BOG_REPORT.pdf ("The board reaffirmed its expectation created at the outset of the review that Kaplan's final conclusions and recommendations will be transparent to the membership and public.").

[9] *See NCAA v. Smith*, 525 U.S. 459, 469 (1999).

[10] 34 C.F.R. § 106.41(c).

fair and equitable the overall program of the other gender."[11] This definition aptly frames the inquiry at the heart of our review: Would the student-athletes participating in the women's basketball championship accept as fair and equitable their championship as compared to the championship that the NCAA currently administers for the men?

As explained further below, the answer to that question is clearly "no." It is important to note, however, that "equitable" does not mean "identical," and the goal of our review was not to eliminate all possible differences between men's and women's basketball. Both men's and women's basketball should be permitted to make decisions that enhance the unique nature of their own sport, and those differences should be accepted so long as they exist for non-discriminatory, neutral reasons and their impact on the student-athlete experience has been taken into account.

Not surprisingly given the above, Phase I of our review was a significant undertaking, involving the review of thousands of documents and interviews with hundreds of stakeholders. Exhibit A to this report contains a detailed summary of our work, which included the following:

- ***External stakeholders.*** An essential component of this review was hearing directly from key stakeholders about their experiences, insights, and concerns with respect to gender equity in connection with the NCAA and the NCAA championships. As an initial step, KHF conducted listening sessions with constituency groups and individual stakeholders, including, but not limited to, current and former student-athletes, parents, coaches, athletic directors, senior woman administrators ("SWAs"), college and university presidents, conference commissioners, academics and experts, and representative athletics groups. These discussions helped KHF identify and understand the relevant issues and informed our review, analysis, and recommendations.

  As part of that effort, the firm reached out to all 64 NCAA Division I women's basketball teams that participated in the 2021 tournament through their schools, and held listening forums for the student-athletes, coaches, athletic directors, senior woman administrators, and parents of student-athletes at those schools. KHF also held additional forums with key student-athlete groups, including some team-specific forums with schools that participated in this year's Division I tournament and the students-athletes on the NCAA Division I Women's Basketball Student-Athlete Engagement Group. The firm also met with representatives of all Division I conferences, including 31 Division I conference commissioners. In addition, KHF met with several key stakeholders from Division II and Division III conferences and member institutions. In total, KHF conducted 110 stakeholder interviews and 21 discussion forums.

  In addition, KHF created a website, ncaagenderquityreview.com, where anyone could submit comments and provide information for consideration in this review. As of the date

[11] Gender Equity and Title IX, NCAA (last visited July 21, 2021), https://www.ncaa.org/about/resources/inclusion/gender-equity-and-title-ix.

of this report, that website has received 12,125 unique visitors and more than 1,750 submissions from student-athletes, parents, coaches, fans, NCAA staff, and others.

- ***NCAA.*** KHF requested, received, and reviewed thousands of pages of internal documents from the NCAA, including from NCAA committees, the Board of Governors, the Division I Board of Directors, the Division I Council, and relevant NCAA staff.[12] These documents covered a range of topics, including the planning and execution of the basketball championships in 2021 and previous years; NCAA finances; broadcast, corporate sponsorship, and branding agreements; and prior gender equity reviews and initiatives.

  In addition to receiving documents from the NCAA, KHF also conducted nearly 150 interviews with NCAA committees, executives, and staff from all three divisions, as well as with local organizing committees and third-party contractors who help run the basketball championships. These interviews included staff who manage finance and accounting, broadcast services, branding and fan experience, media services, corporate champions and partners, ticketing and marketing, and logistics involved in the basketball championships.

  KHF's interviews covered members of NCAA senior management, including the NCAA's President, Chief Operating Officer, Senior Vice President ("SVP") of Basketball, Vice President of Women's Basketball, Chief Financial Officer, and many others. KHF spoke with members of the Division I Women's and Men's Basketball and Basketball Oversight Committees, among others, and met weekly with representatives from the Women's Basketball and Basketball Oversight Committees throughout the process. KHF also engaged with the NCAA's equity and inclusion committees, including the Board of Governors Committee to Promote Cultural Diversity and Equity, the Committee on Women's Athletics, the Gender Equity Task Force, and the Minority Opportunities and Interests Committee.

- ***Expert analysis and valuation.*** To determine the true value of the media rights associated with the Division I Women's Basketball Championship, KHF, with the full support of the NCAA, engaged a team of independent media experts led by Ed Desser, the founder and president of Desser Sports Media, Inc. and a former senior media executive in the Commissioner's Office of the National Basketball Association. Desser's valuation team included John Kosner, president of Kosner Media and former head of digital media at ESPN for more than two decades, and Neil McDonald, who has more than three decades of experience in sports media and has helped broker dozens of sports media deals. Desser and his team were tasked with identifying issues with the NCAA's media partnerships, making recommendations about how to improve those relationships, and assigning an

[12] While the NCAA was not able to provide KHF with all the requested documentation, it is our view that the NCAA made a good-faith effort to substantially comply with the requests for documents, that KHF has sufficient information to assess the issues and make recommendations, and that obtaining additional documents would be unlikely to substantially change the report or its recommendations.

accurate estimated value to the media rights for Division I women's basketball. The team was provided large volumes of documents and data at their request and met with KHF on a regular basis. Desser's report is attached to this report as an Addendum.

To seize on the momentum created by the gender inequities exposed at this year's Division I Men's and Women's Basketball Championships, and to begin making progress in advance of next year's championships, KHF committed to completing this phase of its review and issuing a final report before an NCAA Board of Governors meeting in early August 2021. KHF has already begun the second phase of its review, focusing on the other NCAA championships, which we currently anticipate will be completed this fall.

2. Summary of Findings

It is beyond dispute that there were significant disparities between the 2021 Division I Men's and Women's Basketball Championships. As highlighted on social media, there were differences in the goods, services, and resources provided to the women's basketball players, including their weight training facilities, COVID-19 tests, food, recreational opportunities, and gifts and mementos. In addition, there have been significant—and longstanding—disparities in the production and operation of the championships, including, among other things, differences in the quality and quantity of branding and signage at the arenas and host cities; in the use of the "March Madness" trademark; and in the sponsorship of the fan festivals, etc. In all of these areas and more, the experience of the women's tournament participants was markedly different from and inferior to that of the men's tournament participants.

The unique logistical challenges presented by the coronavirus pandemic impacted the 2021 championships in many ways. Perhaps most significantly for purposes of gender equity, the pandemic gave rise to a view on the part of tournament organizers that, after the NCAA was forced to cancel the 2020 tournament, a failure to hold the 2021 men's championship would have had a disastrous financial impact on the NCAA going forward. That attitude resulted in a prioritization of men's basketball that shaped every facet of the 2021 championships, starting with the public announcement of the host cities and continuing through the planning process and into the tournaments themselves. But this prioritization of men's basketball existed well before the pandemic. Indeed, as discussed below, there are underlying, systemic gender equity issues at the NCAA which must be remediated if the goal of equitable treatment of student-athletes is to be achieved.

The NCAA's organizational structure and culture prioritizes men's basketball, contributing to gender inequity. As a not-for-profit, member-led organization, the work of the NCAA is conducted by internal staff and member committees. In both areas, men's basketball is prioritized over women's basketball.

With respect to the Division I basketball staff, many stakeholders report that, in both practice and perception, women's basketball essentially reports to and is subordinate to men's basketball. The SVP of Basketball, although tasked with managing both men's and women's

basketball, focuses the majority of his time and energy on men's basketball, in large part because the vast majority of the NCAA's current revenue comes from men's basketball. In addition, leaders of the NCAA's chief revenue functions, such as broadcast services and corporate relations, report directly to the SVP of Basketball and, in some cases, the Managing Director of Men's Basketball. With respect to the committees, the men's basketball committees are comprised of more senior leaders within the NCAA membership than the women's basketball committees, which negatively impacts the women's committees' ability to effectuate change.

Moreover, the resources allocated to men's and women's basketball differ significantly, even taking into account the differences in the size of the tournaments. Men's basketball has substantially more full-time staff and contractor support to plan their championship. There are sizeable disparities between the budgets for the men's and women's tournaments; in 2019, the last year for which there are finalized financials, the difference in spending was approximately $35 million. In some respects, these disparities are justifiable in that they result from objective differences in the tournaments themselves, including, for example, the tournaments' respective fan attendance, media attention, and use of neutral sites. But the differences in the tournaments do not fully account for the differences in spending. And the impact of these disparities on the student-athlete experience is exacerbated by the lack of communication and coordination between the men's and women's basketball staffs and committees. The staffs and committees for men's and women's basketball operate largely in "silos," independently from each other, with little strategic coordination or common purpose. This "silo-ing" of operations impedes the NCAA's ability to provide equitable championship experiences for student-athletes.

Finally, the NCAA lacks the infrastructure necessary to effectively review budgets, staffing, or any other aspect of the Division I Men's and Women's Basketball Championships to monitor and assess gender equity. There is currently no individual—or group—within the NCAA responsible for that task.

The structure of the NCAA's media agreements perpetuates gender inequity. The NCAA has divided the rights and obligations to broadcast and sell sponsorships of its championships across two media partners, with whom it has long-term, lucrative contracts.

With CBS Broadcasting Inc. and Turner Broadcasting System, Inc. (together, "CBS/Turner"),[13] the NCAA is party to several contracts that require CBS/Turner to broadcast the Division I Men's Basketball Championship and to market and sell the NCAA's corporate sponsor program (the "Corporate Partner Program"), which supports all 90 NCAA championships. In exchange, CBS/Turner will pay the NCAA an average of nearly $1.1 billion annually as part of the most recent contract, which sets rights fees for the 2024-32 period.[14]

With ESPN, Inc. and ESPN Enterprises, Inc. (together, "ESPN"), the NCAA exchanges the right to broadcast 29 NCAA championships, including Division I women's basketball, for a

[13] WarnerMedia, LLC now owns Turner Broadcasting System, Inc., but because the NCAA and its media partners still refer to the relationship and the accompanying agreement as "CBS/Turner," this report does the same.

[14] Under the contract that sets rights fees for the 2010-24 period, CBS/Turner pays the NCAA an average of $771.4 million annually.

substantially lower fee of, on average, $34 million per year, or approximately 4.5% of the total rights fee that the NCAA receives from CBS/Turner over the same time period. But based on an independent analysis by expert Ed Desser, the Division I Women's Basketball Championship *alone* is worth much more—between $81 and $112 million annually in 2025. This significant undervaluation is the result of the growing popularity of women's basketball, a changing media landscape, and the fact that the championship's media rights have not been up for competitive bid in nearly two decades.

In addition to significantly undervaluing women's basketball as an asset, the structure of these contracts prioritizes support for men's basketball to the exclusion of women's basketball (and other sports). Because CBS/Turner controls the sponsorship rights for *all* NCAA championships, but the broadcast rights for men's basketball only, CBS/Turner is incentivized to create and encourage sponsorship opportunities for men's basketball above all other sports. And because CBS/Turner requires its Corporate Champions and Partners to purchase the sponsorship rights to all 90 championships *and* the media rights to the men's championship in order to participate as a sponsor, the cost of supporting the women's championship is prohibitively expensive for many companies, shutting out sponsors who might otherwise be interested in supporting women's basketball, but cannot afford the more costly sponsorship of men's basketball. Further, the structure of the contracts imposes a significant set of hurdles even for an existing NCAA sponsor to support other championships: to air advertisements during the women's basketball championship while reaping the benefits of the NCAA's brand, for example, a corporate sponsor must first buy into the expensive CBS/Turner Corporate Partner Program, and then turn to ESPN and separately negotiate and pay for airtime during the women's basketball championship.

As a result, the structure of these contracts has a direct and inequitable impact on the student-athlete experience of women players. Because CBS/Turner has the incentive to build up men's basketball at the expense of all other sports, the men's tournament has a different look and feel—drawing leading artists who perform at a concert during the Final Four, television advertisements that feature famous athletes and public figures, and programming that airs during the broadcast of the tournament covering players, their stories, and their families. Further highlighting men's basketball, the CBS/Turner relationship also includes the broadcaster's obligation to develop and maintain the March Madness Live mobile app, which, by design, only covers men's basketball; the women's basketball app, which is operated by the NCAA itself, has a smaller staff and budget at its disposal and cannot livestream games, leading to a less-functional product. Together, these features make the men's tournament feel like a professional sporting event, while the women's championship lags far behind.

Further, the NCAA's treatment of revenue from these contracts skews the conversation about which sports purportedly make and lose money for the NCAA and its members. The NCAA allocates all of the incredibly lucrative CBS/Turner rights fee—this year, $850 million—as revenue from men's basketball only, notwithstanding the fact that the agreement includes selling CBS/Turner the management of the Corporate Partner Program, which covers the right to use and profit off of the NCAA's brand and logo in connection with *all* 90 championships, not just men's

basketball. This revenue allocation impacts the internal NCAA narrative, which has been repeated in the press, that women's basketball is a revenue loser and, therefore, not as worthy of investment.

The NCAA's revenue distribution model prioritizes and rewards investment in men's basketball. One of the NCAA's fundamental tenets is that it distributes the majority of its revenue back to its membership—most of which goes to the Division I conferences and schools to fund their athletic programs. The largest slice of the pie is distributed through what is known as the "Basketball Fund," which allocates revenue among conferences based *solely* on the participation of a conference's automatic qualifying team in, and a conference's overall performance at, the Division I Men's Basketball Championship. In other words, the further a school's team makes it in the men's tournament, the more revenue that school's conference is given. As a result, institutions are incentivized to invest in their men's basketball programs in the hopes of progressing as far as possible in the men's tournament to gain as much revenue as possible. There is no analogous financial reward for participation in or performance at the Division I Women's Basketball Championship. This sends a very clear and loud message to student-athletes, conferences, and schools about which sports matter and which sports do not.

The disparity in participation opportunities for men's and women's basketball further impacts the student-athlete experience. Not only is there a disparity between the student-athlete experience at the Division I Men's and Women's Basketball Championships, but there are also more participation opportunities provided by the NCAA to men's basketball players than to women's basketball players. Those increased participation opportunities result from, among other things, the larger bracket size for the Division I men's championship (68 teams in the men's versus only 64 in the women's); the NCAA's ownership and operation of only the men's National Invitation Tournament ("NIT") and not the Women's National Invitation Tournament ("WNIT"), post-season tournaments for top Division I basketball teams not selected for the Division I championships; and the NCAA's operation of the College Basketball Academy, a developmental academy for high school boys without an equivalent for high school girls.

Fewer disparities exist in Division II and Division III men's and women's basketball. Our review showed that Division II and III basketball have managed to avoid many of the systemic gender equity issues that are present in Division I basketball. This is attributable to the fact that neither men's nor women's basketball in these divisions brings in any real revenue for the NCAA, so there is no financial incentive to prioritize one gender over the other. In addition, the governance structure for these divisions better facilitates conversations between men's and women's basketball, and the leadership and staff focus on and prioritize gender equity. Disparities still exist, however, particularly with respect to the size and quality of venues. There is also no formal requirement that NCAA staff members or the relevant basketball committees coordinate on individual championship planning decisions, which can result in small disparities occurring each year between the championships.

3. Summary of Recommendations

Although the systemic issues summarized above are significant, we believe that there are concrete steps that the NCAA can and should take that will make the student-athlete experience far more equitable from the perspective of gender. This report's recommendations—all of which are discussed in detail below—fall into the following seven categories:

First, the NCAA should **provide structural support for gender equity** in connection with the Division I Men's and Women's Basketball Championships. In order to address the organizational, staffing, and budgetary disparities identified in this review, the NCAA should:

- 1.1: Change the leadership structure of Division I basketball to prioritize gender equity and coordination between the men's and women's tournaments.
- 1.2: Before the next budget cycle, conduct a "zero-based" budget for Division I men's and women's basketball to ensure that any gender differences are necessary, appropriate, and equitable.
- 1.3: Develop equity in staffing for Division I men's and women's basketball.
- 1.4: Establish regular communications between the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

The NCAA should also take steps to **improve transparency and accountability around gender equity**. Specifically, the NCAA should:

- 1.5: Perform a real-time gender equity audit of the Division I Men's and Women's Basketball Championships as they are being planned and executed each year.
- 1.6: Prepare an annual report on the results of the real-time gender equity audit, including issues identified, how those issues were resolved, and lessons learned.
- 1.7: Conduct an external gender equity assessment of the Division I Men's and Women's Basketball Championships in five years.
- 1.8: Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.
- 1.9: Evaluate and reward performance for contributions to gender equity.
- 1.10: Increase NCAA staff with expertise in Title IX and gender equity.

Second, the NCAA should take steps to **maximize value through gender equity in marketing, promotion, and sponsorships**. Many of the gender inequities identified in this review

stem from the view that men's basketball is and will continue to be the primary source of funding for the NCAA and its membership. Taking steps to maximize the value of women's basketball—and other sports—will promote gender equity while at the same time increasing and diversifying the NCAA's revenue streams. Specifically, the NCAA should:

- 2.1: Market the rights to the Division I Women's Basketball Championship as a stand-alone property.
- 2.2: Use "March Madness" for both the Division I Men's and Women's Basketball Championships.
- 2.3: Negotiate for a new tier of corporate sponsors for the Division I Women's Basketball Championship (and other NCAA championships).
- 2.4: Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.
- 2.5: Implement an overall strategy to realize the value of the Division I Women's Basketball Championship (and other championships across the NCAA).
- 2.6: Establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships (and all other championships across the NCAA).
- 2.7: Pursue marketing and promotional opportunities that will benefit both the Men's and Women's Division I Basketball Championships.
- 2.8: Increase cross-promotion of the Division I Men's and Women's Basketball Championships.

Third, the NCAA should take steps to **improve gender equity at future championships**. To address the disparities in the student-athlete experience that marred the 2021 championships and reduce the likelihood that such disparities will recur, the NCAA should:

- 3.1: Hold the men's and women's Final Fours together in one city.
- 3.2: Ensure that items impacting the student-athlete experience at the Division I Men's and Women's Basketball Championships are gender-equitable.

Particularly in light of the long-term nature of the CBS/Turner contract, it is our view that combining the Final Fours in a single location is, practically speaking, the best possible way to ensure that male and female players have similar, if not the same, experiences at the championships with respect to sponsorship, gifts, signage, etc.

Fourth, the NCAA should **recognize gender equity in revenue distribution**. The existing revenue distribution model rewards performance in only the men's championship, not the women's. This sends a very strong message to women's basketball players that their contributions and achievements do not matter. Over time, and in a way that minimizes immediate disruption to the membership and their budgets, the NCAA should take thoughtful and calibrated steps to:

- 4: Apply gender equity values to revenue distribution.

Fifth, the NCAA should take steps to **ensure gender equity in participation opportunities**. The NCAA should address the differences in the overall number of participation opportunities made available by the NCAA to both current and prospective women's basketball players and:

- 5: Provide an equitable number of participation opportunities.

Sixth, the NCAA should take steps to **enhance gender equity in Division II and III basketball**. Although KHF's review showed that Divisions II and III basketball have managed to avoid many of the systemic gender equity issues that are present in Division I, disparities still exist. In order to address them, the NCAA should:

- 6.1: Establish regular communications between the Division II and III Men's and Women's Basketball Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

- 6.2: Ensure that items impacting the student-athlete experience at the Division II and III Men's and Women's Basketball Championships are gender-equitable.

Seventh, the NCAA should **ensure progress on gender equity** by requiring there to be transparency and accountability. Many of the issues identified in this review—and some of the recommendations put forward—are not new. Efforts to resolve gender equity issues in the NCAA have percolated at various times over the past 20 years or more. To make the most of this opportunity to improve the experiences of thousands of student-athletes, and to ensure that this latest effort does not simply "sit on a shelf," the NCAA should:

- 7: For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report.

WHAT HAPPENED AT THE 2021 NCAA BASKETBALL CHAMPIONSHIPS

The 2021 Division I basketball championships were unique in many ways. Looming over everything, of course, is the fact that planning for the tournaments took place amidst an unprecedented global pandemic, which presented significant logistical challenges. Indeed, the lengthy uncertainty about whether the tournaments would be able to go forward at all shortened the timeframe to prepare. At the same time, because of the massive financial loss the NCAA sustained as a result of the cancellation of the basketball championships the year before, the NCAA was engaged in a number of belt-tightening measures that impacted the staffing resources available for tournament preparation.

Due to COVID-19, the NCAA held both the men's and women's tournaments in a controlled environment at a single site for all rounds—*i.e.*, a "bubble"—requiring significant changes to the structure of both tournaments. Because these tournament bubbles meant that the men and the women were, for the first time, each playing all of their tournament rounds in a single location, the two tournaments were more alike than ever before. By the same token, however, the bubbles enabled a side-by-side, real-time comparison that revealed critical gender equity issues and garnered significant public attention.

It should be noted that hundreds of NCAA staff and volunteers worked incredibly long hours over a period of months to safely conduct the 2021 college basketball championships despite the pandemic. While they achieved that goal, many of them were devastated by the gender inequities that marred the student-athlete experience and ultimately overshadowed the women's tournament. Many student-athletes and coaches expressed deep gratitude for the opportunity to compete in the tournament, but similarly felt that their experience had been tarnished by the inequities they experienced firsthand.

Those gender inequities were baked into the very fabric of the tournaments and how the tournaments were viewed by the NCAA. It was clear to tournament organizers that after the NCAA was forced to cancel the 2020 men's tournament due to the pandemic, failure to hold the 2021 men's championship would have a potentially catastrophic impact on the NCAA's financial position moving forward. As one senior NCAA official explained, "We knew if we failed with the men, the NCAA was doomed. We'd be nothing. . . . There wasn't the same sense of angst with the women."

1. Announcement & Planning

This fundamental difference in perspective about the relative importance of the 2021 men's and women's championships led to gender disparities from the very outset of the planning process. The first decision the NCAA faced was whether to hold the tournaments at all and, if so, whether to host each tournament in a single location or "bubble" because of COVID-19. Making those decisions, and making them public, was the essential prerequisite to tournament planning. Men's

basketball announced their plans for going forward with the tournament in one location on November 16, 2020, but women's basketball was not permitted to make their announcement until a month later on December 14, 2020.[15] This ultimately left women's basketball almost a full month behind in the planning process. While the timing of the men's basketball decision and announcement was driven specifically by the NCAA's need to release hotel rooms for the preliminary rounds of the tournament in order to avoid being on the hook for upwards of $2 million under the applicable contracts, that rationale fails to explain why women's basketball was not permitted to proceed on a similar timeline.

Women's basketball was not told about the men's announcement with sufficient time to decide to make a similar announcement on November 16, but they quickly mobilized and informed the SVP of Basketball just days later that they were prepared to make a parallel announcement on November 23. The women's basketball staff and leadership of the Women's Basketball Committee raised concerns about both the optics of men's basketball making its announcement first and separately from women's basketball, as well as about the impact of the delay on the women's planning. As one leader explained, the "main concern was the delay. The longer the delay, the more difficult it was going to be. Every day that goes by makes it more difficult."

Ultimately, the NCAA did not permit the women's basketball announcement to go forward in November 2020. Instead, women's basketball was instructed that they would first have to conduct a financial review to determine, and then get approval for, the significant additional pandemic-related costs so that the NCAA could decide whether to follow the men's plan and hold all rounds of the women's championship in one location. This direction came from NCAA senior leadership, including the SVP of Basketball, the Chief Operating Officer, and the Chief Financial Officer. Men's basketball did not have to undergo the same financial analysis and approval process. As senior NCAA leaders made clear, because the men's tournament generated nearly a billion dollars in revenue, the NCAA "need[ed] to expend the resources to make [the men's tournament] happen."

After extensive meetings and financial analysis, the NCAA Division I Board of Directors Finance Committee approved the proposed budget for the women's tournament on December 7, noting the importance of holding the women's tournament despite the additional expense as part of their commitment to gender equity.[16] The Division I Women's Basketball Committee approved the decision to hold the tournament in one geographic location on December 10.[17] The PowerPoint presented to the Women's Basketball Committee emphasized "the importance of conducting the championship in a manageable geographic area that limits travel and provides a safe and controlled

[15] The NCAA accompanied these announcements with releases on the NCAA website. *See* David Warlock, *NCAA Relocating 2021 Division I Men's Basketball Championship Sites*, NCAA (Nov. 16, 2020), https://www ncaa.org/about/resources/media-center/news/ncaa-relocating-2021-division-i-men-s-basketball-championship-sites; Rick Nixon, *San Antonio Region Viewed as Potential Host for 2021 DI Women's Basketball Championship*, NCAA (Dec. 14, 2020), https://www.ncaa.org/about/resources/media-center/news/san-antonio-region-viewed-potential-host-2021-di-women-s-basketball-championship.

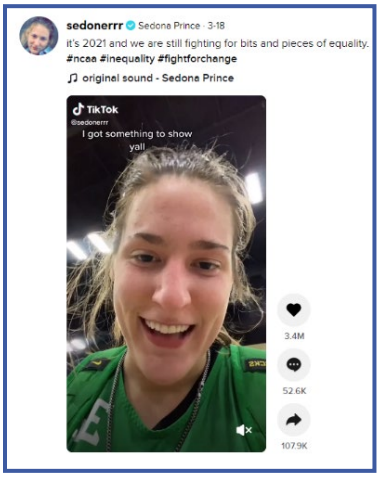
[16] Report of the NCAA Division I Board of Directors Finance Committee (Jan. 12, 2021).

[17] Division I Women's Basketball Committee PowerPoint Presentation (Dec. 10, 2020).

environment with competition and practice venues, medical resources and lodging for teams and officials all within proximity of one another."[18] As a result, the NCAA did not publicly announce that the women's tournament would be held in a single city until December 14, 2020—just three months before the student-athletes were scheduled to arrive.[19]

Even after the December 14 announcement, however, planning for the women's event still continued to lag behind planning for the men's tournament. The NCAA announced on January 4, 2021 that the men's tournament would take place in Indianapolis;[20] the NCAA did not announce that the women's tournament would take place in San Antonio until a month later, on February 5.[21] The women's staff made their first site visit to San Antonio on January 25-28 and then worked to try to solidify hotel and facility contracts, as well as coronavirus protocols, in the days leading up to the February 5 announcement.[22]

The men's and women's teams began arriving at their bubbles on March 13 and 16, respectively. Even before the first women's game took place, the issue of gender equity took over the news, when, as discussed above, University of Oregon player Sedona Prince posted a video on social media depicting differences between the men's and women's weight rooms.



Sedona Prince's TikTok Video from March 18, 2021[23]

[18] *Id.*

[19] *See* Rick Nixon, *San Antonio Region Viewed as Potential Host for 2021 DI Women's Basketball Championship*, NCAA (Dec. 14, 2020), https://www ncaa.org/about/resources/media-center/news/san-antonio-region-viewed-potential-host-2021-di-women-s-basketball-championship.

[20] David Warlock, *NCAA Announces Further Details for 2021 Division I Men's Basketball Championship*, NCAA (Jan. 4, 2021), https://www ncaa.org/about/resources/media-center/news/ncaa-announces-further-details-2021-division-i-men-s-basketball-championship.

[21] Meghan Durham, *San Antonio Region to Host 2021 Division I Women's Basketball Championship*, NCAA (Feb. 5, 2021), https://www ncaa.org/about/resources/media-center/news/san-antonio-region-host-2021-division-i-women-s-basketball-championship.

[22] 2021 Women's Basketball Championship Planning Timeline by Women's Basketball Staff.

[23] Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), https://www.tiktok.com/@sedonerrr/video/6941180880127888646.

That video was quickly picked up and shared by professional athletes and thousands of other basketball fans.[24] Other reports quickly followed, raising questions about everything from disparities in COVID-19 testing and food, to the NCAA's unequal promotion of the men's and women's events.[25]

The unique challenges created by the pandemic and the compressed planning timeline for the women's tournament certainly contributed to the inequities in the student-athlete experience at this year's Division I championships. But it would be a mistake to conclude that disparities between the men's and women's tournaments were limited to this year or to look at this year's tournaments out of context. As discussed below, many of the disparities that received public attention this past spring stem from systemic issues that contribute to and exacerbate gender inequities in the NCAA basketball championships.

2. Weight Rooms

The first issue to garner significant public attention at this year's tournament was the differences in the weightlifting facilities provided to the men and women as a result of Sedona Prince's March 18 TikTok video.[26] That video highlighted for the public the fact that the NCAA had provided the men a large, central weight room divided into six weightlifting areas, which was available to all 68 men's teams as soon as they cleared their two-day quarantine upon arrival in Indianapolis.[27] In addition, the NCAA set up a small pyramid of dumbbells in the holding room adjacent to the practice courts, where the student-athletes would stretch and wait while the court and courtside areas were sanitized and cleaned.

By contrast, the NCAA did not plan to set up any weight room for the women at all until the Sweet Sixteen, when they planned to have three private weightlifting areas available.[28] For the first two rounds of the women's tournament, the student-athletes were intended to have access

[24] *See, e.g.*, Courtney Connley, *Steph Curry, A'ja Wilson and Other Athletes Call Out NCAA for Unequal Treatment of Men and Women Basketball Players*, CNBC (Mar. 19, 2021), https://www.cnbc.com/2021/03/19/steph-curry-other-athletes-call-out-ncaas-treatment-of-women-players html.

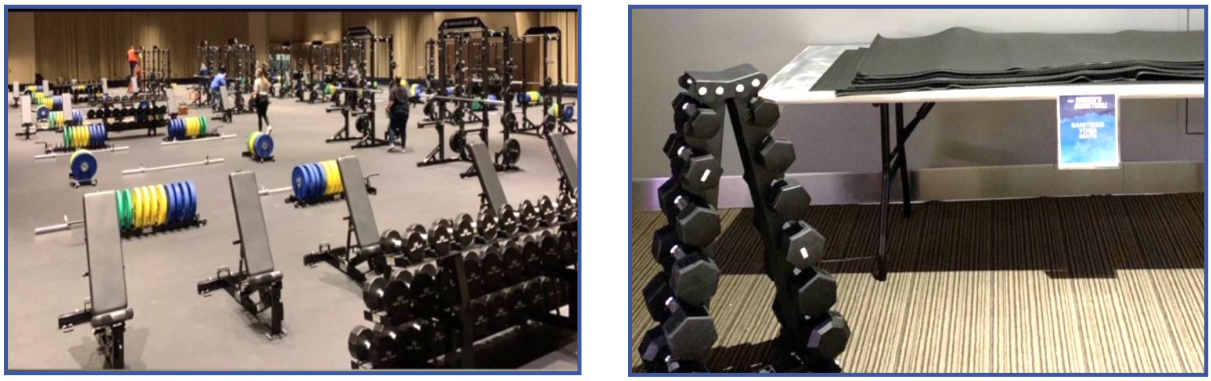
[25] *See, e.g.*, Juliet Macur and Alan Blinder, *Anger Erupts Over Disparities at N.C.A.A. Tournaments*, N.Y. Times (Mar. 19, 2021), https://www.nytimes.com/2021/03/19/sports/ncaabasketball/women-ncaa-tournament-weight-room html; Molly Hensley-Clancy, *NCAA Vows to Improve Conditions at Women's Basketball Tournament, as Outcry Continues*, Wash. Post (Mar. 19, 2021), https://www.washingtonpost.com/sports/2021/03/19/ncaa-women-basketball-weight-room/; Becky Sullivan, *Under Fire, The NCAA Apologizes And Unveils New Weight Room For Women's Tournament*, NPR (Mar. 20, 2021), https://www npr.org/2021/03/20/979596524/under-fire-the-ncaa-apologizes-and-unveils-new-weight-room-for-womens-tournament; Scott McDonald, *NCAA Gender Inequity Cuts Deeper Than Just Weight Room Issues at Tournament*, Newsweek (Mar. 20, 2021), https://www.newsweek.com/ncaa-gender-inequity-cuts-deeper-just-weight-room-issues-tournament-1577617; Gabriella Levine, *NCAA March Madness drops the ball for women's basketball with sexism outrage*, NBC News (Mar. 23, 2021), https://www.nbcnews.com/think/opinion/ncaa-march-madness-drops-ball-women-s-basketball-sexism-outrage-ncna1261775; Molly Hensley-Clancy, *Pressure Mounts on NCAA as House Democrats Demand Answers Over Tournament Disparities*, Wash. Post (Mar. 24, 2021), https://www.washingtonpost.com/sports/2021/03/24/ncaa-tournament-house-democrats-megan-rapinoe/.

[26] *See* Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), https://www.tiktok.com/@sedonerrr/video/6941180880127888646.

[27] 2021 Men's Basketball Participant Manual at 84.

[28] 2021 Women's Basketball Participant Manual at 4-5.

only to a small set of dumbbells, a stationary bike, and yoga mats placed in the women's holding room, similar to the holding room that had been set up for the men.[29]



Pictures Shared on Social Media of Men's Full Weight Room and Women's Holding Room Weights at the Start of the Tournaments[30]

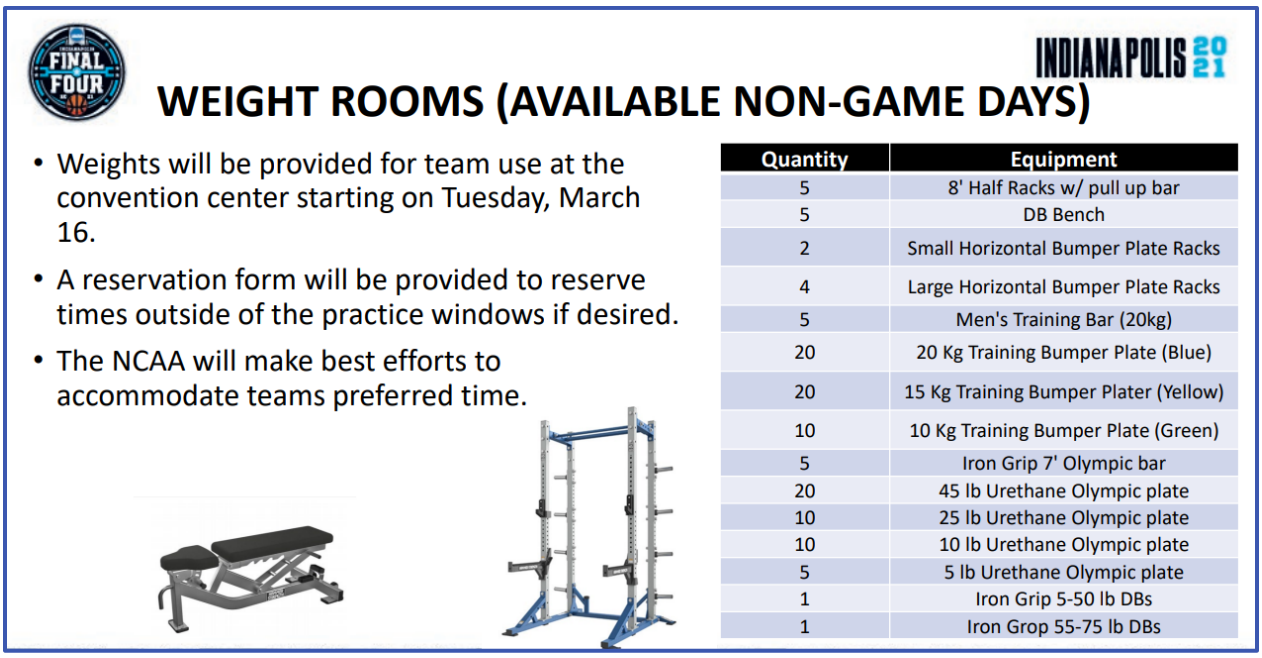
The decision to provide a full weight room for the duration of the men's tournament was made by the NCAA men's staff after consulting with the NBA about the bubble set up for the 2020 NBA Playoffs. On February 17, the NCAA men's staff sent the women's staff a draft manual for tournament participants,[31] which noted the then-current plans for private weight rooms next to each practice court.[32] The following week, on February 26, the men's staff sent athletic directors and conference commissioners a PowerPoint—one of a series of weekly PowerPoints that provided real-time updates on coronavirus protocols and other championship logistics—that contained details about equipment available at the men's tournament. The February 26 PowerPoint made clear that a weight room would be available through the entirety of the men's tournament, and even listed the specific equipment that would be included:

[29] *See* Workout and Weights Facts & Plans (Mar. 18, 2021); *see also* 2021 Women's Basketball Participant Manual at 5.

[30] Ali Kershner (@kershner.ali), Instagram (Mar. 18, 2021), https://www.instagram.com/p/CMkRJ2LswFp. Ali Kershner is the performance coach for the Stanford women's basketball team.

[31] Participant manuals are created each year to provide teams with detailed logistical information for the upcoming tournament.

[32] *See* Email from Men's Basketball Staff to Women's Basketball Staff re: MBB Team Manual (Feb. 17, 2021); *see also* 2021 Indianapolis All-Team Manual Draft ("This time will include weight training, which will be available on each court, should any individuals wish to utilize this equipment.")



INDIANAPOLIS 2021

WEIGHT ROOMS (AVAILABLE NON-GAME DAYS)

- Weights will be provided for team use at the convention center starting on Tuesday, March 16.
- A reservation form will be provided to reserve times outside of the practice windows if desired.
- The NCAA will make best efforts to accommodate teams preferred time.

Quantity	Equipment
5	8' Half Racks w/ pull up bar
5	DB Bench
2	Small Horizontal Bumper Plate Racks
4	Large Horizontal Bumper Plate Racks
5	Men's Training Bar (20kg)
20	20 Kg Training Bumper Plate (Blue)
20	15 Kg Training Bumper Plater (Yellow)
10	10 Kg Training Bumper Plate (Green)
5	Iron Grip 7' Olympic bar
20	45 lb Urethane Olympic plate
10	25 lb Urethane Olympic plate
10	10 lb Urethane Olympic plate
5	5 lb Urethane Olympic plate
1	Iron Grip 5-50 lb DBs
1	Iron Grop 55-75 lb DBs

Slide from February 26, 2021 Men's Basketball PowerPoint[33]

Although this PowerPoint was forwarded to the women's staff that same day,[34] the volunteer helping the women's staff to review the men's weekly PowerPoints for updates relating to coronavirus protocols did not scrutinize the slides in order to identify potential disparities between the two tournaments. The same was true with respect to the participant manuals. As one NCAA women's basketball staff member explained, "We never put those manuals side by side. We didn't have time to do this. We just tried to get our information into the manual as soon as possible."

Neither the first nor second draft participant manual that the women's staff shared with the men's staff included any reference to a weight room at the women's tournament.[35] The final version of the women's manual, circulated on March 15, was the first time that the women's staff shared detailed information about their weight room plans, which they highlighted in green, and which explained that other than "access to a stationary bike and free weight pyramid within the holding areas and/or team practice locations" there would not be workout facilities in the first and

[33] *See* 2021 DI Men's Basketball Tournament Update #4 (Feb. 26, 2021).

[34] *See* Email from Men's Basketball Staff to Women's Basketball Staff re: MBB Tournament Update #4 (Feb. 26, 2021).

[35] *See* 2021 First Edition – WBB Participant Manual (Mar. 5, 2021); 2021 Second Edition – WBB Participant Manual (Mar. 10, 2021).

second rounds "due to limited space, movement of teams, number of individuals within each property and sizes of workout facilities with COVID-19 capacity restrictions."[36]

Weight & Workout Facilities / Outdoor Spaces -

1st and 2nd Rounds. Each team will have access to a stationary bike and free weight pyramid within holding areas and/or team practice locations. No hotel or other workout facilities will be available due to limited space, movement of teams, number of individuals within each property and sizes of workout facilities with COVID-19 capacity restrictions.

Sweet 16/Elite Eight. Starting on Wednesday, March 25th, a workout/weight facility (up to 90 minutes per day per team) will be made available at the Convention Center as part of the team coordinated schedule of events. A list of expected equipment is provided below.

Women's Final Four. A workout/weight facility (up to 90 minutes per day per team) will be made available at the Convention Center as part of the team coordinated schedule of events. A list of expected equipment is provided below.

Excerpt of March 15, 2021 Final Edition of Participant Manual for Women's Basketball Championship[37]

Even shortly before the tournaments began, details for the weight rooms intended for the women's Sweet Sixteen and beyond were still being sorted out. On March 13, for example, one women's basketball staff member emailed another a screenshot of the men's participant manual section on the weight room, noting that the men's plans could be used as a basis to decide what equipment they would need: "FYI – a snapshot from MBB manual on weight room usage and set-up. Again, this list is FAR too heavy for WBB needs, yet a good start for review."[38] The women's basketball staff member later explained that March 13 was the first time she learned that the men were providing a full weight room for the duration of the tournament. And the night before Sedona Prince posted the weight room photos, on March 17, women's basketball received a $100,000 estimate for their planned Sweet Sixteen weight rooms.[39]

The public outcry unleashed by Sedona Prince's video caused the NCAA to quickly pivot from its original plan. After discussions with women's coaches and NCAA basketball leadership, the women's staff worked with an outside contractor to construct a weight room virtually overnight.[40] To do so, the NCAA provided the contractor with what essentially amounted to a

[36] 2021 Women's Basketball Participant Manual at 4-5.

[37] *Id.* at 4.

[38] Emails between Women's Basketball Staff re: Weight Details (Mar. 13, 2021).

[39] *See* Email from MKTG to Women's Basketball Staff re: Weight Room Estimate (Mar. 17, 2021).

[40] *See* Teamworks Message from NCAA to Women's Basketball Teams re: New Weight Room and Enhanced Courtside Workout Spaces (Mar. 20, 2021). This semi-private weight room could accommodate two teams simultaneously and was constructed despite the NCAA's initial statement that the planned disparity in weight rooms was "due to the limited space." Statement from Vice President of Women's Basketball, NCAA Women's Basketball (@ncaawbb), Twitter (Mar. 18, 2021), https://twitter.com/ncaawbb/status/1372676389208477696; *see also* Gabriel Fernandez, *2021 Women's NCAA Tournament: NCAA Says Women Got Smaller Gym Than Men Because There Wasn't Enough Space*, CBS Sports (Mar. 19, 2021), https://www.cbssports.com/college-basketball/news/2021-womens-ncaa-tournament-ncaa-says-women-got-smaller-gym-than-men-because-there-wasnt-enough-space/.

blank check. In an initial estimate on March 19, the contractor informed the NCAA that it might cost anywhere between $400,000 and $500,000 to complete the weight room in the requested timeframe; the NCAA responded that "while mindful of budget, [the] first priority is to make it happen."[41] The NCAA ultimately paid $370,139 to set up the new women's weight room.[42]

Picture of the New Weight Room Set Up at the Women's Tournament on March 20, 2021[43]

That weight room opened on March 20 and was divided into two separate areas, allowing two women's teams to work out at once.[44] The NCAA also set up spaces next to the practice courts that included workout benches, workout bikes, rowing machines, and treadmills. Both the enhanced courtside spaces and the weightlifting areas saw significant use in the days after they were set up.[45] For the Sweet Sixteen and beyond, starting on March 25, the NCAA replaced the temporary weight room with the three private weight rooms that had originally been planned, containing equipment similar to that used for the men.[46]

Some members of the women's staff, senior NCAA leadership, and the Women's Basketball Oversight Committee described being shocked when the Sedona Prince video began circulating online and they saw the disparities in the weightlifting facilities. The video also made the contrast starker for those NCAA staff who had been aware of the difference for a few days.

[41] *See* Email from Women's Basketball Staff to MKTG re: APPROVAL NEEDED - Weight Room Budget (Mar. 19, 2021).

[42] *See* NCAA Women's Overnight & Extended Weight Room Final Budget.

[43] Image from the NCAA.

[44] *See* Teamworks Message from NCAA to Women's Basketball Teams re: New Weight Room and Enhanced Courtside Workout Spaces (Mar. 20, 2021); Email from NCAA Women's Basketball Staff to NCAA Communications Staff re: New Offerings for Women's Teams (Mar. 29, 2021).

[45] *See* Email from Women's Basketball Staff to Vice President of Women's Basketball re: Convention Center Room Metrics (Mar. 30, 2021).

[46] *See* Teamworks Message from NCAA to Women's Basketball Teams re: New Weight Room and Enhanced Courtside Workout Spaces (Mar. 20, 2021). *Compare* 2021 Men's Basketball Participant Manual at 84 (detailing equipment in men's weight room), *with* 2021 Women's Basketball Participant Manual at 5-6 (detailing equipment in women's weight room).

For example, one women's basketball staff member noted, "When we learned about the video, I'll be frank, a lot of us went white in the face. And rightfully so; we didn't have a big weight room."

3. COVID-19 Protocols

Soon after the weight room issue came to light, public attention turned to differences in COVID-19 protocols for tournament participants. While everyone who entered the tournament bubbles had to undergo seven consecutive days of negative COVID-19 tests (including at least one polymerase chain reaction ("PCR") test) before arrival and a two-day quarantine upon arrival, teams at the men's tournament received daily PCR tests, whereas teams at the women's tournament instead received daily antigen tests, with only one PCR test per week.[47]

As with the rest of championship planning, the men's staff was several weeks ahead of the women's staff in developing COVID-19 protocols.[48] Men's basketball and the NCAA's Chief Medical Officer partnered early with Indiana University ("IU") Health and with the Marion County Public Health Department to develop safety and testing protocols. The Marion County Public Health Department required daily PCR testing that would not interfere with the local community's ability to obtain testing. IU Health had a sophisticated lab that was able to run large batches of tests to fulfill those requirements.

On December 22, 2020, the Director of the Marion County Public Health Department approved the following plan of daily PCR testing for the men's championship:

DRAFT

DAILY COVID-19 PCR TESTING: Daily PCR testing (witnessed and self-administered PCR nasal swab) will take place throughout the entire tournament for Tier 1 individuals who remain in the tournament. All COVID-19 testing will take place in designated locations in hotels in Marion County.

Men's Tournament Medical Protocol from December 22, 2020[49]

[47] *See* 2021 Women's Basketball Participant Manual at 12, 18-19; 2021 Men's Basketball Participant Manual at 25-26, 32. The physical distancing guidelines, mask policies, movement restrictions inside and outside hotels, and in-room quarantine policies were similar between the men's and women's championships. *Compare* 2021 Women's Basketball Participant Manual at 10-32 (COVID-19 protocols), *with* 2021 Men's Basketball Participant Manual at 20-42 (COVID-19 protocols).

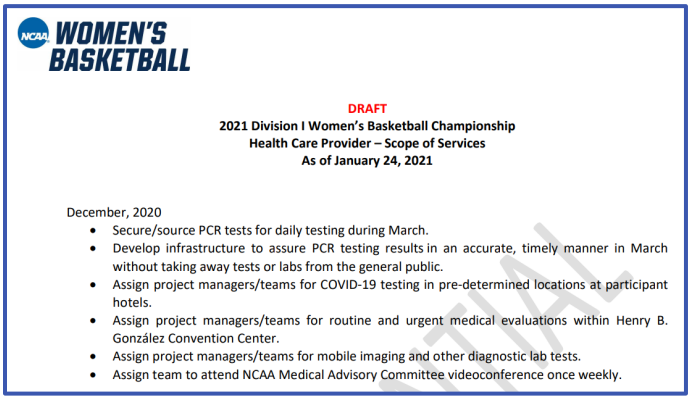
[48] For example, men's basketball executed their agreement with Stratoscope—a contractor who assisted with reviewing the medical and testing plans, implementing testing schedules and protocols, managing the collection of necessary health data pre-tournament, and providing onsite support—on February 15, 2021. The women's staff did not execute a similar agreement until March 5, 2021. *See* Master Services Agreement and Scope of Work Agreement between the NCAA and Stratoscope Consulting, LLC. In fact, the women's staff did not execute the agreement with Stratoscope until NCAA leadership recognized that the women's tournament did not have the appropriate infrastructure for COVID-19 testing and connected the women's staff with Stratoscope two weeks before the start of the tournament.

[49] 2021 NCAA Division I Men's Basketball Tournament Medical Protocol Draft at 2 (Dec. 22, 2020).

Men's basketball confirmed this plan with the Health Department Director by letter on January 1, 2021,[50] and announced the partnership with IU Health on January 6, 2021.[51]

Meanwhile, the NCAA was working out a larger plan for COVID-19 testing across all the other NCAA championships. On January 1, 2021, the NCAA entered into an agreement with Diamond Health to "plan for, schedule, implement, manage and oversee all on-site COVID-19 testing activities" for the NCAA championships.[52] On January 11, the NCAA announced that Diamond Health would be the testing provider for all championships other than Division I men's and women's basketball.[53] The testing procured through Diamond Health was daily antigen testing, with rapid PCR tests for confirmatory or inconclusive tests.[54]

Over the following weeks, the NCAA worked to determine whether Diamond Health could provide testing for the women's championship and what the local health authorities in San Antonio would require. In the earliest drafts of the scope of service for the women's championship, the NCAA noted a plan in December 2020 to "secure/source PCR tests for daily testing during March."[55]



NCAA WOMEN'S BASKETBALL

DRAFT
2021 Division I Women's Basketball Championship
Health Care Provider – Scope of Services
As of January 24, 2021

December, 2020

- Secure/source PCR tests for daily testing during March.
- Develop infrastructure to assure PCR testing results in an accurate, timely manner in March without taking away tests or labs from the general public.
- Assign project managers/teams for COVID-19 testing in pre-determined locations at participant hotels.
- Assign project managers/teams for routine and urgent medical evaluations within Henry B. González Convention Center.
- Assign project managers/teams for mobile imaging and other diagnostic lab tests.
- Assign team to attend NCAA Medical Advisory Committee videoconference once weekly.

PARTIAL

Draft of 2021 Division I Women's Basketball Championship Health Care Provider – Scope of Services as of January 24, 2021[56]

[50] *See* Letter from NCAA to Director of Marion County Public Health Department (Jan. 1, 2021) ("I am pleased that we have reached consensus and agreement with the [Marion County Public Health Department] on the protocols discussed, which are reflected in the attached document. As you know, the NCAA's ability to move forward with planning the 2021 Division I Men's Basketball Championship exclusively in Marion County is reliant upon shared agreement with the protocols.").

[51] *NCAA Announces Health and Safety Protocols for DI Men's Basketball Championship*, NCAA (Jan. 6, 2021), https://www ncaa.org/about/resources/media-center/news/ncaa-announces-health-and-safety-protocols-di-men-s-basketball-championship.

[52] *See* Amended & Restated Services Agreement between the NCAA and Diamond Health, Inc. (Jan. 1, 2021), Ex. A.

[53] Mark Bedics, *NCAA Announces Health and Safety Plans for All Other Winter Championships*, NCAA (Jan. 11, 2021), https://www ncaa.org/about/resources/media-center/news/ncaa-announces-health-and-safety-plans-all-other-winter-championships ("The NCAA will work with IU Health to provide health related support including the administration of daily PCR tests for Tier 1 individuals upon arrival and throughout the tournament.").

[54] *See* Amended & Restated Services Agreement between the NCAA and Diamond Health, Inc. (Jan. 1, 2021), Ex. B.

[55] 2021 Division I Women's Basketball Championship Health Care Provider – Scope of Services Draft (Jan. 24, 2021).

[56] *Id.*

But the draft medical protocols circulated ahead of an introductory call with the San Antonio regional medical contacts on January 25, 2021, instead proposed daily antigen testing for the women's championship.[57]

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DRAFT – WORKING DEVELOPMENT OF POLICIES

DAILY COVID-19 ANTIGEN TESTING: Daily antigen testing (administered antigen nasal swab) will take place throughout the entire tournament for Tier 1 individuals who remain in the tournament. All COVID-19 testing will take place in designated locations in hotels in Bexar County.

Draft of NCAA Women's Basketball Medical Protocol from January 25, 2021[58]

On this January 25 call, the San Antonio health authorities indicated that they would like to add PCR testing to the proposed medical protocol of daily antigen testing.[59] The local health authorities did not specify whether they required daily PCR testing or a combination of PCR and antigen testing. In an email following that meeting, the women's basketball staff noted: "Yes, they said they wanted PCR, but it also seemed that they may be comfortable with a combination of antigen and PCR. We need them to tell us exactly what they'll support."[60]

On February 1, 2021, the NCAA had a follow-up meeting with the Director of the San Antonio Metropolitan Health District, who informed the NCAA that she would require at least

[57] Memories around the decision to use antigen testing for the women's tournament differed. This report therefore relies on the timeline as established by contemporaneous documents. For example, one senior NCAA staff member recalled that the reason why the NCAA proposed daily antigen tests in San Antonio was that the local health officials in San Antonio were concerned about the availability of PCR tests in the community and that a local health provider, a contractor for Methodist Health, informed them that they would be unable to perform testing. The local health authorities did not recall such a concern at that time, and the contractor for Methodist Health recalled that he was told that he was not needed to provide testing and shared an email from the NCAA staff to him stating that the NCAA was: "likely using a testing partner who will be responsible for securing and administering the tests to meet our required COVID testing protocols." Email from Women's Basketball Staff to Methodist Health re: 2021 DI WBB Championship - Health Care Provider (Feb. 2, 2021). While memories differed on the reason why the NCAA proposed daily antigen testing to the San Antonio health authorities, both the NCAA and the San Antonio health authorities expressed confidence that the testing protocol used at the women's tournament protected the health and safety of the student-athletes and others in the tournament bubble.

[58] NCAA Division I Women's Basketball Tournament – Medical Protocols Draft (Jan. 25, 2021).

[59] *See* Email from Women's Basketball Staff to Diamond Health re: Meeting with San Antonio Health Authorities (Jan. 28, 2021).

[60] *Id.*

once-a-week PCR testing to supplement the antigen testing.[61] The NCAA then updated the language in its proposed medical protocol to account for this change.

NCAA DI WBB Championship: Medical Protocol
February 1, 2021
Page 2

DRAFT – WORKING DEVELOPMENT OF POLICIES

DAILY COVID-19 ~~ANTIGEN~~ TESTING: Daily ~~antigen~~ testing ~~(administered antigen nasal swab)~~ will take place throughout the entire tournament for Tier 1 individuals who remain in the tournament. Daily testing will be primarily antigen (administered antigen nasal swab) with one PCR test per week. All COVID-19 testing will take place in designated locations ~~in hotels~~ in Bexar County.

NCAA Women's Basketball Medical Protocol Redline as of February 1, 2021, after Meeting with San Antonio Health Department[62]

Once Diamond Health confirmed they could provide both the once-per-week PCR and daily antigen tests, and the San Antonio health authorities gave their sign off, the NCAA moved forward with Diamond Health as the testing provider for the women's championship.[63]

Student-athletes, coaches, and others raised concerns that the women were receiving lesser quality tests because they considered PCR tests to be the gold standard in COVID-19 testing. As one student-athlete noted, "It's not about the gifts, whatever it may be. But something like our health, the weight room, how we were getting tested . . . we want to be treated equally in that aspect of our lives." Another student-athlete felt the difference in COVID-19 tests "was really telling about how [the NCAA] felt about us as people, like we weren't important enough to have good testing for [COVID-19] which is life-threatening."

There is no evidence to suggest that the difference in testing caused disparities in health outcomes for the men's and women's tournament participants, and the NCAA's Medical Advisory Group—made up of team physicians, public policy experts, and infectious disease experts—provided guidance that either PCR or antigen testing performed with a regular cadence could be used to manage risks associated with COVID-19.[64] Nevertheless, antigen tests have lower

[61] *See* Email from Women's Basketball Staff to San Antonio Health Authorities re: Draft Medical Protocol (Feb. 1, 2021).

[62] *See* NCAA Division I Women's Basketball Championship: Medical Protocol Draft (Feb. 1, 2021).

[63] The NCAA used the Mesa Biotech Accula SARS-CoV-2 test for the rapid PCR testing and the Quidel Sophia point of care antigen test for the daily antigen testing. *See* Amended & Restated Services Agreement between the NCAA and Diamond Health, Inc. (Jan. 1, 2021); *see also* Emails between Women's Basketball Staff re: PCR testing for Women's BB (Feb. 2, 2021).

[64] *See* COVID-19 Guidance on Multiple Teams in the Same Location, NCAA (last visited July 21, 2021), https://www ncaa.org/sport-science-institute/covid-19-guidance-multiple-teams-same-location; COVID-19 Medical Advisory

specificity than PCR tests and thus create a higher likelihood of false positive or inconclusive results.[65] The NCAA itself recognized in coronavirus guidelines that "[p]oint-of-care antigen testing has a specificity of about 98%, meaning that the test may produce a false-positive result in about two cases for every 100 tests performed. Although this may seem low, it means that there is the potential for athletes to be assumed infectious when in fact they are not."[66]

The dramatically higher number of false positives from antigen tests did end up having a negative impact on the student-athlete experience at the women's tournament. As one women's basketball player noted, "Every day there were at least two or three people who had to stay back because of a false positive or the test was inconclusive." This took a toll on mental health and preparedness, with some players receiving false positive tests on the day of competition and being told they might have to sit out the game. The false positives also impacted the staff and support crew. For example, the University of Arizona's women's basketball team was excluded from a video about the women's Final Four teams in part because a false positive antigen test prevented the individuals responsible for putting together the video from attending and photographing the Arizona practice. As Arizona coach Adia Barnes observed, "Those are things that get missed, sometimes, and shouldn't be. Because there are four teams that have worked really hard to get here. Stuff like that shouldn't happen."[67]

Group, NCAA (last visited July 29, 2021), https://www ncaa.org/sport-science-institute/covid-19-medical-advisory-group. As the NCAA's Resocialization Guide indicated: "For the purposes of this document, based on current evidence and standards, PCR testing, or antigen testing that is performed with a regular cadence, should be considered the standard testing methods for both baseline and ongoing surveillance testing. Testing strategies are always contingent on the availability of ample testing supplies, laboratory capacity and the adequacy of turnaround time and access to testing." NCAA, *Resocialization of Collegiate Sport: Developing Standards for Practice and Competition* at 16 (2d ed., first update Dec. 15, 2020), https://ncaaorg.s3.amazonaws.com/ssi/COVID/SSI_ResocializationDevelopingStandardsSecondEdition.pdf. After the differences in testing were reported in the media, the NCAA released a statement that the Medical Advisory Group had "advised that either daily PCR or daily antigen testing were equally effective models for basketball championships, as they recommended adopting the testing approach that worked best with the provider and local health officials." *NCAA Testing Protocols for Basketball Championships*, NCAA (Mar. 20, 2021), https://www ncaa.org/about/resources/media-center/news/ncaa-testing-protocols-basketball-championships.

[65] *See, e.g.*, *Potential for False Positive Results with Antigen Tests for Rapid Detection of SARS-CoV-2 - Letter to Clinical Laboratory Staff and Health Care Providers*, U.S. Food & Drug Administration (Nov. 3, 2020), https://www fda.gov/medical-devices/letters-health-care-providers/potential-false-positive-results-antigen-tests-rapid-detection-sars-cov-2-letter-clinical-laboratory ("Laboratories should expect some false positive results to occur even when very accurate tests are used for screening large populations with a low prevalence of infection. Health care providers and clinical laboratory staff can help ensure accurate reporting of test results by following the authorized instructions for use of a test and key steps in the testing process as recommended by the Centers for Disease Control and Prevention (CDC), including routine follow-up testing (reflex testing) with a molecular assay when appropriate, and by considering the expected occurrence of false positive results when interpreting test results in their patient populations."); *see also Interim Guidance for Antigen Testing for SARS-CoV-2*, Centers for Disease Control and Prevention (updated June 14, 2021), https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antigen-tests-guidelines.html ("Despite the high specificity of antigen tests, false positive results will occur, especially when used in communities where the prevalence of infection is low – a circumstance that is true for all in vitro diagnostic tests. In general, for all diagnostic tests, the lower the prevalence of infection in the community, the higher the proportion of false positive test results.").

[66] *See* NCAA, *Resocialization of Collegiate Sport: Developing Standards for Practice and Competition* at 16 (2d ed., first update Dec. 15, 2020) https://ncaaorg.s3.amazonaws.com/ssi/COVID/SSI_ResocializationDevelopingStandardsSecondEdition.pdf.

[67] *See* Mechelle Voepel, *Arizona Wildcats Irked After Omission from NCAA Women's Final Four Promotional Video*, ESPN (Apr. 1, 2021), https://www.espn.com/womens-college-basketball/story/_/id/31180290/arizona-wildcats-irked-omission-ncaa-women-final-four-promotional-video.

It should be noted that while issues of false positives were not the same, the PCR testing used at the men's tournament also had a negative impact on the players. The men's teams often had to undergo testing at early morning hours. They also faced delays in practices and team meetings as they waited for results because lab-based PCR tests require a longer wait time for results than do rapid antigen tests.

Overall, the men's tournament conducted almost 20,000 PCR tests of Tier 1[68] individuals, with only seven positive tests detected. The women's championship conducted almost 18,000 tests of Tier 1 individuals (15,597 antigen and 2,342 PCR), with 226 positive antigen tests, but only two positive PCR tests.[69] There was no evidence of any spread of COVID-19 from team to team, and no evidence of an increase in community spread either.[70] Both the NCAA and the San Antonio health authorities strongly believe that the testing protocol used at the women's tournament protected the health and safety of the student-athletes and others in the tournament bubbles.

4. Food, Meeting Space & Recreation

Hotel food. Women's basketball players and coaches raised the following four main concerns about the food served during their NCAA championship tournament: quantity, quality, lack of flexibility/choice, and lack of variety. These disparities in food were concerning given the obvious importance of nutrition to the competing student-athletes, and may have been based on unfounded assumptions at the hotels about what, and how much, women eat as compared to men. As one student-athlete noted, "They gave us little portions. It wasn't warm and wasn't good." Another recalled, "It was really [a] little amount of food and not good food." Yet another stated, "Food was our biggest thing. We were on our feet so much of the day. So not having good meals was frustrating." A coach attending the tournament reported, "The portions originally were very small. I didn't ask the men's team about the food. I saw a buffet on Twitter. . . . I would love to be in a buffet situation." Because the food provided was of such poor quality and meager proportions, many schools (who could afford it) paid out of their own pockets to supplement the packaged meals by ordering in groceries, snacks, and restaurant meals for their women's basketball players. Several coaches and athletic directors explained to us that they found themselves "struggl[ing]" to purchase food to ensure their team had sufficient "fuel" to play basketball.

Our investigation confirmed that the food served at the women's tournament was, in fact, quite different from the food served at the men's tournament. After serving pre-packaged meals

[68] The NCAA implemented a tiered system for testing and for the controlled environment in the bubbles. All individuals in a team's official travel party were considered Tier 1 and had to adhere to strict COVID-19 guidelines. *See* 2021 Men's Basketball Participant Manual at 22; 2021 Women's Basketball Participant Manual at 27.

[69] *See* Division I Basketball COVID-19 Testing Results PowerPoint.

[70] *See*, *e.g.*, City of San Antonio Metropolitan Health District, *COVID-19 Monthly Epidemiological Report March 2021* (Apr. 22, 2021), https://covid19.sanantonio.gov/files/assets/public/health/epidemiological-reports/epireport-202103.pdf; City of San Antonio Metropolitan Health District, *COVID-19 Monthly Epidemiological Report April 2021* (May 27, 2021), https://covid19.sanantonio.gov/files/assets/public/health/epidemiological-reports/epireport-202104.pdf; Shari Rudavsky, *As Indianapolis Sees Small Surge in COVID-19 Cases, Officials Urge Vaccination*, IndyStar (April 22, 2021) ("Contact tracing found that less than 1% of the cases confirmed since [the NCAA men's basketball tournament] stemmed from the tournament.").

during the two-day arrival quarantine in the Indianapolis bubble, the hotels provided the men's teams with curated, self-service buffets for the remainder of the tournament.[71] The women's teams faced a similar two-day quarantine period in San Antonio with pre-packaged food—but then continued to receive pre-packaged meals thereafter.[72] As a result, the women received less food, and of a lower quality and variety, than the men. By way of example, below are two lunch menus that two different Marriott hotels provided for men's and women's teams on the very same day:

Day # 4
Lunch $38

Southwest Salad
Chopped Romaine, Corn, Black Beans, Cheddar Cheese and Tomato
Individual Dressings - Buttermilk Ranch

Grilled Chicken Fajita
Caramelized Peppers and Onions

Flour Tortillas

Spanish Rice

Roasted Mexican Squash

Dessert:
Cinnamon Churros

Alternate Protein
Lime Marinated White Fish
Caramelized Peppers and Onions

MARRIOTT
INDY PLACE
Friday

LUNCH BUFFET
SELECT TWO PROTEINS FOR $60.00++ per person ($81.75 inclusive of tax and gratuity)
SELECT THREE PROTEINS FOR $70.00++ per person ($95.38 inclusive of tax and gratuity)
11:00am to 3:30pm

PLEASE SELECT TWO
Stir-Fry Vegetables (Contains Soy, DF, V)
Roasted Cauliflower + Broccoli (GF, DF, V)
Steamed Peas + Carrots (GF, DF, V)

PROTEIN OPTIONS
Sesame Grilled Chicken Breast (8oz) (Contains Soy, DF)
Teriyaki Salmon (8oz) (Contains Soy, DF)
Grilled Skirt Steak (8oz) (GF, DF) *cooked medium*

Mixed Greens Salad with Ranch + Balsamic Dressing (GF, V)
Asian Chopped Salad/Sesame Ginger Vinaigrette
Steamed Brown Rice
Penne Pasta with Turkey Meat Sauce (GF)/Marinara (GF, V)/Alfredo Sauce (GF, V)
Fresh Baked Rolls (CG) with Butter
Fresh Fruit Salad (GF, DF, V)
Orange/Apple/Cranberry Juice/Coffee/Tea/Decaf/White + Chocolate Milk
Individual Packets of Ketchup/Yellow Mustard/Mayo/Hot Sauce/BBQ Sauce/Steak Sauce/Salsa provided

Women's Lunch Menu (Left) and Men's Lunch Menu (Right)[73]

[71] There was significant confusion within the NCAA about whether the men were provided buffets, even after the championships ended. For example, weeks after the championships ended, a women's basketball staff member said, "I was still confused if the men's had buffets. Senior management said they didn't have buffets. I really don't know what actually occurred." Senior management confirmed their view that the men's championship did not use buffets. But multiple interviews with the NCAA men's basketball staff and local organizing committee in Indianapolis, as well as photographic and documentary evidence, revealed that the men's championship had self-service buffets, which hotel staff would set up in team meeting rooms. *See, e.g.*, 2021 Men's Basketball Championship Hotel Food Menus (describing "Quarantine/Isolation Meals" and "Buffet menus").

[72] *See* 2021 Women's Basketball Championship Hotel Food Menus.

[73] Women's Lunch Menu, Marriott San Antonio Rivercenter (Mar. 19, 2021); Men's Food Menu, Marriott Indy Place (Mar. 19, 2021).

Pictures Shared on Social Media of Food Served at the 2021 Basketball Championships[74]

Not surprisingly, women's teams raised concerns about the hotel food almost immediately upon arrival in San Antonio. In response, the women's basketball staff called all seven hotels that the NCAA was using for the women's tournament in order to increase the quantity of food being served. But the hotels continued to serve pre-packaged meals, which the women's staff understood to be the only approved method for food service under applicable coronavirus protocols. Later, after the media began reporting on food disparities between the two tournaments, the NCAA made alternative arrangements with respect to the format of food service, allowing Final Four participants at the women's tournament to have self-service buffets similar to those already provided to the men in Indianapolis.[75] To do this, the NCAA coordinated with the local health officials in San Antonio—just as it had done with Indianapolis officials weeks earlier—to receive approval for self-service buffets.

In our view, the disparity in food offerings between the tournaments was largely the result of coordination and communication failures during the tournament planning process. The NCAA's Chief Medical Officer provided guidance to both the men's and the women's staff on "a safe way to provide meals with physical distancing and no shared utensils"; boxed meals were required for the initial quarantine period and were identified as a safe way to provide food. The men's staff

[74] AJ McCord (@AJ_McCord), Twitter (Mar. 18, 2021), https://twitter.com/aj_mccord/status/1372759106121912320. AJ McCord is a sports reporter and anchor for the CBS affiliate in Portland, Oregon, and the co-host of an ESPN podcast.

[75] *See* Marriott Rivercenter Final Four Buffet Menus.

decided that they wanted to provide more than boxed meals to the student-athletes, so they worked with the local organizing committee and the Marion County Public Health Department over the course of weeks and multiple site-visits to develop a plan for self-service buffets. The women's staff, on the other hand, understood the guidance from the NCAA's Chief Medical Officer to require boxed meals for the duration of the tournament, and presented a plan for boxed meals to the San Antonio health authorities, which San Antonio approved. Because the men's and women's staffs did not coordinate their meal planning, they did not consider the potential effect that the disparate plans would have on student-athletes.

Corporate sponsor food. The disparities in hotel food provided to the student-athletes were exacerbated by the fact that the men's tournament participants had greater access to food from NCAA corporate sponsors. The NCAA men's staff, anticipating that the hotel food alone would be inadequate and insufficient, worked with corporate sponsors—including Pizza Hut, Wendy's, and Buffalo Wild Wings—to provide free, supplemental food at the men's tournament. Some of these corporate partners offered similar opportunities for the women's tournament, but they were not accepted, at least in part because the offers came very close to the start of the tournament, and the women's staff—already operating with reduced time to prepare—simply did not have the bandwidth to coordinate the necessary logistics. The NCAA women's staff also did not anticipate the inadequacies with the hotel food options.[76]

For example, on March 5, 2021, the NCAA's corporate relations team told the women's staff that Wendy's could provide a food truck near the Convention Center for service from March 23 to March 30. The women's staff declined the offer because they thought it was too late in the process to obtain the necessary permits: "Unfortunately, due to the San Antonio historic district, there are limitations on locations for food trucks downtown along with city clean zone restrictions for any non-tenant marketing. . . . Therefore, we are unlikely to make this activation happen. [The San Antonio Local Organizing Committee] usually works with [corporate partners] on these to work through nuisances, yet any exceptions to the San Antonio historical council review requires much advance planning."[77]

After the disparities between the two championships gained public attention, the women's staff and the NCAA corporate relations team worked quickly with San Antonio officials to secure permission for a Wendy's food truck to park outside the Marriott Rivercenter (where all of the women's teams were staying starting with the Sweet Sixteen), from March 21 to March 30.[78] This effort was led primarily by the NCAA's corporate relations team, not the women's basketball staff. The NCAA also made plans with Buffalo Wild Wings to serve food from March 22 to 24, and with Pizza Hut to serve food for one night on March 26.[79]

[76] *See* Email from Women's Basketball Staff to NCAA Corporate Staff re: Wendy's – Food to SA's – Food trucks comp (Mar. 8, 2021).

[77] *Id.*

[78] *See* 2021 Women's Basketball Inventory – Final.

[79] *Id.*

The NCAA women's staff rejected other last-minute offers of food because of concerns about conflicts with existing corporate sponsor relationships and "ambush" marketing.[80] For example, on March 20, H-E-B, the Texas-based grocery store chain, dropped off bins of food to the hotels where the women's teams were staying.[81] The NCAA women's basketball staff was surprised by the delivery and determined that they were required to send the bins back because the bins contained products that were competitors of the NCAA's Corporate Champions and Partners. The women's staff eventually worked with H-E-B to deliver a second set of gift baskets that contained items from the NCAA's corporate partners, and those baskets were delivered to teams later in the tournament.[82]

Recreation space and student-athlete lounges. There was also a significant discrepancy in the outdoor space available to student-athletes at the men's and women's tournaments. As one student-athlete at the tournament observed, "Early on we weren't allowed to leave the hotel except for going to the gym or testing. . . . It was a poor set up for the mental health of players." Another noted, "The guys had opportunities to go outside and do things to get out of the hotel room for mental health, not being stuck inside. But for us, it took a couple of days before we were allowed to do something outside with the team. . . . Mental health is real and if you're stuck in a hotel room, it was pretty tough." A coach at the tournament similarly shared, "An outdoor area would have made a world of difference."

Due to the pandemic, both the men's and women's teams were in a controlled environment where their movements both inside and outside of their hotels were understandably strictly limited due to COVID-19.[83] Except for a few planned outings, teams were unable to explore their respective cities and were allowed to travel only to practices, games, and other settings within the controlled environment.[84]

The men, however, had access to outdoor space from the beginning of the tournament at Victory Field, a minor-league baseball stadium located across from the Convention Center in Indianapolis.[85] There, the NCAA constructed a recreation area where the men could play

[80] "Ambush" marketing occurs when a company attempts to associate its products with an event that already has official sponsors.

[81] *See* Email from NCAA Corporate Staff to Local Organizing Committee re: Virtual Hosts/HEB Basketball (Mar. 21, 2021) ("A lot of the hotels received the baskets from HEB with food yesterday. The women's basketball staff have declined this going to the teams.").

[82] *See* Email from Women's Basketball Staff to NCAA Corporate Champions and Partners Team re: HEB Gift Basket Offerings (Mar. 24, 2021) (listing "recommended offerings of NCAA CCP product in the HEB gift baskets"). Alongside the baskets were notes for the women's teams written by a local youth group, which the women's basketball staff did not expect. Those notes read, for example: "What you are doing is important, equal rights for everyone are important. This was an act of sexisum [sic], yet you pulled through and got your own weight room. I hope you can change more, and keep fighting for future players." The staff made a decision not to distribute those notes because they considered them to be "obviously not appropriate" and "were afraid of creating another viral moment."

[83] *See* 2021 Women's Basketball Participant Manual at 21 (describing controlled environment); *see* 2021 Men's Basketball Participant Manual at 35 (describing controlled environment).

[84] *Id.*

[85] *See* 2021 Big Dance Final Tournament Update #6 at 14.

badminton, pickleball, cornhole, soccer, and football. The women, by contrast, were not intended to have any outdoor space—except for the path from the hotel to the Convention Center in San Antonio—until the Sweet Sixteen.[86] From the Sweet Sixteen on, the women were scheduled to have access to an outdoor green space, Civic Park, adjacent to the Convention Center.[87]

Once again, little if any consideration was given pre-tournament to the disparities in outdoor recreation space. Men's basketball did not develop its plan to use Victory Field until shortly before the tournament began.[88] Even so, there was nothing similar to Victory Field available in San Antonio, and the women's basketball staff did not plan on opening access to the local park earlier because of challenges in getting approval to do so and perceived difficulties in managing the logistics of 64 teams using the park.

In the wake of reporting on gender equity at the tournaments, the women's staff worked to set up additional outdoor spaces at the Convention Center. As one senior NCAA official noted: "We had had [Civic Park] that was fenced in that we were going to use originally, because it was COVID-safe. But we were concerned about the aesthetics of the men at Victory Field in a minor league baseball stadium, and the women basically in a dilapidated city park. We just didn't think that would work." The NCAA ended up cancelling the plan to use Civic Park and instead set up two alternative outdoor spaces which they believed created less of a direct contrast with Victory Field—a balcony and an outdoor patio at the Convention Center.[89] From March 29, 2021, through the remainder of the tournament, women's teams could sign up to use those new spaces in 60-minute increments.[90]

[86] *See* 2021 Women's Basketball Participant Manual at 6 (describing outdoor space).

[87] *Id.*

[88] *See* Email from Men's Basketball Staff to Women's Basketball Staff re: 2021 DI Men's Basketball Tournament Update – FINAL Updates (Mar. 12, 2021) (noting the availability of Victory Field).

[89] *See* Email from NCAA Women's Basketball Staff to NCAA Communications Staff re: New Offerings for Women's Teams (Mar. 29, 2021); *see also* Email from NCAA Women's Basketball Staff to NCAA Men's Basketball Staff re: Questions from Today (Mar. 27, 2021).

[90] *See* Email from NCAA Women's Basketball Staff to NCAA Communications Staff about New Offerings for Women's Teams (Mar. 29, 2021); *see also* Email from NCAA Women's Basketball Staff to NCAA Men's Basketball Staff re: Questions from Today (Mar. 27, 2021).

Outdoor Patio Space at the Convention Center in San Antonio (Left) and Men's Victory Field in Indianapolis (Right) [91]

The women's basketball staff also made a last-minute fix when they identified a disparity in the lounges available to the student-athletes who reached the Final Four. For the men, the NCAA had planned to provide four student-athlete lounges at the Indiana Convention Center starting March 31, located next to each Final Four team's meeting room. The lounges included gaming stations, TVs, ping pong, etc.[92] For the women, the NCAA initially discussed one student-athlete lounge for the teams to share at a cost of $20,000, then considered four smaller lounge areas with fewer amenities within the hotel meeting rooms for each of the Final Four teams. After the gender disparities between the championships gained public attention, the NCAA created separate student-athlete lounges at the Convention Center in San Antonio for each of the women's Final Four teams, "using the [men's basketball] outline" for what those lounges would contain.[93] These new lounges cost the NCAA almost $100,000 to set up on short notice.[94]

The disparities this year between the men's and women's lounges were not new. At the 2019 men's tournament, for example, the NCAA created one lounge each for the Final Four teams, and one lounge each for the families of the Final Four teams, spending $67,575 on the four student-athlete lounges and $2,971 on the four family lounges.[95] In contrast, at the 2019 women's tournament, the NCAA provided only one student-athlete lounge that the Final Four teams shared, and no family lounges; the cost of that single student-athlete lounge was $10,500.[96]

[91] Images from the NCAA.

[92] *See* 2021 Men's Basketball Final Four Manual at 8.

[93] *See* Email from Women's Basketball Staff to Men's Basketball Staff re: SA lounges (Mar. 25, 2021).

[94] *See* NCAA Lounge & Movie Budget (Mar. 25, 2021).

[95] *See* 2019 Final Four Lounges Invoices.

[96] *See* 2019 Student-Athlete Mementos Comparison Spreadsheet.

5. Gifts & Mementos

Student-athlete gifts. The gifts that the men's and women's teams received at their respective tournaments differed significantly. As with the differences between weight rooms, social media posts illustrating the discrepancies were quick to grab the public's attention.

Pictures Shared on Social Media of Gifts at Men's Tournament (Left) and Gifts at Women's Tournament (Right) [97]

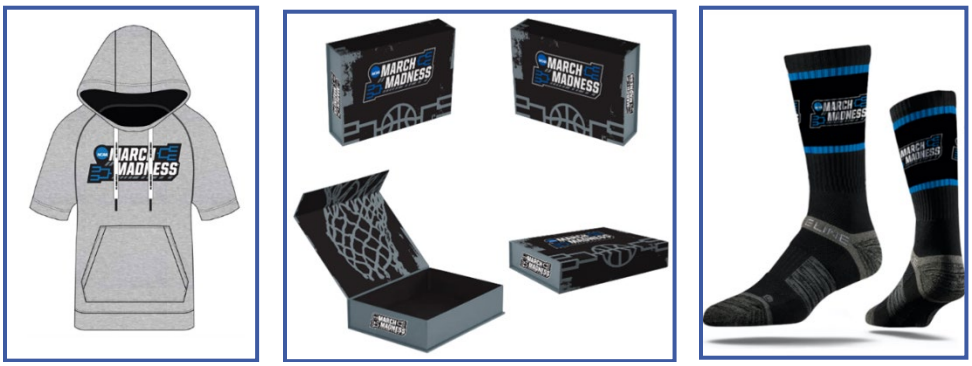
One student-athlete who attended the women's tournament noted that the women players saw photos on social media and realized that the "men got nicer quality stuff, and a little bit more," while the women received only "a little drawstring bag that had some stuff in it." Another reported that "our stuff fit in a gift bag," whereas "the men's swag bag was laid out on their beds in their hotel rooms" because of the sheer number of items.

There were indeed disparities between the gifts that the NCAA provided to men's and women's tournament participants. For the first and second rounds, the NCAA spent $125.55 per player on gifts and mementos distributed at the men's tournament, whereas it spent only $60.42 per player—or less than half as much—on gifts and mementos distributed at the women's tournament.[98] Men's basketball dedicated part of its additional budget to purchasing more items

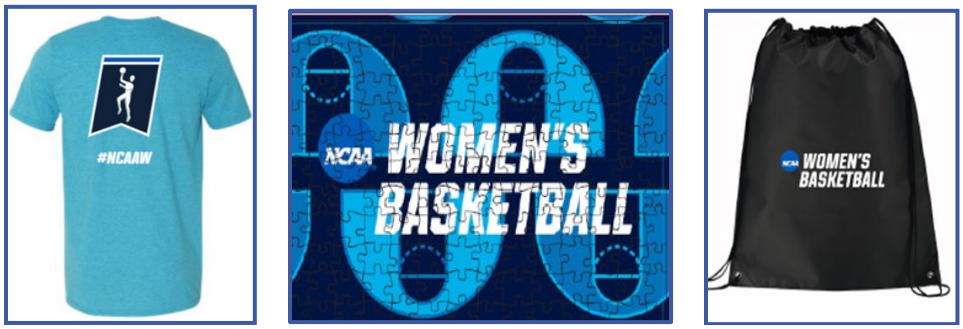
[97] AJ McCord (@AJ_McCord), Twitter (Mar. 18, 2021), https://twitter.com/aj_mccord/status/1372759106121912320.

[98] *See* MBB Memento-SA Experience-Covid Kit Breakdown and WBB 2021 Budget Spreadsheet. In the first and second round, both men and women received a hat, game socks, a game towel, a cinch bag, a Fossil watch, and a puzzle. In addition, the men received a hooded shirt, a March Madness-branded box, a book, two bag tags, three Unilever products, a notebook and pen, a blanket, two pillowcases, two postcards, two lapel pins, a duffle bag, a flag, and two form core logo decals. The women received a t-shirt, a white gift bag, access to a virtual library, one bag tag, one Unilever product, a scrunchie, a COVID-19 patient card, an umbrella, access to the "Tourney Town Connect" online platform (containing free games, yoga instruction, and speakers), a welcome card, Powerade water bottles, and a fiesta serape pouch. The figures above do not include the cost of Tourney Town

and items of higher quality as compared to the women. For instance, the men received a March Madness hooded t-shirt that cost approximately $16.25, whereas the women received a t-shirt with the hashtag #NCAAW, but no championship-specific branding, that cost $8.28.[99]



March Madness Branded Hoodie T-Shirt, Gift Box, and Socks for the Men's Teams[100]



Women's Basketball-Branded T-Shirt, Puzzle, and Cinch Bag for the Women's Teams[101]

In addition to the money spent on men's gifts and mementos, the NCAA spent $70,539 on kits that contained supplies and other accessories—*e.g.*, disinfectant wipes, bathroom air fresheners, and sneaker deodorizer balls—that the 68 men's teams, but none of the women's teams, received.[102]

Connect ($17,000 for the entire tournament), nor do they include the cost of the Fossil watch provided to both the men and the women, which have not been finalized for 2021. In 2019, the total watch cost was $164,864 for the men's tournament and $140,613 for the women's.

[99] *Compare* MBB Memento-SA Experience-Covid Kit Breakdown, *with* WBB 2021 Budget Spreadsheet.

[100] Images from the NCAA.

[101] Images from the NCAA.

[102] *See* MBB Memento-SA Experience-Covid Kit Breakdown; *see also* 2021 MBB – COVID Kit.

As gender equity issues surrounding the tournaments gained national attention, the NCAA sought to correct for these disparities in the later rounds of the tournaments. For example, in the Sweet Sixteen, the men's staff chose not to distribute additional items that had been purchased only for the men's teams including a March Madness robe ($32) and March Madness beach towel ($15.25).[103] The women's staff, for its part, added a hooded blanket ($35.75). Accordingly, as the tournaments progressed, gifts were more evenly distributed to the men's and women's teams. For the Sweet Sixteen and Elite Eight, before the NCAA removed men's gifts and added women's gifts, the NCAA planned to spend $77.68 per male student-athlete and $39.96 per female student-athlete. After removing the men's robe and beach towel and adding the women's hooded blanket, the NCAA ultimately spent $30.43 per male student-athlete and $67.21 per female student-athlete.[104] In the Final Four, the NCAA spent $139.82 per player on gifts distributed to the men and $168.68 per player on gifts distributed to the women.[105] It is worth nothing that the gifting opportunities provided by corporate sponsors this year—including a Nintendo Switch, HyperX headphones, portable chargers, a duffle bag, and a laptop desk—were identical between the men's and women's championships, although men's basketball declined a gift from Powerade that women's basketball accepted.[106]

The NCAA's unequal gifting budget this year is consistent with previous years. In 2019, for example, the NCAA spent $560,130 on men's basketball gifts—$241,494 for the first and second rounds, $55,724 for the Sweet Sixteen and Elite Eight, and $262,912 for the Final Four. That same year, the NCAA spent only $395,150, or about 30% less, on women's basketball gifts—$193,054 for the first and second rounds, $50,036 for the Sweet Sixteen and Elite Eight, and $152,062 for the Final Four.[107] Following the 2019 tournament, the women's basketball staff requested a $75,000 budget increase that would, in part, have allowed women's basketball to provide gifts in 2020 that only men had received in 2019 (*e.g.*, game towels, hangers, and bag tags). In the budget request, the women's staff wrote:

> Each year we continue to hear from women's championship teams/conferences and committee members whose counterparts, either at their school or within their

[103] *See* MBB Memento-SA Experience-Covid Kit Breakdown.

[104] *Compare* WBB 2021 Budget Spreadsheet, *with* MBB Memento-SA Experience-Covid Kit Breakdown. Note: the women also removed a "Nail Polish Kit" from distribution.

[105] *Compare* WBB 2021 Budget Spreadsheet, *with* MBB Memento-SA Experience-Covid Kit Breakdown. These figures exclude the costs of championship rings provided during the later tournament rounds. They also exclude the costs of certain "backpack stuffers" that were provided to the men's and women's teams, including water bottles and notebooks.

[106] *See* Powerade Student-Athlete Gifting Summary; Coke-Wendy's Gifting Summary.

[107] *See* 2019 Student-Athlete Mementos Comparison Spreadsheet. This trend continues for previous years. For example, in 2018 the NCAA spent $633,115 on gifts and mementos for the men's tournament and $305,477 on gifts and mementos for the women's tournament. Similarly, in 2017, the NCAA spent $773,010 for the men's tournament and $485,237 for the women's tournament. *See* DI Basketball Pivoted Expenses FY 2016-17, 2017-18 (Apr. 2021). These amounts only include money spent by the NCAA and exclude any money fundraised and spent by the local organizing committees on gifts and mementos. Some of the difference in this total spending on gifts is attributable to the fact that the men's championship provides a larger total number of gifts, as they order gifts for additional guests and staff—*e.g.*, corporate sponsors, security personnel, and CBS/Turner Productions. *See, e.g.,* 2021 MBB – Miscellaneous Mementos.

> conference, have attended the men's championship and received an increased level of experience. Due to recent emphasis on providing similar experiences for both men's and women's basketball teams during the tournaments, the additional requested dollars would make a visible and memorable impact on the student-athlete experience that is comparable to what is already being done in men's basketball. Women's Basketball currently spends $365K on student-athlete mementos, which is inclusive of all rounds.[108]

Online gifting suites. Apart from the predetermined gifts and mementos distributed at the tournaments, the NCAA also provides participating student-athletes with access to gifting suites where the student-athletes can select from an array of higher priced items. This year, as in other recent years, the NCAA operated an online gifting suite for players at the Sweet Sixteen and again at the Final Four. The suites were identical for the men's and women's championships. Student-athletes received a certain amount of money to spend on the online platform, which included items ranging from a beach chair and popcorn popper to Apple AirPods Pro and a 50-inch television.[109]

Equity in these gifting suites, however, came only after another previous public backlash. The NCAA first offered a gifting suite to student-athletes at the 2016 tournament—and, in that year, only to the men. The NCAA women's basketball staff had to scramble after the media reported on the men's gifting suite. In hopes of providing something of comparable value to the women's Final Four teams, the head of women's basketball got approval from the NCAA to make a last-minute order of GoPro cameras for overnight delivery. In fact, a member of the NCAA basketball staff had to put approximately $20,000 on a personal credit card as they tried to "create a gifting suite on the fly." After the 2016 championship ended, women's basketball requested, and the NCAA approved, funding to set up gifting suites at both the men's and women's events.[110] Those gifting suites have been comparable in price and items ever since.

6. Use of "March Madness"

There are material differences in the way that the NCAA markets and brands the men's and women's tournaments. The most prominent difference is the use of the "March Madness" trademark and branding for the men's—but not the women's—tournament. Student-athletes explained that when they arrived at this year's tournament, they expected to see the arenas, their mementos, and the courts marked with the instantly recognizable March Madness logo. But that branding was completely missing from the women's tournament.

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[108] *See* Division I Women's Basketball: FY2019-20 Budget Requests at 3. The $50,000 in funding for additional gifts and mementos was approved, while $25,000 in funds requested for student-athlete lounges was not approved.

[109] *See* 2021 Catalog of 2-Tier and 7-Tier Gifting Suites.

[110] Meghan Durham, *Division I Men's and Women's Basketball Student-Athletes to Receive Championships Gifts*, NCAA (Mar. 3, 2017), https://www ncaa.org/about/resources/media-center/news/division-i-men-s-and-women-s-basketball-student-athletes-receive-championships-gifts.

Photographs of Women's (Left) and Men's (Right) 2021 Tournament Courts[111]

The student-athletes we interviewed expressed near universal disappointment about this situation. One player explained, "My biggest thing is that people were saying men's is the only one that's March Madness. . . . I don't understand that because everyone said we were going to March Madness." Another emphasized, "We strive for March Madness. To have no affiliation with it is a bummer."

From the perspective of many stakeholders—including student-athletes, coaches, NCAA staff, committee members, and others—using March Madness in connection with the women's basketball tournament would be a huge advantage. As our independent media expert observed, using the popular March Madness mark "would raise the perception of the [Division I Women's Basketball Championship] as a major championship for many in the media, marketers and among sports fans."[112] Another branding expert said to the Wall Street Journal, "There is no question in my mind that the value of the women's tournament would go up pretty dramatically if [the women's teams] were able to have the halo of the March Madness branding as well."[113]

The NCAA adopted the term "March Madness" from the Illinois High School Association decades ago.[114] The logo that now accompanies the March Madness trademark was created within the last 10 years and quickly became synonymous with the men's tournament. Indeed, the formal document in which the NCAA sets forth the bid specifications for upcoming men's tournaments states that March Madness is "inextricably connected with the NCAA's Division I Men's Basketball Championship."[115] Similarly, the NCAA's own online "March Madness history – The

[111] Images from the NCAA.

[112] Desser Report § 4.1.

[113] Rachel Bachman, et al., *NCAA Withheld Use of Powerful 'March Madness' Brand From Women's Basketball*, Wall Street Journal (Mar. 22, 2021), https://www.wsj.com/articles/march-madness-ncaa-tournament-womens-basketball-11616428776.

[114] A Brief History of March Madness, Illinois High School Association (last visited July 21, 2021), https://www.ihsa.org/Sports-Activities/March-Madness-Experience/March-Madness-History.

[115] NCAA Division I Men's Basketball Championship 2023, 2024, 2025 & 2026 Preliminary Round Sport-Specific Bid Specifications.

ultimate guide" recounts the history of the men's tournament only.[116] But there are no trademark limitations on the use of March Madness for women's basketball, and the NCAA's contracts with CBS/Turner, ESPN, and various corporate sponsors do not contain such a limitation either—in fact, they specifically note that March Madness may be used for "Division I men's or women's basketball only."[117] The NCAA's legal department has told us that they agree with this conclusion.

There is some dispute as to why the women's tournament does not use March Madness branding. Certain NCAA executives and staff, as well as external stakeholders, have suggested that women's basketball has deliberately chosen not to use the March Madness mark and logo out of a desire to pursue unique branding for the women's tournament. For example, one NCAA executive recalled that the women's staff opted against using the March Madness logo on their courts, in favor of the phrase and logo "Four It All." This year, after the media began reporting on the absence of March Madness branding at the women's tournament, the NCAA issued a public statement: "When the current version of the March Madness logos and branding were developed five years ago, women's basketball leadership at that time chose to pursue their own brand identity."[118]

But the NCAA retracted that statement one day later, citing it as "inaccurate."[119] And interviews with the NCAA staff members who purportedly declined to use March Madness in the past explained that they had never communicated or intended to communicate that women's basketball was not interested in using March Madness. To the contrary, NCAA staff who have been involved in planning this and prior years' tournaments recounted that women's basketball had repeatedly asked to use the March Madness branding, but were repeatedly rebuffed. These staff members were told that the mark was "off limits" to women's basketball; some were told that this was because of the NCAA's relationship with CBS/Turner and CBS/Turner's use of the mark for their programming. Significantly, no one at the NCAA was able to identify any instance in which CBS/Turner itself suggested that the women's tournament could not use March Madness—or even an instance in which the NCAA asked the broadcaster for its position on the issue.

To give one illustration, after the NCAA first introduced the March Madness logo, the women's staff created several gifts for student-athletes containing the logo, including a laptop sleeve and a bracelet. They described being reprimanded for doing so and being told to stop using the logo. Again around 2018, a senior member of the women's basketball staff asked members of the corporate relations team whether the March Madness mark could be used in connection with the women's tournament and was told that the mark was "off limits" because of obstacles with the

[116] Daniel Wilco, *March Madness History – The Ultimate Guide* (Mar. 18, 2021), https://www ncaa.com/news/basketball-men/article/2021-03-14/march-madness-history-ultimate-guide.

[117] *See, e.g.*, Corporate Partner Agreement between CBS/Turner and General Motors LLC (Jan. 31, 2020), Ex. C; ESPN-NCAA Multi-Media Agreement (Jan. 25, 2011), Ex. B.

[118] Rachel Bachman, et al., *NCAA Withheld Use of Powerful 'March Madness' Brand From Women's Basketball*, Wall Street Journal, Mar. 22, 2021, https://www.wsj.com/articles/march-madness-ncaa-tournament-womens-basketball-11616428776.

[119] *Id.* ("Over the weekend, the NCAA initially assigned responsibility for that decision to its women's basketball leaders before reversing course to say that was inaccurate.").

CBS/Turner contract. This year, the women's staff sought to use face masks labeled "Mask Madness" at the San Antonio games similar to those that were to be distributed by the State of Indiana and the City of Indianapolis at the men's tournament. The head of women's basketball was told no by the SVP of Basketball, who explained that while he was supportive of the idea, "Mask Madness" was not "consistent with the branding of the women's championship," because it had been used only in connection with the men's tournament.

In June 2021, the NCAA publicly announced that women's basketball may use the March Madness brand moving forward.[120] The Women's Basketball Oversight Committee has said that it will work with the Men's Basketball Oversight Committee to review the potential use of March Madness in connection with both the men's and women's tournaments.[121]

7. Signage & Championship Atmosphere

The men's and women's tournaments have historically been very different in their look and feel, and this year was no exception. One student-athlete who played in San Antonio noted that it "didn't feel like it was the big tournament," while parents of student-athletes in this year's women's tournament noted that local residents "didn't even know the tournament was going on." Indeed, as the New York Times reported, "The banners, at least ones this large, are unique to Indianapolis. . . . In fact, the signs that are omnipresent here — covering pedestrian bridges, lampposts and the sides of buildings — are absent in San Antonio."[122]

Our investigation confirmed these observations. Even after taking into account the requirements associated with the men's larger venue, there were significant disparities in the signage and branding in Indianapolis and San Antonio, both inside and outside the tournament venues. This was the result of the NCAA spending approximately $2,416,000 on signage for the men's tournament and only $783,000 on signage for the women's tournament.[123] And this budget disparity is what existed *after* the women's tournament added significant signage in an effort to "provide a more equitable signage plan" once the gender equity issues first came to light.[124] It goes without saying that with over a million dollars more to spend, men's basketball was able to do far

[120] Bob Williams, *NCAA Women's Basketball Tournament Could Be Finally Given 'March Madness' Branding*, SportBusiness (June 8, 2021), https://www.sportbusiness.com/news/ncaa-womens-basketball-tournament-could-be-finally-given-march-madness-branding/.

[121] Meghan Durham, *Women's Basketball Oversight Committee Sets Priorities Amid Gender Equity Review*, NCAA (June 8, 2021), https://www ncaa.org/about/resources/media-center/news/women-s-basketball-oversight-committee-sets-priorities-amid-gender-equity-review.

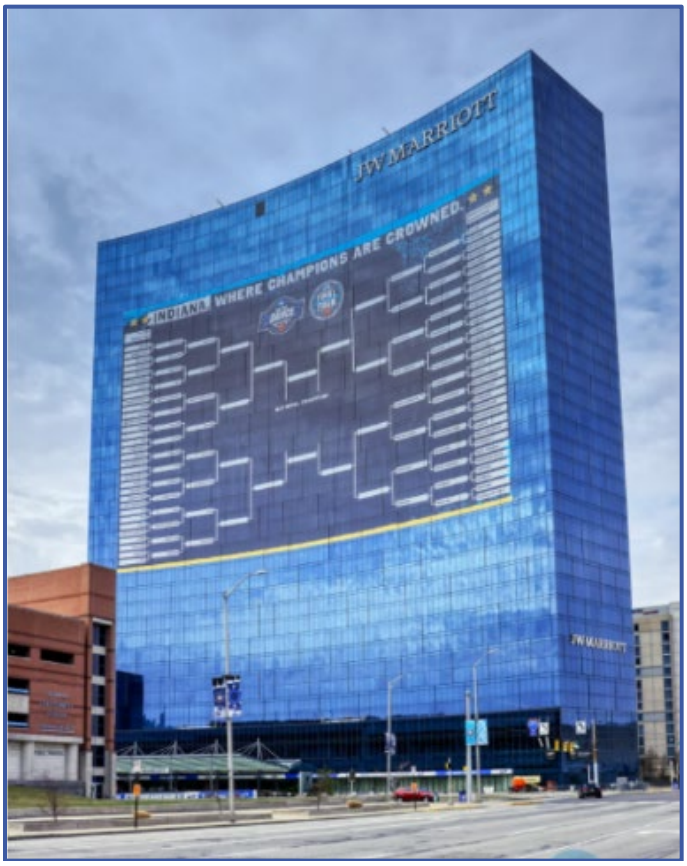
[122] *See* Billy Witz, *In Indianapolis, Checking the Bracket Means Looking Up*, N.Y. Times (Mar. 25, 2021), https://www nytimes.com/2021/03/25/sports/ncaabasketball/biggest-ncaa-bracket-indianapolis.html.

[123] *Compare* 2021 Men's Signage Budget, *with* 2021 Women's Signage Budget. The men's Final Four is held in a bigger venue—*i.e.*, a football stadium instead of a basketball stadium—which impacts some, but not all, of the signage budget.

[124] *See* Email from NCAA Signage and Branding Staff to Women's Basketball Staff re: Additional Signage – Regional Rounds and FF (Mar. 23, 2021).

more to dress up arenas and promote the tournament in hotels, on public walkways, and around Indianapolis.

One prominent example was the giant tournament bracket that men's basketball displayed this year on the side of the JW Marriot in Indianapolis.



JW Marriot Bracket Display[125]

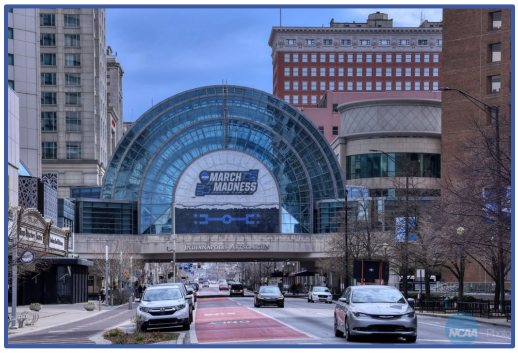
The NCAA spent more than $100,000 on this display. There was no equivalent display in San Antonio for women's basketball.[126] Instead, San Antonio had the women's Final Four logo projected on windows on the side of the Alamodome, something the men's tournament had as well.

[125] Image from the NCAA.

[126] *See* 2021 Men's Signage Budget.

Lucas Oil Stadium in Indianapolis (Left) and Henry B. González Convention Center in San Antonio (Right)[127]

Indianapolis also had extensive signage in the local airport and on major roads throughout the city. Signage in San Antonio was present, but far more limited, consisting mainly of streetlamp banners and localized displays near or on the Alamodome.



Signage at the Men's Tournament in Indianapolis[128]

Signage at the Women's Tournament in San Antonio[129]

[127] Images from the NCAA.

[128] Images from the NCAA.

[129] Images from the NCAA.

While the fact that San Antonio's downtown is a historic district did have some impact on the types and amount of signage permitted in some areas,[130] those restrictions were not responsible for many of the significant signage discrepancies.

For example, the NCAA spent approximately $27,000 on the men's championship's airport signage and $61,300 on street pole banners, while the NCAA spent nothing on airport signage in San Antonio and only approximately $8,700 on street pole banners.[131] This difference was noticed by those attending the championships. One athletic director who attended both the men's and women's tournaments this year noted that "in Indy, it felt like you were at an NCAA championship anywhere you arrive in the city. In San Antonio, there was nothing when you arrive at that venue. [Indianapolis] had street signs for a mile . . . nothing like that in Austin. So the branding piece, you never felt like you were at a women's NCAA championship event."

Signage was similarly different at the venues where the student-athletes played. On the "Inner Bowl" of the venues, the NCAA spent approximately $169,000 on the men's tournament and $35,300 on the women's; on the "Player Hallways and Tunnels" the NCAA spent approximately $288,000 on the men's tournament and $30,400 on the women's; and on locker rooms, the NCAA spent approximately $188,000 on the men's tournament and $46,200 on the women's.[132] Overall, the NCAA spent less than a quarter on these signage and décor items at the women's tournament than it did at the men's tournament.[133]

This disparity permeated the rest of the signage budgets, from where the student-athletes stayed to how they traveled. The NCAA spent approximately $59,000 for the men on signage at the hotels while spending only $26,400 on the women. The NCAA spent approximately $71,000 decorating 12 buses for the men while spending only $27,200 decorating the same number of buses for the women.[134]

Like many other tournament elements discussed in this report, these disparities in signage between the men's and women's 2021 tournaments were not new. While there have been years in which participants in the women's tournament have been more satisfied with their signage than they were this past year, the men's tournament has spent significantly more on signage year over year, and the circumstances in previous years did not facilitate the same kind of detailed comparison of signage at the separate tournaments that happened this year. In 2019, the NCAA

[130] *See* City of San Antonio, Historic Districts (last visited July 21, 2021), https://www.sanantonio.gov/historic/scoutsa/HistoricDistricts.

[131] *Compare* 2021 Men's Signage Budget, *with* 2021 Women's Signage Budget.

[132] *Compare* 2021 Men's Signage Budget, *with* 2021 Women's Signage Budget.

[133] As explained above, the men's Final Four's larger arena increases the necessary signage budget for the "Inner Bowl" and for the venue generally. The NCAA prioritizes signage and décor in the following order: (1) inner bowl; (2) locker rooms; (3) player hallways and tunnels; (4) stadium exterior; (5) concourses; (6) hotels; (7) street pole banners; and (8) airport. *See* Kaplan NCAA – Budget Numbers (July 20, 2021).

[134] *Compare* 2021 Men's Signage Budget, *with* 2021 Women's Signage Budget.

spent $1,524,471 on signage for the men's tournament, and only $87,760 on the women's.[135] Part of that difference—approximately $875,000 of the $1,436,711—stemmed from the fact that the men played at neutral sites for the first and second rounds, whereas the women played on campuses which received only small décor kits so that hosts could add some NCAA tournament branding to their arenas.[136] But the remaining difference—approximately $560,000—relates to the Sweet Sixteen, Elite Eight, and Final Four, all of which are played at neutral sites for both the men's and women's tournaments. An even greater difference was seen in 2018, when the NCAA spent more than $1.1 million more on men's signage and décor for the Final Four alone—a gap that is only partially explained by the greater size of the men's Final Four venue.[137] Similarly, in 2017, the men's signage and décor spending totaled $2,289,721, whereas the women's spending was $212,643.[138] These are significant discrepancies, even after taking into account that the size of the men's Final Four venue requires more signage.

These figures do not account for the additional funds that the NCAA spends on March Madness branded basketball courts for the men as compared to the women. In a normal year, the men's first and second rounds take place at neutral sites, and the NCAA owns nine courts that it uses for these early round games. It pays approximately $180,000 every year for storage, transportation, and installation of these courts.[139] The women's first and second rounds take place at campus sites and are played on the home floors of those host institutions. As one senior NCAA staff member explained, "Generally, these home sites have significant logos and branding of their own that make any covering or rebranding challenging, unrealistic, or would not be aesthetically pleasing to cover, especially in a 2-3 day window to execute." As a result, the only branding for the first and second rounds of the women's tournament is an "NCAA" decal that is placed on the floor, which costs the NCAA approximately $38.75 per decal, with three sent to every host site (two for the floors and one back-up).[140] A large number of the women's basketball players who

[135] *See* Financial Outcome on Parity: Basketball Championships PowerPoint Presentation for NCAA Board of Governors from NCAA Chief Financial Officer (Apr. 27, 2021). The spending figures provided for signage and décor in this report include only the amount spent by the NCAA and not any amount fundraised or spent by the local organizing committee. For example, in 2019, the local organizing committee spent approximately $656,000 on signage and décor at the men's Final Four and only $190,000 at the women's Final Four. See Kaplan NCAA – Budget Numbers (July 20, 2021).

[136] *See* Financial Outcome on Parity: Basketball Championships PowerPoint Presentation for NCAA Board of Governors from NCAA Chief Financial Officer (Apr. 27, 2021).

[137] *Compare* 2018 Men's Signage Budget ($1,477,496), *with* 2018 Women's Signage Budget ($373,167). The detailed budget breakdown shows that the men's championship spent significantly more money for signage at the airport ($10,908 versus $5,000) and hotels ($182,567 versus $59,830).

[138] *See* 2017 Women's Signage Budget; 2017 Men's Signage Budget.

[139] *See* Agreement between NCAA and Connor Sports Court, International (Sept. 1, 2020); *see also* Financial Outcome on Parity: Basketball Championships PowerPoint Presentation for NCAA Board of Governors from NCAA Chief Financial Officer (Apr. 27, 2021).

[140] After the first and second rounds, both the men's and women's tournaments use courts owned by Connor Sports Court, with the NCAA paying only for their installation. Connor Sports Court also pays to stain and paint the floors with logos and branding up to a certain price per square foot, with the NCAA covering any cost over that limit. *See* Agreement between NCAA and Connor Sports Court, International § 3.7 (Sept. 1, 2020).

attended the 2021 tournament with whom we spoke expressed disappointment over the way the women's basketball courts looked, particularly as compared to the courts used by the men.

8. Fan Festivals & Other Events/Meetings

Even in a year when most of the non-competition events were cancelled due to the pandemic, the men's tournament managed to significantly outshine the women's tournament with respect to promotion, hosting a made-for-TV virtual concert by Miley Cyrus that took place between the Final Four games on April 3, 2021. The concert gave the men's Final Four the feel of a professional sports event, while there was nothing comparable at the women's Final Four. The men's concert was sponsored by the NCAA's Corporate Champions—AT&T, Coca-Cola, and Capital One—and cost the NCAA almost $5 million, through a contribution required by a contract between the NCAA and CBS/Turner.[141]

Stage of the Grammy Award-Winning Singer, Songwriter, and Actress Miley Cyrus Performing at the 2021 NCAA Men's Final Four[142]

One month before the women's championship, NCAA sponsor AT&T offered to do a virtual concert for the women's championship, but the women's basketball staff declined out of concern that only a couple hundred people would tune in and that it would not be worth the $150,000 it would cost the NCAA to support. The 90-minute intermission between the women's

[141] *See* Comparison of Men's to Women's Division I Basketball, FY 2021 Projections (Apr. 27, 2021).

[142] Drew Quinones, *4Wall Provides Lighting & Rigging for the Capital One Tournament Central at the 2021 NCAA Men's Final Four*, 4Wall (May 12, 2021), https://www.4wall.com/about/press/4wall-provides-lighting-rigging-for-the-capital-one-tournament-central-at-the-2021-ncaa-men-s-final-four.

Final Four games was instead filled by studio dialogue. Women's basketball had also considered a drive-in concert at the Alamodome, but that fell through because of space and timing issues, especially once the city of San Antonio set up a large COVID-19 vaccination site in the Alamodome parking lot.

In a typical year, the differences between the side events at the men's and women's championships—fan festivals, exhibition basketball games, concerts, and youth basketball events—are even more pronounced. At the men's Final Four, the NCAA's corporate partners typically sponsor a multi-day music festival that features several A-list musicians, ranging from Rihanna to Bruce Springsteen.[143] The women's Final Four, by contrast, does not consistently have a fan concert and, when it does, the concert has been headlined by lesser-known acts. For example, in 2019, AT&T agreed to sponsor a one-night concert at the women's tournament headlined by Gavin DeGraw.[144] That same year, the 2019 March Madness Music Series at the men's tournament, sponsored by AT&T, Coca-Cola, and Capital One, featured musical performances by Katy Perry, the Jonas Brothers, and the Chainsmokers.[145]

Similarly, while multi-day fan festivals are held near the competition venues at both the men's and women's Final Fours,[146] these fan festivals have an entirely different look and feel, largely due to differing levels of investment by the NCAA's corporate sponsors. The total cost of fan events (including the concerts) at the 2019 men's tournament—which was largely paid for by corporate sponsors—was approximately $7 million.[147] By contrast, the total cost of fan events at the 2019 women's tournament was a little over $300,000—with approximately $200,000 paid for by a single corporate sponsor.[148]

Further contributing to the general feeling that the men's tournament is the "priority event" is the fact that many more NCAA governance meetings, networking events, and business meetings take place at the men's Final Four than at the women's. The NCAA senior leadership hosts an annual dinner with the NCAA's broadcasting partners at the men's Final Four, and in 2019, there was a dinner and meeting of the Board of Governors Executive Committee at the men's Final Four

[143] March Madness Music Festival, NCAA (last visited July 21, 2021), https://www ncaa.com/final-four/ncaa-march-madness-music-festival.

[144] NCAA Women's Final Four Super Saturday Concert with Street Laced, Street Laced Marketing & Promotions (last visited July 21, 2021), https://www.streetlaced.com/ncaa-womens-final-four-super-saturday-concert-with-street-laced/.

[145] 2019 NCAA March Madness Music Series Will Feature Headline Performance by GRAMMY® Award-Nominated Multiplatinum Powerhouse Trio, Jonas Brothers, Presented by Coca-Cola on April 6, NCAA (Mar. 21, 2019), https://www ncaa.com/news/ncaa/2019-03-21/2019-ncaa-march-madness-music-series-will-feature-headline-performance-grammyr; Additional Final Four® Resources, City of Minneapolis (last visited July 21, 2021), https://www.minneapolis.org/other-resources/.

[146] 2017-20 Division I Men's Basketball Championship Final Four Bid Specifications; 2017-20 Division I Women's Basketball Championship Final Four Bid Specifications.

[147] Comparison of Men's to Women's Division I Basketball, FY 2019 and 2021 Actuals and Budget (Apr. 26, 2021).

[148] *Id.*

as well.[149] The NCAA Executive Office also hosts an event honoring the spouses and partners of the Men's Basketball Committee members, but hosts no similar event for spouses and partners of the Women's Basketball Committee members. It is not surprising, based on all of these networking opportunities, that key stakeholders, including conference commissioners and college athletic directors and presidents, spend more time at the men's championship each year than they do at the women's—assuming they even attend the women's championship at all. This matches the travel pattern of the NCAA's own senior leadership, who generally spend far more time at the men's tournament than the women's.[150]

9. Press Conference Transcripts & Photo Posting

On March 22, 2021, a reporter publicized the fact that no pictures from the women's championship were available in the NCAA's Photo Hub, an online portal used this year for the first time to make tournament photographs available for free download.

Tweet About NCAA Photo Hub from March 22, 2021[151]

Hundreds of high-resolution photographs from the early rounds of the men's tournament were available to the media, fans, student-athletes, and their families, but the Photo Hub was

[149] *See* 2019 NCAA Division I Men's & Women's Final Four Executive Schedule; 2017 NCAA Division I Men's & Women's Final Four Executive Schedule.

[150] *See* 2019 NCAA Division I Men's & Women's Final Four Executive Schedule; 2017 NCAA Division I Men's & Women's Final Four Executive Schedule.

[151] AJ McCord (@AJ_McCord), Twitter (Mar. 22, 2021), https://twitter.com/AJ_McCord/status/1373849223347765249.

devoid of any equivalent photographs from the women's tournament. As one women's coach noted: "Even from a marketing/promotion standpoint, if you went in as media to do a story on the women's tournament pre-Sweet Sixteen, there were not many photos on the website or anything for them to grab. So that 'afterthought' process echoes throughout."

On-site photographers and transcriptions of post-game press conferences and interviews are two expenses that this year, as in years past, the NCAA budgeted for the entirety of the men's tournament, but only for the Sweet Sixteen and later rounds of the women's tournament.[152] Transcripts and photographs are fundamental tools that facilitate media coverage of the tournaments, especially for offsite or local media who are unable to attend the events in person—a circumstance that was exacerbated this year by the pandemic. The COVID-limited audiences made providing these services all the more important this year and caused the NCAA to decide for the first time to make its online photo portal accessible to the public, which made the lack of photography at the women's tournament far more noticeable.

After the news broke about the lack of photographs from the women's tournament on the NCAA Photo Hub, the NCAA scrambled to get a photographer onsite for the first two rounds of the women's championship. One NCAA staff member got a call requesting that she get "photographers in San Antonio, now," for a game starting just two hours later. That staff member called the contractor who fortunately already had a photographer at the game taking pictures. It ultimately cost the NCAA more than $40,000 for the additional services in the first and second rounds—a higher figure than the NCAA would have had to pay had it planned ahead.[153] NCAA photographers were quickly hired to be on-site and were deployed on March 22, 2021 (the second day of the first round).[154]

* * *

The disparities between the 2021 men's and women's tournaments bring into sharp contrast a fundamental difference in attitude that led to gender disparities from the outset of the planning process this year, as well as underlying gender equity issues at the NCAA. When these issues were compounded by the unique challenge of planning and executing a championship amidst a global pandemic, the world took notice. We next address what we believe to be the root causes of the problem—systemic issues in the NCAA's organizational structure, its contracts with media partners, its revenue distribution, and its participation opportunities for student-athletes. We also provide specific recommendations for how the NCAA leadership, staff, membership, and partners can work to ensure an equitable student-athlete experience for women's basketball.

[152] The NCAA spent $16,380 for transcripts at the women's tournament as compared to $65,232—or four times more—at the men's. *Compare* ASAP 2021 MBB Invoice, *with* ASAP 2021 WBB Invoice.

[153] *See* WBB 2021 Invoice from Clarkson Creative (noting "last minute fees for coverage of the 2021 NCAA Women's Basketball Tournament").

[154] Even then, however, since the photographers were local photographers (as opposed to the typical photographers the NCAA's contractor uses for NCAA events), the NCAA elected to wait until the Sweet Sixteen to place earlier round photos on the online public photo portal. The NCAA did make the first and second round photos available on the NCAA Digital Media Hub for media and member institutions.

THE NCAA'S ORGANIZATIONAL STRUCTURE & CULTURE

The NCAA, a not-for-profit, member-led organization, is operated by two groups: (1) NCAA employees; and (2) the NCAA membership, which includes colleges, universities, and athletic conferences.[155] The NCAA employees (*i.e.*, leadership and staff) are largely responsible for the day-to-day operation of the NCAA, which includes regulating the athletics programs of its members; planning, running and promoting the NCAA championships; supporting the work of the NCAA committees (see below); managing the NCAA's relationships with corporate and media partners; and providing financial and programmatic support to its members. Representatives from the membership—*e.g.*, college presidents, athletic directors, coaches, and student-athletes—sit on and work through committees to determine the rules and policies that govern the NCAA and college athletics generally for NCAA sports. The NCAA committees are the key decision-making bodies of the organization and make decisions on a wide range of issues, from how NCAA revenue is distributed to whether individual sport brackets should be expanded.

The membership's heavy reliance on the monies it receives from the NCAA has had a significant impact on the structure and culture of the NCAA. The NCAA and its members have a stated commitment to certain values, including diversity, inclusion, and gender equity.[156] They also have a commitment to provide superior athletic programming for their student-athletes. As many academic institutions are operating under incredible financial strain, particularly in light of the pressures put on college and university budgets due to COVID-19, NCAA member institutions are dependent now more than ever on the financial support they receive from the NCAA. That, in turn, puts pressure on the NCAA to maximize revenue—a goal that can conflict, or at least be perceived to conflict, with some of the organization's other objectives and values, like gender equity. These tensions and skewed incentives are embedded in the NCAA's organizational structure, staffing, budgeting, and culture.

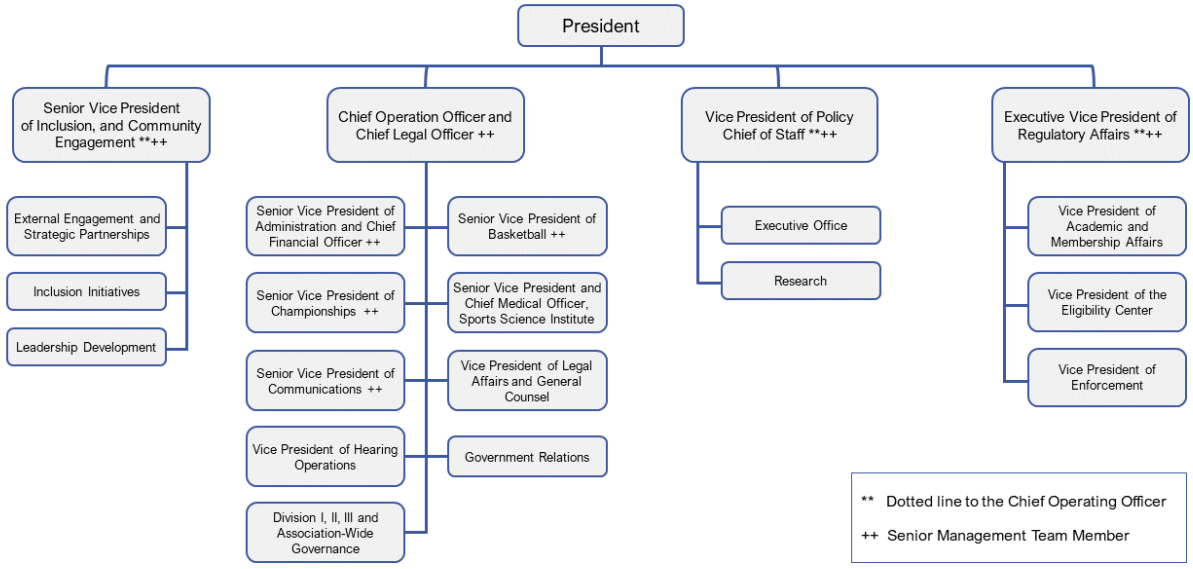
[155] What Is the NCAA, NCAA (last visited July 21, 2021), https://www ncaa.org/about/resources/media-center/ncaa-101/what-ncaa.

[156] *See, e.g.*, NCAA Constitution, Article 2.2.2 (adopted Jan. 10, 1995) ("It is the responsibility of each member institution to establish and maintain an environment that values cultural diversity and gender equity among its student-athletes and intercollegiate athletics department staff."); NCAA Constitution, Article 2.3.3 (adopted Jan. 11, 1994) ("The activities of the Association should be conducted in a manner free of gender bias."); NCAA Inclusion Statement (adopted Apr. 2010, and amended Apr. 2017) ("As a core value, the NCAA believes in and is committed to diversity, inclusion and gender equity among its student-athletes, coaches and administrators."); NCAA Presidential Pledge (adopted by the NCAA Board of Governors in 2016, and signed by 980 member institutions as of Sept. 2020) ("Consistent with our mission and values, our institution, a member of the National Collegiate Athletic Association, pledges to specifically commit to establishing initiatives for achieving ethnic and racial diversity, gender equity and inclusion, with a focus and emphasis on hiring practices in intercollegiate athletics, to reflect the diversity of our membership and our nation."); Gender Equity and Title IX, NCAA (last visited July 20, 2021), https://www ncaa.org/about/resources/inclusion/gender-equity-and-title-ix ("One of the NCAA's principles of conduct for intercollegiate athletics focuses on gender equity. The office of inclusion is committed to supporting the membership as it strives to comply with federal and state laws regarding gender equity, to adopting legislation that augments gender equity and to establishing an environment that is free of gender bias.").

1. Division I Basketball Organizational Structure

The SVP of Basketball, a position currently occupied by Dan Gavitt, oversees all of basketball at the NCAA. Until recently, the SVP of Basketball reported to the Chief Operating Officer/Chief Legal Officer, but at present reports to the President, because the Chief Operating Officer/Chief Legal Officer position is not currently filled. The SVP of Basketball also sits on the President's Senior Management Team ("SMT").[157]

Senior NCAA Leadership at the Time of the 2021 Championship



The SMT includes all SVPs and Executive Vice Presidents at the NCAA and is described as a group of the NCAA President's "closest advisors."[158] The SMT is tasked with helping the NCAA President make strategic decisions for the organization and with providing guidance to key leaders at the NCAA member institutions. The SVP of Basketball stated that if he wants to bring an issue to the President's attention, he primarily does that at an SMT meeting. These meetings are generally held twice a week.

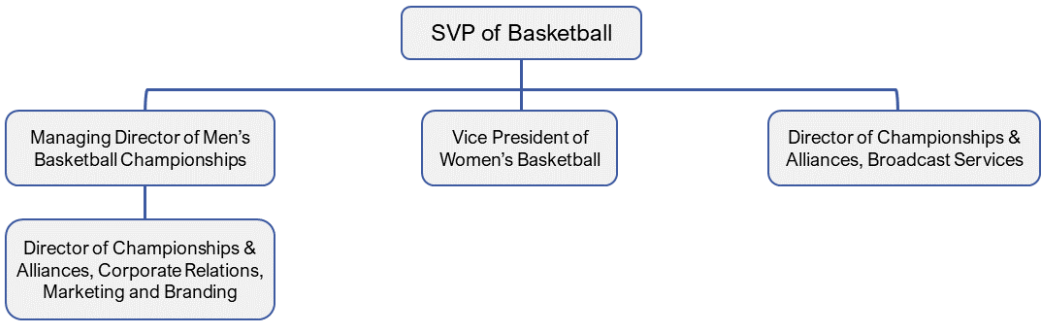
Currently, the SVP of Basketball's primary responsibilities are to manage the men's and women's Division I, Division II, and Division III tournaments and the men's NIT at a macro level, to manage the NCAA's broadcast relationships for all NCAA sports, and to oversee the corporate sponsorship program for all NCAA sports. The following all report directly to the SVP of Basketball: the head of women's basketball, Lynn Holzman (a Vice President); the head of men's

[157] National Office Leadership Team, NCAA (last visited July 21, 2021), https://www ncaa.org/about/who-we-are/office-president/ncaa-leadership-team.

[158] *Id.*

basketball, JoAn Scott (a Managing Director); and the Director who administers the NCAA's broadcasting contracts with CBS/Turner and ESPN, Julie Kimmons (the Director of Championships & Alliances, Broadcast Services). The Director who oversees the NCAA's corporate relationships and other marketing and branding efforts across all sports, Ellen Lucey (the Director of Championships & Alliances, Corporate Relations, Marketing and Branding), reports directly to the Managing Director of Men's Basketball.

Current Reporting Lines to the SVP of Basketball



Although this structure, on its face, should not necessarily disadvantage Division I women's basketball,[159] many stakeholders report that, in both practice and perception, women's basketball essentially reports, and is subordinate, to Division I men's basketball. This view results, at least in part, from the fact that Gavitt himself was formerly the Vice President of Men's Basketball at the NCAA. At that time, he and then-Vice President of Women's Basketball Anucha Browne reported to the Executive Vice President for Championships and Alliances, Mark Lewis. After Lewis left the NCAA in 2016, Gavitt became the SVP of Basketball, with responsibilities for both men's and women's basketball, and no longer reported up to a head of all championships.[160]

The perception that women's basketball effectively reports up through men's basketball also stems from the fact that although the SVP of Basketball is tasked with managing both women's and men's basketball, he spends most of his time on men's Division I basketball.[161] The current SVP of Basketball explained to us that his work is "[d]efinitely more tilted toward men's

[159] In fact, the head of women's basketball currently holds a more senior title than the head of men's basketball.

[160] *NCAA Promotes Gavitt to New Position to Oversee Basketball*, AP (Dec. 14, 2016), https://apnews.com/article/ea7a39922e2f4b2c8d4e8fbb83a91c9f.

[161] For example, when the NCAA was asked to present on men's and women's basketball at meetings involving all Division I conference commissioners in the months leading up to the 2021 championships, the SVP of Basketball dedicated his presentation to men's basketball, and the Vice President of Women's Basketball discussed women's basketball.

basketball." One NCAA senior staff member noted that the SVP of Basketball is not "engaged in strategic thinking and initiatives" for women's basketball; another NCAA executive noted that the SVP of Basketball expects the Vice President of Women's Basketball to largely run women's basketball autonomously. Tellingly, a significant number of leaders in the women's basketball community describe and understand the current SVP of Basketball to be the head of *men's* basketball only, not the head of *all* of basketball at the NCAA.[162]

The SVP of Basketball's focus on Division I men's basketball is unsurprising. No one questions that men's basketball currently brings in the vast majority of the NCAA's current revenue. As President Emmert put it, men's basketball is "just economically way more important. We can have problems in any of our championships but that one. It's just a fact. Everyone in the membership knows that."

The SVP of Basketball's primary focus on Division I men's basketball, however, creates significant challenges for women's basketball. It means that women's basketball is not fully represented in important discussions within the NCAA and important information does not always flow to women's basketball. The Vice President of Women's Basketball does not sit on the SMT (which is limited to only SVPs and higher),[163] and does not attend the NCAA's quarterly meetings with CBS/Turner or ESPN regarding broadcast agreements and corporate sponsors. Thus, the Vice President of Women's Basketball was not in the room during discussions among senior NCAA management on whether or not to cancel the basketball tournaments in 2020, or for early meetings on COVID-19 protocols for the 2020-21 season. Accordingly, the Vice President of Women's Basketball was often wholly reliant on the SVP of Basketball to relay to her any information pertinent to women's basketball and to advocate for women's basketball with NCAA senior leadership.

Another challenge with the current leadership structure is that it aligns the NCAA's chief revenue-generating departments with basketball, and often specifically with men's basketball, as described above. As a result, the NCAA's broadcasting relationships and corporate sponsorship program are set up in a way that largely benefits men's basketball—to the exclusion of all other championships, including women's basketball, as detailed further below. If the staff of these departments continue to report to basketball or, even more specifically, to men's basketball, it seems unlikely that they will shift attention to supporting and benefitting women's basketball and the other championships.

[162] In fact, his NCAA website biography does not mention women's basketball at all: "In his current role, Gavitt oversees the day-to-day operations of the NCAA Division I men's basketball championship, as well as the NCAA's 11-year, $10.6 billion contracts with broadcast partners CBS and Turner Broadcasting. He also supervises the Postseason NIT and NCAA Division II and III Men's Basketball Championships and serves as the staff's day-to-day contact to the Division I Men's Basketball Committee and the Men's Basketball Oversight Committee." National Office Leadership Team, NCAA (last visited July 21, 2021), https://www ncaa.org/about/who-we-are/office-president/ncaa-leadership-team.

[163] *Id.*

2. Staff Size & External Support

Disparities in staffing complicate matters further. Excluding the SVP of Basketball, there are currently 11 full-time men's basketball staff (including the Managing Director of Men's Basketball), and only seven full-time women's basketball staff (including the Vice President of Women's Basketball and her executive assistant).[164] Taking into account the time that other NCAA employees (in departments such as ticketing, corporate alliances, and statistics) allocate to support the Division I Men's and Women's Basketball Championships, men's basketball has the equivalent of 21.86 full time employees, while women's basketball has only 13.92.[165]

To some extent, different levels of staffing are understandably attributable to the differences between men's and women's Division I basketball. For example, one of the men's basketball staff members largely manages the NIT; there is no similar staffing on the women's side because the NCAA does not own the WNIT and therefore plays no role in that non-NCAA event. Additional staffing is also needed for the men's tournament because the first and second rounds are played at neutral sites (unlike the women, whose first and second rounds are hosted at member campuses), and because of the significantly larger scale of the men's tournament.

This reasoning goes only so far, however, as a single women's basketball staff member often shoulders all of the same responsibilities as several colleagues on the men's side. For example, for the 2021 championships, the person responsible for mementos and gifts for the women's tournament had approximately 20 other responsibilities and seven counterparts in men's basketball.[166] The person responsible for gifts and mementos for the men's tournament had approximately three other responsibilities (although one was running the Division III Men's Basketball Championship) and only three counterparts in women's basketball.[167]

This disparity in staff size is exacerbated by the fact that men's basketball employs more external contractors to help run the tournament than women's basketball does. In particular, the NCAA engages Populous to help with logistics like directional signage, scheduling, coordinating with media partners, and coordination of NCAA-related construction projects for the men's Final Four.[168] In 2021, Populous dedicated eight workers to those tasks.[169] The NCAA paid Populous consulting fees of $942,668 in 2019 and $733,037 in 2021 (through July 1, 2021). Although the NCAA paid $211,200 as compensation for outside contractor assistance with operations and

[164] Men's and Women's Basketball Championships Roster (as of Mar. 1, 2020); 2020-21 Women's Basketball Organizational Chart.

[165] Championships and Alliances Staffing Allocation (Apr. 15, 2021).

[166] This women's basketball staff member's additional responsibilities included coordinating all volunteers, planning hotels and lodging, dealing with space assignments, and planning the Salute presentation for all of the women's Final Four teams. *See* Men's and Women's Basketball Buddy List (2020-21).

[167] *Id.*

[168] NCAA and Populous Master Service Agreement (2021-26); Populous 2021 Final Four, Indianapolis, Indiana, Work Order Assignment Number: 1.

[169] Populous 2021 Final Four, Indianapolis, Indiana, Work Order Assignment Number: 1 § 6.5.

logistics in connection with the 2021 women's tournament,[170] it does not typically do so, and the NCAA women's basketball staff tend to bear many of the responsibilities outsourced to contractors for men's basketball.

Even with respect to those external contractors that the NCAA uses on a regular basis for both men's and women's basketball, the contractor's responsibilities are usually greater for men's basketball than for women's. For example, both women's and men's basketball use Anthony Travel to help arrange travel to and from the men's and women's tournaments and to manage hotel reservations for the tournaments. But while Anthony Travel was required under the travel-related services contract in effect from 2016 to 2021 to arrange all "travel to and from airports" for selected hotels for the men's Final Four, the contract noted that the women's Final Four "will utilize existing airport transportation when it is feasible."[171] In addition, Anthony Travel is required under the hotel management agreement in effect from 2018 to 2023 to perform a host of additional responsibilities at the men's basketball tournament such as hotel reservations management for media, staff, committees, and fans; NCAA staff members must perform these responsibilities for the women's tournament.[172] Finally, men's basketball has historically had two employees from Anthony Travel on site at their tournament to help with hotel arrangements. Women's basketball has had no similar employee from Anthony Travel on site until this year, when they were—after multiple requests—able to ensure that one Anthony Travel employee was on the ground in San Antonio.

A final difference in staffing between the men's and women's tournaments is the number of unpaid volunteers. The larger-scale Division I Men's Basketball Championship has many more unpaid volunteers that assist with the tournament each year. For example, in 2019, the total number of unpaid volunteers that helped out at the women's tournament was 912, whereas the total number of unpaid volunteers at the men's tournament each year is approximately 2,200 to 2,500.

3. Communication/Coordination Between Men's & Women's Staffs

Despite having a common SVP, the men's and women's basketball staffs operate largely independently of one another, with limited strategic communication or coordination. At present, there are no joint strategic meetings involving the SVP of Basketball, the Vice President of Women's Basketball, and the Managing Director of Men's Basketball to discuss an overall strategy for basketball or to jointly determine budget priorities. The Vice President of Women's Basketball and the Managing Director of Men's Basketball do not regularly communicate or meet with each other either. Although the entire men's and women's basketball staffs meet jointly on a monthly basis, the meetings have been described to us as ineffective, and they did not occur during the months immediately preceding this year's tournaments. One NCAA staff member, for

[170] NCAA and MKTG, Inc. Master Services Agreement (Oct. 14, 2020); MKTG Scope of Work (Feb. 22, 2021).

[171] NCAA and Anthony Travel LLC Transportation Management Agreement at 12 (Sept. 2016).

[172] *See* NCAA and Anthony Travel LLC Hotel Management Agreement (2018).

example, relayed that some of the men's basketball staff do not consider it their responsibility to help the women's basketball staff plan their tournament.

Coordination between the two staffs largely occurs on an individual staffer-by-staffer basis and depends on how well staff members with parallel responsibilities communicate with each other. Although some men's and women's basketball staff members report a positive working relationship, others do not. Attempts have been made to improve information-sharing between the two staffs, including the creation of a "buddy list" in the fall of 2020.[173] The buddy list detailed the responsibilities of each staff member, with the goal of facilitating communications between men's and women's staff members with similar responsibilities. But many staff members reported that the buddy list was not successful, in large part because the distribution of responsibilities for the men's basketball staff does not correlate well to the distribution of responsibilities for the women's basketball staff. For example, the women's basketball staff member responsible for credentials, game operations, and approximately 30 other tasks had approximately eight men's basketball counterparts with whom she was in theory supposed to coordinate.[174]

Overall, the men's and women's basketball staffs operate in separate silos, and with one of those silos—men's basketball—institutionally prioritized over the other. This results in a dynamic where men's basketball makes decisions, women's basketball finds out about those decisions, and women's basketball must then choose whether to follow suit. As one NCAA leader put it, there is not much "let's sit together and talk about what we should do." This dynamic explains how significant disparities often go unnoticed within the NCAA—or at least until they become public at the tournaments, as was the case this past March.

4. Men's & Women's Basketball & Basketball Oversight Committees

The NCAA committees responsible for men's and women's Division I basketball have some of the same communication and coordination issues. There are four key committees responsible for Division I basketball: the Division I Men's and Women's Basketball Committees administer the national championships, and the Division I Men's and Women's Basketball Oversight Committees review recommendations from the Basketball Committees and are responsible for strategic matters relating to both regular-season and post-season basketball.[175]

Similar to the men's and women's basketball staffs, there is little communication between the Men's and Women's Basketball Committees, and no apparent sense of joint purpose. As one member of the Women's Basketball Committee, for example, explained: "In terms of formal or

[173] Men's and Women's Basketball Buddy List (2020-21).

[174] *Id.*

[175] Division I Women's Basketball Oversight Committee, NCAA (last visited July 21, 2021), https://www ncaa.org/governance/committees/division-i-women-s-basketball-oversight-committee; Division I Men's Basketball Oversight Committee, NCAA (last visited July 21, 2021), https://www ncaa.org/governance/committees/division-i-men-s-basketball-oversight-committee.

informal collaboration, there is none." This was echoed by a member of the Men's Basketball Committee, who similarly noted that "there's zero communication with the Women's Basketball Committee." An NCAA staff member confirmed that communication is "nonexistent" between the Men's and Women's Basketball Committees.

There is more communication between the Men's and Women's Basketball Oversight Committees. In the months leading up to this year's championships, the two committees met jointly approximately 10 times in order to discuss the unique circumstances of holding tournaments during a pandemic.[176] In the past, the two committees have had joint meetings when discrete issues arose that touched on both sports (*e.g.*, recruiting rules or credentialing coaches).[177] The two committees do not, however, have regular discussions to coordinate on strategic matters to ensure gender equity between men's and women's basketball generally.

The dynamic between and the relative effectiveness of the men's and women's committees are also influenced by the composition of each committee. The Men's Basketball Committee and Basketball Oversight Committee are largely composed of conference commissioners and athletic directors, whereas the Women's Basketball Committee and Basketball Oversight Committee have a greater proportion of associate commissioners, assistant athletic directors, and/or SWAs.[178] For example, as of July 2021, 10 members of the Men's Basketball Committee were either commissioners or athletic directors, in contrast to only three of the 10 members of the Women's Basketball Committee; similarly, eight of the 15 members of the Men's Basketball Oversight Committee were either commissioners or athletic directors, in contrast to only five of the 15 current members of the Women's Basketball Oversight Committee.[179] This difference in committee membership may be contributing to the lesser stature of women's basketball within the NCAA, as

[176] Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Mar. 3, 2021); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Jan. 25, 2021); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Dec. 14, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Nov. 16, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Nov. 19, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Oct. 29, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Oct. 23, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Oct. 5, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Sept. 11, 2020); Joint Report of the Division I Men's and Women's Basketball Oversight Committees (Sept. 1, 2020).

[177] *See, e.g.*, Agenda of Joint Meeting of the NCAA Division I Men's and Women's Basketball Oversight Committees (Apr. 17, 2019); Agenda of Joint Meeting of the NCAA Division I Men's and Women's Basketball Oversight Committees (Oct. 1, 2018); Agenda of Joint Meeting of the NCAA Division I Men's and Women's Basketball Oversight Committees (Apr. 16, 2018).

[178] A Senior Woman Administrator, or SWA, is the highest-ranking woman in an athletics department or conference office. The SWA designation was created 40 years ago, in 1981, the year the NCAA added women's championships, to "promote meaningful representation of women in the leadership and management of college sports." Senior Woman Administrators, NCAA (last visited July 21, 2021), https://www.ncaa.org/about/resources/inclusion/senior-woman-administrators. Some stakeholders expressed the view that it may be time to re-examine this designation.

[179]Division I Men's Basketball Committee, NCAA (last visited July 21, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1MBB; Division I Women's Basketball Committee, NCAA (last visited July 21, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1WBB; Division I Men's Basketball Oversight Committee Roster, NCAA (last visited July 21, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1MBBOVERSIGH; Division I Women's Basketball Oversight Committee Roster, NCAA (last visited July 21, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1WBBOVERSIGH.

the people with the most influence in college athletics are not necessarily the ones behind the strategic discussions and decisions that affect women's basketball. As one interviewee aptly put it, due to the lack of athletic directors and commissioners on the committees, women's basketball has "no juice to make change" within the Division I Council and the Board of Governors; when the committees try to "request changes, growth, and solutions," they often "fall flat."

In certain ways, the disparity in committee membership is self-perpetuating. Potential committee members are drawn to the men's basketball committees because of their greater prestige, and filling the committees with athletic directors and conferences commissioners maintains that prestige for future rounds of nominations. Indeed, the disparate compositions of the men's and women's committees have not gone unnoticed by the NCAA, which is now taking steps to rectify it. More specifically, during an April 2021 meeting regarding vacancies on the Men's Basketball Committee, the Council Coordination Committee formally recommended that "changes should be made to help ensure that the composition of committees for men's and women's sports (e.g., men's basketball and women's basketball) are similar in terms of the positions and responsibilities."[180] In addition, during a meeting of Division I conference commissioners in June 2021, the NCAA asked the conferences to prioritize nominating athletic directors and commissioners to the Women's Basketball Committee.

5. The Budget & the Budget Process

As discussed above, many of the differences experienced and observed at the championships stem from significant disparities between the men's and women's tournament budgets and spending. In 2019—the last year for which the NCAA held basketball championships and has final spending figures—the men's basketball tournament cost $53.2 million, and the women's basketball tournament cost $17.9 million.[181] The 2019 unaudited financials break down as follows:[182]

[180] NCAA Division I Council Coordination Committee: Summary of Actions and Key Informational Items (Apr. 15, 2021). When there is a vacancy on an NCAA committee, conferences are tasked with nominating individuals to fill the spot, and the NCAA Division I Nominating Committee then reviews the list of names and makes recommendations to the Council Coordination Committee who has final approval over an appointment.

[181] Comparison of Men's to Women's DI Basketball, FY 2019 and 2021 Actuals and Budget (Apr. 27, 2021); DI Basketball Pivoted Expenses (2017-18).

[182] Comparison of Men's to Women's DI Basketball, FY 2019 and 2021 Actuals and Budget (Apr. 27, 2021).

	Actuals - FY 2019		
	Men	Women	Difference
Basketball Direct Game Expense			
Facilities	$ 6,130,414	$ 700,076	$ 5,430,338
Ticket taxes/fees and credentials	$ 3,116,118	$ 48,638	$ 3,067,480
Honorariums and hosting settlements	$ 2,757,194	$ 421,398	$ 2,335,795
Personnel (includes contractors and consultants)	$ 3,360,150	$ 1,284,147	$ 2,076,002
Signage	$ 1,524,471	$ 87,760	$ 1,436,711
Equipment	$ 1,659,911	$ 311,726	$ 1,348,185
Media production, technology, and telecomm	$ 1,713,688	$ 488,910	$ 1,224,777
Other travel (includes staff travel)	$ 974,815	$ 111,274	$ 863,541
Hospitality and catering	$ 783,063	$ 244,289	$ 538,775
Apparel	$ 316,733	$ 59,342	$ 257,391
Officials	$ 750,454	$ 510,300	$ 240,154
Awards/mementos	$ 629,464	$ 406,828	$ 222,637
Promotion	$ 338,380	$ 374,402	$ (36,022)
Office and professional services	$ 27,483	$ 124,821	$ (97,338)
Game Expense Total	$ 24,082,339	$ 5,173,911	$ 18,908,428

	Actuals - FY 2019		
	Men	Women	Difference
Basketball Other Direct Expense			
Team travel	$ 9,404,705	$ 6,446,785	$ 2,957,919
Per diem and lodging costs	$ 6,189,663	$ 4,107,888	$ 2,081,775
Committee expense	$ 427,184	$ 262,264	$ 164,920
Total Direct Expenses	**$ 40,103,890**	**$ 15,990,848**	**$ 24,113,042**
Basketball Support Expense			
Fan Events, Promotion, and Presentation	$ 8,496,045	$ 949,777	$ 7,546,268
NCAA Marketing and Ticketing Expense	$ 651,759	$ 162,723	$ 489,035
Credit Card Fees	$ 707,218	$ 67,419	$ 639,799
NCAA Champs Functional Group Expenses	$ 714,833	$ 319,797	$ 395,036
Playing Rules and Officiating Improvement	$ 487,773	$ 417,367	$ 70,406
Insurance	$ 2,025,211	$ -	$ 2,025,211
Total Support Expenses	**$ 13,082,838**	**$ 1,917,083**	**$ 11,165,755**
TOTAL DISBURSEMENTS	**$ 53,186,729**	**$ 17,907,931**	**$ 35,278,798**

In 2021, the men's tournament costs are projected to be around $20 to $25 million more than the women's tournament.[183]

To be sure, gender equity does not require equal budgets, as a tournament with greater fan attendance, corporate sponsorship, and media attention, and one with all rounds hosted at neutral sites, naturally commands additional resources and support. However, the view that men's basketball is highly profitable and therefore worthy of increased investment has cultivated a culture within the NCAA in which men's basketball is not required to abide by many of the same budgetary constraints as women's basketball (or other sports). For example, the women's basketball staff and the Women's Basketball Oversight Committee have previously been tasked

[183] *See id.* These financial figures were presented to the Board of Governors in April 2021, following this year's Division I basketball championships. They include expenses that the NCAA paid itself, as well as those that host institutions paid to various vendors. Figures for the 2021 championships are projections, as the NCAA continues to collect invoices and make payments in connection with the tournaments. The 2021 financials will not be final until after the end of the fiscal year on August 31, 2021.

with making significant cuts to the women's basketball budget, decreasing the funding for Division I women's tournament travel, fan festivals, and operational costs. As one committee member noted, "The mandate was we need to cut a couple million dollars out of the women's basketball budget. . . . Someone asked is the men's championship doing a similar exercise. And [the answer] was of course not because they're making so much money." Another stakeholder explained that a couple of years ago, a group met within the NCAA with the goal of cutting championship expenses, and that NCAA senior leadership said that the Division I Men's Basketball Championship was "off the table" with respect to such cuts.

In general, the NCAA does not actively consider or monitor whether the differences between the men's and women's basketball budgets or spending are equitable. Rather, the championship budgets remain relatively stagnant from year to year, with championship staff having the opportunity either to request additional funds that would be allocated from an annual inflation-based increase or to move funds from one line item in the championship budget (*e.g.*, photography) to another (*e.g.*, mementos).[184] For both men's and women's basketball, the SVP of Basketball has the final approval of the yearly championship budgets, for which he consults with a member of the finance staff.[185] The SVP of Basketball has approved budget requests for both men's and women's basketball operations, but has also denied multiple requests from the women's basketball staff to increase the amount spent on Tourney Town (the fan festival at the women's tournament), and the concert during the Final Four weekend, even though prior budget cuts had already reduced the NCAA's spend on these two student-athlete and fan-facing events by more than $1 million.[186]

Because the NCAA's general practice is to maintain similar line items as compared to prior years (*e.g.*, allocating a similar amount for gifts and mementos as the year before), differences in particular line items can grow unchecked for many years. And while the SVP of Basketball has the authority to move funds between budget categories and between men's and women's basketball as he deems appropriate, the SVP has rarely done so.

[184] The NCAA's budget for all championships is based on a 10-year model for Division I set forth by the Chief Financial Officer, as approved by NCAA senior leadership. This 10-year plan provides high-level projections for Division I Distributions, Division I Championships and Programs, allocations and revenues for Divisions II and III, and association-wide expenses. Based on these 10-year projections, each year, the Board of Governors approves a proposed business plan, reviewed by several executive staff and committees, which determines how much each championship is allocated for that year. Based on this business plan, the annual budget for each championship covers all regular and anticipated expenses to plan and put on the championships and is subject to an annual growth rate based on inflation.

[185] If the SVP of Basketball decides not to grant a request for additional funds in the championship budget, he may instead submit a request for additional funds from a small "association-wide allocation." The association-wide allocation is a distinct budget allocation of which each championship and staff group can apply for a portion. In basketball, the championship staff may make a request to the SVP of Basketball for specific budgetary items, which may be funded through part of the association-wide allocation. The SVP, in turn, may elevate a request that he chooses not to fund through the championship budget to senior leadership, including the Chief Financial Officer and President, who, along with certain committees, conduct budget hearings and have the discretion to approve or deny the request. These association-wide requests are less frequent and issued more sparingly. In 2019, the NCAA awarded the women's basketball staff funds from the association-wide allocation to implement their Strategic Plan. 2019-20 Basketball Business Unit – Budget Submission Summary (2019).

[186] 2019-20 Basketball Business Unit – Budget Submission Summary (2019).

Overall, the NCAA does not have appropriate measures in place for monitoring gender equity in the budget and spending process. The men's and women's basketball staffs do not coordinate on planning the budget or on what their total expenses are for each line item, and the SVP of Basketball does not share—or discuss—the budgets for men's and women's basketball between the two staffs.[187] As a result, the basketball staffs cannot plan to have similar spending, or identify issues created from differences in spending, while they are planning the men's and women's championships. Although aware of both budgets, the SVP of Basketball historically has not run a comparison between them or focused on the disparities between the men's and women's basketball budgets until the NCAA ran comparisons following the 2021 tournaments.

In 2019, the NCAA formed the Division I Championships Finance Review Working Group, which was tasked with reviewing legislation and policy governing championship resources.[188] The NCAA Board of Directors, with input from the Division I Council, approved seven guiding principles for the review, including one on gender equity: "NCAA championships will reflect the NCAA's commitment to diversity and inclusion and student-athlete gender equity."[189] As a result, many of the Working Group's recommendations focused on policies that strengthen gender equity among student-athletes, including express directives that the NCAA adopt gender equity principles when considering the administration and funding of the championships.[190] The Division I Finance Committee adopted the Working Group's recommendations incorporating gender equity as a key consideration for certain decisions, such as on bracket and field size, and those recommendations are planned to be adopted in August 2021. As part of this process, the NCAA also began to develop a numerical formula intended to assist in prioritizing spending requests across the championships, but that process has been put on hold pending this external gender equity review. While the formula under consideration considers gender equity as an express element, if the NCAA chooses to move forward with such a formula, the gender equity factor would need to be appropriately weighted to ensure meaningful changes in NCAA practice.[191]

6. Internal Gender Equity Controls

As evidenced by the above discussions of inequities in NCAA staffing and budgets, no one at the NCAA is currently tasked with regularly reviewing budgets, staffing, or any particular aspects of the Division I Men's and Women's Basketball Championships to ensure that they are equitable from a gender perspective. To be sure, the NCAA has various offices and committees

[187] While the NCAA's budget software system does permit men's and women's basketball to review each other's materials, those materials only show a dollar amount associated with a general spending category, and staff are not instructed to review those materials or to coordinate spending with each other.

[188] Report of the NCAA Division I Championships Finance Review Working Group at 4 (Oct. 7, 2020).

[189] *Id.* at 5.

[190] *Id.* at 12, 18-19.

[191] Championships Investment Evaluation and Prioritization Act II Presentation (2021).

tasked with working on issues of diversity and inclusion. However, each is largely focused on promoting diversity and inclusion externally—that is, within the NCAA membership institutions—rather than internally. For example, the NCAA Office of Inclusion is tasked with educating the membership on Title IX and other diversity, equity, and inclusion matters; planning diversity and inclusion programming for the membership, including an annual NCAA Inclusion Forum; and helping to manage the NCAA's diversity and inclusion committees and task forces.[192] The Office has only six full-time staff members, but serves more than 1,100 colleges, universities, and conferences.[193] The NCAA also has four committees that focus on diversity and inclusion, but none is tasked with ensuring that there is gender equity in NCAA championships or Division I basketball specifically. As one NCAA staff member put it, "Who is really responsible for [gender equity]? That's an overall point that needs to be addressed in a meaningful way."[194]

7. Recommendations

Recommendation 1.1

Change the leadership structure of Division I basketball to prioritize gender equity and coordination between the men's and women's tournaments.

The leadership of men's and women's basketball should be at equivalent levels of seniority within the organization and should be tasked with working together to coordinate a joint strategy to maximize the value of both championships while ensuring gender equity in the student-athlete experience. The leadership of men's basketball should no longer have responsibility for the broadcast or corporate partnership arrangements for all sports, as explained in Recommendation 2.4.

Both men's and women's basketball and the leadership of other championships should report up to a Head of Championships who is responsible for ensuring gender equity across championships. In particular, the Head of Championships would be responsible for reviewing budgets and participation opportunities for gender disparities, and for ensuring that items that impact the student-athlete experience, which are detailed in Recommendation 3.2, are equitable.

[192] Office of Inclusion, NCAA (last visited July 21, 2021), https://www.ncaa.org/about/resources/inclusion; Gender Equity and Title IX, NCAA (last visited July 21, 2021), https://www ncaa.org/about/resources/inclusion/gender-equity-and-title-ix; 2021 Inclusion Forum, NCAA (last visited July 21, 2021), https://www ncaa.org/about/resources/events/2021-ncaa-inclusion-forum.

[193] Office of Inclusion, NCAA (last visited July 21, 2021), https://www ncaa.org/about/resources/inclusion.

[194] In late March 2021, the NCAA was asked by members of the U.S. House of Representatives to describe the processes that the NCAA has in place to ensure championship competitions adhere to the gender equity principles of Title IX. The NCAA responded that it required those bidding for NCAA championships to provide assurances that anyone associated with an NCAA event will be treated with fairness and respect, but was otherwise unable to identify processes in place to ensure that the women's and men's championships are equitable. *See* Letter from President Mark Emmert to Honorable Mikie Sherrill, et al., U.S. House of Representatives (Apr. 2, 2021).

When selecting a Head of Championships, a key qualification for the position should be a demonstrated commitment to gender equity.

These changes are designed to improve coordination and communication between the heads of men's and women's basketball, eliminate the current perception that women's basketball reports up through men's basketball, and ensure the regular consideration of gender equity across NCAA championships, with equity in the student-athlete experience as the guidepost. Separating out the business functions from the championship management structure will also help ensure that managers of championships are maintaining a primary focus on how to provide the best student-athlete experience possible. *See* Recommendation 2.4 below, concerning the creation of a new senior position of Chief Business Officer.

Recommendation 1.2

Before the next budget cycle, conduct a "zero-based" budget for Division I men's and women's basketball to ensure that any gender differences are necessary, appropriate, and equitable.

To reset the budgets for men's and women's basketball based on a detailed assessment of whether discrepancies in the budgets are justifiable and appropriate in light of differences in the structure of the championships, the NCAA should create a "zero-based" budget before the next budget cycle. This process involves starting from a "zero base" and adding back each budget line item for men's and women's basketball, as opposed to the annual NCAA process of adopting the previous year's budget as a base. This will enable the NCAA leadership of championships, men's and women's basketball, and the financial office to work together not only on ensuring equitable budgets, but in creating efficiencies across budgets and maximizing the impact of spending.

After this "zero-based" budget has been created, the heads of men's and women's basketball, under the oversight of the Head of Championships, should each year work together to confirm that those line item expenses that touch on the student-athlete experience are equitable and that any disparities in budgetary line items continue to be reasonable. This process will require men's and women's basketball to openly share budgetary information with one another and to collaborate on the strategic and efficient use of basketball funds.

Recommendation 1.3

Develop equity in staffing for Division I men's and women's basketball.

In order to enable the women's basketball staff to provide female student-athletes with a championship experience that is equitable to their male counterparts, the NCAA should make changes to ensure that the staffing for the tournaments is equitable. The NCAA could adjust staffing in one of two ways. First, the NCAA could increase the total number of staff and/or

contractors in women's basketball to ensure that equitable time is able to be spent on those tasks that impact the student-athlete experience, as outlined in Recommendation 3.2. Alternatively, the NCAA could require the same individuals to handle specific roles for both men's and women's basketball. For example, the NCAA could choose to have a single employee order swag and gifts for both the men's and women's tournaments. Not only is having the same employee perform certain roles for both women's and men's basketball likely to be more efficient; it may also help to avoid unintended disparities between the tournaments. Moreover, some overlap in the two staffs is likely to promote a feeling of joint purpose and a sense that they are a unified team. Variables such as the fact that staff members often have multiple responsibilities that do not always match up with their counterparts on the other staff, that the size and structure of the men's tournament currently add certain responsibilities for the men's staff, and that contractors often supplement full-time staff, should be considered when analyzing how best to make the staffs more equitable.

Recommendation 1.4

Establish regular communications between the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

To facilitate joint decision making and management and ensure gender equity in the Division I basketball tournaments, the chairs of the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees should regularly communicate with their counterparts in order to coordinate on broader strategic decisions made by the Committees. Each Committee separately, and the Men's and Women's Committees together, should regularly consider and discuss how best to ensure that the student-athletes have equitable championship experiences.

To further facilitate coordination, the NCAA should also consider some cross-pollination between the members of the Division I Men's and Women's Basketball and Basketball Oversight Committees. For example, the NCAA could require that at least one seat on the Men's Basketball and Basketball Oversight Committees be occupied by a sitting member of the Women's Basketball and Basketball Oversight Committees, and vice versa. Having individuals who know about the planning of both championships will be particularly vital if the men's and women's Final Four events are held in one city, as outlined in Recommendation 3.1. Alternatively, there could be joint committee meetings held on a more regular basis.

KHF also supports recent efforts by the NCAA to request that conferences put forward candidates of equal seniority for openings on both the Men's and Women's Basketball and Basketball Oversight Committees, thereby striving to make the composition of the Committees roughly similar in seniority.

Finally, the same four Committees should coordinate on their Committee budgets to ensure that their own spending is equitable and that any differences are reasonable and appropriate.

Recommendation 1.5

Perform a real-time gender equity audit of the Division I Men's and Women's Basketball Championships as they are being planned and executed each year.

Starting with the 2022 championships, the NCAA should develop and implement a real-time gender equity review protocol for the Division I Men's and Women's Basketball Championships, starting from the earliest possible point in the planning process and continuing through the entire planning cycle (including the budget process) and execution of the championships. The review protocol should include a specific process for resolving in real-time any gender equity issues that are identified as part of the review, including how and to whom issues will be elevated for resolution. The review protocol should be developed and implemented by NCAA staff with expertise in Title IX and gender equity issues generally, *see* Recommendation 1.10 below, in consultation with staff responsible for the men's and women's basketball championships.

Recommendation 1.6

Prepare an annual report on the results of the real-time gender equity audit, including issues identified, how those issues were resolved, and lessons learned.

Each year, directly following the championships, the NCAA should prepare a standardized report of the results of the real-time gender equity review for the Division I Men's and Women's Basketball Championships that took place that year. The report should be prepared by the staff with expertise in Title IX and gender equity issues who performed the review. The report should go to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Men's and Women's Basketball and Basketball Oversight Committees, and the NCAA President and Senior Management Team.

Recommendation 1.7

Conduct an external gender equity assessment of the Division I Men's and Women's Basketball Championships in five years.

To ensure that gender equity is being achieved, and similar to the periodic assessments in which the Division I member institutions regularly engage, the NCAA should conduct a gender equity assessment of the Division I Men's and Women's Basketball Championships in five years. That assessment should be led by an external auditor with expertise in Title IX compliance in collegiate athletics and gender equity issues generally. The external auditor should provide its report to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Men's and Women's Basketball and Basketball Oversight Committees, and the NCAA President and Senior Management Team, and an executive summary should be made publicly available on the NCAA's website. The external audit should include an assessment of the efficacy of the measures prescribed in Recommendations 1.5, 1.6, and 1.8, and a recommendation for their continuation or alteration as appropriate. Depending on the results of this five-year external audit, another external audit should be conducted periodically thereafter.

Recommendation 1.8

Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.

Beginning no later than fall 2022, the NCAA should:

- Develop a gender equity impact statement template;

- Identify those actions being taken within the NCAA that are connected to the Division I Men's and Women's Basketball Championships, but not part of the general annual planning process for those championships that are to be reviewed as part of the real-time audit process in Recommendation 1.5 (such as negotiating broadcast and media rights contracts, corporate partnership changes, and legislative changes), that would require the submission of a gender equity impact statement; and

- Establish a process for the submission, review, and sign-off of gender equity impact statements, including a specific process for how and to whom gender equity impacts that are identified, if any, will be elevated for resolution.

The gender equity impact statement and associated protocol should be developed, and the statements themselves reviewed, by NCAA staff with expertise in Title IX and gender equity issues. *See* Recommendation 1.10 below. Used in a variety of other settings, gender equity impact

statements seek to ensure that decisionmakers identify possible negative consequences of a proposed action on gender equity and preemptively develop mitigation strategies.

Recommendation 1.9

Evaluate and reward performance for contributions to gender equity.

While protocols should be put into place to help ensure that there is gender equity in the student-athlete championship experience, *see* Recommendations 1.5-1.8 above and Recommendation 3.2 below, actually achieving that gender equity goal should be considered part of everyone's job at the NCAA. Achieving gender equity is the responsibility of the NCAA leadership, and working towards gender equity goals is something that should be expected, evaluated, and rewarded as part of the NCAA's internal performance review process for all NCAA leadership and staff.

Recommendation 1.10

Increase NCAA staff with expertise in Title IX and gender equity.

To implement the recommendations contained in this report, additional full-time employees should be added (including in the Office of Inclusion) to assist with performing these tasks. These individuals should have experience with Title IX compliance as it relates to collegiate athletics and expertise in gender equity issues generally.

THE NCAA'S LONG-TERM MEDIA AGREEMENTS

The NCAA has decades-long relationships with two media partners: (1) CBS/Turner; and (2) ESPN. Both are valued partners who, among other things, help generate financial stability for the NCAA and its membership. The NCAA has entered into several long-term agreements with CBS/Turner, pursuant to which CBS/Turner pays the NCAA billions of dollars over time in exchange for the exclusive right to broadcast the Division I Men's Basketball Championship in the United States and sell and manage the NCAA's marketing rights as part of the NCAA's Corporate Partner Program.[195] ESPN pays a substantially lower fee to the NCAA for the broadcast rights to 29 other championships, including Division I women's basketball.[196]

The NCAA's goal has long been to maximize the revenue produced by the CBS/Turner contract to ensure the long-term sustainability of the NCAA and the predictable and significant distribution of funds to its membership to help support their athletic programs. To achieve this goal, the NCAA has entered into agreements structured to generate corporate sponsorship of, and produce substantial revenue in connection with, Division I men's basketball alone—without regard for the significant hurdles that those same agreements put in place with respect to the sponsorship of other NCAA championships, including women's basketball. The result is a system that devalues women's basketball (and other NCAA sports) within the NCAA and significantly undervalues and underutilizes the Division I Women's Basketball Championship (and likely other NCAA championships) as a revenue-producing property. This, in turn, has had a negative impact both on the student-athlete experience and on the growth of women's basketball.

1. The History & Structure of the Media Agreements

The NCAA's broadcasting relationships with ESPN and CBS/Turner are made up of multiple agreements governing the media and marketing rights to all 90 NCAA championships.

CBS/Turner. Since 1982, CBS and later CBS/Turner have contracted with the NCAA to broadcast the Division I Men's Basketball Championship. The NCAA most recently extended its relationship with CBS/Turner in 2016, entering into a new Multi-Media Agreement, which is set to expire in August 2032.[197] Pursuant to the Multi-Media Agreement, CBS/Turner must pay the

[195] *See generally* Multi-Media Agreement between CBS, Turner, and the NCAA (Mar. 14, 2016) ("2016 CBS/Turner Multi-Media Agreement"); Multi-Media Agreement between CBS, Turner, and the NCAA (Apr. 22, 2010) ("2010 CBS/Turner Multi-Media Agreement").

[196] *See generally* Multi-Media Agreement between ESPN, Inc. and the NCAA (Dec. 15, 2011) ("ESPN Multi-Media Agreement"). While the ESPN Multi-Media Agreement signed in 2011 only covered the broadcast rights for 24 championships, ESPN has since agreed to air an additional 5 championships through supplemental agreements with the NCAA.

[197] 2016 CBS/Turner Multi-Media Agreement § 1(eee) & Ex. B.

NCAA a yearly, fixed rights fee, which currently sits at $850 million and increases each year, with the contract reaching a rights fee of $1.165 billion by 2032.[198]

In exchange for that annual payment, CBS/Turner has the obligation to broadcast all 67 games of the Division I Men's Basketball Championship in the United States, and to manage, solicit, and contract with corporate sponsors through the Corporate Partner Program.[199] While the earliest iteration of the contract gave CBS the non-exclusive right to sell sponsorship opportunities for the men's tournament, the most recent Multi-Media Agreement, like its immediate predecessors, grants CBS/Turner the exclusive right to sell sponsorship opportunities for all 90 championships, including women's basketball. Through the Corporate Partner Program, CBS/Turner may contract with corporate sponsors and grant them both marketing and media rights to the NCAA championships.[200] The marketing rights give the sponsor the exclusive right, within its particular product category,[201] to use the NCAA's brand, including trademarks, taglines, tickets, and other marketing rights for all 90 championships.[202] The media rights, which are included in every sponsorship agreement, give sponsors the right to air advertising and programming on the CBS/Turner networks that air the men's—but not the women's—tournament games.

The NCAA and CBS/Turner have agreed to keep the Corporate Partner Program small. Today, there are just 18 sponsors that occupy two distinct tiers, and CBS/Turner may engage at most 30 sponsors total.[203] The first tier—called "Champions" —contains only three sponsors: AT&T, Capital One, and Coca-Cola. It requires a significantly higher buy-in and includes substantial rights in connection with various NCAA championships. The second tier—called "Partners"—contains 15 sponsors: Aflac, General Motors-Buick, Buffalo Wild Wings, Geico, Great Clips, Hershey's/Reese's, Invesco, Lowe's, Marriott Bonvoy, Mondelez/Nabisco, Nissan, Pizza Hut, Uber/UberEats, Unilever, and Wendy's.[204] The second tier similarly requires payment of a substantial (although not as substantial as the Champions) annual fee to CBS/Turner in exchange for marketing rights to the NCAA and its 90 championships and media rights to the

[198] The royalty fees through August 31, 2024, are set by the 2010 Multi-Media Agreement, while the royalty fees from September 1, 2024, to August 31, 2032, are governed by the 2016 Multi-Media Agreement. *See* 2010 CBS/Turner Multi-Media Agreement, Ex. B; 2016 CBS/Turner Multi-Media Agreement, Ex. B. The royalties for the former timeframe are supplemented by small additional pre-term payments pursuant to the 2016 Multi-Media Agreement. *See* 2016 CBS/Turner Multi-Media Agreement, Ex. B. In the 2026-27 contract year, CBS/Turner and the NCAA will meet to discuss opportunities to increase revenue in the contractual relationship. *See* 2016 CBS/Turner Multi-Media Agreement § 16.1(d).

[199] 2010 CBS/Turner Multi-Media Agreement §§ 1(c), 5.1, 10; 2016 CBS/Turner Multi-Media Agreement §§ 1(c), 5.1, 10.

[200] 2010 CBS/Turner Multi-Media Agreement § 10; 2016 CBS/Turner Multi-Media Agreement § 10.

[201] The product category refers to the type of product the sponsor sells. No two Corporate Partners can occupy the same product category. For example, Lowe's has the exclusive marketing rights for the NCAA in the "home improvement" category, while Marriott has the exclusive marketing rights for the NCAA in the "lodging and accommodation for the general public for any type of travel" category.

[202] 2016 CBS/Turner Multi-Media Agreement § 10; *see also, e.g.*, NCAA Corporate Champion Agreement between AT&T Services, Inc., Turner, and CBS § 1.47.1 (Sept. 1, 2017).

[203] 2016 CBS/Turner Multi-Media Agreement § 10.2(b).

[204] NCAA Corporate Champions and Partners, NCAA (Feb. 12, 2021), https://www ncaa.com/news/ncaa/article/2011-02-25/corporate-champions-and-partners; *see also* Corporate Champion and Partners Agreements with CBS/Turner.

Division I Men's Basketball Championship. While Corporate Champions and Partners purchase the exclusive right to market their products at all championships, they must separately decide whether to pay to run advertisements at each championship beyond Division I men's basketball. The NCAA maintains a list of potential ways a sponsor can support the NCAA's championships while simultaneously promoting the company's brand, known as "activations" (*e.g.*, Unilever providing its products for student-athletes in the locker rooms),[205] but it does not internally track the annual activations in which its Champions and Partners have engaged. As a result, there is currently no precise way to measure or compare the degree of sponsor activation at the men's and women's tournaments.

In addition to the Multi-Media Agreement, the NCAA and CBS/Turner are parties to two other agreements with notable implications for the men's and women's basketball tournaments. First, the NCAA contracts with CBS/Turner to operate the fan festival at the Division I Men's Basketball Championship and a few other NCAA championships, including by selecting vendors, hiring event staff, making financial and operational decisions, and designing and developing the events.[206] Although that agreement does not require CBS/Turner to provide the same services at the fan festival at the women's basketball tournament, it does grant CBS/Turner the sponsorship and media rights at *both* the men's and women's basketball fan festivals.[207]

Second, the NCAA and CBS/Turner have entered into a Digital Rights Agreement pursuant to which CBS/Turner creates and maintains several digital media platforms for the NCAA, including (1) NCAA.com, which covers all 90 championships, and (2) the March Madness Live app, which covers only Division I men's basketball.[208]

ESPN. Since 1996, ESPN has agreed to broadcast the Division I Women's Basketball Championship, along with, at present, 28 other NCAA championships. The current broadcast agreement grants ESPN and its subsidiary and sister networks (ESPN1, ESPN2, ESPN+, ESPNU, and/or ABC) the right to air these 29 championships, as well as broadcast rights to the Division I men's basketball NIT and the international broadcast rights for the Division I Men's Basketball Championship.[209]

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[205] NCAA Corporate Champions and Partners Activation Opportunity Playbooks, 2018-20; Spreadsheet from Corporate Relations Staff Member of Champions and Partners Activations from 2018-19.

[206] *See* Letter Agreement between CBS/Turner and the NCAA regarding the NCAA Fan Festivals (Mar. 14, 2016).

[207] *Id.* § 2(A).

[208] *See generally* Digital Rights Agreement between Turner and the NCAA (Aug. 23, 2010) ("Digital Rights Agreement"); Amendment to Digital Rights Agreement (Mar. 14, 2016).

[209] ESPN Multi-Media Agreement §§ 1(e), 2.1, 3.1, 4.1. The championships that ESPN agrees to broadcast are: Division I FCS football; Division II football; Division III football; Division I women's volleyball; Division I men's soccer; Division I women's soccer; Division I women's basketball; Division I men's and women's indoor track and field; Division I men's and women's outdoor track and field; Division I women's swimming and diving; Division I men's swimming and diving; Division I wrestling; Division I men's ice hockey; women's ice hockey; women's gymnastics; men's and women's fencing; men's volleyball; Division I men's lacrosse; Division I women's lacrosse; Division I men's and women's cross country; Division I softball; Division I baseball; field hockey; beach volleyball; and women's bowling. *See id.*, Ex. A; Agreements between ESPN and the NCAA regarding Women's Ice Hockey, Field Hockey, Beach Volleyball, and Men's and Women's Cross Country.

The current ESPN Multi-Media Agreement was entered into in 2011 and is now set to expire in 2024. Pursuant to this Agreement, ESPN pays the NCAA an annual rights fee of approximately $34 million (on average) over the life of the contract in exchange for the broadcast rights—or about 4.5% of the value of the rights fee that the NCAA receives from CBS/Turner over the same time period; in 2021, ESPN is set to pay the NCAA approximately $41.8 million.[210] Unlike CBS/Turner, ESPN does not have the right to sell any corporate sponsorships, does not play a role in creating or managing the fan festivals, and is not required to promote on ESPN's networks or its digital platforms the men's tournament aired on CBS/Turner.

2. Effects on Gender Equity

Although it is undoubtedly true that the NCAA's broadcast relationships have been highly lucrative for the NCAA, the way in which these relationships are structured has disadvantaged the women's basketball tournament in the past and is not geared toward growing the women's basketball tournament in the future.

The contracts prioritize support for men's basketball to the exclusion of women's basketball (and other sports). The CBS/Turner Multi-Media Agreement prioritizes support for men's basketball in two key and very basic ways. First, while CBS/Turner controls the sponsorship rights for all NCAA championships (including women's basketball), it has the broadcast rights only for the Division I Men's Basketball Championship, with limited obligations to "cross-promote" the women's tournament.[211] CBS/Turner is therefore incentivized to focus its efforts on developing sponsorships for men's basketball, not for women's basketball (or any other sport, for that matter), so as to bring in the greatest amount of money possible for CBS/Turner.[212] This is borne out in the NCAA Corporate Champion and Partner contracts, each of which is between the corporate sponsor and CBS/Turner (as approved by the NCAA), and each of which requires a corporate partner to spend a significant percentage of its total contract fee on advertisements and programming during the men's tournament broadcast on CBS/Turner's networks and mobile apps.[213] As independent media expert Ed Desser explains in his accompanying report, CBS/Turner wants to maximize the spending of the Champions and Partners on programming within CBS/Turner's control: "they don't actually want those sponsors to *spend anything* on the ESPN presentation of the" women's tournament "if it results in any decrease in buying [the men's basketball] inventory or other CBS/Turner-owned inventory."[214] Directing corporate sponsor support and advertising buys to the men's tournament in this way leaves the women's basketball

[210] ESPN Multi-Media Agreement § 6.1.

[211] 2016 CBS/Turner Multi-Media Agreement § 9.5(g).

[212] Desser Report § 6(4).

[213] *See, e.g.*, NCAA Corporate Partner Agreement between CBS/Turner and Geico (Jan. 1, 2019).

[214] Desser Report § 6(4) (emphasis in original).

tournament (and other NCAA championships) without the sponsorship support it might otherwise garner if the media contracts were structured differently.

Second, and equally as important, because the marketing rights for men's basketball are, for the foreseeable future, significantly more costly than the marketing rights for other NCAA championships, and because each of the Champion and Partner agreements include both marketing and certain media rights for men's basketball, bundling the marketing rights for all sports together with the media rights for men's basketball (as the CBS/Turner Multi-Media Agreement does) makes sponsorship of any NCAA championship prohibitively expensive to many, if not most, potential corporate partners.[215] Put another way, at present, a sponsor must either go "all-in" on *all* NCAA championships—including the costly sponsorship of, and media rights to, the Division I Men's Basketball Tournament—or not participate at all. There is no space for sponsors who might be interested in sponsoring women's basketball, but who do not want or cannot afford to buy the required advertising time to support men's basketball. As Desser has observed, the substantial cost of buy-in to the NCAA Corporate Partner Program "places a very high practical financial hurdle in front of those that might be interested in supporting" the women's tournament or other championships "because of the significant mandated advertising spend CBS/Turner insist upon to support the" men's tournament.[216]

In addition, even corporate sponsors who do buy into the Corporate Partner Program must separately purchase airtime on ESPN if they want to run advertisements as an NCAA sponsor during the women's basketball tournament. And, as explained above, CBS/Turner has no reason to encourage them to do so. Requiring a corporate sponsor to negotiate with—and pay—both CBS/Turner and ESPN to provide similar support to the women's championship as to the men's significantly disincentivizes the sponsors from doing so, even where they are interested in supporting the championships in equitable ways.[217]

This structure unnecessarily places women's basketball at a distinct disadvantage from a marketing and sponsorship perspective, which in turn perpetuates the view that women's basketball is a less appealing investment. By depriving women's basketball of sponsorship opportunities it might otherwise have if these agreements were structured differently, the CBS/Turner Multi-Media Agreement contributes to the narrative that women's basketball is a supposed revenue loser, and that men's basketball needs to be prioritized so that it can maximize revenue for the benefit of all NCAA sports. This narrative has long been used by many in the NCAA and its membership to justify unequal investment in men's basketball as compared to women's basketball, leaving the growth potential of women's basketball untapped.

[215] *Id.* § 6(2).

[216] *Id.*

[217] As noted above, because the NCAA does not track the activations in which its sponsors have engaged, there is no complete record demonstrating which Champions and Partners engage at the men's basketball tournament as compared to the women's tournament or other championships, and at what level. This makes it impossible as a practical matter to compare sponsorship activations between the men's and women's basketball championships, disincentivizing both the NCAA and its sponsors from promoting gender equity.

The contracts have a direct and inequitable impact on the student-athlete experience. The involvement of corporate sponsors and the synergy between the corporate sponsors and CBS/Turner make a significant difference in the look and feel of the championships, including the production quality of the events and their television broadcasts, the size and production quality of the fan festivals and other public-facing events, and advertising both in-person at the venues and during the television broadcasts. For example, CBS/Turner, as well as the NCAA's Champions and Partners, fund a massive and expensive concert at the men's tournament (this year, Miley Cyrus, which was aired on CBS, and in past years, drawing names such as Katy Perry, Rihanna, and Bruce Springsteen),[218] whereas the women's tournament has historically attracted fewer headline performers, if any, at a concert that is substantially smaller in size and budget.

Student-athletes and their families and fans notice these differences. The men's tournament comes across as "so exciting and so big," appearing as if men's basketball is "the *real* basketball," whereas the women's tournament broadcast is all about "calling plays and commenting on the game itself." Student-athletes commented that when they found out that the men's tournament had a Miley Cyrus concert, "[i]t was extremely upsetting," even though they were familiar with the fact that the corporate sponsors disproportionately supported the men's tournament as compared to the women's tournament. One student-athlete explained that "there should be some sort of way to ask these big corporations to give money to the women's tournament as well." Other stakeholders who have long-term experience attending both tournaments recognized the impact of the CBS/Turner relationship and its skewed incentives on the student-athlete experience at the women's tournament. One commissioner explained that under the current structure, when sponsors "buy rights to all championships and only choose to activate at the men's [tournament], everyone else is screwed."

What's more, as CBS/Turner broadcasts the men's games, it promotes the other events that it manages, including the fan festival and the concert. Because ESPN does not manage the women's fan festival or other fan events, it is not similarly incentivized to promote these events. For student-athletes and fans watching the tournaments on television, they see on CBS a coherent, coordinated broadcast, with expensive ads often featuring celebrities and famous athletes (Capital One with Samuel L. Jackson, Spike Lee, and Charles Barkley),[219] and with programming highlighting the student-athletes playing in the men's tournament. On ESPN, by contrast, the advertising content is often more typical of any sports broadcast, with some of the same ads playing, as one student-athlete put it, "over and over from day one." Our media expert has described this disparity in the relevant advertising as "discordant."[220]

The NCAA's treatment of revenue from these contracts skews the conversation about which sports generate revenue. Within the NCAA, no portion of the significant CBS/Turner rights

[218] Daniel Kreps, *Watch Miley Cyrus Cover Queen Classics at NCAA Final Four Concert*, Rolling Stone (Apr. 4, 2021), https://www rollingstone.com/music/music-news/miley-cyrus-cover-queen-ncaa-final-four-concert-1150947/.

[219] Desser Report § 6(2).

[220] *Id.*

fee is credited to any other championship besides Division I men's basketball. The NCAA's website itself, in explaining to the public "Where Does The Money Go," credits "Division I Men's Basketball Championship television and marketing rights" with bringing in $867.5 million for fiscal year 2018-19—approximately the rights fee from the CBS/Turner Multi-Media Agreement.[221] This treatment ignores the fact that the Corporate Partner Program in the Multi-Media Agreement sells the exclusive right to use and profit off of the NCAA's brand and logo in connection with *all* 90 championships, not just men's basketball. While the amount that Champions and Partners spend at championships other than men's basketball is admittedly small,[222] the presumption that all of the revenue from the CBS/Turner agreement is attributable to the Division I men's tournament feeds into the narrative that women's basketball is not and can never be revenue-generating.

The NCAA uses the hefty rights fee from CBS/Turner and the presumption that men's basketball is solely responsible for all of that revenue to justify treating men's basketball inequitably. For example, shortly after this year's championship, the NCAA released background information to the press that ultimately shaped news reporting around the differences between the two championships' spending. That background information furthered the narrative that women's basketball "lost $2.8 million" in 2019, which it described as the "largest loss of any NCAA championship" that year.[223] The supposed $2.8 million loss, however, appears to be based on a calculation of revenue that attributed all revenue from the CBS/Turner contract to men's basketball alone.[224]

CBS/Turner owns and operates the March Madness Live app, which does not include coverage or information about women's basketball. Pursuant to the CBS/Turner Multi-Media Agreement and the Digital Rights Agreement, CBS/Turner has developed and maintains the March Madness Live app, which tracks coverage of the Division I Men's Basketball Championship only.[225] The app, presented by NCAA Corporate Champions Coca-Cola and CapitalOne and NCAA Corporate Partner Buick, is well-developed and includes, among other things, stories about the teams, clips from the games, scores, and the ability to enter into the March Madness Bracket Challenge (sponsored by NCAA Corporate Champion Capital One) and to track the Official Bracket (a different feature, presented by NCAA Corporate Partner Reese's).

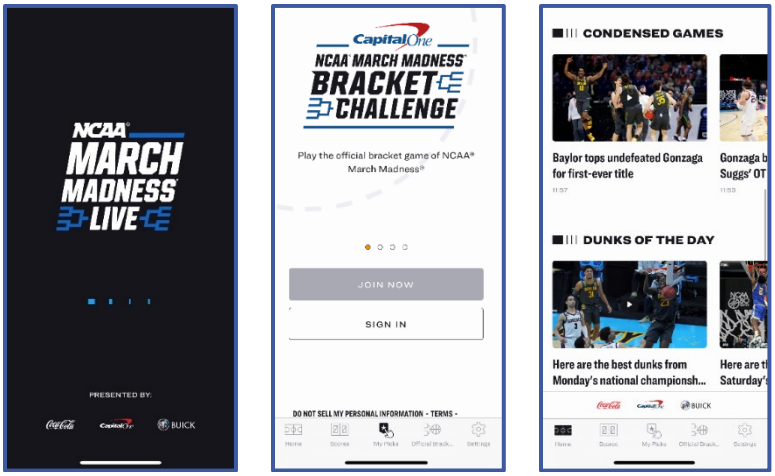
[221] Where Does The Money Go, NCAA (last visited July 21, 2021), https://www.ncaa.org/about/where-does-money-go.

[222] Desser Report § 6(5). While Desser considered the amounts "earmarked for an NCAA Championship other than the" Division I Men's Basketball Championship, *id.*, Champions and Partners may—and often do—spend additional activation dollars for other promotions on top of those described in their contracts with CBS/Turner.

[223] *See, e.g.*, Heather Dinich, *NCAA Budget for Men's Basketball Tournament Almost Twice as Much as Women's Budget*, ESPN (Mar. 26, 2021), https://www.espn.com/mens-college-basketball/story/_/id/31141363/ncaa-budget-men-basketball-tournament-almost-twice-much-women-budget.

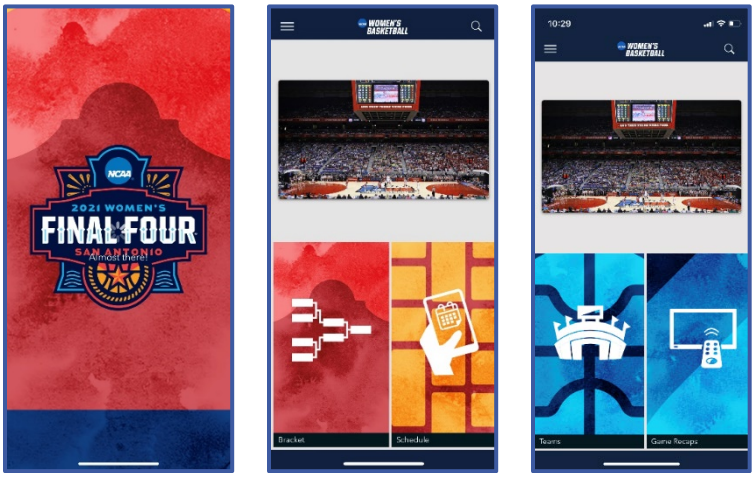
[224] *Id.*

[225] 2016 CBS/Turner Multi-Media Agreement § 5.5; Digital Rights Agreement § 2.



March Madness Live App[226]

That women's basketball is not covered on the March Madness Live app reinforces the primacy of men's basketball; women's basketball players reported feeling confused and upset to find that the ostensibly gender-less March Madness Live app excluded them. In addition, there is no equivalent digital coverage for the women's championship. The only mobile app for the women's tournament is the NCAA DI WBB app, which is developed and managed by the NCAA digital team and is meant to be a digital fan guide. The app, which has no corporate sponsor, has limited clips of the games and no news articles. Rather, it is designed to enhance the fan experience for those attending the event, informing fans where certain events are being held on site, how to purchase merchandise and tickets, and about health and safety information.



NCAA DI WBB App[227]

[226] Screenshots of March Madness Live App.

[227] Screenshots of NCAA DI WBB App.

The NCAA DI WBB app is not tied to the broadcaster of the Division I Women's Basketball Championship, and thus it cannot stream games live unless redirected to an ESPN app (to which it links on a sub-page of the mobile app). Moreover, unlike the dozens of CBS/Turner employees who work on the March Madness Live app and other digital platforms, the NCAA digital staff includes at most four full-time employees, three contractors, and one full-time post graduate intern who work on a total of six apps and all social media accounts, four of whom work on the NCAA DI WBB app.

ESPN does not close the gap in digital coverage of women's basketball. While ESPN distributes the championship games that it broadcasts on its digital platforms (*i.e.*, ESPN's website and ESPN's mobile app), it does not (and is not required to) maintain a separate NCAA website like www.NCAA.com (which is developed and managed by CBS/Turner) and does not create or manage any mobile apps specific to women's basketball like March Madness Live. Instead, fans can access individual pages and information for each NCAA championship to which ESPN has rights on ESPN's general mobile app (called simply "ESPN") or through the main page of ESPN's website (www.ESPN.com).

In addition to the mobile apps that fans can download, the NCAA maintains social media accounts for each of its championships; Division I women's basketball is @ncaawbb on Twitter, for example. These social media accounts on Twitter, Facebook, Instagram, SnapChat, YouTube, and TikTok do not currently contain advertisements from Champions or Partners.

3. The True Value of the Division I Women's Basketball Championship Is Not Reflected in the Contracts

The Division I Women's Basketball Championship is "one of the most valuable U.S. sports media properties" around, according to the team of sports media and marketing experts led by Ed Desser.[228] Yet, under the current ESPN Multi-Media Agreement, ESPN pays the NCAA an annual rights fee for an "'all in one' package"—including women's basketball and 28 other sports—which amounts to an average of $34 million per year over the life of the contract.[229] The original decision to grant ESPN, the "Worldwide Leader in Sports," the right to broadcast the women's championship packaged with then-20 other NCAA championships was made in 2001, before the launch of several national sports networks.[230] Accordingly, the ESPN Multi-Media Agreement—now two decades since it was last put to bid—does not accurately reflect the value of women's basketball in today's market or sports media landscape, which has changed in important and significant ways since 2001.[231] Based on his own independent analysis, Desser estimates that the

[228] *See* Desser Report §§ 1.1, 2. In 2021, ESPN is set to pay the NCAA approximately $41.8 million. ESPN Multi-Media Agreement § 6.1.

[229] Desser Report §§ 1.10, 3.2; ESPN Multi-Media Agreement § 6.1.

[230] Desser Report § 3.2.

[231] *Id.* § 3.1.

Division I Women's Basketball Championship is worth between $81 and $112 million annually beginning in 2025.[232]

There are multiple reasons why the broadcasting rights to the women's basketball championship are significantly more valuable than is reflected in the current ESPN contract:

First, as Desser explains, the Division I Women's Basketball Championship has matured into an increasingly popular "tentpole" event.[233] After years of steadily increasing ticket sales, viewership, and ratings of the women's tournament, the 2021 women's Final Four had an average of more than 2.9 million viewers—a 14% increase from 2019.[234] This year, for the very first time, ESPN nationally broadcast all 63 games of the women's tournament on its television networks—a recognition of the tournament's growing popularity.[235] The 2021 women's championship game saw its highest viewership since 2014, averaging 4.1 million viewers.[236]

Indeed, as Desser concludes, the women's Final Four "generally outdraws the TV viewership for all sporting events taking place in its event window except for" the men's tournament.[237] It "ranks among ESPN's highest-rated programs, other than NFL games and the College Football Playoff," and it is one of few championships that ESPN broadcasts during March and April, "filling a hole after football season and before the NBA and NHL Playoffs, both attracting subscribers to ESPN and, crucially, keeping them from dropping ESPN."[238] In fact, as depicted in the graphic below developed by Desser, the women's tournament delivers an audience on par with NBA playoff conference finals, college football conference championship games and regular-season college football games, Major League Baseball Wild Card Playoffs, Men's and Women's Tennis Grand Slam Finals, and more than four times the Duke v. UNC regular-season rivalry games:[239]

[232] *Id.* § 7.7.

[233] *Id.* § 2.

[234] *Id.* § 2.1. Like its increasing television viewership, ticket sales for the Division I Women's Basketball Tournament have been steadily increasing for the past several years. In 2019, the women's tournament had the most ticket sales in nearly two decades. *See* Attendance History – Division I Women's Basketball Championship, NCAA (1982-2019).

[235] Desser Report § 2.8.

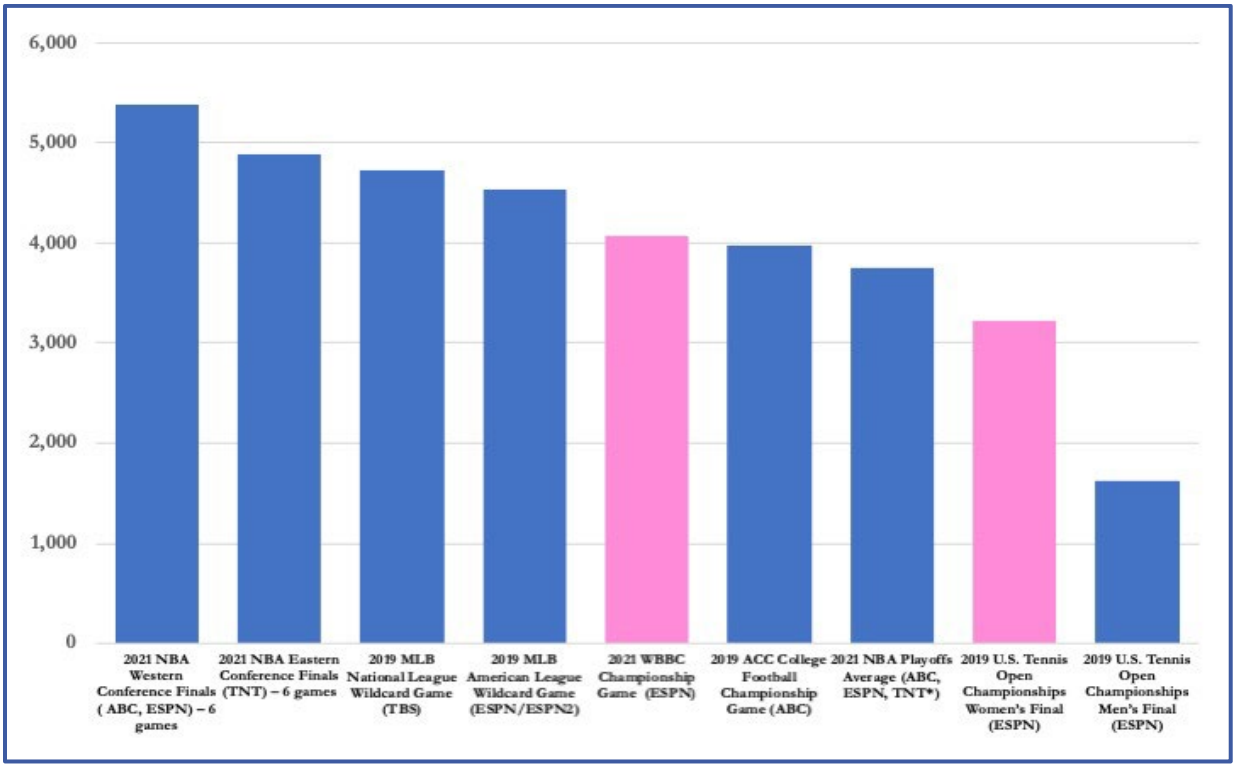
[236] *Id.* § 2.1.

[237] *Id.* § 1.2.

[238] *Id.*

[239] *Id.* § 2.2, Figure 2.2.

Desser Figure 2.2: Marquee ESPN Properties (excl. NFL & CFP)



Moreover, the women's tournament is a national championship with a far-reaching audience, aired during a time of year when few other professional athletic competitions air, which further increases its value.[240] It features many well-known American universities with substantial fan bases and compelling single-elimination playoff games.[241] And because the WNBA does not accept players until they are twenty-two years old, many of the student-athletes playing women's basketball are able to draw fandom for several consecutive years.[242] Combined with the advent and ubiquity of social media, this repeat fandom has made women's basketball even more popular. University of Connecticut player Paige Bueckers, for example—the first freshman to ever win the Associated Press National Player of the Year—has 900,000 followers on Instagram.[243] That is more than the twenty 2021 men's Final Four starters combined.[244]

Overall, when viewed over the life of the tournaments—the men's tournament has occurred for 83 years, and the women's for just 40—the women's tournament is on a similar growth

[240] *Id.* §§ 2.3, 2.4.

[241] *Id.* § 2.9(1)-(2).

[242] *Id.* § 2.9(3).

[243] Paige Bueckers (@paigebueckers), Instagram (last visited July 30, 2021), https://www.instagram.com/paigebueckers/.

[244] Desser Report § 2.9(3).

trajectory as the men's, "benefiting from a virtuous cycle of increasing viewership and broadening exposure."[245]

Second, as Desser explains, the marketplace for sports rights has "changed dramatically in the decade since the NCAA renewed its" contract with ESPN; it now has more potential bidders for high-quality live sports than ever before.[246] As this media landscape has grown and begun to morph from linear paid television services like Comcast, DirecTV, Spectrum, etc., which air channels such as ESPN, CBS, and Fox, to streaming platforms (ESPN+, Paramount+, etc.), so has the value of digital rights, which were not as prevalent when the ESPN agreement was last negotiated in 2011.[247]

Third, the current ESPN contract likely does not reflect the true value of the women's basketball championship broadcast rights because NCAA has not put the women's championship to competitive bid since 2001, when it first entered into the ESPN Multi-Media Agreement, thus foregoing "the single most important negotiating tactic the NCAA could have used in order to assure that it was receiving fair market value" for the tournament.[248]

4. Recommendations

Recommendation 2.1

Market the rights to the Division I Women's Basketball Championship as a stand-alone property.

The NCAA should market the Division I Women's Basketball Championship as a stand-alone property when it is next up for bid, which our independent media expert has determined would "unlock considerable value and attract far more bidders than keeping it combined with 28 other NCAA Championships."[249] The women's tournament has achieved a level of popularity that translates into a unique and highly desirable programming opportunity for any number of broadcasting partners. Moreover, as the ESPN contract is up for renewal in just a few years (in 2024), the NCAA will have the opportunity to take full advantage of all of the changes in media and broadcasting that have occurred since the ESPN contract was signed back in 2001 and renewed in 2011. And during the 10 years since the existing ESPN contract was signed, other NCAA championships have similarly grown in stature such that our independent media expert believes that separating out the Division I Women's Basketball Championship "will not negatively impact

[245] *Id.* § 1.3.

[246] *Id.* § 1.4; *see also id.* § 3.1.1.

[247] *Id.* § 3.1.2.

[248] *Id.* § 3.2.

[249] *Id.* § 1.10.

the value, attention and opportunities the Other Championships will receive prospectively."[250] Combined, all of these factors will allow the NCAA to realize the significant untapped monetary potential of the Division I Women's Basketball Championship as a stand-alone property.

Recommendation 2.2

Use "March Madness" for both the Division I Men's and Women's Basketball Championships.

The NCAA owns one of the most popular brands in sports—March Madness—and should use it in the marketing and presentation for both the Division I Men's and Women's Basketball Championships. For example, the NCAA's @MarchMadness Twitter and Instagram accounts have a combined 2.3 million followers, but they are used only to promote the men's tournament.[251] Nothing in the CBS/Turner or ESPN Multi-Media Agreements (or any other agreement, including the Champion and Partner agreements) limits use of the mark in this way.[252] Moreover, as detailed above, there is significant value that could be realized from the women's tournament using the mark. *See* pp. 37-40.[253] The NCAA could generate branded, cross-promotional marketing for both championships, which will become even more important and practical if there is a combined men's and women's Final Four, *see* Recommendation 3.1.[254]

Similarly, there should be no differentiation between the men's and women's championships by using gender modifiers in front of only the women's tournament, *i.e.* "Final Four" to describe the Division I Men's Basketball Championship finals and "Women's Final Four" to describe the Division I Women's Basketball Championship finals. Instead, to the extent necessary, the championships can be distinguished by referring to the location (*e.g.*, "San Antonio

[250] *Id.* This is one of a number of recommendations made by Desser that are designed to create new and increased sources of revenue for the NCAA and its media partners while simultaneously strengthening the marketing clout of the Division I Women's Basketball Championship and other NCAA tournaments. Desser has also provided more specific and sensitive suggestions for navigating these negotiations to the NCAA under private cover in order to protect the NCAA's ability to succeed in those negotiations.

[251] *See* NCAA March Madness (@marchmadness), Twitter (last visited July 21, 2021), https://twitter.com/marchmadness (tagline states "The official NCAA March Madness destination for all things Division I NCAA Men's Basketball. #MarchMadness"); NCAA March Madness (@marchmadness), Instagram (last visited July 21, 2021), https://www.instagram.com/marchmadness/ (tagline states "Official Instagram account for all things #marchmadness & D1 Men's Basketball.").

[252] *See, e.g.*, NCAA Corporate Champion Agreement between AT&T Services, Inc., Turner, and CBS (Sept. 1, 2017), Ex. B ("**March Madness®** - *Division I men's or women's basketball only* **March Mayhem™**- *Division I men's or women's basketball only* **Midnight Madness®** - *Division I men's or women's basketball only* . . . **The Big Dance®** - *Division I basketball only* **The Final Four®** - *Division I men's or women's basketball only*.").

[253] Desser Report § 4.1 (describing significant benefits of using March Madness for Division I Women's Basketball Championship, without taking anything away from Division I Men's Basketball Championship).

[254] While the Division I Finance Committee's branding and marketing study is exploring how the NCAA can best capitalize on using its trademarks (including March Madness and Final Four) outside of Division I men's basketball, that should not delay the NCAA's use of the March Madness mark and branding at both the 2022 Division I Men's and Women's Basketball Championships.

Final Four" and "Indianapolis Final Four") or by using "Men's Final Four" along with "Women's Final Four."

Recommendation 2.3

Negotiate for a new tier of corporate sponsors for the Division I Women's Basketball Championship (and other NCAA championships).

The way in which the existing broadcast and sponsorship agreements are currently structured does not encourage, and in fact makes it exceedingly difficult (if not impossible) for sponsors to activate at events other than the Division I Men's Basketball Championship. The NCAA should therefore encourage CBS/Turner to permit the sale of a new tier of non-conflicting corporate sponsorships, which would include marketing rights to Division I women's basketball (or another agreed-upon event or series of events) that are more limited than those available to Champions and Partners. This new non-conflicting sponsorship tier should permit flexible formats and customized sponsorship opportunities (*e.g.*, creating an opportunity for a women's basketball-specific product at the Division I Women's Basketball Championship or a swimming-specific product at the swimming championships).[255]

Recommendation 2.4

Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.

The NCAA should create a new senior position of Chief Business Officer ("CBO") responsible for implementing a strategy designed to maximize value across all NCAA championships while promoting gender equity. That leader would oversee the NCAA's media partner relationships with CBS/Turner and ESPN, the Corporate Partner Program, and branding and marketing for all championships, specifically by having reporting responsibility over the Directors for each of those programs. The CBO should report directly to the President or Chief Operating Officer of the NCAA, and would be responsible for implementing many of the recommendations within this report, *see* Recommendations 2.1-2.3 and 2.5-2.8, and made by our independent media expert.

One of the CBO's key responsibilities would be to implement a strategy, working with the NCAA's media partners and within the current broadcast contracts, to find ways to increase gender

[255] Desser Report § 6(5).

equity through flexibility and modest accommodations. Ultimately, the CBO would be responsible for negotiating future contracts that are structured to maximize benefits throughout the NCAA championships.

There would be several benefits to this newly created CBO position and structure, which also was recommended by Desser.[256] First, removing responsibility for broadcasting, Champions and Partners, marketing, and branding out from under the leadership of basketball would help to ensure that the broadcasting agreements and the Corporate Partner Program maximize the value of all championships, not just men's basketball. Second, putting these departments (which currently report up through different leaders at the NCAA) under a single individual will make it easier for these groups to work in concert and to think creatively and cohesively about maximizing value and how to grow a diverse set of revenue producing championships, including women's basketball. In addition, this reporting structure acknowledges the substantial responsibilities of the newly created CBO and Head of Championships, each of whom will have responsibility for ensuring gender equity if the recommendations in this report are implemented.

Recommendation 2.5

Implement an overall strategy to realize the value of the Division I Women's Basketball Championship (and other championships across the NCAA).

Working in conjunction with its media and corporate partners, and based on the advice, analysis, and recommendations of our independent media expert, *see* Desser Report, the NCAA, led by its new CBO, should implement a strategy to realize the significant value of Division I women's basketball (and other sports) by (1) working within the current broadcast contracts to seek increased flexibility and accommodations in order to increase gender equity, and (2) ultimately negotiating future contracts that are structured to maximize benefits across the NCAA championships.

As our independent media expert has explained, "While the NCAA's media agreements are locked in for three (ESPN) and 11 (CBS/Turner) more years, there is nothing stopping the NCAA and its media partners from exploring changes to the current agreements now that can create more value for everyone involved going forward. And, as the NCAA's media partners, CBS/Turner and ESPN should all be open to adjustments as the current gender equity issues that have surfaced provide ample justification for changes to the status quo. Here, the combined efforts of the NCAA and its media partners would protect the premium value of the [Division I Men's Basketball Championship] and the continued development of the [Division I Women's Basketball Championship] and the NCAA's Other Championships."[257]

[256] *Id.* §§ 1.8, 5.2.

[257] *Id.* § 5.2

Recommendation 2.6

Establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships (and all other championships across the NCAA).

To be able to work strategically to maximize sponsorships and sponsor activation at the Division I Men's and Women's Basketball Championships (and across all NCAA championships), the NCAA should establish a system for tracking where and how the NCAA's corporate sponsors have been and are activating, both historically and in real time. Such a system should be established no later than 2022 and will allow the NCAA to better track sources of revenue and evaluate opportunities on an ongoing basis.

Recommendation 2.7

Pursue marketing and promotional opportunities that will benefit both the Men's and Women's Division I Basketball Championships.

The NCAA can and should make changes now, working within the parameters of the existing broadcast agreements, so as to maximize the value of the Division I Women's Basketball Championship. Ideally, each of these changes should be implemented before the 2022 Division I Men's and Women's Basketball Championships so that the NCAA can begin obtaining data and feedback prior to, and best equip itself to take full advantage of, combined Division I Final Fours, *see* Recommendation 3.1:

- ***Televise the women's Final Four on ABC.*** The NCAA should encourage ESPN to exercise its contractual right to air the women's Final Four, or at the very least the championship game, on ABC, and ideally during the best time slot in prime time (9-11 pm ET). According to our independent media expert, airing these games on ABC would carry the Division I Women's Basketball Championship to a broader audience who may not have access to ESPN through a cable or streaming subscription.[258]

- ***Optimize mobile apps.*** To optimize gender equity and maximize the championships' value, our independent media expert has recommended that the March Madness Live mobile app become the go-to location for all basketball fans to follow both the men's and women's tournaments, including news, information, scores, schedules and live streaming.[259] This would require changes to the existing contracts, because the current March Madness Live

[258] *See* ESPN Multi-Media Agreement § 5.3; Desser Report § 3.6(1).

[259] Desser Report §§ 1.9(2), 4.1.

app is run and owned exclusively by CBS/Turner and yet the rights to broadcast the live women's tournament are exclusive to ESPN. Under the existing contracts, it is also unlikely that ESPN would have any incentive to develop an app for the Division I Women's Basketball Championship that is of similar quality to the March Madness Live app, because ESPN benefits from the live streaming of the women's tournaments on its current ESPN app. Within the existing media agreements, however, the NCAA could: (1) encourage CBS/Turner to include the Division I Women's Basketball Championship bracket, and feature players and stories from Division I women's basketball, on its March Madness Live app, within legal limits; and (2) enhance the NCAA-run Division I women's basketball app (titled "DI WBB"), including by posting features on players, games, and the tournament bracket. To the extent CBS/Turner is unwilling to include women's basketball content on the app, CBS/Turner should be encouraged to change the name of the March Madness Live app to the "Men's March Madness Live app" to ensure that consumers understand that the app is covering only the men's tournament.

- ***Monetize social media accounts.*** The NCAA should create a plan for developing and monetizing the NCAA's social media accounts for the Division I Men's and Women's Basketball Championships.

These examples are by no means exhaustive, and the NCAA should explore opportunities to implement other such arrangements with its broadcast and corporate partners.

Recommendation 2.8

Increase cross-promotion of the Division I Men's and Women's Basketball Championships.

There are some additional steps that the NCAA can and should take immediately to encourage cross-promotion of the men's and women's championships that may require modest tweaks to its contractual agreements with its media partners. As our independent media expert has explained, "More aggressive cross-promotion of the [Division I Men's Basketball Championship] and [Division I Women's Basketball Championship] can help to lift each other" by driving up viewership and the value of media rights.[260] By way of example only:

- CBS/Turner and ESPN could hold combined or successive, and cross-promoted, selection show(s) in which the networks reveal both the men's and women's tournament brackets, instead of holding the selection shows separately on different days and on different networks (as is the current practice).

[260] *Id.* § 4.3.

- Throughout the year, ESPN and CBS/Turner could run combined highlights of both the men's and women's championships (and even other championships) in vignette packages.[261]

These examples are by no means exhaustive, and the NCAA should explore opportunities to implement other such cross-promotion arrangements with its broadcast and corporate partners.

[261] *Id.* § 6(5).

WHAT SHOULD BE DONE WITH RESPECT TO THE DIVISION I MEN'S & WOMEN'S BASKETBALL CHAMPIONSHIPS

1. The Student-Athlete Experience

Given the above, there can be no serious dispute that the student-athlete experience is not the same at the NCAA women's and men's basketball tournaments. For all the reasons discussed herein, the two championships are materially different events. The involvement of corporate sponsors at the men's tournament, and the synergies between the corporate sponsors and CBS/Turner, mean that the men's championship has a meaningfully different look and feel, with professional quality events, venues, and broadcasts, all of which is lacking at the women's championship. *See* pp. 40-47, 70-75. Relatedly, the disparate financial investment made by both sponsors and the NCAA in everything from signage and branding to gifts and mementos means that NCAA women's basketball players do not currently have the same championship experience as their male counterparts. *See* pp. 34-47, 57-60, 70-75.

Achieving gender equity at the Division I Men's and Women's Basketball Tournaments, however, does not mean that the championships need to be identical. As a group of Division I commissioners acknowledged, "the need for equitable treatment . . . does not necessarily require identical or equal characteristics in all circumstances."[262] The key inquiry, as distilled down by the Women's Basketball Oversight Committee and the Women's Basketball Coaches Association, among others, is which aspects of women's and men's basketball must be equal, which should be comparable, and which are and should be "different for a reason."[263]

There is a general consensus among stakeholders that those elements of the men's and women's tournaments directly impacting the student-athlete experience must be the same, or at least comparable. As the SVP of Basketball explained, the "baseline has to be making sure that the experience of the student-athletes, if not exactly the same, is close to it." This does not mean that "every part of the [Women's Basketball] NCAA Championship must follow the men's structure."[264] It does mean, however, that, to the extent they are not already, tournament elements like branding, the size of the brackets, student-athlete amenities (*i.e.*, food, swag bags, weight rooms, etc.), and transportation and lodging, among other things, should be roughly the same or comparable.[265]

[262] Letter from Select NCAA Division I Commissioners to Kaplan Hecker & Fink LLP (May 14, 2021).

[263] Women's Basketball Oversight Committee, Game Plan for Gender Equity in Basketball (May 27, 2021); *see also* Our Fair Shot, WBCA (last visited July 21, 2021), https://ourfairshot.com/.

[264] Letter from Division I Commissioner to Kaplan Hecker & Fink LLP (Apr. 20, 2021).

[265] Letter from Select NCAA Division I Commissioners to Kaplan Hecker & Fink LLP (May 14, 2021) ("[V]isible presentation . . . of all NCAA championships (e.g., signage, décor, branding) in the game facility including back of the house (e.g., locker rooms, media rooms)," "[g]ifts provided to student-athletes" and "[e]vent production" should be equitable, recognizing that in some

2. Recommendations

Recommendation 3.1

Hold the men's and women's Final Fours together in one city.

One way to ensure that the student-athlete experience at the men's and women's championships is more equitable is to have a single, combined event—in this case, a combined Final Four over the same weekend in the same city. Having the men and women participate in a single, combined event would require careful and thoughtful planning, with meticulous attention to detail to ensure an equitable student-athlete experience. In light of the structure of the NCAA's existing broadcast and sponsorship contracts, however, there is no realistic way to obtain the same level of corporate sponsorship and promotional synergies at a separate women's championship in a separate city. Put simply, without combining the Final Fours, the women's championship will continue to have a different look and feel from the men's championship, at least until the CBS/Turner Multi-Media Agreement expires in 2032. Indeed, our independent media expert, Ed Desser, has strongly recommended combining the Final Fours because, in his view, doing so would "enhance both the [Division I Women's Basketball Championship] and the [Division I Men's Basketball Championship] too—through improved promotion" and a myriad of other benefits.[266]

According to Desser, combined Final Fours would create a more compelling weekend schedule in the host city that the media partners could aggressively cross promote; provide additional ticketing demand for the women's Final Four because of the large fan pool in the city, many of whom cannot acquire the higher-demand men's basketball tickets; help facilitate and expand corporate partner involvement in the women's Final Four due to sponsor proximity; and enhance press and electronic media coverage and social media activation such as ESPN bringing "SportsCenter" to the host city and social media companies establishing home bases in the city.[267] Combined Final Fours could also be an amazing (and lucrative) fan-building event—serving as a premier basketball showcase that would create increased interest and support from corporate sponsors, broadcasters, and other NCAA partners. As discussed in the previous section, because of the way in which the NCAA's contracts are structured, there is no way to compel the NCAA's sponsors to "activate" at the women's tournament, especially if the women's Final Four is held in another city at the same time as the men's Final Four.[268]

To be successful, however, the transition to combined Final Fours cannot be made half-heartedly. While the first combined Final Fours may not be perfect, it is important that the NCAA

instances, the "scope and scale" of the events may "warrant different deliverables."). Some policies at the NCAA are already the same for men and women, such as the per diem policy.

[266] Desser Report §§ 1.7, 4.

[267] *Id.* §§ 1.8, 4.2.

[268] *Id.* § 4.2(4).

and its partners work diligently and put in the necessary effort and attention to ensure that combined Final Fours are as successful as possible—both in terms of the student-athlete experience and as a revenue driver for the NCAA. Combining the men's and women's Final Fours will require a lot of thoughtful planning and promotion. For example, efforts will need to be undertaken to achieve the goal that every sponsor that chooses to "activate" at the men's Final Four does the same for the women's Final Four. Any concert by Miley Cyrus or anyone else that is open to the male student-athletes and their fans will obviously have to be available to the female student-athletes and their fans on the same terms. In other words, each and every detail will need to be considered, and decisions will need to be made carefully and with intent to ensure that the student-athlete experience is gender-equitable.

There is also no question that planning and promoting combined Final Fours, rather than two separate events, would create significant efficiencies and cost-savings for the NCAA, its membership, and its partners. These cost savings would be even more significant if the NCAA chose to also hold the Final Fours in the same venue. There would similarly be an advantage from a monitoring perspective since it would be a lot easier to determine whether hotel rooms, food, locker and weight room facilities, or signage are comparable if they are all in the same city.

Of course, combining the Final Fours in one city is not a new idea—current Big East Commissioner Val Ackerman recommended combining Final Fours almost a decade ago in her 2013 White Paper.[269] Others have encouraged the NCAA to consider the idea by pointing to the world of professional tennis. Billie Jean King, winner of 39 Grand Slam tournament titles and renowned gender equity advocate, has always preferred combined men's and women's events, even when she broke away from the United States National Lawn Tennis Association in 1970 over gender pay disparities to found the women's-only Virginia Slims Circuit in 1971.[270] As she explained to us, "Virginia Slims was Plan B. Plan A was always to have the men and women together. Men and women together create much more value, and that's what we want the world to look like." A Division I conference commissioner similarly attributed the growth and success of women's tennis to the fact that it is "side by side with the men in its most important moments. It's a unified product, and that brings eyeballs and popularity and brand value to the women's."

Even many of those who are skeptical about the idea of combining the Final Fours because of the not-irrational fear that the women's games will be "drowned out," have expressed an openness to trying it to see if it works. Perhaps most importantly, however, the overwhelming majority of women's basketball players whom we asked about this possible solution during our review were in favor of attempting to combine the Final Fours to grow the profile of the women's tournament and provide a more comparable experience to the men's tournament. And we and our

[269] Val Ackerman, Division I Women's Basketball White Paper at 43 (June 15, 2013), https://wbca.org/sites/default/files/061513-ackerman-white-paper.pdf ("Ackerman White Paper").

[270] Melissa Murphy, *Original 9 Trailblazers Stood for Tennis Equality in 1970*, AP (Sept. 23, 2020), https://apnews.com/article/new-york-billie-jean-king-virginia-us-open-tennis-championships-wimbledon-ec4f2a1684a5efd286cbfb31a7611764.

independent media expert believe that women's basketball now has the maturity, the fanbase, and the positive momentum to carry it to the "next level."

Accordingly, we recommend that the men's and women's Final Four events should be combined as soon as possible—preferably no later than the 2022-23 season (*i.e.*, spring 2023) so as to continue building on this positive momentum. While there certainly would be a more limited number of cities in the United States capable of hosting combined Final Fours, both Houston and Dallas, which are scheduled to host the 2023 men's and women's Final Fours, respectively, are capable of hosting such a combined event.[271] Moreover, our independent media expert has strongly recommended implementation of this recommendation by the 2023 championship, because it would "generate significant incremental value for the [Division I Women's Basketball Championship] immediately and thus provide the NCAA with a tremendous strategic advantage heading into its ESPN renewal discussion."[272] In our view, combined Final Fours should be held in this manner for at least three or four years to give the NCAA time to fine tune the combined event and assess its full impact.

We do not make this recommendation lightly. We understand that the NCAA has made commitments to host cities for multiple years, and this recommendation will require the NCAA to work with those host cities to make changes to their plans based on the serious and shared value of promoting gender equity. We also appreciate the understandable reluctance of many longstanding members of the women's basketball community to do a combined event given the long, unfortunate history of discrimination against women's sports, including women's basketball. It is critical, however, to make this change and to do so quickly to take advantage of the current momentum, to demonstrate the NCAA's significant commitment to change, to garner the significant benefits to the women's Final Four described above, and to capture the strategic value that combined Final Fours could yield for future contract negotiations.

Indeed, the primary objection we have heard with respect to combining the men's and women's Final Fours was the fear that the women would be overshadowed by and treated as "second-class" to the men. Many suggested that regardless of how carefully the NCAA plans such an event, disparities will remain and the presence of the tournaments simultaneously in the same location will only sharpen the focus on those disparities, making for an inferior student-athlete experience. While such concerns are certainly not unfounded, a combined Final Four, if thoughtfully and intentionally planned and implemented, is the best potential solution to existing tournament gender inequities given the NCAA's current long-term contracts, especially the 2016 CBS/Turner Multi-Media Agreement. After all, the men's and women's tournaments already

[271] Indeed, Dallas has previously bid on both the men's and women's tournament for the same year and conveyed to the NCAA its ability to hold both tournaments together. Other possible cities for a combined Final Four other than Dallas and Houston include Indianapolis, New Orleans, Las Vegas, Atlanta, Los Angeles, and St. Louis, among others. *See* Desser Report § 4.2. All of these cities have two separate venues capable of hosting the men's and women's tournaments. Although women's basketball intends to hold a large Title IX 50th anniversary celebration at the 2023 championship, this presents an ideal opportunity to combine the Final Fours, highlight the strength and value of both men's and women's basketball, and emphasize how much women's basketball has grown in the 50 years since Title IX was enacted.

[272] Desser Report § 5.2.

reflect numerous disparities that can be, and now have been, brought to the attention of the wider public in a manner that dampened the student-athlete experience. The mere possibility that some disparities *could* remain despite careful planning, and that those disparities would be noticed by student-athletes, would leave the tournament no worse off than it is now.

Although many stakeholders we contacted would favor combining the men's and women's Final Fours at least on a trial basis, others proposed alternative changes such as (1) maintaining separate men's and women's Final Four events, but holding them on different weekends so as to minimize competition for fans,[273] and (2) maintaining separate tournaments, but holding the women's Final Four (and potentially earlier rounds) in the same location for several years in a row (or possibly permanently) in order to grow a local following and establish event planning infrastructure. For all of the reasons discussed above, and particularly in light of the incentives and limitations created by the CBS/Turner contract, KHF believes that a combined Final Four is the best available means to grow women's basketball and create equity between the men's and women's championship experience.

Recommendation 3.2

Ensure that items impacting the student-athlete experience at the Division I Men's and Women's Basketball Championships are gender-equitable.

The NCAA should develop, preferably in conjunction with the real-time gender equity review of the men's and women's basketball championships in Recommendation 1.5, a defined set of items directly impacting the student-athlete championship experience that should be substantially the same at all basketball championships going forward, starting with the 2022 championships. This list of items should be developed by NCAA staff with expertise in Title IX and gender equity, in consultation with staff responsible for the men's and women's basketball championships. "Substantially the same" means that any differences in quality and/or quantity of the items should be reasonable based on the structure of the championship, the size of the audience, and the location of the events. Obviously, as noted above, it will be easier for the NCAA to ensure gender equity with respect to many if not all of these items if the men's and women's Final Fours are held together in one city, as opposed to two separate, simultaneous championships being held hundreds of miles apart. At a minimum, however, the following principles should apply:

- ***Health and safety.*** Anything that falls within the broad category of health and safety should be substantially the same.

[273] Although various stakeholders and NCAA staff members highlighted scheduling conflicts with other major sporting events as one barrier to holding the men's and women's tournaments at separate times, this barrier could potentially be overcome with careful planning.

- ***Practice facilities and locker rooms.*** Understanding that there may be some differences based on the particular location of an event, the size, quality, and proximity of practice facilities and locker rooms should be substantially the same.

- ***Travel and accommodations.*** The type (bus versus plane, charter versus commercial, etc.) and quality of transportation to the championships should be substantially the same, as should the degree to which travel considerations are permitted to impact the brackets. Once at the championships, transportation should also be of a substantially similar quality, including escorts to facilitate travel to and from game venues. Hotels should be of the same quality with substantially similar amenities and located a similar distance from playing venues. To the extent feasible, travel and accommodations should be booked at the same time for both championships, and efforts should otherwise be made to ensure that the men and the women have similar access to limited travel and hotel options so that the best options can be maximized for all teams going to the championships. The food provided at the championships should also be of a substantially similar quality, quantity, and variety.

- ***Gifts, mementos, and other amenities.*** Any gifts, mementos, "swag," or amenities given to student-athletes or their families at the men's and women's tournaments should be substantially the same.

- ***Signage, marketing, promotional efforts, and branding.*** The quality and quantity of signage, marketing, promotional efforts, and branding should be substantially the same. This should include the same opportunity for signage and branding on any team buses and in game facilities, locker rooms, hotels, and public spaces throughout the tournament locale.

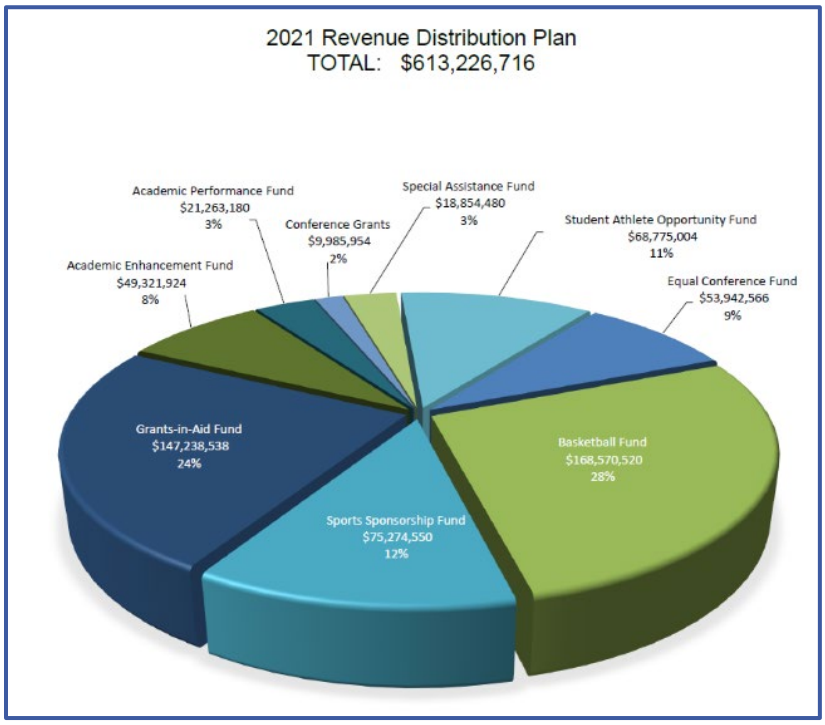
- ***Entertainment.*** Any entertainment or other recreational activities made available to student-athletes, their families, and their fans should be substantially the same.

Once developed, the list should be reviewed and updated regularly in order to reflect the current state of the championships.

THE NCAA'S REVENUE DISTRIBUTION MODEL

1. The Current Model

Since the 1970s, the NCAA has distributed approximately 60% of its revenue back to its Division I conferences and schools to fund their Division I athletics and academic-support programs.[274] In 2021, the total amount distributed pursuant to the Division I Revenue Distribution Plan was more than $613 million.[275] The NCAA employs a complex formula to distribute this revenue through nine separate "funds."[276] The largest amount of revenue is distributed through two funds—the Basketball Performance Fund and the Equal Conference Fund—which allocate revenue to conferences based on their participation in, and success at, the Division I Men's Basketball Championship.[277] There is currently no equivalent fund for participation in, or success at, the Division I Women's Basketball Championship.



[274] Distributions, NCAA (last visited July 21, 2021), http://www ncaa.org/about/resources/finances/distributions.

[275] *See* Where the Money Goes Presentation, NCAA Budget FY 2020-21. Division II and Division III each get a set percentage of the NCAA's annual revenue. In 2019, $53.3 million (or 4.37%) went to Division II conferences and institutions, and $35.2 million (or 3.23%) to Division III; in 2021, Division II is set to receive approximately $45 million, and Division III $33 million. *Id.* All three divisions received significantly less revenue in 2020 due to the canceled 2020 championships and a decreased rights fee received from CBS/Turner. 2020 NCAA Financial FAQs, NCAA (last visited July 21, 2021), https://www ncaa.org/about/resources/finances/2020-ncaa-financial-faqs.

[276] *See generally* NCAA 2021 Division I Revenue Distribution Plan, https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2021D1Fin_RevenueD1FinstributionPlan.pdf.

[277] *Id.* at 7, 12.

In total, revenue distributed based on participation in and performance at the men's basketball tournament accounts for more than a third of the distribution to the Division I membership.[278] The Equal Conference Fund distributes revenue equally to all of the Division I conferences that automatically qualify for the men's basketball tournament—that is, all active Division I basketball-playing conferences, of which there are currently 32.[279] As reflected in the above pie chart, 9% of the total funds distributed to Division I conferences goes into this Equal Conference Fund. In 2021, that 9% was close to $54 million, or approximately $1,685,700 per conference.

In addition, the Basketball Performance Fund rewards conferences based on their relative performance at the Division I Men's Basketball Tournament by awarding each conference "units" based on how far its member schools progress at that tournament.[280] Funds are then allocated to the conferences based on the number of units earned by each conference over the prior six-year period.[281] The longstanding justification for the Basketball Performance Fund, which has existed in some form since at least the 1980s, is that because men's basketball generates most of the NCAA's annual revenue through the CBS/Turner contract, the NCAA should reward and incentivize those conferences that support men's basketball and create competitive, successful men's basketball programs. As reflected in the above pie chart, 28% of the total funds distributed to Division I conferences comes from this Basketball Performance Fund. In 2021, over $168 million was distributed to Division I conferences through the Basketball Performance Fund, with conferences receiving distributions ranging from $0 to $33.7 million.

In our view, a model that distributes funds in this way, based only on the performance of men and not women, does not reflect or advance the value of gender equity. To the contrary, it sends a clear and disturbing message to female student-athletes that they are not as valuable as their male counterparts—quite literally, in monetary terms that can translate into millions of dollars. And it has a concrete impact on the experience of women's basketball players: as currently structured, the Basketball Performance Fund incentivizes member institutions and conferences to put more support and resources toward men's basketball, over women's basketball and other sports, in an effort to reap "rewards" from the Fund. Without a similar system to benefit or reward investment in women's basketball, the Basketball Performance Fund perpetuates and exacerbates existing gender inequities and disincentives schools from investing in and developing their women's basketball programs.

[278] *Id.* at 3.

[279] *Id.* at 12.

[280] One unit is awarded to each school participating in each game; units are not awarded for the first round for schools that were automatic qualifiers for their particular conference, and are not awarded for the championship game. *See Id.* at 7; Division I Revenue Distribution Governance Policy.

[281] For example, in 2019, the Basketball Performance Fund awarded funds based on units earned at the men's tournament from 2013 to 2018. *See* NCAA 2021 Division I Revenue Distribution Plan at 7, https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2021D1Fin_RevenueD1FinstributionPlan.pdf.

No one disputes, and the NCAA community acknowledges and appreciates, that the Division I Men's Basketball Championship is currently the most significant revenue generator for the NCAA. But it is inconsistent with Title IX principles,[282] and with the NCAA's own stated commitment to gender equity, for the NCAA and its membership to reward the success of men's basketball through its revenue distribution model, without providing comparable opportunities and benefits to women's basketball. After all, the NCAA is a not-for-profit membership organization, not an "eat what you kill" business enterprise.

2. Recommendation

Recommendation 4

Apply gender equity values to revenue distribution.

On its face, distributing funds for (or effectively rewarding) performance in the Division I Men's Basketball Championship, but not the women's, is not consistent with fundamental gender equity principles. At the same time, we understand the significant degree to which the NCAA's member institutions rely upon their NCAA funding distributions—and the accompanying budget certainty—in operating their athletics programs, and that the Basketball Performance Fund accounts for a substantial portion of those distributions. Accordingly, any alteration to the Division I revenue distribution model to account for gender equity must be balanced against the membership's need for advanced planning in order to run their athletics programs smoothly and effectively.

We think that this can best be accomplished by phasing in any change over time in a way that will minimize any immediate, deleterious impact. For example, with respect to the Basketball Performance Fund, one way to achieve gender equity would be to reallocate 5% of that Fund every year for the next 10 years (thereby reaching an equitable 50:50 split in year 10) and to distribute that reallocated amount based on performance in the NCAA women's basketball tournament. Phasing in this modification over 10 years would minimize any drastic change in the amount of funds any one conference or school might receive from year to year, giving member conferences and schools time to adjust accordingly.

In addition, including women's basketball in the calculation of Basketball Performance Fund payouts would incentivize member institutions to develop and support their women's basketball programs since schools and conferences that do so successfully would be financially rewarded. The end result would be greater investment in women's basketball, increased parity and competitiveness in the sport, and the potential for conferences and schools not already in the

[282] By way of illustration, it would almost certainly violate Title IX if a co-ed NCAA member institution agreed to accept a large sum of money from an alumnus-donor to build a new state-of-the-art gymnasium and the donor sought to condition payment of the funds on only male athletes having access to the gym. *See* 34 C.F.R. § 6.41(c)(7) (requiring under Title IX the "equal athletic opportunity for members of both sexes" in the "[p]rovision of locker rooms, practice and competitive facilities").

picture to gain financially. Most importantly, changing the funding model in this way would send the strong message to student-athletes and the broader NCAA community that women's basketball is valued and treated equitably.

Exhibit B to this report contains a table for illustration purposes only that demonstrates what a hypothetical revised distribution might look like. The projections in Exhibit B are based on the performance of the Division I conferences from 2013 to 2018, and assume that performance remains constant over the proposed 10-year implementation period (as there is no way to accurately predict future performance).[283] The calculations used the following methodology: KHF received the NCAA's calculation for revenue distribution from the Basketball Performance Fund for 2019, which is based on performance at the men's tournament from 2013 to 2018 (the "Men's Distribution"). KHF then used the same formula that the NCAA employs to calculate units allocated to each conference based on performance in the men's tournament to calculate the units that would have been allocated to each conference in 2019 based on performance in the women's tournament from 2013 to 2018 (the "Women's Distribution").[284] Thus, for Year 1, 95% of the total funds available would be distributed among the conferences using the Men's Distribution, and 5% would be distributed using the Women's Distribution. For Year 2, 90% of the total funds available would be distributed among the conferences using the Men's Distribution, and 10% would be distributed using the Women's Distribution, and so on through Year 10.

These calculations show that, based on the above assumptions, nine conferences stand to gain revenue by accounting for women's performance in the Division I championship: the American Athletic Conference, the Atlantic Coast Conference, the Big 12 Conference, the Colonial Athletic Association, the Metro Atlantic Athletic Conference, the Mid-American Conference, the Pacific-12 Conference, the Southeastern Conference, and the Summit League. Five conferences would see no change at all, earning no units for either men's or women's basketball. The remainder would see decreases in their Basketball Performance Fund distribution due to historical success at the men's tournament, but fewer wins at past women's tournaments. Yet, for each year, at most 10 out of 32 conferences would experience a loss of more than 5% of their distribution from the prior year, and no conference would ever experience a loss of more than 9.1% from the prior year. With the incremental 5% per year allocated to women's performance, the median change per year never exceeds a 2.3% loss. This all assumes no future change in performance at either tournament, which is highly unlikely. Indeed, if the conferences that have historically had few schools participate or progress in the women's tournament increase their focus on and improve the performance of their women's basketball programs, then these numbers could

[283] The 2013-18 period was used for our analysis because pandemic-related budgetary shortfalls significantly impacted the total distributions made based on performance in the 2014-19 period, and because the pandemic-driven cancellation of the 2020 championships render the 2015-20 period an atypical one.

[284] In other words, KHF assigned one unit per member institution for each round a women's basketball team played in, excluding the automatic qualifiers and the final game. In so doing, KHF did not discount the units or the value thereof based on the fact that the women's tournament currently only has 64 teams, whereas the men's tournament has 68 teams.

change significantly, and those conferences would stand to gain additional revenue under this revised model.

Of course, a 5% phase-in over 10 years is just one possible approach to adjusting the Basketball Performance Fund consistent with gender equity principles; there are certainly other ways to achieve the same end, with potentially different costs and benefits. For example, another option would be to do away with the practice of rewarding performance in any one sport altogether, and to instead distribute these funds in a way that adheres to the principle of gender equity and also satisfies other NCAA goals and values.

Finally in this regard, taking participation in the women's championship into account should in no way change the financial distribution of the Equal Conference Fund. For purposes of advancing the value of gender equity, however, the NCAA should no longer describe the Fund as based solely on having an automatic qualifier in the men's basketball tournament, but should make it clear that the Fund is based on qualifying for both the Division I Men's and Women's Basketball Tournaments.

DISPARITIES IN PARTICIPATION OPPORTUNITIES

In addition to the disparities that women's basketball players experience when they attend the Division I tournament, there are also differences in the overall number of participation opportunities made available by the NCAA to both current and prospective student-athletes. Put simply, male student-athletes are afforded more opportunities to play competitive basketball by the NCAA than are female student-athletes. These are objective differences in the student-athlete experience that can be readily discerned and fixed.

1. Unequal Size of the Division I Tournaments

Although there are roughly the same number of men's and women's Division I basketball teams,[285] only 64 teams participate in the women's tournament, compared to the 68 teams that participate in the men's. The additional four teams on the men's side compete in a series of "play-in" games, known as the First Four, which take place prior to the first and second rounds.[286]

The decision to expand the men's basketball bracket to 68 teams occurred in 2010, the same year that the NCAA entered into the 2010 CBS/Turner Multi-Media Agreement.[287] The expansion of the men's bracket was influenced, in part, by a desire to maximize the value of the men's broadcasting rights, and the CBS/Turner contract specifically provides for the broadcast of the First Four games.[288]

That the women's tournament did not also expand to a 68-team bracket appears to be, in part, a function of the silos in which men's and women's basketball have operated, as discussed above. The NCAA decided to expand the men's basketball bracket in parallel with its negotiation of the 2010 CBS/Turner contract, while discussions about whether to expand the women's basketball bracket remained separate and ongoing.[289] Moreover, there has been no historical consensus among stakeholders on whether expanding the bracket would be good for the game of women's basketball, due to concern that the lack of parity among Division I women's basketball

[285] Composition and Sport Sponsorship of the NCAA Membership, NCAA (Sept. 1, 2020) https://www ncaa.org/about/who-we-are/membership/composition-and-sport-sponsorship-ncaa-membership.

[286] Daniel Wilco, *The First Four of The NCAA Tournament, Explained*, NCAA (Mar. 19, 2021), https://www ncaa.com/news/basketball-men/bracketiq/2021-02-25/first-four-ncaa-tournament-ultimate-guide.

[287] 2010 CBS/Turner Multi-Media Agreement; Ben Klayman, *NCAA Signs $10.8 Billion Basketball Tourney TV Deal*, Reuters (Apr. 22, 2010), https://www.reuters.com/article/us-basketball-ncaa-cbsturner/ncaa-signs-10-8-billion-basketball-tourney-tv-deal-idUSTRE63L4FP20100422.

[288] 2010 CBS/Turner Multi-Media Agreement § 5.3(d).

[289] *CBS, Turner Win TV Rights to Tourney*, ESPN (Apr. 22, 2010), https://www.espn.com/mens-college-basketball/news/story?id=5125307 ("[T]he Division I Men's Basketball Committee unanimously passed the proposal [to expand the bracket] and it will be reviewed by the Board of Directors next Thursday. . . . Another NCAA committee is looking at whether to expand the women's tournament or keep it in the current format.").

teams would make an expanded women's tournament less competitive overall.[290] At present, however, the women's basketball community appears to largely favor moving to a 68-team bracket for women's basketball for reasons of gender equity.[291]

2. National Invitation Tournaments

The men's NIT is a 32-team post-season tournament comprised of the top Division I men's basketball teams that are not selected for the Division I Men's Basketball Championship. The NIT was founded in 1938, but the NCAA did not begin running the NIT until 2005, when it purchased the NIT as part of a $56.5 million settlement of a lawsuit.[292]

While a similar post-season event exists for women's basketball—the 64-team WNIT—the WNIT is owned by Triple Crown Sports, Inc., not the NCAA. The NCAA therefore provides no financial support for the WNIT or the teams competing in it. Triple Crown Sports, for example, requires teams to pay the first $12,000 in travel expenses (including air, hotel, bus, and food) for the entire tournament for a travel party of up to 20, and all travel expenses for any additional travel party members.[293] This means that either a team's school needs to provide funding for participation in the WNIT, or the team needs to raise the money itself in order to be able to participate. The NCAA, by contrast, covers all travel expenses—including air and bus travel—and provides a per diem to cover lodging and meals for travel parties of up to 25 for those teams participating in the NIT.

[290] In fact, Val Ackerman noted in her 2013 White Paper that some stakeholders actually favored reducing the number of women's basketball teams in the tournament due to the "gap in program quality between the top and bottom halves of the championship bracket and the prevalence of lopsided games in the early rounds." Ackerman White Paper at 42-43.

[291] *See, e.g.*, Meghan Durham, *Women's Basketball Oversight Committee Sets Priorities Amid Gender Equity Review*, NCAA (June 8, 2021), https://www ncaa.org/about/resources/media-center/news/women-s-basketball-oversight-committee-sets-priorities-amid-gender-equity-review (noting that the Women's Basketball Oversight Committee plans to evaluate "the expansion of the tournament field to 68 teams"); Letter from Commissioner Richard J. Ensor, Metro Atlantic Athletic Conference, to Kaplan Hecker & Fink LLP (June 3, 2021) (recommending "[e]xpansion to 68 teams for the women's tournament bracket"); Letter from Commissioner James J. Phillips, Atlantic Coast Conference, to Kaplan Hecker & Fink LLP (May 28, 2021) ("For several years, women's basketball coaches and administrators believe the interest surrounding the NCAA Division I Women's Basketball Tournament more than justifies increasing the field from 64 to 68 teams."); Letter from Select NCAA Division I Commissioners to Kaplan Hecker & Fink LLP (May 14, 2021) ("Opportunities for participation in NCAA championships must be equitable, including other postseason opportunities the NCAA controls."); Andrea Adelson, *WBCA to Discuss Inequities Between Men's and Women's Tournament with NCAA*, ESPN (Apr. 12, 2021), https://www.espn.com/womens-college-basketball/story/_/id/31244763/wbca-discuss-inequities-men-women-tournament-ncaa (noting that WBCA requested the Division I Women's Basketball Oversight Committee consider "[e]xpan[ding] the women's championship field from 64 to 68 teams to match the current men's tournament format"); Steve Berkowitz, Lindsay Schnell, & Dan Wolken, *'I Assumed They Were Treating Us Fairly:' Why Can't NCAA Get Women's Basketball Right*, USA Today: Sports (Mar. 27, 2021), https://www.usatoday.com/in-depth/sports/ncaaw/2021/03/27/march-madness-why-cant-ncaa-get-womens-basketball-right/7012017002/ ("West Coast Conference commissioner Gloria Nevarez said: 'It's not just event management. The tournament has quite a few visual issues, but at a bigger level we have 68 teams on men's side, 64 on women's.'").

[292] Frank Litsky, *NCAA Buys NIT for $56.5 Million*, N.Y. Times (Aug. 18, 2005), https://www nytimes.com/2005/08/18/sports/ncaabasketball/ncaa-buys-nit-for-565-million html.

[293] There are also costs associated with hosting part of the tournament.

In addition, those schools whose teams participate in the men's NIT receive a financial distribution from the NCAA for participating in the NIT—similar to the distribution from the Basketball Performance Fund discussed above. Just as with the Basketball Performance Fund, monetary "units" are awarded to universities and colleges based on the number of NIT rounds in which their men's Division I basketball teams play in the tournament. The value of individual units is determined based on the financial performance of the event. In 2019, each unit was worth $5,220 for a total distribution to schools of about $330,000.[294] No such monetary units are awarded to the teams playing in the WNIT.

3. College Basketball Academy

The NCAA College Basketball Academy is a developmental academy for prospective men's basketball student-athletes. In 2019, the NCAA created the College Basketball Academy when implementing recommendations from the Commission on College Basketball.[295] In response to a federal investigation into college basketball recruiting, the Commission on College Basketball recommended that "the NCAA work with USA Basketball, the NBA and the NBPA and others to establish and administer new youth basketball programs."[296] The NCAA does not run a similar program for prospective women's basketball student-athletes.

The College Basketball Academy is administered and funded by the NCAA—including travel, expenses, and apparel. The College Basketball Academy has run once, in 2019, and was cancelled in 2020 and 2021 due to the pandemic.[297] The program is currently under review—both for financial reasons and gender equity reasons—at the request of the Division I conference commissioners.

4. Other Differences in Participation Opportunities

The NCAA also provides support for events like all-star games that are organized and largely sponsored by non-NCAA entities, but that further widen the gap between the number of competitive playing opportunities available in Division I men's and women's basketball. The NCAA's support often includes promoting the event and providing the venue, in-game support such as refereeing and game equipment, and funding to the National Association of Basketball Coaches ("NABC") that helps support the event.

[294] 2019 NIT Distribution Listing. By way of comparison, in 2019, Basketball Performance Fund units were worth $280,367.45.

[295] What Is the NCAA College Basketball Academy?, NCAA (last visited July 21, 2021), https://www ncaa.com/collegebasketballacademy/about.

[296] Commission on College Basketball, Report and Recommendations to Address the Issues Facing Collegiate Basketball (Apr. 2018).

[297] Greg Johnson, *NCAA Cancels College Basketball Academy*, NCAA (May 12, 2020), https://www ncaa.org/about/resources/media-center/news/ncaa-cancels-college-basketball-academy; NCAA College Basketball Academy (last visited July 19, 2021), https://thecbbacademy.com/. The NCAA spent approximately $5 million in 2019 on NCAA College Basketball Academy events.

For example, men's basketball has the Reese's College All-Star Game, which features the top senior student-athletes from Division I men's teams that do not make it to the Final Four.[298] The game, originally operated by the NABC without corporate sponsorship, has been held during the Final Four weekend since 1978; it was played on the Final Four floor for the first time at the Alamodome in San Antonio in 2008.[299] The game is typically played as part of Final Four Friday, when the men's Final Four teams have open practices. The event is free to the general public.[300] There is no similar all-star game for women's basketball.

Next year, there will also be an additional men's all-star game for student-athletes from historically Black colleges and universities. The game will take place during the Final Four in New Orleans and will be broadcast on CBS.[301] There is currently no similar women's all-star game scheduled.

5. Recommendation

Recommendation 5

Provide an equitable number of participation opportunities.

The NCAA should increase the bracket for the Division I Women's Basketball Championship from 64 teams to 68 teams. In light of the approximately equal number of men's and women's basketball teams in Division I,[302] there is no justification for the disparity in tournament participation opportunities. Going forward, the relevant committees should discuss any future bracket expansion with a view toward equal participation opportunities in the men's and women's tournaments.

As is mentioned above, at this time the women's basketball community appears to largely favor moving to a 68-team bracket for women's basketball for reasons of gender equity. However, some stakeholders were either indifferent to or opposed to expanding the women's tournament to include 68 teams. The primary reason for this opposition was a concern that there is a larger gap between the top and bottom teams at the women's tournament as compared to the men's and, therefore, adding four more women's basketball teams would have an outsized negative impact on

[298] Reese's College All-Star Game, NABC (last visited July 21, 2021), https://www nabc.com/events/college_all-star_game.

[299] Key Dates in NABC History, NABC (last visited July 21, 2021), https://www.nabc.com/about/history/index.

[300] Reese's College All-Star Game, NABC (last visited July 21, 2021), https://www nabc.com/events/college_all-star_game.

[301] HBCU All-Star Game (last visited July 21, 2021), https://hbcuallstargame.com; Chris Bengel, *CBS Sports Announces Multi-Year Agreement to Broadcast HBCU All-Star Game*, CBS (Mar. 4, 2021), https://www.cbssports.com/college-basketball/news/cbs-sports-announces-multi-year-agreement-to-broadcast-hbcu-all-star-game/.

[302] There are just over 350 teams in both Division I men's and women's basketball. *See* Your Complete List of Men's Division I Basketball Colleges, NCSA (last visited July 21, 2021), https://www ncsasports.org/mens-basketball/division-1-colleges; Your Complete List of Women's Division I Basketball Colleges, NCSA (last visited July 21, 2021), https://www.ncsasports.org/womens-basketball/division-1-colleges.

the competitiveness of the women's tournament. Even if that were true, looking at this issue through a Title IX lens, the number of participation opportunities for men and women should be substantially proportionate. Moreover, if the NCAA implements Recommendation 4 above and begins distributing revenue based on performance in both the men's and women's tournaments, then there is even more reason to make the number of teams in each of the tournaments the same, so as to make equivalent the opportunity for women's teams to "win" revenue for their conferences.

There is an additional disparity in participation opportunities in connection with the NIT as compared with the WNIT. While our recommendation prioritizes the NCAA Division I championships, the difference between the NIT and the WNIT is a gender disparity that the NCAA should also remedy, including through the possible award of a grant or stipend to schools to help offset the cost of participating in the WNIT. Similarly, if the NCAA decides to continue with the College Basketball Academy, then there should be academies for both girls and boys. The NCAA should also ensure that when it is offered opportunities to support events sponsored by third parties (*e.g.*, all-star games), it strives to offer financial, promotional, and other support for such opportunities on an equitable basis.

DIVISIONS II & III'S INFRASTRUCTURE FOR ADDRESSING GENDER EQUITY

Divisions II and III have managed to avoid many of the systemic problems facing Division I basketball, in large part due to the absence of the financial dynamic that exists in Division I, as discussed above. Since neither men's nor women's basketball in Divisions II and III is viewed as revenue-generating, neither receives any different or preferential treatment.[303] In addition, Divisions II and III plan their championships through a different organizational structure than Division I, and there is an explicit prioritization of gender equity at multiple levels of Division II and III leadership.

1. Background

Division II and III institutions are, for the most part, smaller schools that devote fewer financial resources to their athletic programs than their Division I counterparts.[304] The Division II and III men's and women's basketball championships fall under the oversight of both the SVP of Basketball and SVP of Championships at the NCAA. Although there is overlap in their responsibilities, the SVP of Basketball (or, through delegation, the Vice President of Women's Basketball or the Managing Director of Men's Basketball) is generally in charge of play-related matters such as rule changes and court markings, whereas the SVP of Championships oversees everything else, including budgets and the divisional policies and procedures for the championships.

Each of these four championships is managed and run by a championships staff member. Running the Division II and III basketball championships is only a fraction of each of these staffers' jobs, as each has responsibility for planning other NCAA championships. As in Division I, the four championships are also planned by the Division II and III Men's and Women's Basketball Committees. Unlike Division I, however, the Division II and III Men's and Women's Basketball Committees each report to the Division II or III Championships Committee.[305] Each Championships Committee has responsibility for all of the division's championships, and oversees the budget and conduct of these championships.[306]

[303] NCAA Comparison of Game Expense for Division III Men's and Women's Basketball 2017 to 2019; NCAA Comparison of Game Expense for Division II Men's and Women's Basketball 2017 to 2019; NCAA Revenue Analysis of Division III Men's and Women's Basketball 2015 to 2019; NCAA Revenue Analysis of Division II Men's and Women's Basketball 2015 to 2019.

[304] About NCAA Division II, NCAA (last visited July 21, 2021), https://www ncaa.org/about?division=d2; About Division III, NCAA (last visited July 21, 2021), https://www ncaa.org/about?division=d3.

[305] Division II Championships Committee, NCAA (last visited July 21, 2021), https://www ncaa.org/governance/committees/division-ii-championships-committee; Division III Championships Committee, NCAA (last visited July 21, 2021), https://www ncaa.org/governance/committees/division-iii-championships-committee.

[306] *Id.*

The Division II and III championships take place every March (although both were cancelled in 2020, and the Division III championships were also cancelled in 2021).[307] The budgets for these championships are significantly less than the budgets for the Division I basketball tournaments. In 2019, the Division II Men's and Women's Basketball Championship budgets were approximately $1.6 million and $1.9 million, respectively, and the Division III Men's and Women's Basketball Championship budgets were both approximately $1.2 million and $1.3 million, respectively.[308] The Division II and III championships also generate significantly less revenue than the Division I basketball championships. In 2019, NCAA revenue from the Division II men's and women's basketball championships was approximately $110,000 and $60,000, respectively, and approximately $125,000 and $30,000 from the Division III men's and women's basketball championships, respectively.[309]

2. Gender Equity Infrastructure

For the most part, the gender disparities in Division I exist to a far lesser extent, if at all, in Divisions II and III. Unlike Division I, budgets and participation opportunities are roughly the same for Division II and III men's and women's basketball. In fact, in certain years, team travel expenses make the women's budgets slightly higher than the men's.[310] Moreover, the bracket sizes for the men's and women's basketball championships in both divisions are identical.

This is attributable in large part to the fact that a central Championships Committee in Division II and III oversees both men's and women's basketball and serves as an important check on gender inequity. The chairs of these committees said they view it as their responsibility to ensure that gender equity is considered when decisions are being made—from how they spend their budgets to whether a specific sport can expand its bracket. The committees consider gender equity within each sport and across the divisions generally.

Because there is a single committee overseeing both the men's and women's basketball championships—*i.e.*, the Division II or III Championships Committee—that committee can and does actively facilitate coordination between the men's and women's championships by ensuring that requests made on the men's side are also considered for the women, and vice versa. For example, in 2019, Division III men's basketball requested a new video replay review system. The

[307] Jeremy Villanueva, *Division III Cancels 2021 Winter Championships*, NCAA (Feb. 3, 2021), https://www ncaa.com/news/ncaa/article/2021-02-03/division-iii-cancels-2021-winter-championships; *NCAA Cancels Remaining Winter and Spring Championships* (Mar. 12, 2020), https://www ncaa.org/about/resources/media-center/news/ncaa-cancels-remaining-winter-and-spring-championships.

[308] NCAA Comparison of Game Expense for Division III Men's and Women's Basketball 2017 to 2019; NCAA Comparison of Game Expense for Division II Men's and Women's Basketball 2017 to 2019.

[309] NCAA Revenue Analysis of Division III Men's and Women's Basketball 2015 to 2019; NCAA Revenue Analysis of Division II Men's and Women's Basketball 2015 to 2019.

[310] *See* Division III 2018-19 Facts and Figures, NCAA (last visited July 21, 2013) https://ncaaorg.s3.amazonaws.com/about/d3/2018-19D3_FactandFigures.pdf; NCAA Comparison of Game Expense for Division III Men's and Women's Basketball 2017 to 2019; NCAA Comparison of Game Expense for Division II Men's and Women's Basketball 2017 to 2019.

Championships Committee flagged this request for the championships staff member for Division III women's basketball, who had been unaware that men's basketball was planning to request the technology. The staff member noted that women's basketball would likely support the request if the technology was considered for both women's and men's basketball. Ultimately, the request was denied, but the structural check worked effectively to ensure that the men and women had the same opportunities.

The Division II and III Championships Committees also regularly run participation numbers across like sports as well as all sports in each division to ensure that opportunities are equal for male and female student-athletes and that any differences in participation opportunities correspond to differences in the number of schools sponsoring a particular sport. As one Division II leader explained, Division II takes pride in working to ensure that the participation opportunities across men's and women's sports are 50-50.

Divisions II and III's commitment to gender equity is also embodied by the Divisions' leadership. Committee members and NCAA staff stated that the NCAA leadership and staff in these Divisions, including SVP of Championships Joni Comstock, Vice President of Division II Terri Gronau, and interim Vice President of Division III, Louise McCleary, focus on gender equity and take steps to correct any disparities of which they become aware. For example, when CBS/Turner contracted to broadcast only the Division II men's championship game on CBS or a CBS-affiliated channel,[311] the NCAA paid CBS approximately $150,000 to broadcast the women's semifinals and championship game, as well as $84,000 to broadcast the men's semifinals, on CBS Sports Network.

3. Gender Disparities

Despite these commendable efforts to actively address gender equity, there are still some gender disparities in connection with the Division II and III basketball championships. One notable disparity concerns competition venues. The venues used for the Division II and III women's tournaments are consistently smaller, and of a lesser caliber, than the men's venues. Men's basketball often uses larger, off-campus facilities with more amenities, whereas women's basketball, particularly in Division III, often relies on campus facilities. In addition, men's basketball in Divisions II and III more often uses the same venues for several years in a row, which helps to grow the fan base and ensure that an already proven venue is hosting the championship.[312]

The differences between the men's and women's venues were particularly pronounced at this year's Division II basketball championships. While the men's championship took place at the Ford Center in Evansville, Indiana (where the final rounds of the tournament were held in 2014, 2015, and 2019), the women's basketball championship took place at the Greater Columbus

[311] 2016 CBS/Turner Multi-Media Agreement § 7.4(d).

[312] Division II Gender Equity Championship Data (2021); Division III Gender Equity Championship Data (2021).

Convention Center in Columbus, Ohio.[313] Shortly before the event, the original venue for this year's Division II women's basketball championship decided against hosting the tournament due to the pandemic. The Greater Columbus Sports Commission, who was cosponsoring the tournament, worked with the NCAA to help them stay in Columbus at the Convention Center.[314] Due to space and public safety restrictions at the Convention Center, however, only approximately 72 family members of the women's basketball players were permitted to attend each game, and no tickets were available to the public.[315] The Convention Center also is not a basketball arena, and while a basketball court was set up, it did not have the look and feel of an NCAA championship.[316] By comparison, the Ford Center, where the men's championship was held, is a large venue and able to seat thousands of fans, even with public safety restrictions on crowd size.[317]

While this year's venue issues were due in part to the pandemic, they were by no means unique. In fact, even the women's original venue would have been smaller and of lesser quality than the men's. Venue selection is driven to a large degree by who bids on the tournament; while the Division II and III Men's and Women's Basketball Committees ultimately choose the venues, they can only pick among the bids that have been submitted. And hosting a men's tournament may have greater appeal to potential host sites due to the greater revenue from ticket sales that has historically been received from Division II and III men's basketball.[318]

Although these external factors contribute to venue disparities, the Division II and III Women's and Men's Basketball Committees do not take steps to coordinate with one another on venue selection to strive for greater equity. Moreover, differences in priorities between the men's and women's committees can also enhance disparities in venue size and quality. For example, one Division III Women's Basketball Committee member noted that their committee focuses on

[313] Wayne Cayadi, *DII Men's Basketball Championship: How to Watch the DII Men's Elite Eight*, NCAA (Mar. 29, 2019), https://www ncaa.com/news/basketball-men/article/2019-03-28/dii-mens-basketball-championship-how-watch-dii-mens-elite; Hendrix Magley, *NCAA D2 Men's Basketball Elite Eight, Other Postseason Events Staying in Evansville*, Courier & Press (Oct. 15, 2020), https://www.courierpress.com/story/sports/college/2020/10/15/ncaa-division-ii-mens-basketball-elite-eight-return-evansville-2024/3654751001/; Jacob Myers, *How Columbus Will Host NCAA Division II Women's Basketball Championship During a Pandemic*, Dispatch (Mar. 23, 2021), https://www.dispatch.com/story/sports/2021/03/23/how-columbus-host-ncaa-d-2-womens-basketball-title-during-pandemic/4769478001/.

[314] Jacob Myers, *How Columbus Will Host NCAA Division II Women's Basketball Championship During a Pandemic*, Dispatch (Mar. 23, 2021), https://www.dispatch.com/story/sports/2021/03/23/how-columbus-host-ncaa-d-2-womens-basketball-title-during-pandemic/4769478001/.

[315] *Id.*

[316] Sarah Wynn, *Preparations Underway in Columbus for NCAA Division II Women's Basketball Tournament*, ABC 6 (Mar. 10, 2021), https://abc6onyourside.com/sports/content/preparations-underway-in-columbus-for-ncaa-division-ii-womens-basketball-tournament.

[317] *Safety Protocols of NCAA Basketball Championships at Ford Center*, City County Observer (Mar. 3, 3021), https://city-countyobserver.com/safety-protocols-of-ncaa-basketball-championships-at-ford-center/ ("Spectator seating for the events will be limited to 2,500 fans and will be divided into socially-distanced pods.").

[318] NCAA Revenue Analysis of Division III Men's and Women's Basketball 2015 to 2019; NCAA Revenue Analysis of Division II Men's and Women's Basketball 2015 to 2019.

finding a venue that fits the expected crowd size, whereas the men's committee often purposefully chooses larger venues.

Divisions II and III risk other small disparities occurring at the men's and women's championships because, as in Division I, there is no formal system for ensuring staff communication and coordination while planning the tournaments. Individual staff members have discretion in decision-making, which can result in disparities between the tournaments if the staff members do not coordinate. The fact that budgets are modest and largely the same helps to minimize any unintentional disparities, but does not prevent such disparities entirely. Small differences can also result from amenities being provided by host institutions and localities.[319]

4. Recommendations

Recommendation 6.1

Establish regular communications between the Division II and III Men's and Women's Basketball Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

While Divisions II and III largely do not have the same gender equity issues as Division I, those gender equity issues that do arise—such as issues related to venues and site selection—largely stem from lack of coordination and communication between the basketball staff and committees. Accordingly, consistent with Recommendation 1.4 above, the Division II and III Men's and Women's Basketball Committees should regularly communicate, with a focus on coordinating strategic decisions and achieving gender equity in the student-athlete experience.

This enhanced communication and coordination should include site selection and the quality of venues, including coordinating on the timing of selecting venues and developing a considered list of priorities for site selection. While differences in the quality of venues is largely dependent on who bids to host the tournaments, the lack of coordination on site selection and differing priorities between the Division II and III Men's and Women's Basketball Committees has led to an inability to identify and address these venue-related issues during the site selection process. For example, if the timing for site selection were coordinated and the venues bidding for the women's events happened to be disparate from the men's, the Basketball Committees could consider combining the tournaments in one location or making other changes to improve venue options.

[319] Division II Gender Equity Championship Data (2021).

Recommendation 6.2

Ensure that items impacting the student-athlete experience at the Division II and III Men's and Women's Basketball Championships are gender-equitable.

The championships staff for Division II and III men's and women's basketball should coordinate with one another to ensure that those items that impact the student-athlete experience (as detailed in Recommendation 3.2 above) are substantially the same.

ENSURING PROGRESS ON GENDER EQUITY

Many of the recommendations made in this report are not new. Indeed, some will be all too familiar to those who have been involved with women's collegiate basketball over the last 30 years or more. But the events that occurred at this year's NCAA Division I Men's and Women's Basketball Championships—and which led to this review—have provided the NCAA, its membership, and its corporate and media partners with a unique opportunity to work together to implement these recommendations now, effectuating real change to achieve gender equity and improve the student-athlete experience at the championships going forward. Having spoken to literally hundreds of conference commissioners, athletic directors, SWAs, coaches, student-athletes, sports groups and institutes, and many, many others, we are confident that the college sports community and its supporters are ready, willing, and able to help improve gender equity at the NCAA championships; in fact, they expect nothing less.

Recommendation 7

For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report.

To keep the collegiate sports community informed and engaged in this process, and to ensure that the best possible use is made of this opportunity to make change at the NCAA, there should be an annual assessment of the NCAA's progress in implementing this report's recommendations. The assessment should be made public on the NCAA website, and also provided to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Division II and III Presidents Councils, the Division II and III Championships Committees, and the Men's and Women's Basketball and Basketball Oversight Committees for all divisions.

LIST OF RECOMMENDATIONS

The gender equity challenges that the NCAA faces are significant and systemic. But there are concrete steps that the NCAA can take to address them. The recommendations outlined above, and listed again below, provide a comprehensive roadmap for advancing the gender equity principles to which the NCAA and its members have committed.

Providing Structural Support for and Improving Transparency and Accountability Around Gender Equity **(see pp. 61-66 for details)**

Recommendation 1.1: Change the leadership structure of Division I basketball to prioritize gender equity and coordination between the men's and women's tournaments.

Recommendation 1.2: Before the next budget cycle, conduct a "zero-based" budget for Division I men's and women's basketball to ensure that any gender differences are necessary, appropriate, and equitable.

Recommendation 1.3: Develop equity in staffing for Division I men's and women's basketball.

Recommendation 1.4: Establish regular communications between the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

Recommendation 1.5: Perform a real-time gender equity audit of the Division I Men's and Women's Basketball Championships as they are being planned and executed each year.

Recommendation 1.6: Prepare an annual report on the results of the real-time gender equity audit, including issues identified, how those issues were resolved, and lessons learned.

Recommendation 1.7: Conduct an external gender equity assessment of the Division I Men's and Women's Basketball Championships in five years.

Recommendation 1.8: Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.

Recommendation 1.9: Evaluate and reward performance for contributions to gender equity.

Recommendation 1.10: Increase NCAA staff with expertise in Title IX and gender equity.

Maximizing Value Through Gender Equity in Marketing, Promotion, and Sponsorships **(see pp. 78-84 for details)**

Recommendation 2.1: Market the rights to the Division I Women's Basketball Championship as a stand-alone property.

Recommendation 2.2: Use "March Madness" for both the Division I Men's and Women's Basketball Championships.

Recommendation 2.3: Negotiate for a new tier of corporate sponsors for the Division I Women's Basketball Championship (and other NCAA championships).

Recommendation 2.4: Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.

Recommendation 2.5: Implement an overall strategy to realize the value of the Division I Women's Basketball Championship (and other championships across the NCAA).

Recommendation 2.6: Establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships (and all other championships across the NCAA).

Recommendation 2.7: Pursue marketing and promotional opportunities that will benefit both the Men's and Women's Division I Basketball Championships.

Recommendation 2.8: Increase cross-promotion of the Division I Men's and Women's Basketball Championships.

Improving Gender Equity at Future Championships **(see pp. 86-90 for details)**

Recommendation 3.1: Hold the men's and women's Final Fours together in one city.

Recommendation 3.2: Ensure that items impacting the student-athlete experience at the Division I Men's and Women's Basketball Championships are gender-equitable.

Recognizing Gender Equity in Revenue Distribution **(see pp. 93-95 for details)**

Recommendation 4: Apply gender equity values to revenue distribution.

Ensuring Gender Equity in Participation Opportunities **(see pp. 99-100 for details)**

Recommendation 5: Provide an equitable number of participation opportunities.

Enhancing Gender Equity in Division II and III Basketball **(see p. 105-06 for details)**

Recommendation 6.1: Establish regular communications between the Division II and III Men's and Women's Basketball Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

Recommendation 6.2: Ensure that items impacting the student-athlete experience at the Division II and III Men's and Women's Basketball Championships are gender-equitable.

Ensuring Progress on Gender Equity **(see p. 107 for details)**

Recommendation 7: For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report.

EXHIBIT A: SCOPE OF REVIEW

EXTERNAL STAKEHOLDER CONNECTIONS	
Stakeholder Interviews	110
Discussion Forums	21
BREAKDOWN OF EXTERNAL STAKEHOLDERS BY ROLE	
Student-Athletes	78
Commissioners	37
Coaches	66
Athletic Directors	25
SWAs	27
Sports Organizations and Institutes	17
Other	30
TOTAL	280
KHF GENDER EQUITY WEBSITE[320]	
Unique Visitors	12,125
Submissions	1,762

[320] As of August 2, 2021.

NCAA INTERVIEWS	
NCAA Staff	75
NCAA Committee Members	63
Contractors, Local Organizing Committees, and Others	6
TOTAL	144
KEY NCAA INTERVIEWEES	
NCAA Senior Leadership	▪ President Mark Emmert ▪ Former Chief Operating Officer/Chief Legal Officer Donald Remy ▪ Executive Vice President of Regulatory Affairs Stan Wilcox ▪ SVP of Basketball Dan Gavitt ▪ Vice President of Women's Basketball Lynn Holzman ▪ SVP of Administration and Chief Financial Officer Kathleen McNeely ▪ SVP and Chief Medical Officer Dr. Brian Hainline ▪ SVP of Communications Bob Williams ▪ Interim SVP of Legal Affairs and General Counsel Scott Bearby ▪ SVP of Championships Dr. Joni Comstock ▪ Interim SVP of Policy and Governance Chief of Staff Cari Van Senus ▪ Vice President of Division I Kevin Lennon ▪ Vice President of Enforcement Jon Duncan ▪ Vice President of Division II Terri Steeb Gronau

	▪ Interim Vice President of Division III Louise McCreary ▪ Vice President of Academic and Membership Affairs Dave Schnase ▪ Managing Director of Inclusion Amy Wilson
Members of NCAA Committees	▪ Division I Women's Basketball Committee ▪ Division I Women's Basketball Oversight Committee ▪ Division I Men's Basketball Committee ▪ Division I Men's Basketball Oversight Committee ▪ Division II Women's Basketball Committee ▪ Division II Men's Basketball Committee ▪ Division III Women's Basketball Committee ▪ Division III Men's Basketball Committee ▪ Division I Board of Directors Finance Committee ▪ Division II Planning and Finance Committee ▪ Division II Championships Committee ▪ Division III Championships Committee ▪ Division II Management Council ▪ Division III Management Council ▪ Division III Administrative Committee ▪ Board of Governors Committee to Promote Cultural Diversity and Equity ▪ Committee on Women's Athletics ▪ Minority Opportunities and Interests Committee ▪ Gender Equity Task Force
DOCUMENTS	
Documents from the NCAA	4,086

EXHIBIT B: ANALYSIS OF BASKETBALL PERFORMANCE FUND DISTRIBUTION

Conference	Men's-Only Payment	Year 1: 95/5	Year 2: 90/10	Year 3: 85/15	Year 4: 80/20	Year 5: 75/25	Year 6: 70/30	Year 7: 65/35	Year 8: 60/40	Year 9: 55/45	Year 10: 50/50
America East Conference	$560,734	$547,932	$535,131	$522,329	$509,528	$496,726	$483,925	$471,123	$458,322	$445,520	$432,719
American Athletic Conference	$11,214,696	$11,446,189	$11,677,683	$11,909,176	$12,140,669	$12,372,162	$12,603,656	$12,835,149	$13,066,642	$13,298,135	$13,529,629
Atlantic Sun Conference	$1,121,469	$1,095,866	$1,070,263	$1,044,660	$1,019,056	$993,453	$967,850	$942,247	$916,644	$891,041	$865,438
Atlantic 10 Conference	$9,812,859	$9,535,508	$9,258,157	$8,980,807	$8,703,456	$8,426,105	$8,148,754	$7,871,404	$7,594,053	$7,316,702	$7,039,351
Atlantic Coast Conference	$28,317,111	$28,531,417	$28,745,723	$28,960,029	$29,174,335	$29,388,641	$29,602,947	$29,817,253	$30,031,559	$30,245,865	$30,460,172
Big 12 Conference	$21,588,293	$21,590,574	$21,592,856	$21,595,137	$21,597,418	$21,599,700	$21,601,981	$21,604,263	$21,606,544	$21,608,825	$21,611,107
Big East Conference	$14,018,371	$13,637,391	$13,256,410	$12,875,430	$12,494,450	$12,113,470	$11,732,489	$11,351,509	$10,970,529	$10,589,548	$10,208,568
Big Sky Conference	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Big South Conference	$280,367	$266,349	$252,330	$238,312	$224,294	$210,275	$196,257	$182,239	$168,220	$154,202	$140,184
Big Ten Conference	$25,233,070	$24,915,996	$24,598,922	$24,281,848	$23,964,774	$23,647,701	$23,330,627	$23,013,553	$22,696,479	$22,379,405	$22,062,331
Big West Conference	$841,101	$799,046	$756,991	$714,936	$672,881	$630,826	$588,771	$546,716	$504,661	$462,606	$420,551
Colonial Athletic Association	$280,367	$312,054	$343,741	$375,428	$407,115	$438,803	$470,490	$502,177	$533,864	$565,551	$597,238
Conference USA	$1,401,836	$1,331,744	$1,261,652	$1,191,561	$1,121,469	$1,051,377	$981,285	$911,193	$841,102	$771,010	$700,918
Horizon League	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Metro Atlantic Athletic Conference	$0	$45,705	$91,411	$137,116	$182,822	$228,527	$274,233	$319,938	$365,644	$411,349	$457,055

Conference	Men's-Only Payment	Year 1: 95/5	Year 2: 90/10	Year 3: 85/15	Year 4: 80/20	Year 5: 75/25	Year 6: 70/30	Year 7: 65/35	Year 8: 60/40	Year 9: 55/45	Year 10: 50/50
Mid-American Conference	$280,367	$342,524	$404,682	$466,839	$528,997	$591,154	$653,312	$715,469	$777,626	$839,784	$901,941
Mid-Eastern Athletic Conference	$560,734	$532,697	$504,661	$476,624	$448,587	$420,551	$392,514	$364,477	$336,440	$308,404	$280,367
Missouri Valley Conference	$5,607,349	$5,372,687	$5,138,025	$4,903,363	$4,668,701	$4,434,039	$4,199,377	$3,964,715	$3,730,053	$3,495,391	$3,260,729
Mountain West Conference	$4,205,511	$3,995,235	$3,784,960	$3,574,684	$3,364,409	$3,154,133	$2,943,858	$2,733,582	$2,523,307	$2,313,031	$2,102,756
Northeast Conference	$560,734	$532,697	$504,661	$476,624	$448,587	$420,551	$392,514	$364,477	$336,440	$308,404	$280,367
Ohio Valley Conference	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Pacific-12 Conference	$16,261,310	$16,773,703	$17,286,096	$17,798,489	$18,310,882	$18,823,275	$19,335,668	$19,848,061	$20,360,454	$20,872,847	$21,385,240
Patriot League	$280,367	$266,349	$252,330	$238,312	$224,294	$210,275	$196,257	$182,239	$168,220	$154,202	$140,184
Southeastern Conference	$17,943,516	$18,737,442	$19,531,369	$20,325,295	$21,119,222	$21,913,148	$22,707,075	$23,501,001	$24,294,927	$25,088,854	$25,882,780
Southern Conference	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Southland Conference	$560,735	$532,698	$504,662	$476,625	$448,588	$420,551	$392,515	$364,478	$336,441	$308,404	$280,368
Southwestern Athletic Conference	$280,367	$266,349	$252,330	$238,312	$224,294	$210,275	$196,257	$182,239	$168,220	$154,202	$140,184
Sun Belt Conference	$841,101	$814,281	$787,461	$760,641	$733,821	$707,002	$680,182	$653,362	$626,542	$599,722	$572,902
The Ivy League	$841,102	$829,517	$817,932	$806,348	$794,763	$783,178	$771,593	$760,008	$748,424	$736,839	$725,254
The Summit League	$280,367	$281,584	$282,801	$284,017	$285,234	$286,451	$287,668	$288,885	$290,101	$291,318	$292,535
West Coast Conference	$5,326,982	$5,167,279	$5,007,576	$4,847,873	$4,688,170	$4,528,467	$4,368,764	$4,209,061	$4,049,358	$3,889,655	$3,729,952
Western Athletic Conference	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0

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NCAA EXTERNAL GENDER EQUITY REVIEW

Phase II

October 25, 2021

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EXECUTIVE SUMMARY

Earlier this year, a viral video comparing the spacious weight room at the Division I Men's Basketball Championship with the single tower of hand weights provided at the Division I Women's Basketball Championship brought public scrutiny to issues of gender equity at the NCAA.[1] The attention did not stop with basketball. The public spotlight that revealed disparities at the basketball championships in Indianapolis and San Antonio soon highlighted differences in the experiences of male and female student-athletes at other NCAA championships held this past spring.

As these events were unfolding, NCAA President Mark Emmert directed NCAA Senior Vice President (SVP) of Championships, Joni Comstock, who oversees all 84 of the NCAA's non-basketball championships, to "check everything." For the first time, the NCAA's Championships staff undertook an expedited review of the supplies, services, and resources provided by the NCAA to the student-athletes participating in all NCAA championships other than basketball. Looking at the men's and women's championships by sport (*e.g.*, men's and women's tennis, men's and women's lacrosse, men's and women's ice hockey, etc.), the Championships staff compared, among other things, equipment and supplies, schedules, and athletic, medical, and housing services.

From that review, the NCAA was able to identify gender discrepancies in approximately nine out of 23 sports, and to address some of those discrepancies before the spring 2021 championships took place. For example, the NCAA increased the travel party size for women's lacrosse so that it was equal to the travel party size for men's lacrosse. It also ordered new commemorative chairs for softball to match the ones already ordered for baseball. While several of the inequities identified were quickly corrected, many others could not be resolved with short-term fixes. The SVP of Championships and her staff highlighted the findings of their internal gender equity review in a meeting with the NCAA Board of Governors on April 27, 2021.

Despite the NCAA's efforts, the media and the college sports community continued to raise concerns about gender disparities in a number of the NCAA's spring championships. The New York Times, for example, reported striking disparities between the Men's and Women's College World Series, describing how "one sport's players get showers, off days, massages and a festive dinner, while the others get doubleheaders and sweaty bus rides back to a hotel."[2] (Baseball is the former; softball the latter.) Various other news outlets reported outrage among players and fans over the NCAA's decision to cancel one of its regional women's golf tournaments because of inclement weather.[3]

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[1] Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), https://www.tiktok.com/@sedonerrr/video/6941180880127888646.

[2] David Leonhardt, *Massages for Men, Doubleheaders for Women*, N.Y. Times (June 4, 2021), https://www nytimes.com/2021/06/04/briefing/college-sports-gender-inequality html.

[3] *See, e.g.*, Steve Gress, *Commentary: NCAA Tone Deaf Again in Women's Golf Fiasco*, Gazette Times (May 16, 2021), https://www.gazettetimes.com/sports/beavers-sports/commentary-ncaa-tone-deaf-again-in-womens-golf-fiasco/article_6a223283-34c7-595c-a4db-bc8ea8d07b97 html; Jack Seddon, *Social Media Slams "Disgusting" Acts of NCAA After Women's Event Is*

That there are gender inequities at NCAA championships other than basketball is, while disappointing, not a surprise. As our August 2, 2021 Phase I report on basketball concluded, gender disparities in the NCAA championships stem from the structure and culture of the NCAA itself. As we explained in our Phase I report, woven into the fabric of the NCAA is a pressure to increase revenue to maximize funding distributions to the membership, which relies heavily on the NCAA's support. This pressure led the NCAA to prioritize Division I men's basketball over women's basketball in ways that create, normalize, and perpetuate gender inequities.

Phase II of our review has shown that this same pressure has led the NCAA to invest more—and in some instances considerably more—in those championships that it views as already or potentially revenue-producing, while minimizing spending for other championships.[4] Because the mere handful of championships that the NCAA views as revenue-producing are exclusively men's championships—Division I baseball, men's basketball, men's ice hockey, men's lacrosse and wrestling—this has significant implications for efforts to achieve gender equity between the men's and women's championships in those sports. The NCAA's simultaneous failure to put in place systems to identify, prevent, and address gender inequities across its championships has allowed gender disparities in these and other sports to persist for too long.

The result has been cumulative, and is only compounded by the fact that the men's championships have a much longer history at the NCAA than the women's. It is impossible to understand the gender disparities in the NCAA's 24 sponsored sports without acknowledging the significant head start that men's sports have had at the NCAA. The NCAA did not sponsor a championship for women until the fall of 1981, more than 75 years after the association was founded. And the women's championships are almost universally newer than the men's: since 1981, all of the Division I championships added to the NCAA roster have been in women's sports.

In the last 40 years, women's sports have effectively been playing catch up at the NCAA. In this pursuit, women's sports have received support from many in the NCAA who have made concerted efforts over the years to advance gender equity. For example, more than a decade ago, the NCAA adopted a number of gender-neutral policies, such as its per diem and travel policies, to ensure that male and female student-athletes within the same division are receiving the same level of funding for certain activities. To encourage the growth of women's sports, in 1994, the NCAA put in place the concept of "emerging sports for women" and a lower sponsorship threshold for women's sports to qualify for the creation of a new NCAA championship—a minimum threshold of 40 school sponsors for women's sports, as compared to 50 for men's sports.[5] And, as a general matter, the Division I Competition Oversight Committee and Division II and III

Cancelled, Golf Magic (May 13, 2021), https://www.golfmagic.com/golf-news/social-media-slams-disgusting-acts-ncaa-after-womens-event-cancelled.

[4] The NCAA considers a "revenue-producing" championship to be one in which gross revenue, excluding revenue from television and marketing rights fees, exceeds spending—in other words, one in which the NCAA nets a profit.

[5] NCAA Bylaws 18.2.4.1, 18.2.4.2 (originally adopted Jan. 11, 1994, last amended Jan. 17, 2009).

Championships Committees strive to ensure that requests made for the men's championship in a given sport are also presented to and considered for the women's, and vice versa.

Our Phase II review has shown that these gender equity efforts are capable of bearing fruit. We found that many NCAA sports have made progress in providing equitable championship experiences for their male and female student-athletes. Because of the nature of this review, which necessarily involved a high-level analysis of the 84 championships within its scope, we focused on certain key characteristics of equitable championships, though other relevant information may exist for each sport. For example, many of these sports have either joint committees and joint staff or, at a minimum, separate committees and staff that communicate and coordinate well with one another. In addition, many of these sports hold either joint championships or championships that use the same facilities in back-to-back weeks. And many of these sports receive equitable levels of funding and staffing from the NCAA for the men's and women's championships. These sports can serve as models for gender equity in NCAA championships. While there is no "one-size-fits-all" solution that will work for every sport, the experiences of these sports corroborate the findings of our Phase I report, which identified collaboration between committees and staff, combined championships, and equitable financial and staff support as potential ways of addressing gender disparities.

The NCAA will never achieve gender equitable experiences for all student-athletes, however, until it adopts the right systems to identify, prevent, and address gender disparities, as we highlighted in our Phase I report. That must change. And it can. The NCAA has already shown that changes can be made—and with some speed—when there is sufficient attention and commitment by the NCAA's leadership, membership, staff, and other stakeholders.

Since our Phase I report was released in early August 2021, the NCAA has taken a number of meaningful steps to achieve greater gender equity in its championships—some at our recommendation and others on its own. For example, in response to our Phase I recommendations, the NCAA has extended the use of the March Madness trademark to the Division I Women's Basketball Championship and has adopted a "zero-based budgeting method" for Division I basketball.[6] In addition, the NCAA has added rest days for Division I women's gymnastics, softball, and women's volleyball, and has expanded the Division I women's golf regionals from four sites to six sites to match the men's regional structure.[7]

Of course, the NCAA's work in achieving gender equity across its championships for all its student-athletes is far from completed. Many challenges remain. But the NCAA's recent efforts provide cause for optimism that with the right tools, focus, and resources, the NCAA can live up

[6] Greg Johnson, *March Madness Brand Will Be Used for DI Women's Basketball Championship*, NCAA.com (Sept. 29, 2021), https://www ncaa.org/about/resources/media-center/news/general-march-madness-brand-will-be-used-for-di-womens-basketball-championship.

[7] Report of the NCAA Division I Competition Oversight Committee (Sept. 17, 2021).

to its stated commitment to "diversity, inclusion and gender equity among its student-athletes, coaches and administrators."[8]

1. Review Process & Scope

While the 2021 Division I Men's and Women's Basketball Championships were still ongoing, the NCAA retained Kaplan Hecker & Fink LLP (KHF) to review disparities that had been identified between those championships. Our firm's mandate was not limited to basketball, however. The NCAA asked KHF to conduct a comprehensive and thorough review of gender equity issues in connection with all NCAA championships, to assess the causes of any gender disparities, and to make recommendations for how the NCAA should address those disparities going forward.

At the NCAA's direction, our review was to be completed in a timeframe that would allow the NCAA to consider our recommendations and begin the implementation process in time for the upcoming championship season. To accommodate this timeframe, our review was divided into two phases. In Phase I, KHF studied the NCAA's policies, practices, and culture with respect to gender equity and how the NCAA's administration of its championships impacts the student-athlete experience. The keystone of that analysis was an in-depth review of the NCAA's basketball championships, which was conducted over the course of approximately four months and involved extensive interviews, document review, and the retention of a media expert to assess the true value of the broadcast rights to the Division I Women's Basketball Championship. The findings from Phase I were released to the public on August 3, 2021, and are available at https://ncaagenderequityreview.com.

For Phase II, which was conducted over the course of approximately three months, KHF was asked to assess gender disparities in the experiences of male and female student-athletes at the NCAA's 84 other championships, for which more than 500,000 student-athletes, across 23 sports and three divisions, strive to qualify. These sports include baseball, beach volleyball, bowling, cross country, fencing, field hockey, football, golf, gymnastics, ice hockey, indoor track and field, lacrosse, outdoor track and field, rifle, rowing, skiing, soccer, softball, swimming and diving, tennis, volleyball, water polo, and wrestling. Rather than placing any single sport under a microscope—as the Phase I report did with basketball—our Phase II report looks at NCAA championships through a broader lens, identifying patterns or trends in the ways in which the NCAA's policies, practices, and culture around gender equity impact the student-athlete championship experience, as well as highlighting factors that can lead to more equitable championships. As part of this effort, we completed nine different case studies of Division I and National Collegiate (NC)[9] championships—baseball and softball, ice hockey, lacrosse, volleyball, gymnastics, tennis, swimming and diving, soccer, and golf—to further explore these patterns and

[8] NCAA Inclusion Statement (adopted by the NCAA Executive Committee April 2010, amended by the NCAA Board of Governors April 2017), https://www.ncaa.org/about/resources/inclusion/ncaa-inclusion-statement.

[9] National Collegiate championships are NCAA championships for which schools from multiple divisions are eligible.

trends and to provide context for our recommendations. *See* pp. 60-109. We also prepared data-driven fact sheets (compiled at Exhibit A) for all NCAA sports besides basketball.

As in Phase I, the NCAA guaranteed KHF independence in its work on Phase II and cooperated fully in our fact-gathering efforts. The NCAA further committed to respect the confidentiality of our communications with, and the anonymity of, any sources who asked not to be identified to the public or the NCAA. While NCAA staff were given an opportunity to confirm the accuracy of certain facts (*e.g.*, budgetary numbers), the NCAA did not approve this report or change any of its recommendations before it was issued. The NCAA committed to this report's public release.

While the scope of this review was in many ways extremely broad, it was not unlimited. At the NCAA's direction, we analyzed disparities between the men's and women's championships of like sports—for example, comparing the experience of student-athletes at the women's lacrosse championships with that of student-athletes at the men's lacrosse championships. We did not compare championships across sports or conduct an analysis of gender equity across NCAA championships in the aggregate. In the course of our review, many stakeholders expressed the view that such an analysis would be of value to the NCAA, as well as frustration that such an analysis was not part of this review. While those questions fall beyond the purview of our work here, we encourage the NCAA, its members, and its stakeholders to consider, based on the NCAA's own internal gender equity review and our Phase I and II reports, whether any additional gender equity analysis related to any particular sport, or across all championships in the aggregate, would be useful as the NCAA continues to undertake the work necessary to ensure an equitable experience for all of its student-athletes. We note in this regard that a significant challenge to conducting such an aggregate review is that the NCAA's current methods of collecting and maintaining information about, among other things, ticket sales, corporate partnerships and activations, and championship amenities across championships do not facilitate such a review. Improving this data collection and maintenance will be an important first step towards enabling effective gender equity reviews in the future. *See* Recommendation A.2 below.

Given the number of championships at issue, Phase II of our review was a significant undertaking. The analysis reflected in this report is informed heavily by the work we did in Phase I, which included interviews with a total of 144 NCAA staff, committee members, and third-party contractors and organizations working with the NCAA, as well as 280 external stakeholders, including coaches, student-athletes, athletic directors, commissioners, senior woman administrators, and sports organizations and institutes. That work also involved the collection of more than 4,000 documents from the NCAA and the creation of a website that allowed the public to submit comments relevant to our review.

We did additional work to gather information specific to Phase II. As detailed below, we used multiple methods to gather information relevant to our review:

- ***Questionnaires.*** At the outset of our review, KHF sent questionnaires to four categories of stakeholders: NCAA staff, NCAA committees, conference commissioners, and coaches associations. Specifically, we sent questionnaires to (1) the NCAA staff member

responsible for coordinating the championship in each division for each of the 23 sports covered by Phase II; (2) the chair of the committee for each of those championships; (3) each conference commissioner for Divisions I, II, and III; and (4) the head of the primary coaches association for each sport. The questionnaires were designed to elicit information about inequities observed between the NCAA championships held for each gender within a sport. For single-gender sports, respondents were asked to compare similarly situated sports offered for the other gender. KHF received a total of 185 questionnaire responses.

- ***Interviews.*** KHF also conducted interviews with a total of 68 external stakeholders and 25 key NCAA staff and committee chairs. Among those external stakeholders were commissioners, athletic directors, academics, coaches, and organizations that focus on gender equity in intercollegiate sports. Among the staff and committee members were the championship managers for many of the NCAA's championships, as well as the chairs of several NCAA sport committees. KHF also met with the SVP of Championships, the Chair of the Competition Oversight Committee, and multiple current and former Managing Directors of Championships and Alliances.
- ***Documents.*** In addition, KHF requested, received, and reviewed thousands of internal documents from the NCAA. The documents covered a range of topics, including championship spending and revenue, broadcast and attendance data, host venue contracts, budgets and budget requests, and internal analyses of the needs of various championships. In total, KHF received approximately 8,100 documents as part of our Phase II review.
- ***Website submissions.*** Finally, KHF created a website at the beginning of Phase I, ncaagenderequityreview.com, where anyone could submit comments and provide information for consideration in this review. Submissions continued through Phase II, and as of the date of this report, that website has received over 18,600 unique visitors and more than 1,780 submissions from student-athletes, parents, coaches, fans, NCAA staff, and others.

2. Summary of Findings

In Phase I of our review, we concluded that the NCAA has not lived up to the principle of gender equity because of the structures and systems of the NCAA itself. Our first report analyzed the ways in which those structures and systems led to stark and long-standing gender inequities in the Division I basketball championships.

In Phase II, we reviewed 84 NCAA championships in three divisions across 23 sports and identified how those same structures and systems have impacted the tens of thousands of student-athletes who participate in those championships each year. We identified some sports with significant gender disparities in the experience they provide to male and female student-athletes. We identified other sports where stakeholders voiced no gender equity concerns and described their championships as gender equity role models for the NCAA. And we identified sports where

gender equity efforts have been made, and yet some issues went overlooked or unrecognized until this year. This broad survey has allowed us not only to further understand the causes of gender disparities in NCAA championships, but also to isolate the characteristics that more equitable championships share, which can provide guidance for how to advance gender equity in the NCAA's championships moving forward.

The NCAA's organizational structure and culture prioritizes revenue-producing sports, contributing to gender inequity. The same structural and cultural issues that impact Division I basketball pervade the NCAA and have shaped its treatment of other championships. The NCAA membership's heavy reliance on the money it receives from NCAA revenue distributions has placed pressure on the NCAA to maximize that revenue and minimize spending so that more funds can be distributed to the membership. Because the NCAA has limited staff and financial resources to allocate among its many championships, this means that championships that are not viewed by the NCAA as already or potentially revenue-producing receive less support.

For the vast majority of NCAA sports, the result is that the men's and women's championships of like sports are resourced equitably (albeit perhaps minimally). But for sports in which one championship is viewed as producing significantly more revenue than its gender counterpart, stark differences in spending and staffing emerge, leading to inequitable student-athlete experiences in those championships. Today, the only championships that the NCAA considers revenue-producing are men's championships: Division I baseball, men's basketball, men's ice hockey, men's lacrosse, and wrestling.[10] It is when those sports have women's counterparts that we observed the greatest resource disparities and resulting gender inequities. Similarly, the NCAA invests more in those women's championships that generate more revenue than their men's counterparts, such as Division I women's volleyball and women's gymnastics, as those women's championships are considered potentially revenue-producing while their men's counterparts are not.

Additional resources are understandably required to support championships that have, for example, larger audiences, more student-athlete participants, and live broadcasts. It is also understood that the NCAA has a goal of maximizing revenue to ensure its own long-term sustainability and the distribution of predictable and significant funds to its membership, which can be critical to helping support their athletic programs. Championships in the earlier stages of growth and development—as are many of the women's championships—are not considered by the NCAA to be its largest, most revenue-producing championships. Nevertheless, they deserve a fair shot to get there, which they cannot do without sufficient resources.

Despite the numerous NCAA championships in which resources are allocated equitably or even equally, spending per Division I and NC championship participant (excluding basketball) in 2018-19 was $4,285 on the men's side compared to $2,588 on the women's—a difference of

[10] Currently, only men have an NCAA wrestling championship. Wrestling is an "Emerging Sport for Women."

$1,697 per student-athlete.[11] Of course, a calculation of average spending per student-athlete does not explain the potential reasons for these differences (*e.g.*, fan attendance), but it can still serve as one useful benchmark in examining gender equity in the allocation of resources between men's and women's championships.

The NCAA needs to have a clear, transparent process in place for actively monitoring whether differences in spending and staffing between championships are appropriately tied to a championship's particular needs and characteristics, or whether they instead result in unacceptable gender inequities that can impact the student-athlete experience. The NCAA should also have a similar process for allocating resources among championships in the first instance that takes gender equity into account. Where there is no clarity around how resources are being allocated between championships, there is certainly no way to ensure that any resource allocation is equitable from a gender perspective.

The structure of the NCAA's media agreements encourages uneven investment in championships, further contributing to gender inequity. As we found in Phase I, the NCAA's media contracts prioritize support for Division I men's basketball to the exclusion of all other championships. The significant expense of buying into the CBS/Turner corporate sponsorship program, which bundles the marketing rights for all other championships together with the media rights for Division I men's basketball, means that the cost of sponsoring championships other than men's basketball is often prohibitive. As a result, many championships outside of basketball have little to no corporate sponsorships at all.

Some, however, do. In those instances, the incentive structures created by the NCAA's media contracts result in a system in which corporate sponsorship dollars—and the associated benefits, including fan fests and other items that contribute to a championship's "look and feel"—are disproportionately spent on men's championships over women's championships within the same sport. For example, the NCAA has an agreement with CBS/Turner in which CBS/Turner manages the fan festivals at the Division I Men's Basketball Championship, the Division I Men's College World Series, the Division I Men's Lacrosse Championship, the Division I Men's Frozen Four, and the Division I Wrestling Championship, but only manages one fan festival for a women's championship, the Division I Women's College World Series.[12]

[11] To calculate the average spend per student-athlete, we divided the total spend for Division I and NC men's and women's championships by the total number of student-athletes who participate in the men's and women's championships, respectively. See below at p. 21 n.41 for more details.

Throughout this report, we use NCAA financial data from 2018-19, unless otherwise indicated. *See* NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019. The 2018-19 year was the last full year that the NCAA held all of its championships without accommodations due to the COVID-19 pandemic.

[12] *See* Letter Agreement between CBS/Turner and the NCAA regarding the NCAA Fan Festivals at 2 (Mar. 14, 2016) ("Fan Fest Agreement"); *see also, e.g.*, 2019 Wrestling Settlement Statement; 2019 Lacrosse Settlement Statement; 2019 Frozen Four Settlement Statement; 2019 Women's CWS Settlement Statement; 2019 Men's CWS Settlement Statement. As discussed in our Phase I report, CBS/Turner holds sponsorship and media rights for the women's basketball fan festival, but is not required to provide the same services as it does for the men's championship. *See* Phase I Report at 69.

The NCAA does not have the necessary infrastructure in place to encourage corporate sponsors—even within the existing contracts—to activate at championships in a more equitable manner. And efforts to grow corporate sponsorships for championships other than men's basketball currently lack accountable, measurable means to their success.

The NCAA lacks the infrastructure necessary to effectively monitor, assess, and ensure gender equity. As we found in Phase I, internal and external efforts to increase gender equity have fallen short because the NCAA does not have the systems in place (and the infrastructure to support them) to ensure transparency and accountability around gender equity. The NCAA does not maintain standardized data across the NCAA's 90 championships in a way that facilitates gender equity reviews and audits. Moreover, the organization lacks the staff, resources, and processes to ensure that its commitment to gender equity is being realized: it does not perform regular gender equity audits or reviews and does not have sufficient staff with relevant expertise to do so. Many of our recommendations in Phase I were intended to address this structural failing, which we found equally impacts NCAA championships other than basketball.

Combined championship structures and collaborative sport committees and staff meaningfully increase gender equity. The impact of resource disparities in some sports are compounded by the fact that the staff and committees for some men's and women's championships operate in "silos," *i.e.*, independently from one another, with little strategic coordination, communication, or common purpose. Our review of sports other than basketball has identified two structural configurations that contribute to increased equity in the championship experience of male and female student-athletes: a combined (in some way) championship for men and women, and a combined—or, at a minimum, well-coordinated—sport committee.

In our Phase II review, we have seen that combining at least some portion of the men's and women's championships for a given sport enables more coordinated planning, increases equity in the goods, services, facilities, and resources provided at the championships, and eliminates or reduces disparities between the "look and feel" of the tournaments, including as a result of combining corporate sponsorships and promotions. All of this, of course, leads to a more equitable student-athlete experience.

Numerous sports have combined their men's and women's championships in some way. Some sports, like track and field and cross country, hold their entire men's and women's championships on the same days in the same location. Others, like tennis, hold only certain rounds of the men's and women's tournaments together. Still others, like golf, swimming and diving, and water polo hold a portion of the men's and women's championships in the same venue on staggered dates. And a few sports—fencing, rifle, and skiing—hold a single co-educational championship.

In addition, a joint committee structure helps to advance gender equity by facilitating communication and collaboration in the planning and execution of the championships. While these joint championship and committee structures increase equity, they are not "one-size-fits-all" solutions and must be calibrated to the unique characteristics and needs of each sport and its student-athletes.

Single-gender sports highlight some of the challenges facing newer and growing women's sports. The NCAA hosts championships for six single-gender sports. Two of these are men only (football and wrestling), and four are women only (beach volleyball, bowling, field hockey, and rowing). In general, the men-only sports have been sponsored by the NCAA for far longer and in the aggregate receive more financial and staffing support than the women-only sports. For example, in 2018-19, the NCAA spent $2,229 more per student-athlete for these men's championships than for the women's (an average of $5,282 per student-athlete for the men's as compared to $3,053 per student-athlete for the women's).

Although the NCAA has made efforts to invest more strongly in some of these women-only championships, most notably beach volleyball, limited resources for expansion of participation opportunities and overall improvements in the student-athlete experience can have an even greater impact on these younger and still growing championships, as is the case with many of the NCAA women's championships. By way of example, wrestling became an NCAA championship more than 50 years before field hockey, and 88 years before beach volleyball. The men's single-gender championships, and the NCAA men's championships generally, have a significant head-start on the women's, which has enabled the men's championships to become more well-established with strong fan bases while the women's championships play catch-up.

Divisions II and III. The student-athlete experience in Division II and III championships is more equitable across the board than in Division I and NC championships. Division II and III championships are not viewed as revenue-producing or potentially revenue-producing, so none receive the type of preferential treatment from the NCAA that certain Division I and NC championships receive. In addition, NCAA leadership in Divisions II and III explicitly prioritize gender equity across their championships, and there is more communication and coordination among Division II and III staff and committee members representing men's and women's programs. While Divisions II and III have managed to avoid many of the more significant gender equity issues that are present in Division I, some disparities do exist. The most common disparity concerns the venues for final round games, as well as at least one notable disparity in Division II and III lacrosse. Nevertheless, Divisions II and III can benefit from the same kinds of process and system improvements that we have recommended for Division I, so as to ensure that they have checks in place to identify and prevent gender inequities in the future.

3. Summary of Recommendations

We believe that there are concrete steps that the NCAA can take to address the gender inequities identified in this report and their underlying, systemic causes.

Many of those steps were described in our Phase I report. In Phase I, we concluded that the NCAA's inability to live up to its stated commitment to "diversity, inclusion and gender equity among its student-athletes, coaches and administrators" stemmed from the structures and the systems of the NCAA itself. It was clear from our Phase I assessment that some of the root causes of gender inequity—including the lack of an NCAA infrastructure to effectively monitor and assess gender equity, as well as the NCAA's financial structure and its related pressures and

incentives—impact all of the NCAA championships and not merely basketball. We therefore made a series of recommendations in our Phase I report that were not specific to basketball, but were intended to address these structural issues across the organization, including:

- 1.9: Evaluate and reward performance for contributions to gender equity.
- 1.10: Increase NCAA staff with expertise in Title IX and gender equity.
- 2.3: Negotiate for a new tier of corporate sponsors for the Division I Women's Basketball Championship (and other NCAA championships).
- 2.4: Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.
- 2.5: Implement an overall strategy to realize the value of the Division I Women's Basketball Championship (and other championships across the NCAA).
- 2.6: Establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships (and all other championships across the NCAA).

Beyond these institution-wide recommendations made in Phase I, this report includes additional recommendations for making the student-athlete championship experience in sports other than basketball more equitable from a gender perspective. These recommendations—all of which are discussed in detail below—fall into the following categories:

Organizational structure and culture

- A.1: Develop clear criteria for making decisions about resource allocation among championships that integrate gender equity principles and transparency into the process.
- A.2: Establish a system for collecting and maintaining standardized data across the NCAA's 90 championships that will facilitate future gender equity reviews and audits.
- A.3: Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.
- A.4: Increase the number of senior staff in the NCAA's Championships structure to improve oversight of gender equity.
- A.5: Over the next five years, conduct a "zero-based" budget for each championship to ensure that any gender differences are necessary, appropriate, and equitable.
- A.6: Perform a real-time gender equity audit of all men's and women's championships and prepare an annual report on the results.
- A.7: Conduct an external gender equity assessment of all championships in five years.

Broadcast, corporate sponsorship, and branding

- B.1: Consider commissioning an independent valuation of the media rights of other championships or championship "packages."
- B.2: Ensure equitable branding for all championships, including but not limited to gender modifiers in championship titles.

The student-athlete experience

- C.1: Ensure that items impacting the student-athlete experience at all championships are gender-equitable.
- C.2: Create a transparent process for reviewing proposals to increase the size of a championship's bracket/field, squad, bench, or travel party size that takes gender equity into account.

Championship and committee structure

- D.1: Conduct an assessment and develop a plan for combining or co-locating men's and women's championships where appropriate.
- D.2: For non-joint committees, establish regular communications between the men's and women's sport committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

Ensuring progress on gender equity

- E: For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report and the Phase I report.

THE NCAA'S ORGANIZATIONAL STRUCTURE & CULTURE

As discussed in our Phase I report, the NCAA, a not-for-profit, member-led organization, is operated by two groups: (1) NCAA employees; and (2) the NCAA membership, which includes colleges, universities, and athletic conferences.[13] The NCAA employees (*i.e.*, leadership and staff) are largely responsible for the NCAA's day-to-day operations, which includes planning, running, and promoting the NCAA championships; supporting the work of the NCAA committees; managing the NCAA's relationships with corporate and media partners; and providing financial and programmatic support to its members.[14] Representatives from the membership—college presidents, athletic directors, coaches, and student-athletes—sit on and work through committees to determine the rules and policies that govern the NCAA and some aspects of college athletics generally for NCAA sports.[15] The NCAA committees are the key decision-making bodies of the organization and make decisions on a wide range of issues, from how NCAA revenue is distributed to whether to expand a championship bracket or increase the number of days over which a championship is played.

Not surprisingly, we have found that the same tensions and pressures that we previously identified as being embedded within the NCAA are influencing and impacting all of the NCAA's championships. The membership's heavy reliance on the monies it receives from the NCAA's revenue distributions has had a significant impact on the structure and culture of the NCAA. Many academic institutions are operating under incredible financial strain, particularly in light of the pressures put on college and university budgets due to COVID-19. Member institutions are dependent on the financial support they receive from the NCAA, and this, in turn, puts pressure on the NCAA to maximize revenue and minimize expenses for championships that do not produce revenue so that more funds can be distributed to the membership. This has led to inequitable student-athlete experiences, particularly where one sport is viewed as significantly more revenue-producing than its gender counterpart.

1. The NCAA's Organizational Structure

The SVP of Championships, a position currently occupied by Joni Comstock, oversees all of the championships besides men's and women's basketball.[16] The SVP of Championships reports to the Chief Operating Officer/Chief Legal Officer.[17]

[13] What Is the NCAA, NCAA (last visited Oct.18, 2021), https://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa.

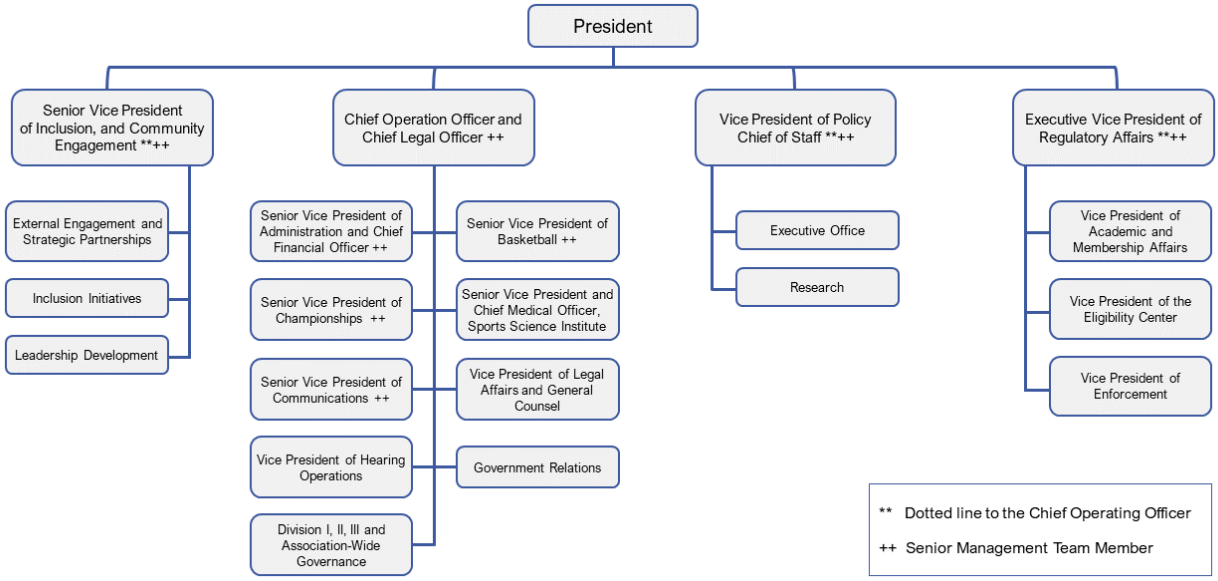
[14] *Id.*

[15] How the NCAA Works, NCAA (last visited Oct. 18, 2021), https://www.ncaa.org/champion/how-ncaa-works.

[16] National Office Leadership Team, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/about/who-we-are/office-president/ncaa-leadership-team.

[17] The SVP of Championships currently reports directly to the President of the NCAA because the Chief Operating Officer/Chief Legal Officer position is not currently filled.

Senior NCAA Leadership at the Time of the 2021 Spring Championships



Currently, the SVP of Championships' primary responsibilities are overseeing the planning and execution of the 84 championships besides men's and women's basketball,[18] and external operations for all 90 championships, including licensing, statistics and media coordination, ticketing and marketing, and social media and digital. The 84 championships that the SVP of Championships oversees on the championships operations side include all divisions of all 23 sports besides basketball.

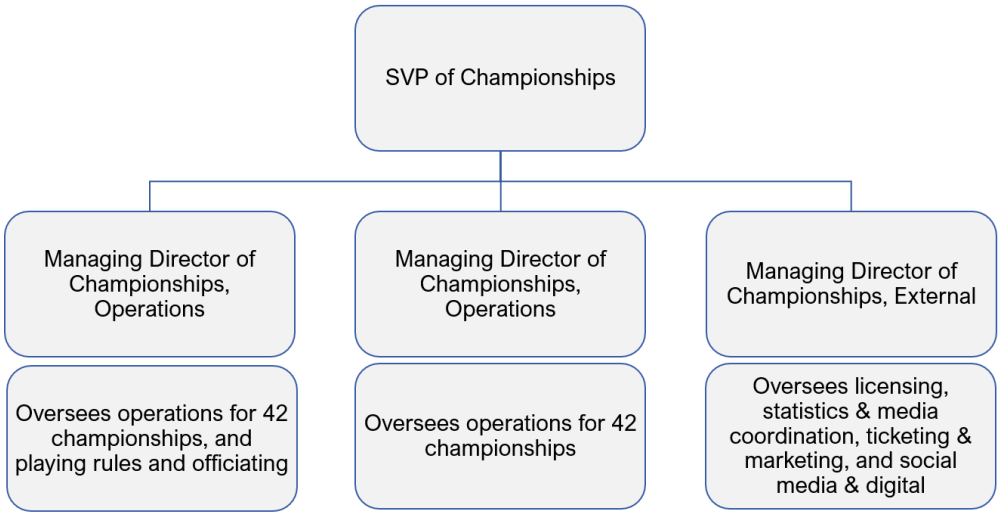
The SVP of Championships has three managing directors who report directly to her: two managing directors work on championship operations for the 84 championships, and a third manages a team that addresses external operations for all 90 championships.[19] Until 2020, there was an additional managing director for championship operations, but that person retired and the NCAA has no current plans to fill that position. The two championship operations managing directors oversee all of the championship managers and their assistants—that is, the NCAA staff who plan and execute all of the championships other than men's and women's basketball ("Championships staff"). The managing director charged with external operations oversees the

[18] *See* National Office Leadership Team, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/about/who-we-are/office-president/ncaa-leadership-team (noting the SVP of Championships oversees 84 championships). Division II and III men's and women's basketball sit in a unique place in the NCAA's organizational structure. For the planning and execution of the Division II and III basketball championships, the staff who work on these championships report to both the SVP of Basketball—who is generally in charge of supervising play-related matters for the championships, such as rule changes and court markings—and the SVP of Championships—who oversees everything else, including budgets and the divisional policies and procedures for the championships. *See* Phase I Report at 101.

[19] September 2021 Championships Operations and External Operations Organizational Chart.

NCAA staff who provide assistance in specialized areas (such as social media and marketing) to the championship managers ("External Operations staff").[20]

Current Reporting Lines to the SVP of Championships



As our Phase I report described, the NCAA organizational structure is set up to align the NCAA's chief revenue-generating departments with basketball, and often specifically with men's basketball.[21] The SVP of Basketball manages the NCAA's broadcast relationships, branding, and corporate sponsorship program for all NCAA sports.[22] As a result, those broadcast and sponsorship relationships largely benefit men's basketball, to the exclusion of all other championships.[23] *See* pp. 28-31. Our Phase I report recommended that the NCAA change that structure, consolidating those functions with the media coordination, digital and social media, and marketing functions, which are currently under the SVP of Championships, and moving all of them under a new position of Chief Business Officer. The Chief Business Officer could then focus on implementing a strategy for the marketing, promotion, and sponsorship of all championships that prioritizes gender equity.[24]

[20] *Id.*

[21] *See* Phase I Report at 50-52.

[22] NCAA Organizational Chart; Phase I Report at 50-52.

[23] *See* Phase I Report at 67-78.

[24] *See id.*, Recommendation 2.4.

2. Staff Size & Allocation

The NCAA has 42 full-time Championships staff to plan and execute the 84 championships other than the basketball championships. For context, there are 11 full-time staff working on the Division I Men's Basketball Championship and seven full-time staff working on the Division I Women's Basketball Championship, or a total of 18 staff to plan and execute two of the NCAA's basketball championships.[25]

As a result, the NCAA must make difficult decisions about how to best allocate limited staffing resources among these 84 championships. First, the NCAA assigns each championship a dedicated championship manager who is responsible for the championship's planning and execution.[26] In addition to the championship manager, the NCAA provides some championships with varying levels of additional Championships staff support, as well as staff support from corporate relations, broadcast, and External Operations.[27] The NCAA usually assigns two to three championships to each championship manager, typically in different athletic seasons.[28]

The NCAA's allocation of staffing resources among its many championships appears to follow its general pattern of dedicating more resources and support to the championships that it perceives as more likely to produce revenue for the organization and its members. Division I baseball, for example, is allocated the largest amount of NCAA staff time of any championship after Division I men's and women's basketball—5.08 full-time equivalent employees, or FTEs. *See* pp. 65-66. Overall, championships with larger audiences, more prominent broadcasts, and greater overall revenue-producing potential are more likely to receive a greater share of Championships staff, as well as more specialized staff to assist with other elements of the championships, including corporate sponsors, broadcasting, and marketing.[29] Because those championships are also more complex and challenging to manage, the NCAA leadership explained that they often provide them with more experienced staff, leaving the other championships with less experienced Championships staff.

While appearing to follow this general pattern, the NCAA's process for making staff allocation decisions lacks any real clarity or transparency. Some NCAA staff members explained that there are three "categories" of championships—referred to as "equity," "growth," and "sustained"—that are used as a framework to guide decision-making about External Operations staff allocation. An "equity" championship is one that is considered to be revenue-producing, or to have the potential to become revenue-producing, and therefore warrants additional support to

[25] Men's and Women's Basketball Championships Roster (as of Mar. 1, 2021); 2020-21 Women's Basketball Organizational Chart.

[26] The formal titles of the people filling this role vary, but we use the term "manager" as it is used in NCAA championship manuals to refer to the person responsible for the operational oversight of each championship.

[27] 2021-22 Tournament Operations Assignments (as of Sept. 16, 2021); 2021-22 NCAA Championship Marketing and Ticketing Who to Contact; 2021-22 NCAA Media Coordination/Statistics Staff Who to Contact; 2021-22 NCAA Digital – Who to Contact.

[28] 2021-22 Tournament Operations Assignments (as of Sept. 16, 2021).

[29] *Id.*; 2021-22 NCAA Championship Marketing and Ticketing Who to Contact; 2021-22 NCAA Media Coordination/Statistics Staff Who to Contact; 2021-22 NCAA Digital – Who to Contact.

increase "the probable return on investment, asset value and corporate and broadcast partner interest."[30] A "growth" championship is one that has the potential to grow, gain popularity, and bring in revenue over time, and which therefore warrants an intermediate level of support. And a "sustained" championship is one to which the NCAA dedicates minimal staff resources and on which it is generally considered to be losing money.

Although these three categories were frequently invoked by NCAA staff to explain why some championships receive more staffing resources than others, there appears to be no formal or consistent definition of these categories, and no process or mechanism for either reviewing a championship's assignment or moving a championship from one category to another.[31] When asked which championships fall within which categories, NCAA staff provided different lists. The current categories do not appear to have been shared with or approved by the Competition Oversight Committee, *see* pp. 51-52, or any other current NCAA committee. In fact, there remains little understanding among the NCAA membership and even among NCAA staff about how staffing support is allocated among championships. And there appears to be no uniform practice for allocating staff (or any other) resources based on these three categories.

We were told that from their creation, these categories distinguished between championships based on whether they were or had the potential to be "revenue-producing," with only those that made or could make the NCAA a profit placed in the top resources category. A former NCAA staff member explained that even a decade ago, when these categories were first considered, the NCAA staff recognized that if the top category were limited to revenue-producing sports, it would contain only men's sports. Recognizing that as a problem and gender equity as a value, the staff reformulated the categories to give additional support to the sports that had the potential to be revenue-producing, like Division I softball and Division I women's volleyball, "to start putting more into women's sports because they're on the verge of moving." One individual recalled that the initial decisions regarding these categories were discussed with a marketing subcommittee of the former Division I Championships/Competition Cabinet, with assistance from a marketing research company, but that appears to be the last time that there was any formal evaluation of the process.

Where there is no transparent and consistent system for resource allocation, there is certainly no way to ensure that resource allocation is equitable from a gender perspective. For many sports other than basketball, NCAA staffing resources are, in fact, distributed equitably across men's and women's championships in the same sport. *See* p. 18. But not surprisingly, for sports where one championship is prioritized for resource allocation while its gender counterpart is not, the resulting inequitable staffing distributions can significantly impact the student-athlete experience.

[30] NCAA Championships – Celebrating Champions, Alignment of Resources and Staff Work.

[31] One list, which appeared most formal, contained seven factors: including (1) ticket sales and attendance; (2) revenue and ability to reduce expenses; (3) broadcast ratings and new media hits; (4) fan experience; (5) student-athlete experience; (6) awareness of the championships; and (7) brand development. *See* NCAA Championships – Celebrating Champions, Alignment of Resources and Staff Work.

There are several Division I and NC sports in which one championship receives significantly more staffing resources than its gender counterpart, including Division I baseball, Division I men's ice hockey, Division I men's lacrosse, NC women's gymnastics, and Division I women's volleyball.

Division I & NC Sport-by-Sport FTE Numbers as of April 15, 2021

SPORT	MEN'S FTE	WOMEN'S FTE
Baseball/Softball	5.08	3.51
Football	3.60	
Ice Hockey	2.62	0.67
Wrestling	2.59	
Lacrosse[32]	1.99	1.01
Golf	1.38	0.89
Soccer	1.03	1.16
Track (Outdoor)	0.79	0.82
Track (Indoor)	0.73	0.76
Gymnastics	0.62	1.34
Volleyball	0.62	3.11
Water Polo	0.59	0.52
Cross Country	0.54	0.45
Swimming & Diving	0.53	0.85
Tennis	0.39	0.72
Beach Volleyball		1.55
Bowling		0.71
Field Hockey		0.84
Rowing		0.60
Fencing*	.50	
Rifle*	.36	
Skiing*	.43	

**Fencing, rifle, and skiing are co-ed championships, where men and women share staff and budgetary resources.*

Of course, measuring staffing by reference to FTEs does not accurately reflect the differences in the kinds of Championships and External Operations staffing, or the level of expertise, being provided to each championship. Nor does it capture the level of actual assistance (including non-NCAA staff and volunteers) provided on the ground during the championships. In

[32] These numbers do not account for recent changes in lacrosse staffing, as discussed below. *See* pp. 83-85.

Division I ice hockey, for example, there are 11 NCAA staff members who contribute to the men's tournament, including three Championships staff, a media coordinator, and seven External Operations staff members. The women's tournament, however, has only two Championships staff members assisting with it.[33] *See* p. 75. Such staffing imbalances can contribute to gender inequitable student-athlete experiences. As one ice hockey coach put it, "Because there is a point person for each aspect of the men's tournament, there is more attention to detail in a wider range of areas. On the contrary, those serving on the women's staff need to multi-task."

To some extent, different levels of staffing are understandably attributable to the differences between championships. A championship with a larger bracket or field size, and thus more student-athletes, may require more staff to manage it, as would a championship that draws a large broadcast and thus requires additional media credentials and coordination. *See* pp. 28-29. As we have stated previously, gender equity does not require perfect equivalence. But it does require that each gender's Championships and External Operations staff is able to provide NCAA student-athletes with a championship experience that is equitable to their gender counterpart's.

3. The Budget & the Budget Process

Budgeting for championships follows the same structures and processes that we described in our Phase I report.[34] The key difference for these championships as compared to basketball is that the NCAA spends far less money on them, leading to difficult budget decisions that have far-reaching gender equity impacts on the student-athlete experience.

The budget process. The NCAA's budget for all championships is based on a 10-year model set forth by the Chief Financial Officer, as approved by NCAA senior leadership. This 10-year plan provides high-level projections for Division I distributions, Division I and NC championships and programs, allocations and revenues for Divisions II and III, and association-wide expenses. Based on these 10-year projections, each year, the Board of Governors approves a proposed business plan, reviewed by several executive staff and committees, which determines how much each championship is allocated for that year.[35]

The business plan delineates the annual budget for all of the championships under the purview of the SVP of Championships and covers all regular and anticipated expenses to plan and put on the championships. This allocation is subject to an annual growth rate based on inflation. But overall, based on the NCAA's 10-year financial model, the Division I and NC championship budgets remain relatively stagnant from year to year.[36] Annually, the SVP of Championships recommends the budget to the Chief Financial Officer and President Emmert, who in turn

[33] 2019 Women's National Collegiate Ice Hockey Championship Pre-Championship Manual; NCAA Division I Men's Ice Hockey Staff List.

[34] *See* Phase I Report at 59.

[35] *See id.* at 59 n.184.

[36] For a discussion of the budget process for Divisions II and III, see below at pp. 115-16.

recommend the budget to the Division I Board of Directors Finance Committee and the Board of Governors.[37] The SVP of Championships makes these recommendations with input from the Competition Oversight Committee, which relays the membership's preferences.[38]

For the 2021-22 academic year, in conjunction with the 10-year plan, $160.6 million has been allocated to championships across all three divisions. Of that $160.6 million, $63.7 million funds the six basketball championships, and $96.9 million funds all of the other 84 championships, with $49.6 million going to Division I and NC championships. Once divided among the 84 championships, there is a wide range in the amount that the NCAA budgets, and ultimately spends, on any one of these 84 championships—from more than $16 million spent on Division I baseball in 2018-19 to less than $230,000 on NC rifle that same year. *See* pp. 19-22.

Because, as was discussed in our Phase I report, the NCAA's general practice is to maintain similar budget line items as compared to prior years (*e.g.*, allocating a similar amount for gifts and mementos as the year before), differences in particular line items can grow unchecked for many years.[39] This budgeting practice necessarily favors established championships—generally the men's sports—over younger, growing championships—generally the women's sports—which are then forced to compete for the limited additional resources that are distributed each year. For example, because bracket expansions are expensive, some women's championships, like beach volleyball and women's ice hockey, have had to wait to get the necessary committee approval for a bracket expansion for which they have long been eligible. *See* pp. 46-48. As one member of the NCAA staff aptly explained, "the financial situation disproportionately affects women."

Data retention and review. It is important to note that during this review, KHF was limited in its ability to perform direct comparisons of specific expense items or categories between like-sport championships (or across all NCAA championships) because the NCAA does not maintain its records of expenses, ticket sales, amenities, or other items in a standardized manner that would permit such analysis. For example, the NCAA collects information regarding the number of tickets sold and accompanying revenues for each championship, but for some championships the ticket revenues are for just the final round games and for others they are for a larger collection of games. In another example, the NCAA tracks expenses for each championship's "gifts and mementos," but there is no central data collection for the number, amount, and quality of objects purchased such that one could accurately compare the purchases between two like championships, or across all championships. As such, the data currently maintained by the NCAA does not facilitate a deeper comparison of specific championship expense items.

[37] *See also* Phase I Report at 59.

[38] The SVP of Championships may also request additional funds from a small "association-wide allocation." The association-wide allocation is a distinct budget allocation from which each championship and staff group can apply for a portion, and which is ultimately approved by several committees and the NCAA President. These association-wide requests are less frequent and represent only a small portion of the total budget each championship receives. *See id.* at 59 n.185.

[39] *See id.* at 59. While Championships staff reported that they have done a zero-based budget review at some point in the past decade, they do not have a formal or consistent process for doing so or current plans to repeat that review.

Gender inequity in championship spending. The NCAA's championship funding decisions have been heavily influenced by the same pressures, and organizational structure and culture, described above: the NCAA generally seeks to maximize revenue by investing more in those handful of sports it views as revenue-producing—which, currently and historically, are only men's championships. Specifically, the NCAA currently considers only the following five championships to be revenue-producing, meaning that they are considered to "turn a profit from operations before considering media revenue or staffing costs": Division I men's basketball, baseball, men's ice hockey, men's lacrosse, and wrestling. Accordingly, the NCAA dedicates more financial resources to these Division I championships than to their Division I and NC women's counterparts.

SPORT	MEN'S EXPENSES	MEN'S REVENUE	WOMEN'S EXPENSES	WOMEN'S REVENUE
Baseball/Softball	$16,036,861.00	$28,316,064.00	$6,361,695.00	$4,009,901.00
Ice Hockey	$4,235,662.00	$5,842,212.00	$656,827.00	$154,189.00
Lacrosse	$2,619,073.00	$2,716,860.00	$1,737,259.00	$417,773.00

See also pp. 64-65, 74-75, 82-83.

There are also examples of sports in which the Division I or NC women's championship generates more revenue than the men's and receives a greater investment from the NCAA, such as:

SPORT	MEN'S EXPENSES	MEN'S REVENUE	WOMEN'S EXPENSES	WOMEN'S REVENUE
Gymnastics	$320,190.00	$59,093.00	$1,164,234.00	$785,313.00
Soccer	$2,411,151.00	$496,656.00	$3,487,928.00	$659,792.00
Volleyball	$376,942.00	$172,806.00	$3,811,633.00	$3,000,600.00

Generally, the result of the NCAA's spending decisions is that male student-athletes receive a greater investment than female student-athletes, on average. While there are approximately 650 more student-athletes participating in the NCAA's Division I and NC women's championships than in the men's championships (excluding the three co-ed championships, skiing, rifle, and fencing),[40] the overall average spending per student-athlete in Division I and NC championships (excluding basketball) is substantially higher for the men, by approximately $1,697.[41] This spending difference is even more significant in Division I and NC single-gender

[40] The higher number of female student-athletes likely stems from the fact that the NCAA does not run championships for FBS football, and so FBS football student-athletes are not counted as participants in the NCAA championships.

[41] To calculate the average spend per student-athlete, we divided the total spend for Division I and NC men's and women's championships by the total number of student-athletes who participate in the men's and women's championships, respectively. To calculate the total number of student-athletes for team sports, we multiplied the bracket size (*i.e.*, the number of teams participating in the championship) by the squad size, which is the maximum number of student-athletes per team allowed to dress in uniform and participate at the championship. To calculate the total number of student-athletes for individual sports, we used the field size, which is the total number of individuals permitted to compete in the championship. In calculating spending per male and female student-athletes, we did not include sports with co-ed championships and shared budgets, including NC skiing, rifle, and fencing.

sports, where the NCAA's average spend per student-athlete playing in the women's championships is approximately $2,229 less than for those playing in the men's championships ($3,053 on average for women and $5,282 on average for men).

In our comparisons, we analyzed the per student-athlete spending averages because a significant portion of the costs of many championships comes from the travel and per diem costs, which are dependent on the number of student-athletes participating in the championship. We note, however, that many variables in the requirements and specifics of different championships and sports make it difficult to decipher trends in the aggregate data.

To be sure, gender equity does not require equal spending for men's and women's championships in the same sport, as championships with more fan attendance, corporate sponsorships, and media attention will necessarily require additional resources and support. But the NCAA also does not have a clear process for actively monitoring or considering whether the differences between championship budgets and spending within a sport are gender equitable, particularly when it comes to the impact on the student-athlete experience. Not surprisingly, the result is that the sports with the greatest spending disparities are also the sports with the greatest gender disparities in the student-athlete experience. *See* pp. 64-65 (baseball/softball), pp. 74-75 (ice hockey), pp. 82-83 (lacrosse). Moreover, the NCAA's continued investment in one gender's championship over the other's can perpetuate disparities by limiting the less-resourced championship's capacity for growth and development.

Conversely, it is perhaps no coincidence that sports in which student-athletes report more equitable experiences have more equitable budgets and spending. A prime example is tennis, where the NCAA spends virtually the same amount on both the Division I Men's and Women's Tennis Championships, which are also the same size in terms of student-athlete participation: $945,004 on the men's, and $904,488 on the women's.[42] In fact, the NCAA spends a similar amount on the Division I Men's and Women's Tennis Championships across the board, including on items such as apparel, awards, and mementos. *See* p. 95. Moreover, for individual (as opposed to team) Division I and NC sports, such as cross country and outdoor track and field, as well as sports that have a combined budget, such as fencing, rifle, and skiing, the amount spent on each student-athlete is roughly equivalent, and stakeholders do not report an inequitable student-athlete experience within those sports. *See* pp. 55-56.

The greatest source of disparity between the per student-athlete spend on men as compared to women is in Division I baseball and softball, which have identical bracket sizes and slightly different squad, bench, and travel party sizes, yet the NCAA spends approximately two-and-a-half times more on the baseball championship than on the softball championship. *See* pp. 64-65. When those two championships are removed from these calculations, the NCAA's average spend per student-athlete is $2,254 for women, and $3,208 for men, or a difference of $954.

[42] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

4. Recommendations

Among our central conclusions in our Phase I report was that the NCAA lacks the infrastructure necessary to effectively review budgets, staffing, or any other aspect of the basketball championships to monitor and assess gender equity. There is no individual—or group—within the NCAA responsible for that task. In the context of basketball, this allowed various institutional causes of gender inequity in the student-athlete experience to continue unchecked over many years, including significant disparities in the resources allocated to men's and women's basketball, an organizational structure that prioritized men's basketball by subordinating women's basketball, and the absence of mechanisms for communication and collaboration between men's and women's basketball staffs and committees. And, as our Phase II review has shown, the NCAA's lack of infrastructure to monitor, assess, and ensure gender equity is in no way limited to basketball; rather, it impacts gender equity in the student-athlete experience in other sports as well.

In addition to recommendations that were specific to basketball, our Phase I report made recommendations for ways the NCAA could address this infrastructure deficiency institution-wide. Specifically, we recommended that the NCAA begin evaluating and rewarding staff performance for contributions to gender equity (**Recommendation 1.9**). While our Phase I report recommended specific protocols to ensure gender equity in the basketball student-athlete experience, and while this report recommends similar protocols across championships, actually achieving the goal of gender equity must be considered part of everyone's job at the NCAA. Achieving gender equity is the responsibility of all NCAA leadership, and working towards gender equity goals is something that should be expected, evaluated, and rewarded as part of the NCAA's internal performance review process for all NCAA leadership and staff.

Our Phase I report also recommended that the NCAA increase its staff with expertise in Title IX and gender equity (**Recommendation 1.10**). To implement the recommendations in both the Phase I and II reports, additional full-time employees should be added (including in the Office of Inclusion) to assist with performing these tasks which, based on the recommendations made in this report, will be no small undertaking. These individuals should have experience with Title IX compliance as it relates to collegiate athletics and expertise in gender equity issues generally. Together, these two recommendations (**Recommendations 1.9 & 1.10**) will increase the expectations, incentives, and capacity of the NCAA staff to work on identifying and preventing gender inequity across all 90 NCAA championships.

In addition to these institution-wide recommendations, we make the following recommendations that are specific to championships other than basketball.

Recommendation A.1

Develop clear criteria for making decisions about resource allocation among championships that integrate gender equity principles and transparency into the process.

Beginning no later than the fall of 2022, the NCAA should:

- Develop a set of clear criteria to be used by NCAA leadership and staff, the Division I Competition Oversight Committee, the Division II and III Championships Committees, and all other relevant committees and leadership bodies within the NCAA when making decisions about how to allocate financial and staffing resources among the NCAA's 90 championships. While the criteria may include any other factors that those within the NCAA tasked with developing the criteria deem appropriate, and while different criteria may be weighed differently, gender equity should be one of the criteria.
- Establish a clear process for application of the above criteria on a regular basis to resource allocation decisions being made within the NCAA and its committee structure pertaining to championships.
- Ensure that the criteria and the associated process for applying the criteria are updated on an annual basis and made available to all NCAA staff, committee members, and membership institutions.

These resource allocation criteria and associated protocols should be developed by NCAA staff in all three divisions with expertise in championships, finance, broadcast, marketing, and corporate partnerships, as well as Title IX and gender equity issues.

Recommendation A.2

Establish a system for collecting and maintaining standardized data across the NCAA's 90 championships that will facilitate future gender equity reviews and audits.

To facilitate future gender equity reviews and audits, and to enable NCAA staff and stakeholders to better compare information and ensure gender equity, the NCAA should establish systematic practices for collecting and maintaining information in a more standardized way across all 90 championships. While the NCAA collects data for both financial and non-financial items, that data is often not collected or maintained in a way that would facilitate a comprehensive comparison of specific championship expense items between like-sport championships or across the organization. The NCAA's Research and Championships staffs, working with NCAA staff with expertise in finance, corporate partnerships, broadcast, marketing, and Title IX compliance

and gender equity issues, should propose a new system for maintaining relevant data by the fall of 2022.

Recommendation A.3

Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.

Recommendation 1.8 from our Phase I report should be applied to all of the NCAA's 90 championships, not just the Division I Men's and Women's Basketball Championships.[43] Specifically, the gender equity impact statement template and associated submission and review process developed in response to Phase I Recommendation 1.8 should be applied to all championships. To the extent necessary, the NCAA should identify those actions being taken within the NCAA in connection with the 88 other championships that would require the submission of a gender equity impact statement.

Recommendation A.4

Increase the number of senior staff in the NCAA's Championships structure to improve oversight of gender equity.

The two managing directors for operations within Championships currently each oversee 42 championships. To better ensure oversight of gender equity with respect to these 84 championships, the NCAA should increase the number of managing directors for operations reporting to the SVP of Championships by at least one.[44] The 84 championships should then be distributed among the managing directors in a way that will maximize their ability to monitor for, identify, and promptly address any gender equity issues or concerns as they arise within a sport. This will provide for increased oversight of and emphasis on gender equity at the highest levels of the NCAA's Championships operations and give the managing directors additional bandwidth to work on ensuring that the NCAA's championships are being planned and executed in a way that is gender equitable.

[43] *See* Phase I Report at 65-66.

[44] If distributed evenly among the three managing directors, this would mean each managing director would be responsible for overseeing 28, instead of 42, championships.

Recommendation A.5

Over the next five years, conduct a "zero-based" budget for each championship to ensure that any gender differences are necessary, appropriate, and equitable.

In Phase I, we recommended that the NCAA undergo a budget reset in connection with Division I men's and women's basketball based on a "detailed assessment of whether discrepancies in the budgets are justifiable and appropriate in light of differences in the structure of the championships."[45] Creating zero-based budgets for all of the NCAA's championships will enable the NCAA leadership and the budget office to work together not only to ensure gender equitable budgets, but to create efficiencies across budgets and maximize the impact of spending.

We recognize that performing zero-based budgets for all championships will take some time. While the same level of benefits may not be achieved by creating zero-based budgets for each of the championships, we believe that it will be a useful gender equity exercise that may also free up additional resources to be redistributed among the various championships.

Before the next budget cycle, the NCAA should prioritize creating zero-based budgets for those championships identified in this report as having more significant budget disparities between genders. After that, the NCAA should carry out the same exercise for the remaining Division I and NC championships over the course of the subsequent four years, to be completed by 2026. With respect to the Division II and III championships, the NCAA should determine the order of priority for developing zero-based budgets, working with the Division II and III Championships Committees and in conjunction with their budget cycles. This process will require the budget office to work with the SVP of Championships, the Vice Presidents of Divisions II and III, the Championships staff, the External Operations staff, and the broadcast and corporate relations staff to collaborate on the strategic, efficient, and equitable use of championship funds.

Recommendation A.6

Perform a real-time gender equity audit of all men's and women's championships and prepare an annual report on the results.

Starting with the 2022 championships, the NCAA should begin implementing a real-time gender equity review protocol for all championships. The NCAA should be able to use the real-time gender equity review process developed for Division I basketball in response to Phase I Recommendation 1.5, combined with input from the internal gender equity review conducted by the SVP of Championships earlier this year. The review should include, at a minimum, those items

[45] Phase I Report, Recommendation 1.2.

set forth in Recommendation C.1 below. The review protocol should be standard across all championships, and should be developed and implemented by NCAA staff with expertise in Title IX and gender equity issues generally, in consultation with the Championships staff responsible for the planning and execution of the men's and women's championships and the Division I, II, and III leadership.

Each year, the NCAA should prepare a standardized report of the results of the real-time gender equity reviews of the championships that took place that year. This standardized report can be modeled off the similar recommended report for the Division I Men's and Women's Basketball Championships in Phase I Recommendation 1.6. The report for all other championships should be prepared by NCAA staff with expertise in Title IX and gender equity issues who performed the real-time gender equity review. The report should go to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Division II Presidents Council, the Division III Presidents Council, and the NCAA President and Senior Management Team.

Recommendation A.7

Conduct an external gender equity assessment of all championships in five years.

In conjunction with the external gender equity assessment of the Division I Men's and Women's Basketball Championships, the NCAA should also conduct a companion external gender equity assessment of its other 88 championships to ensure that gender equity is being achieved. The assessment should be led by an external auditor with expertise in Title IX compliance in collegiate athletics and gender equity issues generally. The external auditor should provide its report to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Division II Presidents Council, the Division III Presidents Council, and the NCAA President and Senior Management Team, and an executive summary should be made publicly available on the NCAA's website.

BROADCAST, CORPORATE SPONSORSHIP & BRANDING

1. Media Agreements & Corporate Sponsorship

As discussed in our Phase I report,[46] the NCAA is party to several contracts with its media partner, CBS/Turner, to broadcast the Division I Men's Basketball Championship, and to market and sell the NCAA's corporate sponsor program (the "Corporate Partner Program"),[47] which supports all 90 NCAA championships, in exchange for an annual average payment to the NCAA of nearly $1.1 billion by 2032. The NCAA has also contracted with ESPN to broadcast 29 other NCAA championships[48] for a much smaller annual fee of, on average, $34 million per year.[49] Like Division I women's basketball, the NCAA's other championships are negatively impacted by the structure of these contracts and the resulting inequitable attention that they receive from the NCAA's corporate partners, which in turn results in significantly lower sponsorship support—and potentially unrealized value for the NCAA and its membership.

The structure of the media agreements limits corporate sponsorships and activations for championships other than Division I men's basketball. As we explained in our Phase I report, the structure of the NCAA's media contracts prioritizes support for men's basketball to the exclusion of all other sports.[50] Because CBS/Turner controls the sponsorship rights for all 90 championships, but only the broadcast rights for the Division I Men's Basketball Championship, it is incentivized to focus its efforts on developing sponsorships for men's basketball above all other sports. And because Champions and Partners have to buy in to the costly CBS/Turner corporate sponsorship program, which bundles the marketing rights for all other NCAA championships together with the media rights for Division I men's basketball, the cost of sponsoring championships other than Division I men's basketball is often prohibitive. As one coach remarked, "we have sponsors who would like to [support] softball, but they have to go

[46] Phase I Report at 67-75.

[47] *Id.* at 8. There are two tiers to the Corporate Partner Program, which currently has only 18 total sponsors. The first tier—called "Champions"—contains only three sponsors: AT&T, Capital One, and Coca-Cola. It requires a significantly higher buy-in and includes substantial rights in connection with various NCAA championships. The second tier—called "Partners"—contains 15 sponsors: Aflac, Buffalo Wild Wings, Geico, General Motors-Buick, Great Clips, Hershey's/Reese's, Invesco, Lowe's, Marriott Bonvoy, Mondelez/Nabisco, Nissan, Pizza Hut, Uber/UberEats, Unilever, and Wendy's. Both tiers pay a substantial annual fee to CBS/Turner in exchange for the marketing rights to the NCAA and all of its 90 championships, as well as the media rights to the Division I Men's Basketball Championship.

[48] The championships that ESPN agrees to broadcast are: Division I women's basketball; Division I softball and baseball; NC beach volleyball; NC women's bowling; Division I men's and women's cross country; NC men's and women's fencing; Division I field hockey; Divisions I, II, and III FCS football; NC women's gymnastics; Division I men's and women's ice hockey; Division I men's and women's lacrosse; Division I men's and women's soccer; Division I men's and women's swimming and diving; Division I men's and women's indoor track and field; Division I men's and women's outdoor track and field; Division I women's and NC men's volleyball; and Division I wrestling. Multi-Media Agreement between ESPN, Inc. and the NCAA (Dec. 15, 2011) ("ESPN Multi-Media Agreement"), Ex. A; Agreements between ESPN and the NCAA regarding Broadcast of Women's Ice Hockey, Field Hockey, Beach Volleyball, and Men's and Women's Cross Country.

[49] Phase I Report at 70.

[50] *Id.* at 70-71.

through the NCAA conglomerate. I have to believe that there are sponsors who would like to support women's sports specifically or softball specifically, and they can't."

Even where Champions and Partners might be interested in championships other than Division I men's basketball, the NCAA does not have sufficient systems in place to encourage those sponsors to activate at the other championships. Because the corporate sponsors' budgets to activate at other championships are limited, and because the NCAA does not regularly track activations across championships, efforts to grow corporate sponsorship for championships other than Division I men's basketball have lacked accountable, measurable means to enable their success.

Further complicating matters is an additional arrangement pursuant to which CBS/Turner agrees to manage the fan festivals at the Division I Men's Basketball Championship, the Division I Men's College World Series, the Division I Men's Lacrosse Championship, the Division I Men's Frozen Four, and the Division I Wrestling Championship, but only manages a fan festival at one of the women's championships, the Division I Women's College World Series. *See* pp. 38-40.

Fewer corporate sponsors diminish the student-athlete experience. Due to these incentive structures, the support that the Division I Men's, and even Women's, Basketball Championship receives dwarfs the support that the corporate sponsors provide to other NCAA championships. Many championships, such as fencing, field hockey, rifle, and tennis, have little to no unique corporate sponsorship.[51] *See* pp. 53-54. Agreements with the Champions and Partners themselves indicate that few sponsors activate at other championships: independent media expert Ed Desser remarked that the Champions and Partners earmark only 0.1% of their aggregated contract price on championships other than Division I men's basketball, although corporate sponsors sometimes activate in connection with other championships outside of their contracts.[52] Because the NCAA does not retain a comprehensive list of all activations at all championships for each year, it is difficult to discern whether the overall lack of activation at championships other than Division I men's basketball gives rise to gender equity concerns, although anecdotal evidence suggests that it does.

Generally, the absence of corporate sponsors results in fewer fan events and a less professional "look and feel" for the student-athletes and fans, which detracts from the overall championship experience. Field hockey, for example, does not have any sponsorship activations at its championships. Stakeholders described the fan experience as "essentially non-existent" and said there is "no real national championship-caliber celebration" for the winning team and few gifts or mementos, distinguishing this experience from "male counterparts [in other sports] with sponsorships." These differences in corporate sponsor activation can and do occur for men and women student-athletes competing in the same sport. In Division I/NC ice hockey and lacrosse,

[51] Some Champions and Partners provide broad support for the championships, which changes from year-to-year. For example, Coca Cola often provides side-line PowerAde, including PowerAde water bottles, to all student-athletes, and another sponsor gifts student-athletes "locker room drops" at several championships each year.

[52] NCAA External Gender Equity Review, Media & Sponsorship Addendum by Desser Sports Media, Inc. (Aug. 2, 2021) ("Desser Report") § 1.5; Phase I Report at 73 n.222.

for example, corporate sponsors disproportionately activate at the men's championships over the women's. *See* pp. 72-73, 81-82. At the Division I soccer and volleyball championships, the corporate sponsors favor the women's tournament over the men's. *See* pp. 85-87, 103.

There are also the relationships with equipment suppliers, which sit outside of the Corporate Partner Program but provide additional equipment and gifts to student-athletes. For example, Rawlings Sporting Goods Company, Inc. contracts with both baseball and softball, providing equipment for the championships, as well as gifts for the student-athletes. Despite some inequities in the gifts Rawlings has provided in the past, at this year's championships, the NCAA worked with Rawlings to ensure that the mementos for student-athletes were equitable.

ESPN's contract is undervalued and it broadcasts some men's and women's championships differently. In Phase I of our review, with the NCAA's support, we engaged independent media expert Ed Desser to assess the value of the Division I Women's Basketball Championship as a media property. After utilizing multiple valuation methodologies, Desser and his team estimated that the annual broadcast rights for Division I women's basketball will be worth between $81 and $112 million in 2025—multiples more than ESPN currently pays annually to broadcast 29 championships, *including* Division I women's basketball.[53] While Desser did not perform a valuation for the other 28 championships that ESPN broadcasts, his report supports the conclusion that ESPN is, in general, significantly underpaying the NCAA—and thus causing the association to lose out on substantial and crucial revenue.[54]

The ESPN broadcast agreement grants ESPN and its subsidiary and sister networks (ESPN1, ESPN2, ESPNU, and ABC) the right to air these 29 championships. ESPN has considerable discretion regarding where to air each of the championships. In some years, like in the 2018-19 academic year, ESPN generally aired the men's and women's championships for a particular sport on comparable channels, with the notable exceptions of Division I ice hockey, lacrosse, and swimming and diving.[55] For example, the final games for both Division I baseball and softball were aired on ESPN, and the final games for both Division I women's and NC men's volleyball were aired on ESPN2.[56]

In other years, however, ESPN has more frequently broadcast the men's and women's championships for a particular sport on different channels with different audience sizes. In 2020-21, for example, ESPN broadcast the final games for Division I men's lacrosse and men's outdoor track and field on ESPN2, while broadcasting the women's championships for each of these sports on ESPNU. *See* (fact sheets). The former station is in more households and generally has an audience of a few hundred thousand viewers per day,[57] while the latter is a college sports channel

[53] Phase I Report at 75-78.

[54] *Id.*

[55] *See* NCAA TV Broadcast Schedule, NCAA (last visited Oct. 18, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[56] *Id.*

[57] ESPN2 TV Channel, Cable Rankings (last visited Oct. 18, 2021), https://ctv kwayisi.org/networks/espn2/.

with typical viewership numbers of fewer than 50,000 per day.[58] And in Division I ice hockey, ESPN broadcasts all rounds of the men's tournament on either ESPN2, ESPN3, or ESPNU, depending on the year, and has broadcast the finals on either ESPN or ESPN2 every year since 2013.[59] In 2018 and 2019, the Division I women's ice hockey semifinals and finals were broadcast on the Big Ten Network only; in 2021, ESPN streamed one of the women's semifinal games on ESPN3 and broadcast the other semifinal and final games on ESPNU. The women's first-round games are typically either streamed on NCAA.com or not broadcast at all.[60] *See* pp. 73-74.

Despite these disparities, stakeholders have reported that ESPN seeks to elevate championships that are gaining popularity to better channels with more viewership where possible, which has benefited women's championships. For example, this year, ESPN broadcast the final rounds of the NC Women's Gymnastics Championship on ABC, one of its affiliate networks, and viewership increased 510% between 2019 and 2021, with the largest ever audience for the NC Women's Gymnastics Championship. And in Division I softball, the NCAA has worked with ESPN to produce storylines about the student-athletes and teams and, over time, elements have been added to that broadcast "that make the viewer experience a lot better."

2. Branding

As with basketball, some other NCAA sports have used gender modifiers in front of the championship name for one gender in certain situations, but not the other (*e.g.*, "Final Four" to describe the Division I Men's Basketball Championship finals and "Women's Final Four" to describe the Division I Women's Basketball Championship finals). While the NCAA has largely phased out such differentiations, until very recently, branding disparities still existed in several sports.

For example, in ice hockey, the NCAA Twitter account @NCAAIceHockey uses "#FrozenFour" on social media to market the men's ice hockey championship, but "#WFrozenFour" to market the women's championship.[61] And the website linked on the Twitter account (ncaa.com/frozenfour) goes to the NCAA's webpage for Division I men's ice hockey only.[62] *See* pp. 73-74.

[58] ESPNU TV Channel, Cable Rankings (last visited Oct. 18, 2021), https://ctv kwayisi.org/networks/espnu/.

[59] *See* NCAA TV Broadcast Schedule, NCAA (last visited Oct. 18, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[60] *See id.*

[61] NCAA Ice Hockey (@NCAAIceHockey), Twitter (last visited Oct. 19, 2021), https://twitter.com/ncaaicehockey.

[62] Men's Ice Hockey, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/icehockey-men/d1.

Image of the Twitter Bio for @NCAAIceHockey

Until recently in lacrosse, the NCAA used disparate branding for the Division I men's and women's championships. On social media, the NCAA's Twitter, Instagram, and Facebook pages for Division I lacrosse only covered the men's tournament until fall 2020, when the NCAA changed the pages to cover both championships (although the Twitter page is still linked to the NCAA men's lacrosse webpage).[63] And the Division I Men's and Women's Lacrosse Championships previously used different logos, with the men's logo appearing significantly more developed.

2019 Lacrosse Logos

In April 2021, following the issues that came to light at this year's Division I basketball championships, the NCAA conformed the two lacrosse logos, although the updated women's logo still did not appear on trophies during this year's championship. *See* pp. 79-81.

[63] NCAA Lacrosse (@NCAALAX), Twitter (last visited Oct. 19, 2021), https://twitter.com/ncaalax (linking to ncaa.com/lacrosse, which is the website for Division I men's lacrosse).

2021 Lacrosse Logos

Historically, the Men's College World Series has not always included the gender modifier in its title, referred to instead as the "College World Series," while the women's final rounds were called the "Women's College World Series." In 2008, baseball's host agreement with Omaha, discussed further below, dictated that the finals should be referred to as the Men's College World Series. For many years thereafter, however, some of the NCAA's logos for the baseball championship still titled it the College World Series. The NCAA has since changed its logo to include the "Men's" gender moniker, but has continued to refer to the finals without that modifier in certain instances, like the NCAA's website referring to the "2022 College World Series":

Men's Website Containing College World Series Logo[64]

[64] Image from the NCAA.

Women's Website Containing College World Series Logo[65]

After this year's basketball championships, the Championships staff reported that they increased their efforts to refer to the baseball finals solely as the Men's College World Series. One of the Omaha entities associated with the championship, however, continues to use the name "College World Series of Omaha, Inc." to refer to the baseball finals, which is accompanied by a website, cwsomaha.com.[66] And the NCAA's online presence continues to lag behind, with the Twitter and Facebook handles for NCAA baseball appearing as @NCAACWS, and the handle for NCAA softball appearing as @NCAASoftball.[67] *See* p. 70.

In volleyball, the NCAA recently converted its Twitter handle for volleyball (@NCAAVolleyball) into an account for women's volleyball only, and started a new Twitter account for men's volleyball with the handle @NCAAMVolleyball. *See* pp. 88-89.

It is important to note that earlier this year, the NCAA commissioned a branding and marketing study, through which the NCAA is exploring whether the brands for all championships are equitable and marketable.[68] That study remains ongoing.

3. Recommendations

In our Phase I report, we made a number of recommendations related to media agreements, corporate sponsorships, and branding that, if implemented, will promote gender equity across all championships and ensure that all championships—not just Division I women's basketball—are given the opportunity to grow to their full potential.

[65] Image from the NCAA.

[66] College World Series of Omaha (last visited Oct. 19, 2021), https://cwsomaha.com/.

[67] NCAA Baseball (@NCAACWS), Twitter (last visited Oct. 19, 2021), https://twitter.com/NCAACWS; NCAA Softball (@NCAASoftball), Twitter (last visited Oct. 19, 2021), https://twitter.com/NCAASoftball.

[68] Phase I Report at 79 n.254.

First, we recommended that the NCAA negotiate a new tier of corporate sponsors for the Division I Women's Basketball Championship and all other NCAA championships (**Recommendation 2.3**). This new tier of sponsorship would allow for customized sponsorship opportunities that attract corporate sponsors to other championships, thereby maximizing growth and revenue for sports other than Division I men's basketball.

We also recommended that the NCAA create a new senior position of Chief Business Officer (CBO) to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA. (**Recommendation 2.4**.) This CBO would oversee the NCAA's media partner relationships with CBS/Turner and ESPN, the Corporate Partner Program, social media and digital, and branding and marketing for all championships—responsibilities that are currently split between the SVP of Basketball and the SVP of Championships. Having a single senior person implement a business strategy with a view toward marketing and enhancing gender equity in all NCAA championships, including by working with CBS/Turner to promote activations at championships other than Division I men's basketball, will help grow sports across the organization and allow the NCAA to provide a more equitable championship experience for its student-athletes. At the same time, we recommended that the NCAA implement an overall strategy to realize the value of the Division I Women's Basketball Championship and other championships across the NCAA (**Recommendation 2.5**).

Finally, we recommended that the NCAA establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships and all other NCAA championships (**Recommendation 2.6**). The NCAA should establish a system for tracking where, how, and for how much the NCAA's corporate sponsors have been and are activating, both historically and in real time—something not done at present with regularity. Such a system would enable the NCAA to better track revenue sources and evaluate potential sponsorship opportunities to further maximize growth across its championships.

In addition to these organization-wide recommendations, we make the following recommendations for NCAA championships other than basketball.

Recommendation B.1

Consider commissioning an independent valuation of the media rights of other championships or championship "packages."

In Phase I, with the NCAA's support, we engaged independent media expert Ed Desser to calculate the value of the media rights of the Division I Women's Basketball Championship, which ESPN currently broadcasts as part of a package of 29 championships. Desser determined that if the NCAA opens the bidding rights to the Division I Women's Basketball Championship, it would "unlock considerable value and attract far more bidders than keeping it combined with 28 other

NCAA Championships."[69] Desser further concluded that not only would "break[ing] out and bid[ding]" the Division I Women's Basketball Championship "unlock . . . value" for the NCAA, but so would breaking out some of the rest of the 28 other championships that ESPN currently contracts to broadcast.[70] Desser recommended that the NCAA consider putting out for bid "smaller packages" including, for example, the Men's and Women's College World Series.[71]

ESPN's agreement with the NCAA expires in 2025. Accordingly, heading into these renewal discussions, the NCAA should consider exploring a valuation of some of the NCAA's other championships, including those that are currently part of the ESPN package. Particularly because the NCAA has limited resources with which to plan and execute its championships, it should ensure that it is realizing any untapped monetary potential associated with these media rights.

Recommendation B.2

Ensure equitable branding for all championships, including but not limited to gender modifiers in championship titles.

Following the 2021 Division I basketball championships, the NCAA commissioned a branding and marketing study to determine how best to maximize each sport's brand and logo. As part of that study, the NCAA should ensure that it is addressing any disparities with branding from a gender equity perspective. For example, the NCAA has already announced that it has adopted our Phase I Recommendation 2.2 and will be using "March Madness" for both the men's and women's basketball tournaments.[72] Similarly, the NCAA should ensure that there is no differentiation between men's and women's championships by using gender modifiers in front of one championship but not the other (*i.e.*, "Frozen Four" and "Women's Frozen Four").

This includes the NCAA's social media platforms, which have lagged behind the NCAA's other efforts to equalize championship branding. The NCAA should explore ways to ensure equitable handles and hashtags, and link its social media accounts to both the men's and the women's NCAA webpages. And while the NCAA has made strides to ensure equitable branding, it should continue to closely monitor and consider gender equity in connection with the type and quality of the brands and logos being used for all championships.

[69] Desser Report § 1.10; Phase I Report, Recommendation 2.1.

[70] Desser Report, Synopsis.

[71] *Id.*

[72] Alanis Thames, *N.C.A.A. to Use 'March Madness' Slogan for Women's Basketball, Too*, N.Y. Times (Sept. 29, 2021), https://www nytimes.com/2021/09/29/sports/ncaabasketball/march-madness-womens-basketball html.

THE STUDENT-ATHLETE EXPERIENCE

1. The Student-Athlete Experience

Student-athletes, coaches, commissioners, and NCAA staff reported throughout our Phase II review that many of the same disparities in the student-athlete experience that we discussed in our Phase I report also present themselves in some of the other NCAA championships.

As discussed above, the NCAA allocates greater staffing, budgetary, and other resources to those championships that it views as already or potentially revenue-producing for the NCAA and its members. *See* pp. 16-22. Greater resources can pave the way for a higher quality student-athlete experience. Where a men's championship generates significantly more revenue than its women's counterpart in the same sport, or vice versa, gender disparities in the student-athlete experience may—and often do—arise.

The NCAA is aware that such disparities exist. Following media reports of gender disparities at this year's Division I basketball championships—and the vociferous advocacy of student-athletes, coaches, fans, and other stakeholders in response—the NCAA Championships staff, for the first time, conducted an internal gender equity review of the NCAA's championships. At the prompting of the NCAA President, the SVP of Championships sought feedback from the Championships staff for all 84 championships other than basketball, asking for input on and comparisons of, among other things, equipment and supplies, schedules, and athletic, medical, and housing facilities and services. As part of that process, Championships staff met and compared similarities and differences between the men's and women's championships in their respective sports.

As the staff identified gender equity issues with various championships, they took immediate steps to address those inequities where they could before the spring championships took place. For example, in connection with Division I, II, and III softball and baseball and Division I lacrosse, the NCAA reached an agreement with its equipment suppliers to provide equitable apparel and equipment to the men's and women's championships (*e.g.*, providing an equitable number of lacrosse balls at each championship). Similarly, as previously discussed, the NCAA took steps to improve the Division I women's lacrosse logos and branding before the championship occurred in May 2021. *See* pp. 32-33. And for water polo, the NCAA realized that the men had $5,000 in their budget for publicity, while the women had only $2,100, and increased the women's budget to match the men's.

However, NCAA Championships staff explained that this review was not comprehensive and was done quickly during the championship season. The NCAA did not create any process to

track issues that were identified but not resolved, or to maintain a list of specific changes that resulted from the review.[73]

Despite these efforts, disparities between the men's and the women's student-athlete experience at several championships remain, particularly in the areas of fan events, signage, and venues. The NCAA appears to do a better job distributing equitable awards, gifts, and mementos, but better tracking of spending on those items would ensure that these are distributed on a consistent, equitable basis going forward. Finally, in certain sports, there are disparities in the number of championship participation opportunities relative to the total number of student-athletes in a sport.

Fan events. The NCAA puts on twice as many fan festivals for men's championships as it does for women's championships. According to NCAA staff, decisions regarding which championships will have a fan festival are "driven primarily by corporate champion/partner interest and activation." The Division I championships, aside from basketball, that currently have some form of a fan festival are:[74]

MEN'S CHAMPIONSHIPS	WOMEN'S CHAMPIONSHIPS
Baseball*	Softball*
FCS Football	
Ice Hockey*	
Lacrosse*	Lacrosse
Soccer	Soccer
Wrestling*	

For each of the championships marked with an asterisk (*) above, CBS/Turner manages the fan festival per its arrangements with the NCAA.[75] CBS/Turner has the right to control and manage those fan festivals, including by "selecting vendors, hiring event staff, making financial and operational decisions, design and development of sponsor, concert and fan buildouts and areas, and other similar development, operational and management responsibilities."[76] Under its

[73] Once KHF was engaged to conduct this gender equity review, the NCAA largely paused any internal review so as to avoid taking steps that might be inconsistent with what KHF would recommend. At our request, the NCAA compiled a list of corrective actions taken during its internal gender equity review.

[74] This table only lists official fan festivals held by the NCAA and does not include championships that may provide smaller, one-off activations or interactive experiences for fans. For example, the Division I Women's Volleyball Championship does not hold an official fan festival, but occasionally offers interactive experiences and other smaller activations inside the championship venue, such as a photo booth.

[75] *See* Fan Fest Agreement at 2; *see also, e.g.*, 2019 Wrestling Fan Festival Settlement Statement; 2019 Men's Lacrosse Fan Festival Settlement Statement; 2019 Frozen Four Fan Festival Settlement Statement; 2019 Women's CWS Fan Festival Settlement Statement; 2019 Men's CWS Fan Festival Settlement Statement.

[76] *See* Fan Fest Agreement at 2.

agreement with the NCAA, CBS/Turner is also free to choose the financial model for the fan festivals it runs. For both baseball and lacrosse—historically the only two fan festivals that turn a profit—the agreement with CBS/Turner provides for a split of any net profit between CBS/Turner and the NCAA. For the remaining fan festivals, which historically lose money, the NCAA reimburses CBS/Turner for the amount of the net loss.

Even when there is a fan festival for both the men's and the women's championships, those festivals are often quite different in scale. As noted in the case studies for lacrosse and baseball/softball, *see* pp. 70-71, 81-82, the men's fan festivals are larger and have more corporate sponsor activations, music, and games than the women's fan festivals. These differences are reflected in the cost of the events—for example, in 2019, the baseball fan festival cost approximately $274,800 while the softball fan festival cost approximately $53,900.[77] There is, however, one women's fan event that is larger than its men's counterpart: the women's soccer fan festival is a bigger event with greater investment and corporate sponsor activations than the men's soccer fan festival. *See* p. 103.

Pictures from Fan Fests at the Division I Men's Ice Hockey Championship and College World Series[78]

[77] 2019 Women's CWS Settlement Statement; 2019 Men's CWS Settlement Statement.

[78] Images from the NCAA.

Pictures from Fan Fests at the Division I Men's Ice Hockey and Lacrosse Championships and College World Series[79]

Signage. Like with basketball, some other championships have disparities in city and in-venue signage. As we discussed in our Phase I report, these differences can have a material impact on the student-athlete experience by giving one gender's championship a more professional and exciting atmosphere than the other's.[80]

For example, in several sports, the Division I and NC men's championship spends significantly more than its women's counterpart on signage, including baseball, ice hockey, lacrosse, soccer, and water polo. In other sports, the Division I and NC women's championship spends more than its men's counterpart, such as gymnastics and volleyball. For all other sports, spending on signage is relatively equitable. The following chart displays total spending numbers on signage for the Division I and NC championships:

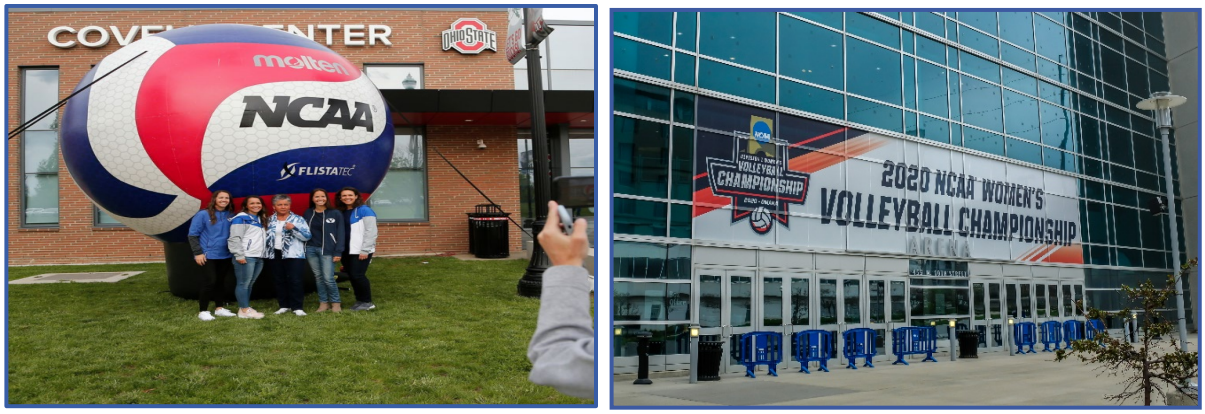
[79] Images from the NCAA.

[80] Phase I Report at 40-45.

NCAA Total Spending on Signage in 2019[81]

SPORT	MEN'S	WOMEN'S
Baseball/Softball	$109,820	$66,684
Cross Country	$5,613	$5,613
Golf	$9,686	$7,633
Gymnastics	$2,483	$22,841
Ice Hockey	$89,435	$23,777
Lacrosse	$109,660	$32,809
Soccer	$53,849	$40,037
Swimming and Diving	$8,903	$9,442
Tennis	$8,607	$8,346
Indoor Track & Field	$5,620	$5,620
Outdoor Track & Field	$15,895	$15,895
Volleyball	$2,817	$45,347
Water Polo	$3,586	$1,960
Wrestling	$66,699	--
Football	$63,417	--
Field Hockey	--	$6,767
Rowing	--	$1,407
Bowling	--	$4,173
Beach Volleyball	--	$21,408
Rifle	$3,813	
Fencing	$2,738	
Skiing	$4,086	

[81] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.



Signage at Men's and Women's Volleyball Championships[82]

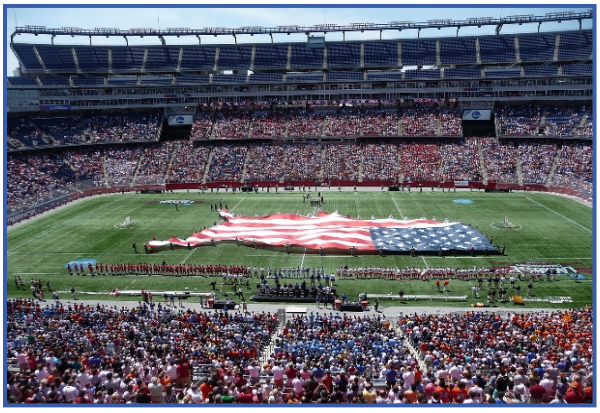
Signage at Men's and Women's Lacrosse Championships[83]

Venue. Disparate venues for men's and women's championships can have a significant impact on the student-athlete experience as well. The difference in quality and size of venues results in different capacities for fans and, as one stakeholder described it, more "bells and whistles (video boards, etc.)." Some student-athletes play in large professional stadiums and arenas, while their gender counterparts play in smaller, minor league or college arenas.

For example, the men's lacrosse championship combines all three divisions and is held in a National Football League stadium each year, whereas all three divisions of the women's lacrosse championships are usually held separately in smaller semi-professional or college stadiums. *See* pp. 78-79.

[82] Images from the NCAA.

[83] Images from the NCAA.



The Men's (Left) and Women's (Right) Lacrosse Championship Venues[84]

And as discussed in detail below, there are significant disparities between the Division I baseball stadium in Omaha and the Division I softball stadium in Oklahoma City, *see* pp. 62-65, as well as between the National Hockey League arenas used by Division I men's ice hockey and the on-campus arenas used by NC women's ice hockey, *see* pp. 72-73.

The Men's (Left) and Women's (Right) Baseball and Softball Championship Venues[85]

Other sports demonstrate the benefit of a shared venue for the men's and women's championships, including alleviating any possible gender disparities. For example, in swimming and diving, the men's and women's championships are often held at the same venue, which "alleviate[s] any previous concerns regarding access for the best-possible venues." *See* pp. 96-98. And the finals of the golf championships take place on back-to-back weeks at the same venue, which contributes to the similar student-athlete experience at both: "I do not notice differences between the NCAA men's and women's golf championships—I am sure due in large part because the championships are held [on] back to back weeks at the same golf course [and] staying at the same hotel." *See* pp. 104-06.

[84] Images from the NCAA.

[85] Images from the NCAA.

Awards, gifts and mementos. Disparities between awards, gifts, and mementos at championships can impact the student-athlete experience. Nevertheless, the NCAA does not systematically track, audit, or compare awards, gifts, and mementos provided to student-athletes at the various championships, which makes directly comparing the items provided significantly more difficult, if not impossible. Indeed, this informs our recommendations that the NCAA establish a system for collecting and maintaining standardized data across its 90 championships and that the NCAA track and ensure equity in items affecting the student-athlete experience, including but not limited to awards, gifts, and mementos. *See* pp. 48-49.

The NCAA coordinates participation awards through a centralized online gift suite system so that the men's and women's championships have access to the same options and have the same per student-athlete amount to spend on them. The online gift suite provides participation awards to "members of the official travel party of institutions that advance to the championship final sites."[86]All 88 championships outside of Division I men's and women's basketball use this same online gift suite.[87] Division I receives $100 per member of the official travel party; Divisions II and III receive $75 per member of the official travel party. There are seasonal (fall, winter, spring) options from which participants can select.

NCAA-Awards.com

HOW TO GET YOUR
Student-Athlete Participation Awards

For 2020-2021, an online gift-suite will serve as the participation awards provided to members of the official travel party of institutions that advance to the championship final sites.

After the championship, MainGate will send the head coach an email providing ordering process details, along with a unique Certificate Code (valid for one participation award per member of your official travel party) that can be redeemed only at www.NCAA-Awards.com. In order to ensure that each participant receives an award, a member of your administration must place your team's order, including size information, at NCAA-Awards.com using your Certificate Code.

Your institution may select different items per participant; men's and women's sizes are available for apparel items. If you would like to purchase additional awards, you will have the opportunity to do so online via personal credit card at the end of the checkout process.

Participation award items will be sent to your institution for distribution to your student-athletes within four to six weeks after your order is placed. If you do not receive information for ordering awards within two weeks of the conclusion of the championship please contact Erin Hannoy ehannoy@legends.net, Legends Global Merchandise (formally known as MainGate Inc.) (866-945-7267) or the NCAA championship manager.

Please add ehannoy@legends.net to your address book to allow us to send you emails.

2020-21 Student-Athlete Participation Awards Brochure

[86] *See* Student-Athlete Participation Awards Brochure.

[87] This online gift suite is different from the one offered at the Division I Men's and Women's Basketball Championships, which is run by a different company and offers different gifts.

Student-athletes receive other gifts and mementos from the NCAA as well. For example, both the Division I softball and baseball championships provide most outstanding player trophies, gold watches, and mini-trophies for certain players. Similarly, Division I men's and women's ice hockey champions receive national champion hats, t-shirts, and towels. And in Division I lacrosse, each person in the travel party receives a participant medallion, a PowerAde water bottle, and, in previous years, a banquet gift from STX Sporting Goods.

At present, there is no systematic way to determine whether the NCAA is spending equitably on awards, gifts, and mementos for student-athletes. The NCAA's general ledger tracks "Awards and Mementos" spending per championship, but neither total spending, nor per-participant spending, reflects the full picture. Total spending can be misleading since one gender's tournament may, for example, involve more teams than the other gender's tournament in the same sport; in such a case, a difference in total spending may be both expected and justified. Yet spending per student-athlete may not reveal gender equity issues either. Even where tournaments are differently sized, many gifts (including gifting suite gifts) are given only to participants who advance to the final rounds; in that case, dividing spending by the total number of championship participants may show a difference where there is none, or mask a difference where there is one. Complicating matters further, "some participating institutions do not redeem their credit for the gift suite with [the NCAA's] memento provider; as a result, there may be some instances where the NCAA does not incur the full amount of anticipated expenses." Again, complications such as these in calculating and tracking awards, gifts, and mementos to student-athletes inform our recommendations that the NCAA standardize data collection and more systematically track and ensure gender equity in the items provided at the championships. *See* pp. 24-25.

Based on our review, it generally appears that the NCAA provides equitable awards and mementos for championships other than basketball. Stakeholders did not raise concerns about this issue during our review, and we confirmed numerous examples of the NCAA providing equitable awards and mementos. We attribute this to the NCAA's uniform system of distributing gifts through the online gift suite and to the fact that additional gifts (*e.g.*, hats, t-shirts, mini-trophies, and participant medallions) are distributed to both men's and women's teams. The one notable exception to this is the most outstanding player trophy provided at the Division I men's baseball championship. *See* pp. 68-69.

In addition to these awards and mementos provided by the NCAA, equipment suppliers and corporate sponsors sometimes provide additional free equipment and "swag." These gifts, which "var[y] by championship/equipment supplier agreement," are not reflected in the NCAA's budget, as they are provided as value-in-kind and not purchased by the NCAA. The NCAA does not comprehensively track or audit these gifts either, so it is unclear which gifts and equipment a championship will receive in any given year. For example, multiple stakeholders noted that "men's [lacrosse] get[s] more items from STX" and, as discussed above, it was only after the NCAA's internal gender equity review this year that the NCAA recognized this disparity and worked to resolve it.

Some corporate sponsors activate equally—or at least are supposed to activate equally—across championships. For example, one Corporate Partner and CBS/Turner have an agreement to place products in locker rooms at NCAA championships. The agreement specifically stipulates: "All locker room product placement *subject to gender equity requirements* (e.g., if [the Partner] provides product for men's soccer, it will also provide product for women's soccer), and subject to NCAA/venue approval." This kind of gender equity provision in sponsor contracts should be an NCAA standard. (We were unable to obtain any proof that it is.) But even with this provision, we were told by the NCAA that while the Partner placed product in locker rooms at the men's and women's lacrosse, soccer, and basketball championships, as well as baseball, softball, and men's wrestling, it also placed product in locker rooms for only women's volleyball and men's ice hockey but not their gender counterparts.

Participation opportunities. Overall, the number of participation opportunities for men and women across all NCAA championships appear to be relatively equitable. In 2019, there were 9,743 opportunities for men, 10,401 for women, and 340 joint opportunities in Division I and NC sports other than basketball. While the overall numbers are similar, participation opportunities within a sport may differ between men and women. For example, swimming and diving coaches and administrators noted "the glaring disparity in access between male and female participants." Division I men currently have 270 swimmers and divers in the championship, whereas Division I women currently have 322.

But raw participation numbers only tell part of the story due to differences in sponsorship at the campus level. Indeed, there are far more schools sponsoring women's swimming and diving than men's, so even though there are currently more participation opportunities for women student-athletes in the Division I championship, a higher percentage of Division I male swimmers and divers are currently able to participate in the championship. *See* p. 100. These "access ratios"—that is, the number of championship participation opportunities relative to the number of total student-athletes in a sport—are significantly different for men and women in some sports. *See* pp. 77 (ice hockey), 89 (volleyball), 91-92 (gymnastics).

Accordingly, championship bracket and field sizes do not need to be the same between all men's and women's championships to ensure gender equity. Rather, a variety of factors influence whether a bracket or field size disparity may be appropriate, including the number of schools that sponsor a sport and the relative competitiveness of the broader field of players. Based on a detailed review of these and other variables in the context of the Division I basketball championships, our Phase I report recommended that the women's bracket be expanded from 64 to 68 teams. But even there, we noted a number of considerations that could caution against bracket expansion.[88]

Similarly, squad, bench, and travel party sizes can also impact the student-athlete experience.[89] For example, a number of stakeholders raised concerns about the different travel

[88] *See* Phase I Report, Recommendation 5.

[89] Squad size refers to the maximum number of student-athletes per team allowed to dress in uniform and play at the championship; bench size is the number of people, including student-athletes, per team who are allowed to sit on the bench, even if they are not

party and bench sizes for women's lacrosse as compared to men's lacrosse. Only after the NCAA's internal gender equity review earlier this year was this issue identified and rectified by equalizing the travel party size (and with plans to equalize the bench size as well). *See* pp. 83-85. There are similar disparities in the bench and squad sizes for baseball and softball: baseball gets more members in their squad size, and more baseball student-athletes are allowed to attend the championship but not wear their uniform or play in the game. *See* pp. 67-68.

A number of considerations may impact the appropriate bracket, squad, bench, and travel party size for each championship. But when a sport reaches a point where an expansion of any one of these elements would provide for a more equitable student-athlete experience, the NCAA should have a clear and transparent process for considering and approving such requests that takes gender equity into account.[90] Indeed, due to the impact on gender equity and the student-athlete experience, combined with the budgetary and other resource implications, the NCAA should be more actively monitoring and preparing for such changes in its championships going forward.

The NCAA has recognized this as an issue. In 2020, the Division I Championships Finance Review Working Group recommended—and the Division I Council has approved—"principles," but no process, to guide "future decisions regarding championship bracket/field size," including consideration of the "[i]mpact on gender equity," as well as principles and a process to guide and manage future requests regarding "squad, travel party, or bench size."[91] Those recommendations were approved by the Division I Board of Directors Finance Committee on October 26, 2020, and the decision was ratified by the Board of Directors. The recommendations took effect on August 1, 2021.

Yet, the NCAA has not fully addressed the issue. The recently approved process for requests relating to squad, travel party, and bench size is not sufficiently detailed and does not provide for transparency into decision-making.[92] And the NCAA has not adopted (nor did the Championships Finance Review Working Group recommend) a process for bracket/field expansion requests.[93] Recently, for example, the NC Women's Ice Hockey Committee requested a bracket expansion from eight to 10 teams. In September 2021, the Competition Oversight Committee noted that "[w]hile the committee supports the merits of the proposal . . . it agreed to

permitted to dress and play; and travel party size is the total number of people per team for whom the NCAA provides travel reimbursement and per diem.

[90] While this report comments on expansion of brackets, we recognize that reducing the size of a bracket can also involve a lengthy NCAA governance process. *See* NCAA Constitution, Article 4.01.2.3.1 Championship Access ("Members are guaranteed access to national championships (including the play-in structure in certain championships, sizes of championship fields and the number and ratio of automatic qualifying conferences) at least at the level provided as of August 1, 2014.").

[91] Report of the NCAA Division I Council (Oct. 13-14, 2020); Report of the NCAA Division I Championships Finance Review Working Group at 4 (Oct. 7, 2020).

[92] Supplement No. 6, NCAA Division I Board of Directors Finance Committee (Apr. 2021).

[93] Report of the NCAA Division I Championships Finance Review Working Group at 2-4 (Oct. 7, 2020); Supplement No. 6, NCAA Division I Board of Directors Finance Committee (Apr. 2021).

table the matter until the next opportunity to fund it."[94] Stakeholders reported that after submitting their request, the Women's Ice Hockey Committee was told that they had missed a deadline of which they were not aware. And though their proposal was tabled, they were also told unofficially that they could have asked for an even larger bracket expansion. As those who worked on the proposal described it, "our committee spent an extraordinary amount of time trying to figure out how to get things submitted to [the Competition Oversight Committee]," but found there is "no clear path."

In October 2021, the Competition Oversight Committee announced its own desire to "engage in a more holistic review of all team-sport squad, travel party and bench sizes rather than address[ing] them as one-off requests," noting that such a review was consistent with the recommendations that the Championships Finance Review Working Group had made.[95] The Competition Oversight Committee's team and individual sport subcommittees have taken the issue under review.

2. Recommendations

Recommendation C.1

Ensure that items impacting the student-athlete experience at all championships are gender-equitable.

The NCAA should develop a defined set of items directly impacting the student-athlete championship experience that should be substantially the same at championships going forward. This list of items should be developed by NCAA staff with expertise in Title IX and gender equity, in consultation with staff responsible for planning and executing the championships. The list of items should parallel the list that we recommended the NCAA create for the men's and women's basketball championships.[96]

As we identified in Phase I, and as we reemphasize now after reviewing the other NCAA championships, at a minimum, the following principles should apply:

- ***Health and safety.*** Anything that falls within the broad category of health and safety should be substantially the same.
- ***Practice facilities and locker rooms.*** Understanding that there may be some differences based on the particular location of an event, the size, quality, and proximity of practice facilities and locker rooms should be substantially the same.

[94] Report of the NCAA Division I Competition Oversight Committee (Sept. 8, 2021).

[95] Report of the NCAA Division I Competition Oversight Committee (Oct. 4, 2021).

[96] *See* Phase I Report, Recommendation 3.2.

- ***Travel and accommodations.*** The type (bus versus plane, charter versus commercial, etc.) and quality of transportation to championships should be substantially the same, as should the degree to which travel considerations are permitted to impact the brackets. Once at the championships, transportation should also be of a substantially similar quality. Hotels should be of the same quality with substantially similar amenities and located a similar distance from playing venues. To the extent feasible, travel and accommodations should be booked at the same time for the championships, and efforts should otherwise be made to ensure that the men and the women have similar access to limited travel and hotel options so that the best options can be maximized for all teams going to the championships. The food provided at the championships should also be of a substantially similar quality, quantity, and variety.
- ***Awards, gifts, mementos, and other amenities.*** Any awards, gifts, mementos, "swag," or amenities given to student-athletes or their families at the men's and women's tournaments should be substantially the same.
- ***Signage, marketing, promotional efforts, and branding.*** The quality and quantity of signage, marketing, promotional efforts, and branding should be substantially the same. This should include the same opportunity for signage and branding on any team buses and in game facilities, locker rooms, hotels, and public spaces throughout the tournament locale. We recognize that the NCAA has commissioned a branding and marketing study, in which they are seeking to explore whether the brands for all championships are equitable and marketable. That study is ongoing, and its results should inform how the NCAA implements this Recommendation.
- ***Entertainment.*** Any entertainment or other recreational activities made available to student-athletes, their families, and their fans should be substantially the same.

Once developed, the list should be reviewed and updated regularly in order to reflect the current state of the championships and should be modified alongside the list created for the Division I Men's and Women's Basketball Championships. Of course, developing the list is just the first step. The Championships and other NCAA staff, as well as the Competition Oversight Committee, the Division II and III Championships Committees, and the sports committees, should all use the list both in planning and administering the championships each year, as well as in conducting any real time or after-the-fact audits to ensure that the men's and women's championship for each sport are equitable, and that sports without a gender counterpart also maintain a comparable student-athlete experience.

Recommendation C.2

Create a transparent process for reviewing proposals to increase the size of a championship's bracket/field, squad, bench, or travel party size that takes gender equity into account.

Building on the principles and process recommended by the Division I Championships Finance Review Working Group to guide decisions regarding modifications to bracket/field, squad, bench or travel party size,[97] the Competition Oversight Committee should develop a transparent process for holistically considering and approving requests from sport committees to expand their brackets/fields and to increase or modify the individuals included in the squad, travel party, and bench sizes that takes gender equity into account. Using the guidance and principles of the Championships Finance Review Working Group—which included an eye toward gender equity—the Competition Oversight Committee should develop a detailed process for evaluating any such requests and should provide detailed information to each sport committee on that process, including how to submit a request, any applicable deadlines, the factors used for review, and all steps of the review and approval process. If a request is submitted and denied, the Competition Oversight Committee should provide the sport committee with an explanation of why the request was denied and, if solely budgetary, an estimated date of when the request is likely to be approved in the future. In order to inform this process, the Competition Oversight Committee should create a system for monitoring and planning for changes in the number of student-athletes participating in the championships.

[97] *See* Report of the NCAA Division I Championships Finance Review Working Group (Oct. 7, 2020); NCAA Division I Championships Finance Review Working Group: Recommendations to the NCAA Division I Council (Oct. 2020); NCAA Division I Championships Finance Review Working Group: Briefing Document/Concepts for Membership Consideration and Feedback (Spring 2020).

CHAMPIONSHIP & COMMITTEE STRUCTURE

There is broad support among NCAA leadership, staff, and committee members for the principle of treating student-athletes equitably with respect to gender. Despite these good intentions, however, numerous championships provide inequitable experiences for their student-athletes. This often results, at least in part, from the fact that men's and women's championships operate in "silos," independently from each other, with little strategic coordination, communication, or common purpose. Conversely, in sports in which the NCAA provides a more gender equitable championship experience for student-athletes, there is generally less "silo-ing" of operations and more communication and coordination in championship planning.

Not surprisingly, then, our review of sports other than basketball has identified two structural configurations that contribute to increased equity in the championship experience of male and female student-athletes: a combined—or, at a minimum, well-coordinated—sport committee; and a combined (in some way) championship for men and women. Importantly, however, our review showed that these are not "one-size-fits-all" solutions; rather, they must be carefully and thoughtfully calibrated to the unique characteristics and needs of the championship and its student-athletes.

1. Joint or Coordinated Committees

Division I and NC championships committee structure. Each NCAA championship is administered by a sport committee comprised of representatives from the NCAA's member institutions or conferences and, as discussed above, by NCAA Championships staff.[98] The NCAA staff are responsible for the day-to-day planning and operations of the championship, whereas the sport committee has general oversight of the championship, including revising and reviewing championship policies and procedures, reviewing and selecting host sites for future championships, and participating in the selection of teams and individuals for the championship.[99]

The sport committees for Division I and NC championships (except football and basketball) all report up to the Division I Competition Oversight Committee.[100] The Competition Oversight Committee reviews recommendations from the sport committees and oversees regular season and championship administration in sports other than football and basketball, including

[98] NCAA Sports & Playing Rules Committee Rosters, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/governance/committees/ncaa-sports-playing-rules-committee-rosters; Committees, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/committees.

[99] *See, e.g.*, 2020 Division I Swimming & Diving Championships: Committee Operations Manual at 5, 9; 2020 Division III Women's Ice Hockey Championship Committee Operations Manual at 5, 9.

[100] Division I Competition Oversight Committee, NCAA (last visited Oct. 17, 2021), https://www ncaa.org/governance/committees/ncaa-division-i-competition-oversight-committee. For a discussion of Divisions II and III, see below at pp. 115-120.

supervising qualification and selection procedures for the championships.[101] According to the NCAA, the Competition Oversight Committee "will prioritize enhancement of the student-athlete educational experience (academically and athletically) and, in doing so, promote student-athletes' personal growth and leadership development."[102]

In this capacity, the Competition Oversight Committee must review and approve some of the sport committees' more significant recommendations concerning championship structure, including proposed changes to bracket and field size and rest days. For example, following the events at this year's Division I basketball championships, the Competition Oversight Committee approved an expansion of the Division I Women's Golf Championship from four regional sites to six, and also approved additional rest days for Division I men's ice hockey, NC women's gymnastics, Division I softball, and Division I women's volleyball.[103] The Competition Oversight Committee also weighs in on how annual increases to the Division I and NC budgets should be allocated across the championships. *See* pp. 19-20.

While there is no formal process for ensuring coordination between men's and women's sports committees, the Competition Oversight Committee has served informally as a sort of gender equity monitor for the Division I championships it oversees. One member reported that the Competition Oversight Committee tries to ensure that the student-athlete experience, particularly with regard to trophies, per diem, travel, and banquets, is as equitable as possible. If the Competition Oversight Committee receives a request from a men's sport committee, it will reach out to any women's committee for the same sport and ask if they would like to make a similar request, and vice versa.

Joint or coordinated sport committees improve gender equity. The sport committees differ in structure and composition across NCAA championships. For most of the Division I and NC sports, the men's and women's championships are managed by separate committees. However, several Division I and NC sports have joint men's and women's sport committees, including cross-country, fencing, indoor track and field, outdoor track and field, rifle, skiing, swimming and diving, and tennis.[104]

The NCAA championships with joint sport committees tend to offer more equitable experiences for men and women student-athletes. For example, one stakeholder noted that in the track and field and cross country championships, there are "no championship differences between men and women at the Division I level." An NCAA staff member opined, "There really are no

[101] Division I Competition Oversight Committee, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/governance/committees/ncaa-division-i-competition-oversight-committee.

[102] *Id.*

[103] Report of the NCAA Division I Competition Oversight Committee Sept. 8, 2021 Videoconference at 3-4.

[104] NCAA Sports & Playing Rules Committee Rosters, NCAA (last visited Oct. 21, 2021), https://www.ncaa.org/governance/committees/ncaa-sports-playing-rules-committee-rosters. While both soccer and ice hockey have separate men's and women's sport committees, they have joint men's and women's rules committees that determine what rules will govern the individual championships.

disparities at the NCAA Skiing Championships between men and women as virtually everything is the same."

Not surprisingly, the joint committee structure helps to advance gender equity by facilitating communication and collaboration in the planning and execution of like-sport championships. As one tennis stakeholder noted, "There's much more communication in tennis" between men's and women's tennis stakeholders "simply because of how the committee works." This model is particularly successful when the joint sport committee is equally comprised of representatives of men's interests and women's interests. For example, as discussed in the tennis case study, *see* p. 95, the Division I Tennis Committee is divided evenly between representatives of women's and men's tennis interests, even rotating the committee chair position annually between the two groups. This careful balancing ensures that both men's and women's representatives have an equal say in championship planning decisions.

Most sports with joint committees also have championship structures that contribute to increased gender equity, including joint men's and women's championships (as is the case in cross country, tennis, and track and field), or championships in which men and women student-athletes compete together (as is the case in fencing, rifle, and skiing). *See* pp. 53-56. But this is not universally the case. In swimming and diving, which has a joint committee but not a joint championship (although it sometimes holds co-located championships), one stakeholder commented that "[s]wimming and diving benefit from having a shared committee structure," which "ensures consistency and fairness between the two championships." Another stakeholder reported that it is the committee structure that "allows for the championships to be so similar."

Some sports with separate committees—and even separate championships—achieve similar benefits if the committees are collaborative and coordinated. As described in the case study for golf below, *see* pp. 107-08, while still having some challenges to resolve, the men's and women's championships are largely equitable in comparison to each other, which is attributable (at least in part) to the fact that their men's and women's committees make an effort to communicate and coordinate with one another while planning their championships.

Despite these benefits to the student-athlete experience, the NCAA does not require men's and women's sport committees to communicate or collaborate, and has not created systems, processes, or standards to govern such coordination. As a result, the degree of communication and coordination between committees varies significantly by sport and, not surprisingly, is very low in those sports with some of the greatest gender disparities in student-athlete experience, such as ice hockey and lacrosse. *See* pp. 75, 83.

2. Combined Championships

In our Phase I report, we recommended that the NCAA hold a combined Division I Men's and Women's Final Four in order to ensure that the student-athlete experience at the Division I

Men's and Women's Basketball Championships is more equitable.[105] In other NCAA sports, this championship configuration has already been well tested, with highly favorable results. Combining at least some portion of the men's and women's championships for a given sport enables more coordinated planning, increases equity in the goods, services, facilities, and resources provided at the championships, and eliminates or reduces disparities between the "look and feel" of the tournaments, including as a result of combining corporate sponsorships and promotions.

Combined championships can and do take several forms. Some sports, like track and field and cross country, hold their entire men's and women's championships on the same days in the same location. Others, like tennis, hold only certain rounds of the men's and women's tournaments together. Still others, like golf, swimming and diving, and water polo, hold the men's and women's tournaments in the same location (at least in certain years) but on staggered dates, which allows for better-coordinated, but still separate, championship events. And a few sports—fencing, rifle, and skiing—hold a single co-educational championship in which men and women compete either against each other or against their same gender with team scores reflecting performance in both male and female events.

Joint championships. Division I indoor and outdoor track and field, as well as cross country, all hold joint men's and women's championships, in which the men's and women's championships take place entirely at the same place and time. Division I cross country holds joint men's and women's regionals on the same day across nine regional campus sites, and a joint men's and women's final on one day at a single campus site.[106] Stakeholders and NCAA staff described the length of the races as the most significant difference between these championships. For example, in Division I cross country, the men run 10 kilometers at the championship while women run six kilometers. Although the subject has been debated amongst those who oversee and participate in the tournament, we were told that "most seem to support the varying distances."

Indoor and outdoor track and field occur at different times of the year (March for indoor, May or June for outdoor), but are structured similarly. Both hold the Division I men's and women's championships at the same site and in the same three-day time window.[107] As a result, all student-athletes experience the same venues, championship branding, and tournament look and feel. The result is a largely identical student-athlete experience.

Partially joint championships. Some sports hold only certain rounds of the men's and women's championships at the same place and time, with other (usually earlier) rounds taking place separately. For example, since 2006, the NCAA has held the Division I Men's and Women's Tennis Championships together, at the same time and location. The men's and women's championships are structured identically, comprised of a team-based single-elimination tournament and a singles and doubles tournament. All rounds of the singles and doubles

[105] Phase I Report, Recommendation 3.1.

[106] 2020 Division I Cross Country Championships Pre-Championships Manual at 11.

[107] NCAA 2021 Division I Men's and Women's Track and Field Outdoor Championships Technical Manual at 4; NCAA 2021 Division I Men's and Women's Track and Field Indoor Technical Manual at 5.

tournament are played at a shared site, and the final rounds of the men's and women's teams matches are played there as well.[108] Tennis stakeholders report few if any gender disparities at the tournament, and one said that the combined championship structure "effectively ended any gender equity problems."

In 2021, for the first time, the Division I Men's and Women's Soccer Championships held their semi-final and final rounds, known as the College Cups, jointly in a single location, with earlier rounds played separately throughout North Carolina. Stakeholders reported that combining the College Cups provided a "phenomenal" experience and "highlight[ed] the ability to create and reimagine a new tournament format." In the past, the Division I Men's and Women's Soccer Championships were offset by one week and were held in different locations, but in 2022 they will again be held in the same location (Cary, North Carolina). Notably, stakeholders report that soccer holds a gender equitable tournament regardless of which format it uses.

Co-located championships. Some sports hold the men's and women's championships either entirely or partially in the same location, but do so on different dates. The finals of the Division I Men's and Women's Golf Championships, for example, are held at the same site on back-to-back weeks, rotating which gender competes first each year.[109] Golf serves as a useful example of how sharing a venue, even when the championships are held at different times, can provide similar gender equity benefits to championships held simultaneously. The NCAA began holding the Division I men's and women's finals at the same course during consecutive weeks in 2015. Division I golf uses the same hotels and lodging and works to ensure consistency in the look and feel of the venue for both genders. Although the experience is not identical, stakeholders reported that the championships are "pretty equitable" and that they "d[id] not notice a difference between" the men's and women's championships. *See* pp. 104-06.

NC water polo sometimes holds its men's and women's championships at the same site, though always at different times of the year.[110] Stakeholders and NCAA staff reported "comparable experiences" at the men's and women's water polo championships in general and said "there are no differences . . . in terms of venues, look and feel." Additionally, the NCAA staff assigned to water polo coordinate both championships; this cross-pollination makes it easier to identify and correct any gender disparities.

Co-educational championships. A handful of sports—including fencing, rifle, and skiing—hold a truly combined tournament: men and women student-athletes compete together

[108] *See* 2021 Division I Men's and Women's Tennis Pre-Championships Manual. Earlier rounds of the men's and women's teams matches are played at campus sites, with higher seeded teams earning the right to host; if the men's and women's team at an institution are both seeded high enough to host an early round match, they may hold a combined regional.

[109] *Compare* 2020 Division I Women's Golf Championships Pre-Championship Manual at 11, *with* 2021 Division I Men's Golf Championships Pre-Championship Manual at 11.

[110] *Compare* 2021 Men's National Collegiate Water Polo Championship Pre-Championship Manual at 8-9, *with* 2021 Women's National Collegiate Water Polo Championship Pre-Championship Manual at 8-9.

(although not always against each other) at the same time and place. These sports generally report virtually identical student-athlete experiences for men and women.

Although stakeholders and NCAA staff reported that men and women have an equitable experience at the fencing tournament, they also identified an inequity that is *caused* by holding a co-ed championship. Numerous schools sponsor a women-only fencing team. Although those teams may compete, they cannot win the national NCAA title, because the team champion is determined by combining the men's and women's points from a given school, and the entry rules limit the number of student-athletes of each gender who can participate per school and per region. There are no men-only teams, meaning that no men are prevented from winning the NCAA championship title by these rules. Some stakeholders have proposed that the championship award prizes for the winning men's squad and women's squad, either instead of or in addition to the single team prize, in order to give all women fencers an opportunity to win a title. The NCAA Fencing Committee has discussed whether to propose this change, and the issue remains under its consideration.

Some skiing stakeholders raised concerns about the different distances that men and women ski in the Nordic skiing events. In Nordic skiing, women race five kilometers on the first day of the championships, while men race 10 kilometers; on the second day women race 15 kilometers, while the men race 20. Some stakeholders have expressed a desire to see men and women ski the same distances, noting that maintaining different distances is "outdated" and "perpetuat[es] the myth that women are less capable" than men. In the spring of 2021, a group of current and former student-athletes and coaches submitted a proposal for equal distance races to the NCAA Ski Committee. The committee voted on the proposal in June 2021 and decided not to change this format for the 2022 championship. Stakeholders reported that the committee was conceptually in favor of the proposal, but not prepared to make the necessary change at this time, explaining that the "best course of action would be to encourage every region to do it for at least one competition this winter (if not more)" in regular season in order to "make sure the student-athletes are on board with the change."

Separate championships. Many sports hold entirely separate men's and women's championships in different locations, overseen by separate committees and coordinated by different staff. These championships tend to see the greatest gender disparities in the student-athlete experience. For example, the Division I Baseball and Softball Championships are held in separate locations each year and see some of the largest disparities among NCAA sports, including significant differences in venue facilities. *See* pp. 62-64. The Division I Men's and Women's Lacrosse Championships similarly see significant disparities in the student-athlete experience, resulting from, among other things, the use of different venues. *See* pp. 78-79. There are also notable disparities between the Division I Men's Ice Hockey Championship and the NC Women's Ice Hockey Championship. *See* pp. 72-73. All of these championships would benefit from improved communication between the men's and women's sport committees and staff, and some may be good candidates for some form of combined championship that would help to make the student-athlete experience more equitable.

* * *

Although there are significant benefits to combining (in some way) the men's and women's championship for a sport, it is not the only way for a sport to provide an equitable student-athlete experience. Some sports have held largely equitable, but separate, championships, like soccer did until this year. Nor is it an ideal solution for all sports: baseball and softball, for example, have long-term relationships and contractual agreements with their respective host cities—Omaha and Oklahoma City, respectively—and combining those championships would undermine the significant (if currently inequitable) benefit both baseball and softball accrue from having long-term, dedicated venues. And, in some circumstances, albeit unusual ones, a combined championship may undermine the goal of gender equity: at least one sport, fencing, has considered separating its championships to improve the student-athlete experience for female competitors.

3. Recommendations

Recommendation D.1

Conduct an assessment and develop a plan for combining or co-locating men's and women's championships where appropriate.

Many NCAA sports have successfully combined some or all of their men's and women's championships, or at least held them on staggered dates at the same venue, showing that doing so can achieve gender equity in the student-athlete experience while creating significant efficiencies and cost-savings for the NCAA. Such "combined" championships present a highly effective way to immediately address some of the key drivers of a gender-inequitable student-athlete experience, including, among other things, differences in venues, facilities, signage, sponsorship, and fan festivals and entertainment.

In our Phase I report, we concluded that, because of the structure of the NCAA's existing broadcast and sponsorship contracts, holding a joint Division I Men's and Women's Basketball Final Four in one location over a single weekend would be the best, and likely the only, way to reduce the existing gender inequities seen in Division I men's and women's basketball.[111] This may not be true for all sports, but we believe that it is likely to be helpful for many sports, as evidenced by those NCAA championships that are already combined in some way. We therefore recommend that the NCAA engage in a systematic evaluation of each of its Division I championships that are offered for both men and women but are not already combined—including gymnastics, ice hockey, and lacrosse[112]—to determine whether doing so would meaningfully

[111] *See* Phase I Report, Recommendation 3.1.

[112] In 2025 and 2026, the Division I Women's Lacrosse Championship is already scheduled to join the Divisions I, II, and III joint men's championship at a single venue. *See* pp. 78-79. Because men's and women's volleyball are currently played in different seasons, combining championships would pose significant logistical challenges. This factor—which is among the ones we list below—may counsel strongly against combining these championships. Similarly, baseball and softball would likely be difficult to

enhance gender equity, and otherwise be appropriate and effective, and, if so, to develop a plan for how to best combine those championships (partially or fully, back-to-back or joint, etc.). The NCAA should also evaluate whether those of its championships that are combined in some way—including soccer, swimming and diving, and water polo—could or should be combined more fully. In making this determination, the NCAA should consider, at a minimum:

- Whether combining in some way the men's and women's championships will improve promotion and corporate sponsor opportunities that will help grow the sport and provide a better student-athlete experience overall;
- Whether combining in some way the men's and women's championships will improve gender equity based on the list of factors set forth in Recommendation C.1;
- The degree to which combining in some way the men's and women's championships poses logistical or budgetary challenges and whether those challenges outweigh any anticipated gender equity benefits; and
- Whether there are unique benefits derived from maintaining separate men's and women's championships that outweigh any gender equity benefits that could be achieved by combining the championships.

These assessments should be performed by the SVP of Championships and the NCAA staff responsible for coordinating each championship under review, in consultation with the relevant sport committee as well as staff who have expertise in Title IX and gender equity issues. The relevant sport committees should submit their recommendations, with a detailed explanation of the basis for their conclusions, to the Division I Competition Oversight Committee, which will make the final decision for each sport based on the considerations listed above. This process should be completed prior to the fall of 2022. With respect to Divisions II and III, the Championships Committees should analyze whether a similar review process should be performed for their respective championships. Any such Division II or III process should be completed prior to the summer of 2023.

Recommendation D.2

For non-joint committees, establish regular communications between the men's and women's sport committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

In our Phase I report, we recommended that the NCAA establish regular communications between the Division I Men's and Women's Basketball Committees and Basketball Oversight

combine, in light of differences between the sports themselves and in light of their lengthy contractual relationships with their respective host cities.

Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.[113] This recommendation is equally applicable to other sports without open and functional lines of communication between their men's and women's sport committees. There can be no question that improved communication and collaboration between the men's and women's committees for a given sport will promote joint decision-making and management and help ensure gender equity in championships. The NCAA should therefore require that for non-joint committees, the chairs of the men's and women's committees for each sport regularly communicate with their counterparts in order to coordinate on strategic decisions and to work together on achieving gender equity for student-athletes at their championships. Similarly, both committees should regularly consider and discuss how best to ensure that the student-athletes have equitable championship experiences.

[113] *See* Phase I Report, Recommendation 1.4.

CASE STUDIES

As part of our Phase II review, we looked more closely at several Division I and NC championships to explore the issues impacting gender equity and the student-athlete experience that have arisen during both phases of our review, including: the NCAA's organizational structure and culture of prioritizing revenue-producing sports; the NCAA's media agreements and sponsor relationships; the communication and collaboration of NCAA committees and staff; and the configuration of the championships themselves. We selected a cross-section of sports that illustrate how these issues and themes affect NCAA championships with different characteristics, such as championships where the men's event has a larger fanbase and is better resourced than the women's, championships where the women's event has a larger fanbase and is better resourced than the men's, championships that are equitably resourced, joint championships, back-to-back championships at the same venue, and championships overseen by joint committees. The nine case studies below—baseball and softball, ice hockey, lacrosse, volleyball, gymnastics, tennis, swimming and diving, soccer, and golf—provide further context for the recommendations in this report.

1. Baseball & Softball

On April 23, 2021, about six weeks before the final rounds of the Division I baseball and softball championships, known as the Men's and Women's College World Series,[114] the Washington Post published an article detailing the historical inequities between these two events.[115] The softball stadium was roughly half the capacity of the baseball stadium and lacked the same basic amenities—such as showers in the locker rooms. And until 2014, softball players had to use porta-potties because their dugouts lacked bathrooms. Such blatant disparities were particularly notable given the growing popularity of the softball championship; the Division I baseball and softball championships are now both drawing sellout crowds and similar viewership on ESPN.[116]

At the time, just on the heels of the gender disparities revealed at this year's Division I basketball championships, NCAA staff were in the midst of an effort to identify and remedy similar disparities before this year's Division I baseball and softball championships began. For example, the NCAA identified that Rawlings, the equipment supplier for baseball and softball, had been giving balls, bags, and participant gifts on an inequitable basis. And the NCAA had been ordering

[114] Before advancing to the Men's and Women's College World Series, each of which involve eight teams, 64 baseball and softball teams compete in regional rounds at 16 sites, and super-regional rounds at eight sites. *See* 2020-21 Division I Women's Softball Championship Pre-Championship Manual at 13; 2021 Division I Baseball Championship Host Operations Manual at 7. This case study focuses principally on the Men's and Women's College World Series, which has received media attention and about which stakeholders have expressed gender equity concerns.

[115] Molly Hensley-Clancy, *College Softball Coaches Decry Treatment by NCAA: 'What's lower than an afterthought?'*, Wash. Post (Apr. 23, 2021), https://www.washingtonpost.com/sports/2021/04/23/ncaa-softball-college-world-series-disparities/.

[116] *Id.*

commemorative chairs for the baseball tournament, but not the softball tournament, and gifting the chairs to coaches at the end of the tournament.[117]

Although the NCAA took steps to remedy these issues, other substantial disparities remained. On June 4, 2021, after the Men's and Women's College World Series began, the New York Times published a story detailing the continued inequities between the tournaments.[118] It depicted a dramatic contrast between the experience of the baseball players, who were being offered free massages, and the softball players, who instead were playing doubleheaders late into the night.[119]

Our review has confirmed the underpinnings of this vivid picture painted by the media of this year's baseball and softball championships. Division I baseball is better funded, has significantly better facilities and more staff support, and offers more amenities for student-athletes and their fans. These significant differences stem in part from the baseball championship's long and financially rewarding relationship with its host city of Omaha, Nebraska. Both Division I baseball and softball have unique financial arrangements as part of long-term agreements with their respective host cities—Omaha and Oklahoma City, respectively—meant to encourage and fund much needed stadium improvements for both championships. Over time, however, Omaha has put more resources into the relationship as compared to Oklahoma City, resulting in inequities in the student-athlete experience that are perpetuated by these long-term agreements, as well as the NCAA's own inequitable dedication of resources, historical internal reporting structure, and lack of coordination.

Historical background. The Division I baseball tournament is one of the oldest collegiate competitions, founded in 1947. Division I baseball's relationship with Omaha dates back more than 70 years, as Omaha began hosting the Men's College World Series (originally called the College World Series, without the gender modifier) in 1950.[120] Since then, Omaha and the NCAA have entered into several long-term agreements to share investment in—and revenue from—the championship.[121] The most recent agreement was signed in June 2008 and is set to expire on October 1, 2036.[122]

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[117] *Id.*

[118] David Leonhardt, *Massages for Men, Doubleheaders for Women*, N.Y. Times (June 4, 2021), https://www nytimes.com/2021/06/04/briefing/college-sports-gender-inequality html.

[119] *Id.*

[120] CWS History, College World Series of Omaha, Inc. (last visited Oct. 19, 2021), https://cwsomaha.com/history/cws-history/.

[121] Division I Baseball Championship History, NCAA (last visited Oct. 19, 2021). The agreement is between the NCAA and CWS, Inc., a private party serving as the official Local Organizing Committee for the Men's College World Series, and references yet another agreement called the Tri-Party Event Agreement between CWS, Inc., the City of Omaha, and the Metropolitan Entertainment & Convention Authority ("MECA"), which "will set forth all matters associated with the conduct of the" Men's College World Series, including but not limited to the construction of a new baseball stadium. College World Series Host Agreement between NCAA and College World Series of Omaha, Inc. (June 10, 2008) ("MCWS Host Agreement"). For simplicity and clarity, this report refers to these three parties collectively as "Omaha."

[122] MCWS Host Agreement § 3.1.

Division I softball, on the other hand, did not become an NCAA sport until 1982, the first spring that the NCAA held women's championships.[123] Softball's final rounds, the Women's College World Series, have been hosted in Oklahoma City, Oklahoma since 1990.[124] As in baseball, the NCAA and Oklahoma City have a long-term agreement to share revenue from and expenses for the Women's College World Series, the most recent of which was signed in January 2018 and is set to expire after the championship in 2035.[125]

Facilities. Both of these long-term contracts were meant, among other things, to provide the local hosts with the ability to obtain the necessary funding for much needed facilities improvements.[126] Specifically, the 2008 agreement between the NCAA and Omaha required Omaha to construct a new baseball stadium complex specifically for the Men's College World Series.[127] This stadium, which was unveiled in 2011 and is located in downtown Omaha, has been proclaimed the "best non-MLB facility in North America."[128] It has 24,000 seats across three decks of general grandstands, club seating for 2,500, features a 360-degree walk-around concourse with a full view of the field, and 10 concessionaries.[129]

[123] Division I Softball Championship History, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/history/softball/d1.

[124] Graham Hays, *How Oklahoma City, Home of the Women's College World Series, Became the Center of the Softball Universe*, ESPN (May 28, 2020), https://www.espn.com/college-sports/story/_/id/29224143/how-oklahoma-city-home-women-college-world-series-became-center-softball-universe. In 1996, the Women's College World Series was played in Georgia at a venue that hosted the Olympics later that year. *Id*.

[125] The NCAA 2018 contract was with the Oklahoma City All Sports Association ("OCASA"). *See* Women's College World Series Host Agreement between the NCAA and OCASA (Jan. 22, 2018) ("WCWS Host Agreement"). Later that year, however, a change in the financial structure of the organization, as well as some concerns by local city officials about the viability and need for the organization, led to its dissolution. *See* Steve Lackmeyer, *Dispute Over Revenue Split from Softball Championship Cited in Potential Demise of All Sports Organization*, Oklahoman (Oct. 17, 2018), https://www.oklahoman.com/article/5611950/dispute-over-revenue-split-from-softball-championship-cited-in-potential-demise-of-all-sports-association. Today, USA Softball, Inc. has assumed the responsibilities and benefits of OCASA.

[126] *See Contract Keeps CWS Safe in Omaha*, NCAA News Archive (June 10, 2008), http://ncaanewsarchive.s3.amazonaws.com/2008/division-i/contract-keeps-cws-safe-in-omaha---06-10-08-ncaa-news.html; *WCWS Stays Put in Oklahoma City*, ESPN (May 29, 2014), https://www.espn.com/college-sports/story/_/id/11001562/women-college-world-series-staying-oklahoma; *OKC Hits it Out of the Park with Women's College World Series*, VelocityKC (June 3, 2019), https://www.velocityokc.com/blog/development/okc-hits-it-out-of-the-park-with-women-s-college-world-series/.

[127] MCWS Host Agreement, Article 2; *see World Series Stays in Omaha*, N.Y. Times (May 1, 2008), https://www nytimes.com/2008/05/01/sports/ncaabasketball/01sportsbriefs-WORLDSERIESS_BRF html; *Contract Keeps CWS Safe in Omaha*, NCAA News Archive (June 10, 2008), http://ncaanewsarchive.s3.amazonaws.com/2008/division-i/contract-keeps-cws-safe-in-omaha---06-10-08-ncaa-news.html.

[128] TD Ameritrade Park Omaha Information & Maps, College World Series of Omaha, Inc. (last visited Oct. 19, 2021), https://cwsomaha.com/td-ameritrade-park-omaha-information-maps/.

[129] *Id.*; Stadium Information, TD Ameritrade Park Omaha (last visited Oct. 19, 2021), http://www.tdameritradeparkomaha.com/stadium-information/; Stadium Information, TD Ameritrade Park Omaha (last visited Oct. 19, 2021), http://www.tdameritradeparkomaha.com/stadium-information/; TD Ameritrade Park, Omaha, NE, Ballpark Design Associates (last visited Oct. 19, 2021).

Baseball Stadium in Omaha[130]

In contrast, the stadium used by Division I softball was originally built in 1987 and is home to USA Softball, the United States national softball team. At the beginning of the NCAA's relationship with Oklahoma City in 1990,[131] NCAA staff immediately recognized the stadium's deficiencies. The NCAA did not have any real alternatives, however, because most softball stadiums are too small to accommodate the audiences that the NCAA softball championship attracts. Indeed, despite its many deficiencies, the stadium in Oklahoma City is one of the most developed softball complexes in the nation.[132]

Softball Stadium in Oklahoma City[133]

[130] Image from the NCAA.

[131] *See WCWS Stays Put in Oklahoma City*, ESPN (May 29, 2014), https://www.espn.com/college-sports/story/_/id/11001562/women-college-world-series-staying-oklahoma.

[132] USA Softball Hall of Fame Complex, Team USA (last visited Oct. 19, 2021), https://www.teamusa.org/usa-softball/usa-softball-hall-of-fame-complex.

[133] Image from the NCAA.

Beginning in 2011, in connection with the NCAA-Oklahoma City relationship and with the NCAA staff's encouragement, significant improvements were made to the stadium complex in Oklahoma City, including:

- Construction of a dedicated ESPN compound (completed in 2013);
- Rebuilding of the stadium seating area above the dugouts; improvements to the dugouts (including the addition of bathrooms), tunnels, handicap plaza, team rooms, lockers, training rooms, and food service equipment for concessions (completed in 2014);
- Construction of a stand-alone, 5,000 square foot hospitality building, and remodeling of the previously existing hospitality area for the media (completed in 2015); and
- Expansions to the concourse, concession, field lighting, media areas, and seating areas, including 4,000 new stadium seats (completed in 2020).[134]

Notwithstanding all of these improvements, the softball stadium in Oklahoma City still lacks basic amenities present at the baseball stadium in Omaha, including an indoor batting cage, a padded fence, and showers in the locker rooms. It also has 11,000 fewer seats.

Host financial contributions. Division I baseball's and softball's host agreements with Omaha and Oklahoma City, respectively, are unique among the NCAA's championships. In addition to providing for the above-described facilities, they provide for a "waterfall" financial structure whereby each host and the NCAA split revenue and expenses.[135] In this waterfall, the total revenue from the championship is collected and used to pay for tournament expenses, including the debt incurred from building or renovating the stadiums, and then the remaining revenue is split between the NCAA and the hosts.[136]

Specifically, under the baseball contract, the NCAA receives a yearly guaranteed payout after the waterfall is completed[137] and a split of any remaining profits.[138] In 2019, for example, the NCAA received a $13,857,011 net distribution from the Men's College World Series, and in 2021, received a $17,176,974 net distribution.[139]

[134] Graham Hays, *How Oklahoma City, Home of the Women's College World Series, Became the Center of the Softball Universe*, ESPN (May 28, 2020), https://www.espn.com/college-sports/story/_/id/29224143/how-oklahoma-city-home-women-college-world-series-became-center-softball-universe; WCWS Host Agreement, Ex. B.

[135] MCWS Host Agreement, Article 7; WCWS Host Agreement § 4.

[136] MCWS Host Agreement § 7.5; WCWS Host Agreement § 4.

[137] Karen Sloan, *College World Series Contract Now Stretches 25 Years*, Kearney Hub (July 24, 2008), https://kearneyhub.com/sports/area/college-world-series-contract-now-stretches-25-years/article_7103e489-0737-53fc-a9ca-42b95a8482f1.html.

[138] MCWS Host Agreement §§ 7.9, 7.10 & Ex. G.

[139] NCAA Men's College World Series, Independent Accountant's Report on Application of Agreed-Upon Procedures, 2019.

While the Women's College World Series agreement has a similar waterfall, the numbers are substantially smaller.[140] In 2019, the NCAA received a $1,209,796 net distribution from the Women's College World Series, and in 2021, received a $2,329,787 net distribution.[141]

NCAA spending. Driven by the significantly higher revenue that the baseball championship produces, the result of these long-term agreements is that the NCAA makes a substantially larger investment on an annual basis in the Division I Baseball Championship than in the Division I Softball Championship.[142] Any shortfall in host financial support for the Division I Softball Championship is not made up, but rather augmented, by the NCAA's own spending on the two championships. In 2019, the NCAA spent $16,036,861 on the Division I Baseball Championship, as compared to $6,361,695 on the Division I Softball Championship, including awards and mementos, apparel, equipment, travel, per diem for each of the student-athletes, personnel, costs (but not salaries), signage, and expenses related to the sports committees, among other things.[143] This nearly $10 million difference—more than the budgetary or spending difference between men's and women's championships in any other sport except Division I basketball—is substantial, even considering the increased costs related to managing an event, like baseball, that attracts significantly more fans and has a larger travel party size than softball. When calculated on a per-athlete basis, in 2019, the NCAA spent approximately $9,281 per student-athlete at the baseball tournament, and only $4,970 per student-athlete at the softball tournament.

Historical reporting structure. Until recently, the NCAA's prioritization of baseball over softball was also reflected in the NCAA's internal reporting structure. Today, Division I baseball—like the other 83 sports besides men's and women's basketball—is managed by a championship manager who reports to the SVP of Championships. But up until 2018, Division I baseball had its own Vice President who reported directly to either the Executive Vice President or SVP of Championships, depending on the point in time, and, importantly, not through the leadership to whom the championship manager for Division I softball (or most other championships) reported. As a result, for many years, the reporting structure for Division I baseball was more akin to Division I basketball and FCS football than it was to softball, lending itself to more silo-ing and a lack of sufficient communication and coordination between the two staffs. More recently, due at least in part to the change in reporting structure, coordination and communication between the two championship managers has increased. Nevertheless, some coaches cited the NCAA's staffing of the tournaments as something the NCAA should consider as it seeks to address gender equity issues moving forward.

Staffing. Division I baseball has more NCAA staff and staff time devoted to its championship than Division I softball. Baseball has three championship managers who assist with the operations side of the championship, and another approximately 13 NCAA staff who assist

[140] WCWS Host Agreement § 4.

[141] Division I Women's Softball Proposed Budget and Financial Report (2019).

[142] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[143] *Id.*

with other elements of the tournament, including marketing and ticketing, fan engagement, media and statistics, branding, corporate relations, social and digital media, broadcast, and community engagement. The softball tournament only has two championship managers charged with managing operations, and another 12 staff members who assist with the other elements of the tournament. Even though there are a similar number of staff members assisting with each championship, the time spent on the baseball tournament is the equivalent of 5.08 FTEs, but only 3.51 FTEs for the softball championship.[144] Notably, this is an improvement from prior years, when the softball championship only had one championship manager running the event with some onsite help from two or three contractors.[145]

Student-athlete experience. As this year's championships showed, student-athletes participating in the Men's College World Series have had a significantly different experience than those participating in the Women's College World Series. In addition to the differences in the facilities already discussed above, there are a number of other gender inequities between the two championships, including the schedule, travel party and squad size, equipment, awards and gifts, hotels and transportation, branding, and fan festivals.

Schedule. Up to and including this year's championship, softball teams who made it to the finals had to play nine games in seven days, whereas the baseball teams who made it to the finals had to play the same number of games in 11 days.[146] The abbreviated schedule for softball required some teams to play doubleheaders, sometimes late into the night, which affected the student-athletes' health, safety, and performance. As one participant who played in the 2019 Women's College World Series recalled, "Sunday, we played Alabama and our loss [required us to play two games in one day]. We were told we needed to change dugouts, change uniforms and be prepared to start in 30 minutes."

To address this scheduling concern, on September 8, 2021, the NCAA announced that the Competition Oversight Committee had approved expanding the schedule for the softball tournament from seven to nine days.[147] This format will eliminate the automatic double-headers for teams that lose on the first day of the championship, and will add a rest day for the two teams that advance to the finals, permitting greater rest and recovery for student-athletes, particularly if inclement weather disrupts the planned schedule.[148]

[144] Championship and Alliances Staffing Allocation (as of Apr. 15, 2021).

[145] The NCAA added a second championship manager prior to this year's championship after the retirement of the individual who had been managing Division I softball for many years.

[146] 2019 Division I Softball Championship, Pre-Championship Manual at 14; 2019 Division I Baseball Championship, Pre-Championship Manual at 26; 2021 Division I Softball Championship Pre-Championship Manual at 14; 2021 Men's College World Series Omaha Participant 2020-21 Manual, Appendix A.

[147] *Women's College World Series Adds Two Days*, NCAA (Sept. 8, 2021), https://www ncaa.org/about/resources/media-center/news/general-womens-college-world-series-adds-two-days.

[148] NCAA Division I Competition Oversight Committee, Report from the NCAA Division I Softball Committee at 2 (July 19, 2021).

Further exacerbating challenges with the softball championship schedule were autograph sessions held at inopportune times. At the softball tournament, student-athletes were obligated to sign autographs for 30 minutes after their first game of the championship. In 2019, for example, the first game for two of the competing teams began at 9:00 pm and finished at 11:30 pm; by the time the teams finished signing autographs and made it back to their hotel, it was nearly 12:45 am. At the baseball championship, student-athletes spent 45 minutes signing autographs on the opening celebration day of the tournament. NCAA staff reported that they have discontinued the autograph sessions at both championships going forward.

Travel party and squad size. Stakeholders have highlighted disparities between baseball and softball with respect to travel party and squad size. Both championships have a 64-team bracket, and the sponsorship on campuses is nearly identical (299 teams for Division I baseball, and 296 teams for Division I softball). But softball teams are only permitted a squad size of 20 student-athletes, while baseball gets 27.[149] Softball is permitted an additional 15 people (student-athletes and coaches) who may attend the championship and sit in the dugout, but the additional student-athletes may not wear their uniform or play in the game, for a total bench size of 35.[150] Baseball is permitted a bench size of 40.[151] Coaches recalled that "[i]t was so disappointing to tell three of our student-athletes who are on the official [squad], dressed out every game during the regular season and have worked hard alongside their teammates all year that they cannot put on their uniform for the most important experience earned by the TEAM, which includes each of them!"

The historical justification for the difference in squad size is that baseball used more pitchers than softball. But according to stakeholders, the number of pitchers used in a softball game has "changed immensely" because the softball "[h]itters got better," so it is "basically impossible to have one pitcher per game." Indeed, one coach reported that while she had only two pitchers on the team in 2006, she now has six. And, according to these stakeholders, an average of 13.6 student-athletes play in each softball game, whereas an average of 15 student-athletes play in each baseball game.

Accordingly, after this year's championship, the Division I Softball Committee requested that the softball squad size be increased from 20 to 22 student-athletes and that the travel party size increase from 28 to 30, which the NCAA anticipates will cost approximately $246,000 per year.[152] Both of these proposals have been forwarded to the Competition Oversight Committee as part of their plan "to engage in a more holistic review of all team-sport squad and bench sizes."[153] The

[149] *Id.*; 2021 Men's College World Series Omaha Participant Manual at 72.

[150] 2021 Division I Softball Championship Pre-Championship Manual at 14.

[151] In the regional and super-regional rounds, baseball may only have 35 people on the bench. 2021 Men's College World Series Omaha Participant Manual at 72; 2021 Division I Baseball Championship, Participant Manual, Preliminary Rounds at 16.

[152] NCAA Division I Competition Oversight Committee, Report from the NCAA Division I Softball Committee at 1, 3 (July 19, 2021).

[153] Report of the NCAA Division I Competition Oversight Committee at 7 (Sept. 8, 2021).

Division I Softball Committee also recommended that the bench size be expanded such that an additional three student-athletes be permitted to be in uniform in the dugout, but not play.[154] The Competition Oversight Committee has yet to consider that recommendation.

Equipment, awards, and gifts. The equipment, awards, and gifts that are provided to the Division I baseball student-athletes are different in some respects than those provided to the Division I softball student-athletes. With respect to equipment, both baseball and softball have contracts with Rawlings, but stakeholders reported that softball has historically received significantly fewer practice balls than baseball, with softball receiving seven dozen for the regional rounds and five dozen for the super-regional rounds, and baseball receiving more than 40 dozen for the regionals and 22 dozen for the super-regionals. The baseball teams have also received canvas bags for ball storage, which the softball teams have not.

In a glaring example of the difference in awards, since 1999, Omaha, with the NCAA's knowledge and agreement, has provided extravagant trophies to the most outstanding player in the baseball tournament, known as the John D. Diesing, Sr. Award.[155] The trophies for that award have been purchased through 2036 at approximately $4,000 per trophy.[156] The existence of this trophy, and the host's ability to provide mementos to the teams, are built into the host agreement between Omaha and the NCAA[157] and are paid for pursuant to the waterfall financial structure. This year, the NCAA began distributing trophies for the most valuable player at the softball championship as well, at a cost of approximately $300 per trophy.[158]

As for student-athlete gifts, they were either already similar, or are being made more similar going forward:

[154] Report from the NCAA Division I Softball Committee July 19, 2021 Videoconference, NCAA Division I Competition Oversight Committee, NCAA (July 19, 2021).

[155] John D. Diesing, Sr., College World Series of Omaha, Inc. (last visited Oct. 22, 2021), https://cwsomaha.com/history/john-d-diesing-sr/.

[156] The City of Omaha purchased these trophies in bulk at the commencement of the last host agreement in 2008. Each year, the NCAA pays its portion for the trophy as part of the waterfall agreement.

[157] MCWS Host Agreement §§ 5.6, 10.9.

[158] NCAA staff reported that they are currently pursuing the creation of a more developed most outstanding player trophy in conjunction with the Oklahoma City community and the USA Softball Hall of Fame Stadium.

BASEBALL	SOFTBALL
Rawlings provides 280 student-athlete gifts, approximately 35 per team at the Men's College World Series, most commonly a Rawlings wallet.	Historically, Rawlings has provided approximately 168 student-athlete gifts, enough to give to each team's squad size plus one additional student-athlete at the Women's College World Series, most commonly a handbag or clutch. Going forward, Rawlings will provide 200 gifts, or approximately 25 per team.
The travel parties have the option to select from the gift and memento suite to purchase apparel.	The travel parties have the option to select from the gift and memento suite to purchase apparel.
Commemorative coin (discontinued going forward).	No commemorative coin.
In 2021, gift bags for the travel party, including an NCAA branded Yeti rambler, provided by Corporate Champion Coca-Cola.	In 2021, gift bags for the travel party, including an NCAA branded Yeti rambler, provided by Corporate Champion Coca Cola.

However, softball players have historically had fewer opportunities to purchase commemorative gifts as compared to baseball players. For example, baseball student-athletes and fans have had the ability to purchase commemorative chairs called Spec Seats for $75, and each member of the travel party for the teams that advance to the Men's College World Series received a photo plaque of the team, taken in front of the statue outside of the stadium. Prior to this year, softball student-athletes and fans could only purchase photos. In 2019, the NCAA discontinued providing photo plaques to the baseball teams, and this year, the NCAA staff changed the policy for the Women's College World Series to mirror that of the Men's College World Series with respect to the commemorative chairs. Softball student-athletes still must purchase their own photos.

Hotels and transportation. The hotels and transportation provided to baseball and softball student-athletes have also differed. As has been the practice for many years, 50 rooms are held per team at the baseball championship, compared to only 16 rooms per team at the softball championship. The NCAA reported that they did not receive any feedback that teams were unable to book rooms at their assigned hotels, but they are revisiting the policy. Making transportation to and from the hotels more difficult, the softball teams are only permitted one rental car per team and police escorts are not used for all teams at all times, whereas baseball teams are allotted two rental cars per team and have police escorts for all practice and competition days. This year, the lack of police escorts and transportation options led to softball teams getting stuck in traffic on their way to and from the stadium.

Branding. The NCAA previously branded the Division I baseball finals as the "College World Series," and the Division I softball finals as the "Women's College World Series." More than a decade ago, however, the NCAA added the "Men's" modifier to the branding for the baseball final games. And the host agreement signed in 2008 between the NCAA and Omaha provides that "[t]he official name of the [championship] shall be the 'NCAA Men's College World Series.'"[159] But the College World Series logo still appears on the NCAA's official bracket for Division I baseball without "Men's" in front of it,[160] as does the image on the front page of the NCAA's webpage for the Men's College World Series. *See* pp. 31-34.

Images of the Men's and Women's College World Series Logo[161]

Fan festivals and other events. At the baseball tournament in years past, the NCAA and its local organizing committee, with the help of the Champions and Partners, have created many student-athlete and fan-centered events that are absent or smaller at the softball tournament. According to NCAA staff, these typically include:

- An opening banquet, which at the baseball tournament permits 55 attendees per team, but permits only 35 attendees per team at the softball tournament free of charge, with each softball team given the opportunity to purchase additional tickets.
- An opening ceremony, at times with a parachute team, a concert, and fireworks at the Men's College World Series, but no such opening ceremony at the Women's College World Series. In 2021, however, an all-female parachute team landed on the outfield before the final game of the Women's College World Series.

[159] *Id.* § 5.1.

[160] Bracket, Division I Baseball, NCAA (last visited Oct. 21, 2021), https://www.ncaa.com/brackets/baseball/d1/2021.

[161] Images from the NCAA.

- A free massage clinic at the baseball tournament provided to anyone participating in or working at the tournament, available on practice days (discontinued after this year).[162]

The Women's College World Series hosts other fan-facing events, including opening the stadium for fan activities such as photo opportunities, lawn games, open practices and, beginning in 2021, a Military and Public Service Appreciation Night, in which the NCAA honors military personnel on the field with a large American flag and a special military themed event for fans.

While both championships have a fan festival, stakeholders have commented that the fan festival at the Men's College World Series is more developed than the festival at the Women's College World Series. In Omaha, the fan festival is accompanied by a trolley, which makes more than a dozen stops throughout the city and ends at the contractually designated "Fan Fest Area" at the stadium. The fan festival at the Men's College World Series has attracted several Champions and Partners, including AT&T, Buffalo Wild Wings, Buick, Capital One, Coca-Cola, Marriott, Pizza Hut, and Unilever.[163]

In Oklahoma City, the fan festival, which is held in the stadium parking lot, reportedly has less "pomp and circumstance." Nevertheless, the Women's College World Series attracts similar Champion and Partner activations as the Men's College World Series, including AT&T, Buffalo Wild Wings, Buick, Capital One, Coca-Cola, Pizza Hut, Reese's, and Unilever.[164]

Other considerations. Although Division I softball does not have the benefit of the substantial history and support that Division I baseball has enjoyed, the growth and popularity of the softball championship is undeniable and bodes well for further expansion of the sport. More fans have been tuning in to watch the softball championship than ever before. This year, ESPN and ESPN2 aired all of the games at the Women's College World Series, as well as many of the super-regional games.[165] Viewership for the Women's College World Series games ranged from around 500,000 to 2.08 million—more than the final game of the Men's College World Series, which drew at most 1.67 million viewers. In fact, the Women's College World Series has one of the highest viewerships of all of the championships that fall within the ESPN agreement.

Similarly, in-person attendance at the Women's College World Series has grown significantly since 2018, with the final rounds bringing in more than $1.4 million in ticket sales in 2018, $1.6 million in 2019, and more than $2.6 million in 2021.[166] While some of the increase in

[162] This massage clinic was the topic of media reporting during this year's championship. *See* David Leonhardt, *Massages for Men, Doubleheaders for Women*, N.Y. Times (June 4, 2021), https://www nytimes.com/2021/06/04/briefing/college-sports-gender-inequality html. The massages were offered at the baseball tournament because the host institution, Creighton University, has students who study massage as part of their major and need a certain number of clinic hours to graduate. The University permitted students to obtain those clinic hours by providing free massages to the student-athletes, coaches, and officials at the baseball tournament. The staff planning the baseball tournament did not communicate with the staff planning the softball tournament that they would have access to these free massages. According to NCAA staff, that free program has been discontinued.

[163] Spreadsheet from Corporate Relations Staff Member of Champions and Partners Activations from 2018-19.

[164] *Id.*

[165] NCAA TV Broadcast Schedule, NCAA (last visited Oct. 24, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[166] Championship Attendance Summary (2015 to Present).

ticket sales was due to Oklahoma City's seating expansion in 2020, during its first year in use, the expanded stadium sold out for the final round between the University of Oklahoma and Florida State University,[167] despite the ongoing pandemic.

2. Ice Hockey

The Division I Men's Ice Hockey Championship provides a markedly different experience for its student-athletes than its counterpart, the NC Women's Ice Hockey Championship. The men's championship, which is a much larger event involving twice as many teams and four-to-five times as many fans,[168] benefits from greater promotion, more extensive television coverage, and a more professional "look and feel." One stakeholder with experience at both the men's and women's tournaments observed, "It's really like they're different sports."

In this way, the ice hockey championships are a stark example of how the NCAA's broader decision to provide greater support to more revenue-producing championships has a gender equity impact on the student-athlete experience. As one stakeholder put it, "[The NCAA] uses its decision-making and negotiating power to bolster men's hockey events, while squandering opportunities to support women's hockey in ways that would both help the sport and itself."

Championship experience. A key difference between the men's and women's ice hockey championships is the size of the events and their overall "look and feel." One stakeholder suggested, "There's very little comparison [between the two]."

While the women's Frozen Four—the moniker used for the championship semifinals and finals—is often held on campus, the men's Frozen Four is held at National Hockey League facilities in major cities in order to accommodate the large crowds that attend the men's games. The disparity in crowd size is significant: the men's championship sold approximately 40,700 tickets in 2019, compared to approximately 10,300 sold for the women's championship.[169] And the large crowds help to bring in substantial revenue for the men's championship—approximately $5.84 million in 2019, compared to the $154,189 generated by the women's championship in that same year.[170]

The use of professional facilities gives men's ice hockey access to state-of-the-art technology that is not available at the women's Frozen Four. And the NCAA spends almost four times more on signage at the men's tournament than it does at the women's tournament, in part because it has to cover a significantly larger venue.[171] While one women's ice hockey stakeholder noted that she is "not necessarily a proponent [of having] a game in a 15,000 person arena," she

[167] Championship History, Division I Softball, NCAA (last visited Oct. 23, 2021), https://www ncaa.com/history/softball/d1.

[168] Championship Attendance Summary (2015 to Present).

[169] *Id.*

[170] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[171] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

stated that the experience for women student-athletes in a smaller, campus venue is "starkly different."

Image of the 2019 Division I Men's Ice Hockey Championship Venue[172]

Image of the 2019 Division I Women's Ice Hockey Championship Venue[173]

Adding to the grander scale of the men's championship is the men's Frozen Four fan festival, known as the Frozen Fest. In a typical, non-COVID year, this event generally attracts corporate sponsors and is managed as part of the CBS/Turner relationship.[174] The women's championship has no equivalent event for its fans.

Broadcasting, marketing, and promotion. The Division I Men's Ice Hockey Championship also gets significantly more broadcast attention than the women's championship. In recent years, ESPN has broadcast all rounds of the men's tournament on one of its stations or

[172] Image from the NCAA.

[173] Image from the NCAA.

[174] Fan Fest Agreement at 4.

its streaming platform, ESPN3; this year, the men's final was televised on ESPN.[175] In 2019, the Big Ten Network broadcast the women's semifinals and final only. In 2021, ESPN streamed one women's semifinal game on ESPN3, and televised the other semifinal and final games on ESPNU; the women's first-round games were streamed on NCAA.com.[176]

ESPN also broadcasts a one-hour selection show for the men's tournament, but the selection show for the women's tournament lasts only a few minutes on the NCAA website.[177] One women's ice hockey coach mused, "For our selection show, if you were cheering, you didn't know who you were playing, it was over that quickly."

Some decisions make it more difficult for the women's tournament to attract greater attention. First, the entire women's tournament is played in the second half of March, which means that it coincides with the extremely popular March Madness.[178] While the men's championship starts in late March (and initially overlaps with March Madness), a break in the schedule between the men's regionals and the men's Frozen Four means that the men's Frozen Four games do not compete with March Madness.[179]

Second, because it is revenue-producing, the NCAA disproportionately markets the Division I Men's Ice Hockey Championship relative to the women's.[180] Overall, the NCAA spends about $193,000 each year on promotional expenses related to the men's tournament, compared to only $11,000 a year for the women's.[181] The men's tournament also benefits from NCAA ticketing and marketing staff that help drive ticket sales and publicize the championship event. The NCAA maintains a webpage on NCAATickets.com that includes details on ticket packages for the men's tournament and allows fans to sign up to be notified about future ticket opportunities and event information.[182] In contrast, the women's tournament has access only to a marketing extern whose responsibilities include other winter championships.[183]

Spending. The disparity in investment in ice hockey is clearly demonstrated by the NCAA's overall spending for the two championships. For example, in 2019, the NCAA spent approximately $4.2 million on the men's tournament and $656,827 on the women's tournament.[184] That difference reflects, in part, the different size of the two championships, including travel

[175] NCAA TV Broadcast Schedule, NCAA (last visited Oct. 13, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[176] *Id.*

[177] *Id.*

[178] 2021 Women's National Collegiate Ice Hockey Championship Pre-Championship Manual at 11-12.

[179] 2021 Men's Division I Ice Hockey Championship Pre-Championship Manual at 9.

[180] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[181] *Id.*; NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

[182] 2021-22 Championships Marketing Groupings; Men's Frozen Four, NCAA Ticketing (last visited Oct. 13, 2021), https://www ncaatickets.com/championship/mens-frozen-four?utm_campaign=inline-article.

[183] 2021-22 NCAA Championship Marketing and Ticketing Who to Contact.

[184] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

expenses for twice as many men's teams participating in the championship. But even at the per student-athlete level, the amount is starkly disparate. In 2019, the NCAA spent $9,805 per student-athlete at the men's championship and $3,421 per student-athlete at the women's, a difference of more than $6,000, or close to three times more.

This increased investment in men's ice hockey because it is revenue-producing contributes to a cycle similar to that experienced in Division I basketball. As one stakeholder put it: "The NCAA has committed to spending money in order to make money over time in men's hockey. This is a generosity it has never afforded women's hockey."

Staffing and committee structure. The Division I Men's Ice Hockey Championship also benefits from substantially more staff assistance than the women's championship. There are 11 NCAA staff members who contribute to the planning of the Division I Men's Ice Hockey Championship: three Championships staff members, a media coordinator, and seven External Operations staff members who are dedicated to specific functions, including ticketing, marketing, broadcast, social media, corporate relations, and branding and fan experience.[185] Only two Championships staff generally contribute to the planning of the NC Women's Ice Hockey Championship.[186] Each championship also has a dedicated committee: the Division I Men's Ice Hockey Committee has six members, and the NC Women's Ice Hockey Committee has five.[187]

The larger men's event certainly requires some degree of greater staff assistance and committee size. That said, the disparity is significant, with more than five times as many staff members working on planning the men's tournament. In addition, men's hockey has staff who are wholly focused on and provide specialized expertise in social media and marketing, and the women do not. As one stakeholder observed, "Because there is a point person for each aspect of the men's tournament, there is more attention to detail in a wider range of areas. On the contrary, those serving on the women's championship staff need to multi-task."

The men's and women's ice hockey staff and committees do not appear to have any formal mechanisms for collaborating and communicating. Although the men's and women's ice hockey staff make an informal attempt to collaborate to ensure that aspects of the championships are equitable, the committees rarely communicate with one another. Where inter-committee communication does occur, it is informal in nature and often takes place between individual committee members with preexisting relationships. One committee member noted that more communication "might create some synergies" between the tournaments, which so far have never "been brought up."

[185] NCAA Division I Men's Ice Hockey Staff List.

[186] 2021-22 Tournament Operations Assignments. Both the men's and women's ice hockey championships also have a national officiating coordinator, a NCAA secretary-rules editor, and a staff liaison for playing rules. *See* 2021 Women's National Collegiate Ice Hockey Championship Pre-Championship Manual at 8; 2021 Division I Men's Ice Hockey Championship Pre-Championship Manual at 8.

[187] Women's Ice Hockey Committee, NCAA (last visited Oct. 19, 2021), https://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=WIH; Division I Men's Ice Hockey Committee, NCAA (last visited Oct. 19, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1MIH.

Manual differences. This failure in coordination between the men's and women's ice hockey staff and committees is demonstrated by a clear difference in their manuals. According to the 2021 NC Women's Ice Hockey Championship Pre-Championship Manual, the women's teams are seeded and paired to reduce travel costs. While the top four women's teams are seeded "1-4 at the time of the selection call," the remaining four teams will be paired with teams 1-4 according to their relative strength only if "such pairings do not result in air travel that otherwise could be avoided."[188]

SEEDINGS AND PAIRINGS

The Women's Ice Hockey Committee will seed the selected participants as follows:

1. The top four teams according to the selection criteria will be seeded 1-4 at the time of the selection call. The remaining four teams will be placed in the bracket based on relative strength as long as these pairings do not result in additional flights. These teams will not be reseeded and the committee will not change the bracket once the tournament has begun.

Teams' relative strength, according to the committee's selection criteria, shall be considered when establishing pairings if such pairings do not result in air travel that otherwise could be avoided. The NCAA Division I Competition Oversight Committee shall have the authority to modify its working principles related to the championship site assignment on a case-by-case basis.

Excerpt of the 2021 NC Women's Ice Hockey Championship Pre-Championship Manual

The men's tournament, by contrast, seeds and pairs teams to maximize "competitive equity, financial success and the likelihood of a playoff-type atmosphere at each regional site."[189] The 2021 Division I Men's Ice Hockey Championship Pre-Championship Manual includes no discussion of reducing travel costs. Rather, to the contrary, it emphasizes that "the integrity of the bracket will be protected."[190] As one person noted, "Our body of coaches has been more interested in competitive equity – getting the best four teams to the Frozen Four. They are very interested in making sure that we have the right match-ups more so than [reducing] travel."

SEEDING AND PAIRINGS

The following steps are taken during the selection meeting:

In setting up the tournament, the committee begins with a list of priorities to ensure a successful tournament on all fronts, including competitive equity, financial success and the likelihood of a playoff-type atmosphere at each regional site. For this model, the following is a basic set of priorities:

1. Once the six automatic qualifiers and 10 at-large teams are selected, the next step is to develop four groups from the committee's rankings of 1-16. The top four teams are No. 1 seeds and will be placed in the bracket so that if all four teams advance to the Men's Frozen Four, the No. 1 seed will play the No. 4 seed and the No. 2 seed will play the No. 3 seed in the semifinals. The next four are targeted as No. 2 seeds. The next four are No. 3 seeds and the last four are No. 4 seeds.
2. Step two is to place the home teams. Host institutions that qualify will be placed at home.
3. Step three is to fill in the bracket so that first-round conference matchups are avoided, unless it corrupts the integrity of the bracket. If five or more teams from one conference are selected to the championship, then the integrity of the bracket will be protected (i.e., maintaining the pairing process according to seed will take priority over avoidance of first-round conference matchups). To complete each regional, the committee assigns one team from each of the remaining seeded groups so there is a No. 1, No. 2, No. 3 and No. 4 seed at each regional site.

Excerpt of the 2021 Division I Men's Ice Hockey Championship Pre-Championship Manual

[188] 2021 Women's National Collegiate Ice Hockey Championship Pre-Championship Manual at 14.

[189] 2021 Division I Men's Ice Hockey Championship Pre-Championship Manual at 16.

[190] *Id.*

As one coach observed, "On the men's side it's about putting together the best field. On the women's it's about saving money and avoiding flights." Stakeholders raised the concern that this difference in seeding impacts the competitiveness of the women's tournament, making it less exciting, and potentially stunting the growth of the sport.

Participation opportunities. There are also fewer opportunities for women's ice hockey student-athletes to participate in the championships than there are for men's ice hockey student-athletes. As discussed above, there are twice as many men's teams (16) than women's teams (8) in the championships, which is primarily attributable to the fact that 60 Division I institutions sponsor men's ice hockey, whereas only 41 Division I and II institutions sponsor women's ice hockey.[191] Even accounting for that difference in sponsorship, however, the percentage of teams that are able to compete in the championship is higher for men (26.7%) than it is for women (19.5%).

This year, the NC Women's Ice Hockey Committee requested that the women's championship bracket size increase from eight to 10 teams to provide more participation opportunities for women student-athletes.[192] That change would have brought the women's team participation ratio from 19.5% to 24.4%, still lower than the men's. The Competition Oversight Committee notes from a September 8, 2021, meeting state that "[w]hile the committee supports the merits of the proposal to expand to 10 teams, it agreed to table the matter until the next opportunity to fund it."[193] Despite their request being denied, women's ice hockey stakeholders plan to continue to push to expand their championship to as many as 12 teams.

In addition to allowing proportionally more men's teams to participate in the championship, the NCAA also allows more men's ice hockey student-athletes to dress in uniform and participate on the teams that qualify. Whereas the squad size for women's ice hockey is limited to 24 student-athletes, the squad size for men's ice hockey is 27.[194] One women's ice hockey coach told us about a student-athlete who was not allowed to play due to championship squad-size constraints: "[S]he was heartbroken and in tears that she had worked so hard and none of it would be recognized."

3. Lacrosse

Stakeholders described how the NCAA Men's and Women's Lacrosse Championships provide disparate student-athlete experiences in all three divisions, stemming from the differences in the structure of the championships, venues, budget, staffing, and a lack of communication and coordination between staff and committees. Following the events of this year's Division I

[191] 2021 Women's National Collegiate Ice Hockey Championship Pre-Championship Manual at 11; 2021 Division I Men's Ice Hockey Championship Pre-Championship Manual at 14.

[192] Report of the NCAA Division I Competition Oversight Committee at 6 (Sept. 8, 2021).

[193] *Id.*

[194] 2020-21 Division I Championships Transportation and Per Diem Policies at 9.

basketball tournaments, the NCAA staff and lacrosse committees addressed some of lacrosse's most glaring differences. Numerous issues remain, however.

Championship structure and venue. Perhaps the most consequential differences between the men's and women's championships are the championship structure and venue. Men's lacrosse holds a joint championship for all three divisions, which generally takes place in a professional (*i.e.*, National Football League) football stadium. Women's lacrosse hosts a separate championship for each division, and the women's championships generally occur in college stadiums or similar venues. As one stakeholder noted, "The men's championship final site is usually a major city and a football stadium, while the women's final is often a small town."

The fact that the men's championships are played in larger, professional stadiums impacts the "look and feel" of the championship and gives the Division I, II, and III men student-athletes the benefits of better audio and visual setups, more fan suites and luxury boxes, better locker rooms and facilities, and more support staff. An NCAA staffer observed that the women's championship stadiums generally do not have "as many of [the] bells and whistles (video boards, etc.) that the NFL stadiums have."

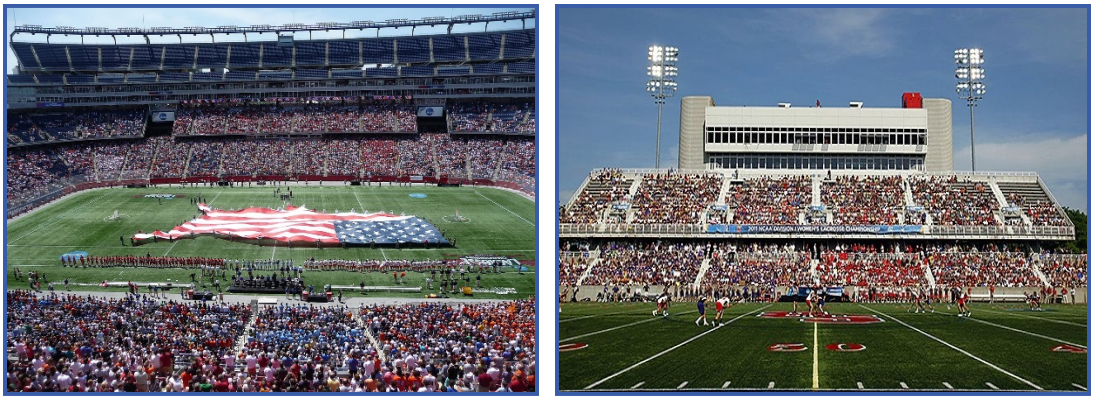
Beyond the additional "bells and whistles," professional NFL stadiums have a much larger capacity compared to the stadiums used for the women's championship games. The Division I women's championship generally sells out its capacity, whereas the men's joint championship, though too large for most non-NFL venues, does not come close to making NFL stadiums feel full. In 2019, for example, men's lacrosse sold 28,160 tickets to the Division I men's final in a stadium with a capacity for 67,594, while women's lacrosse sold 9,017 tickets to the Division I women's final in a stadium with a capacity for 8,500.[195] Total attendance at the Division I women's championship for all rounds has increased year after year: in 2017, there were 18,241 total tickets sold; in 2018 there were 19,869; and in 2019 there were 22,527.[196] That has not been the same for the Division I men's championship, where attendance for all rounds has decreased in recent years: in 2017 there were 69,531 total tickets sold; in 2018 there were 60,113; and in 2019 there were 52,746.[197]

That women's lacrosse is played in smaller capacity stadiums may inhibit its ability to grow its fan base and increase championship attendance. At the same time, some stakeholders observed that filling the smaller venues for the women's championships improves the event's feel, while the men's championships are held in football stadiums that are "this cavernous place so even if you get 45,000 people it still looks empty."

[195] Championship Attendance Summary 2015 to Present.

[196] *Id.*

[197] *Id.*



Division I Men's Championship, Gillette Stadium (Left) and Division I Women's Championship, LaValle Stadium (Right)[198]

In 2025 and 2026, the Division I women's championship will join the Divisions I, II, and III joint men's championship at a single venue, Gillette Stadium in Foxborough, Massachusetts.[199] According to multiple sources, while Gillette was willing to host all six championships (*i.e.*, all three divisions for both men's and women's lacrosse), the Division I Men's Lacrosse Committee was concerned with the logistics of hosting too many championships and teams at one venue. An NCAA staff member familiar with the process shared, "The DI men's committee expressed concern about the significant scale of hosting six championships with at least 16 teams over one weekend for an outdoor sport." There were also concerns with, among other things, the scheduling of the championships (including because the Division II and III women end their season a week before the men) and the ability to provide sufficient practice times for the teams competing in all six championships. Thus, only the Division I women's championship was added to the 2025 and 2026 men's joint championships. This raised significant concerns with some stakeholders, who felt that the "DII and DIII women are excluded" and described the choice as a "disappointing decision."

Branding, marketing, and promotion. The NCAA spends significantly more money on, and invests more staff and resources in, branding, marketing, and promotion for the revenue-producing Division I men's championship than for the Division I women's championship: approximately $53,211 on general promotion for the men compared to $17,396 for the women.[200] This, of course, has an impact on the level and quality of marketing for the two championships. For example, stakeholders noticed and complained that "[b]illboards were put up on Interstate 95 when Philadelphia hosted the men's tournament, the NCAA Trophy was brought out to the US Lacrosse Convention in Baltimore, and advertisements flooded TV and print in New England

[198] Images from the NCAA.

[199] DI Women's Lacrosse Champ Info Future Dates & Sites, NCAA (last visited Oct. 24, 2021), https://www ncaa.com/championships/lacrosse-women/d1/future-info; DI Men's Lacrosse Champ Info Future Dates & Sites, NCAA (last visited Oct. 24, 2021), https://www ncaa.com/championships/lacrosse-men/d1/future-info.

[200] *See* NCAA Comparison of Game Expenses for Other Championships 2015 to 2021; NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

when Boston held the Championships. None of these have happened in promoting the women's lacrosse championships at any level." Indeed, as one coach noted, "when it comes to marketing, at the NFL stadium, there were signs in town on the highway. They have a huge budget. But we're relying on the host school, and they don't have the budget. We don't have the opportunity to grow our sport."

Moreover, until recently, social media accounts—including Twitter, Instagram, and Facebook—for NCAA lacrosse were branded only for the men's championship. This changed in 2021, and now these are joint men's and women's social media pages.[201] Similarly, until this year, the Division I women's championship did not use the same lacrosse championships logo as the men. Although the women adopted a similar logo this year, the newer logo still has not appeared on student awards and trophies because it was adopted too close to the start of the championship. This distinction is meaningful to stakeholders, who noted, "Men's lacrosse has the logo with the lacrosse sticks, and it took us five years to get that. But it's still not on the trophy or the students' awards."

2019 Logos for Men's (Left) and Women's (Right) Lacrosse Championships

[201] *See* NCAA Lacrosse (@NCAALAX), Twitter (last visited Oct. 24, 2021), https://twitter.com/ncaalax; NCAA Lacrosse (@ncaalax), Facebook (last visited Oct. 24, 2021), https://www.facebook.com/ncaalax; NCAA Lacrosse (@ncaalax), Instagram (last visited Oct. 24, 2021), https://www.instagram.com/ncaalax.

2021 Logos for Men's (Left) and Women's (Right) Lacrosse Championships

Fan festival and other events. The revenue-producing Division I Men's Lacrosse Championship has a fan festival every year with prizes, trophies, sponsor activation, music, and other experiences for fans and student-athletes. The Division I Women's Lacrosse Championship traditionally had no equivalent event, but in 2017, started hosting its own similar, but smaller-scale, fan festival. The men's fan festival, which costs over $200,000 to put on, is planned, organized, and subsidized by CBS/Turner, while the Division I women's fan festival is run by the NCAA at what the NCAA reported was essentially no cost, with corporate partners that activate at their own expense.[202] In previous years, the men's fan festival has featured appearances by Major League Lacrosse players, a Capital One Cup Fan Zone where fans can play games and participate in interactive experiences, and youth clinics.[203] The women's more recent, smaller-scale fan festival, on the other hand, was described as "extremely limited."[204] As one administrator of the lacrosse championship noted, the disparity in fan festivals "is something noticed by fans and participants."

[202] *See* 2019 Men's Lacrosse Fan Festival Settlement Statement; NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[203] *See, e.g.*, *Hang with Mike Powell at Capital One Cup Fan Zone at the Laxperience this Weekend*, Lacrosse Playground (May 22, 2012), https://www.lacrosseplayground.com/hang-with-mike-powell-at-capital-one-cup-fan-zone-at-the-laxperience-this-weekend; *STX Sponsors 2014 NCAA Lacrosse Championship*, SGB Media (May 23, 2014), https://sgbonline.com/stx-sponsors-2014-ncaa-lacrosse-championship/; *MLL players Will Be at the Linc Today Through Monday for LaXperience Fan Fest*, PhillyLacrosse.com (May 25, 2013), https://phillylacrosse.com/2013/mll-players-will-be-at-the-linc-today-through-monday-for-laxperience-fan-fest/.

[204] Because the NCAA does not comprehensively track or audit which corporate sponsors activate at specific championships or how much they spend on those activations, it is unclear exactly how much the activations at the women's fan festival cost.

Division I Men's Lacrosse Championship Fan Fest in Philadelphia, PA[205]

The Division I men's championship also has a host of other amenities and experiences that the Division I women's championship does not. For example, the men's championship uses video footage from previous rounds of the same championship for display at the championship, whereas the Division I women's championship uses footage from the prior year's championship. The men's championship has fireworks when the national anthem is sung before games and postgame confetti, whereas the Division I women's championship will only occasionally have confetti. The men's championship has an on-site emcee and a half-time presentation, whereas the women's championship generally does not.

Spending. The Division I men's championship spends more overall and more per student-athlete than the Division I women's championship.[206] This seems somewhat counterintuitive, since due to its larger bracket (29 teams, as compared to the men's 17 teams), the women's championship has to fund more travel costs for more student-athletes and additional costs for more preliminary sites. And, as several people familiar with the process noted, the joint championships on the men's side save money as compared to hosting separate championships for each of the divisions in three separate locations for the women.

Yet, for example, in 2019, the NCAA spent $2,619,073 at the Division I men's championship and $1,737,259 at the women's.[207] And the NCAA spent almost $3,000 more per student-athlete on the men's championship ($4,814 versus $1,939).

[205] Image from the NCAA.

[206] Even though men's lacrosse hosts a joint championship across all three divisions, the NCAA disaggregates its budget and spending numbers by division. The spending numbers in this section therefore directly compare spending on the Division I men's championship with spending on the Division I women's championship.

[207] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

These spending differences exist in categories that directly impact the student-athlete experience, including signage, awards, mementos, and gifts. In 2019, the NCAA spent $109,660 on the men's signage, and only $32,809 on the women's signage at the Division I championships.[208] And the NCAA spent $42,714 on the men's awards and mementos, while spending $43,399, or just $685 more, for the women's, even though the women's championship had over 350 more student-athletes participating.[209] While some additional costs are associated with the use of a larger venue for the men's championship, and comparing the men's and women's budgets is complicated by the fact that the men's three divisions share some operational expenses, these spending numbers demonstrate how funding for the women's championship contributes to a lesser student-athlete experience.

Committee and staff communication. Several stakeholders attributed inequities in the lacrosse championships, at least in part, to the fact that the Division I Men's and Women's Lacrosse Committees do not communicate or share ideas effectively. As one coach put it, some of the gender disparities between the men's and women's championships "raised questions like 'Do the committees talk?' and 'Do people look at differences in the manuals?' and we were told in no uncertain terms, 'no, they don't.'" This was confirmed by a member of the Division II Men's Lacrosse Committee, who explained, "To the best of my knowledge, the staff and committee structure is very similar for both sports, but as a men's lacrosse committee member, we don't have any professional interactions with our counterparts on the women's side." This has led some to observe that "[m]en's lacrosse and women's lacrosse seem to run as two completely different sports, as if they had no relation to each other."

Stakeholders also reported a need for increased communication and collaboration between staff members. For example, one person recalled that the NCAA staff did not initially coordinate on gifts provided by corporate sponsor STX. While ultimately the NCAA staff worked together with STX to ensure that the same gifts were being provided for both the men's and the women's championships, there was some delay in identifying the issue.

Other considerations. Following public scrutiny of the NCAA during this year's March Madness, the NCAA implemented some meaningful gender equity improvements before this year's lacrosse championships in late May. As one staff member put it, "I honestly think a lot of inequities were rectified last year . . . and [the championships are] more on an equal level from our standpoint."

For example, prior to this year's championship, a significant disparity between the men's and women's championships was staff sizes, with the men's championship receiving almost double the amount of staff time than the women's championship (1.01 versus 1.99 FTEs).[210] The men's championship had support staff to help administer all aspects of the championship,

[208] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

[209] *Id.* As discussed above, *see* pp. 44-46, the awards and mementos budget line items do not provide a complete picture of whether the NCAA's spending on awards, gifts, and mementos is equitable.

[210] *See* Championships and Alliances Staffing Allocation (as of Apr. 15, 2021).

including signage; in-venue staff to manage the video-boards, presentations, guests, and other aspects of the venue; a corporate relations staff member; and ticketing support. The women's championship did not.

For the 2021 championships, the NCAA increased the staffing for the women's championship to be in-line with the men's championship. One NCAA staff member reported, "From a staffing standpoint, the women's championship did not have a full internal team as the men did, but that was corrected in 2021 and there is now a full internal team in place for both championships." This shift has included adding staffing for the women's championship for in-venue presentation, signage, ticketing, and marketing. While pleased with this improvement, some stakeholders also mentioned that more work needs to be done in ensuring that the women's staff have a level of experience and expertise similar to the men's staff to "assist in the growth of the championship."

A correction was also made this year to the size of the travel party for the men's and women's championships. Until this year, the men had a travel party of 40 while the women's was only 38.[211] After identifying this difference during the NCAA's internal review, the NCAA staff posed the question: "why are they not the same?" The Division I Women's Lacrosse Committee requested an increase in the size of the women's travel party to match that of the men, which was approved for the 2021 championship.[212]

In addition, men's and women's lacrosse are currently coordinating on making their bench sizes more equitable. The women's bench size is generally 50—a number originally calculated by adding 12 individuals on the sideline to the old travel party of 38.[213] The men's bench size, on the other hand, is 52—a total of 12 individuals on the sideline beyond the travel party of 40.[214] This disparity is particularly notable because college women's lacrosse teams play with two more players on the field than the men—12 women student-athletes as compared to 10 men—and yet the women have a smaller bench size. This has a real impact on the student-athlete experience. As one coach noted, "I had 13 players who had to sit in the stands in 2019, not even on the sideline. And it's awkward not only for those students but also for their teammates on the field. And that's after all year building the team and doing everything together. And that's my worst part of the year."

On June 14, 2021, the Division I Women's Lacrosse Committee noted that it was planning to increase the bench size to match the men's lacrosse bench size. However, the committee has not made the change yet because the Division I Men's Lacrosse Committee is asking for a change to

[211] *Compare* 2020 Division I Men's Lacrosse Championship Pre-Championship Manual at 11, *with* 2020 Division I Women's Lacrosse Championship Pre-Championship Manual at 12.

[212] NCAA Division I Women's Lacrosse Committee Agenda (June 14, 2021) (noting that "the travel party size was increased to 40 for the 2021 championship").

[213] 2020 Division I Women's Lacrosse Championship Pre-Championship Manual at 12.

[214] 2020 Division I Men's Lacrosse Championship Participant Manual at 12.

the men's bench size, [215] and so the women's committee "discussed ideas for increasing the bench size to mirror that of the men and will finalize the approach after reviewing the recommendations coming from the men's lacrosse annual meeting."[216] Multiple staff members from the NCAA confirmed that the women are "going to put forward a proposal that mirror[s] that of the men" and are working to "make[] sure we're consistent."

4. Volleyball

The Division I Women's and the NC Men's Volleyball Championships provide an example of vastly different championships where the women's championship is the larger event with more than nine times as many teams participating, more fan attendance, more financial and staff support, greater promotion, and more broadcasting coverage.[217]

These differences in the championships stem in large part from the fact that women's volleyball is significantly more popular than men's volleyball and generates substantially more revenue. In particular, while about 96% of the NCAA membership has a women's volleyball team, only about 14% of the membership has a men's volleyball team,[218] and more than double the number of fans generally attend the women's final championship games as compared to the men's.[219]

Volleyball is one of the most popular sports for women student-athletes, and its stakeholders have raised concerns that—perhaps because it does not have an equally popular men's counterpart—it receives less resources than other popular NCAA sports.

Championship experience. The Division I Women's Volleyball Championship and the NC Men's Volleyball Championship are in many ways entirely different events. While 64 teams participate in the Division I Women's Volleyball Championship, only seven teams participate in the NC Men's Volleyball Championship.[220] The championships also take place in different

[215] *See* Report of the NCAA Division I Competition Oversight Committee (Oct. 4, 2021) ("The committee discussed but did not take action on a recommendation from the Men's Lacrosse Committee to adjust the bench size to accommodate a team's entire roster (as determined by the team's website) plus 12 nonstudent-athletes and two medical personnel. (The current bench size is 50 plus two medical personnel.) The Competition Oversight Committee agreed to revisit this request once it completes its broader review of squad size/travel party/bench size as noted in Informational Item 2 above.").

[216] *See* Report of the Division I Women's Lacrosse Committee (June 14, 2021).

[217] Even though there is a Division II Women's Volleyball Championship, this case study compares the NC Men's Volleyball Championship (which includes teams from Divisions I and II) to the Division I Women's Volleyball Championship. Like Division I women's volleyball, NC men's volleyball reports up through the Division I governance structure, including the Division I Competition Oversight Committee. NC men's volleyball is also governed by the same travel and per diem policies and procedures and is subject to the same budget process as Division I women's volleyball. The NCAA also hosts a national championship for beach volleyball; however, that sport and championship are separate from men's and women's indoor volleyball and, as a result, are not addressed as part of this case study.

[218] NCAA Sports Sponsorship and Participation Rates Database, NCAA (last visited Oct. 16, 2021), https://www.ncaa.org/about/resources/research/ncaa-sports-sponsorship-and-participation-rates-database.

[219] Championship Attendance Summary 2015 to Present.

[220] Road to the Championship, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/volleyball-women/d1/road-to-the-championship; *NCAA Men's Volleyball Committee Announces Championship Selections*, NCAA (Apr. 25, 2021),

seasons, with the women's event occurring in the fall and the men's occurring in the spring.[221] In addition, all rounds of the men's championship take place on campus (a choice made by the NC Men's Volleyball Committee), whereas the final rounds of the women's championship take place off campus at large professional sports arenas, which, as one stakeholder noted, "elevates the feel of the event."

Far more fans attend the Division I Women's Volleyball Championship, which sells substantially more tickets and generates significantly more revenue than the men's championship. For example, in 2018-19, the final rounds of the Division I Women's Volleyball Championship sold 19,650 tickets, whereas the final rounds of the men's championship sold 4,379 tickets.[222] In that same year, women's volleyball generated about $3 million in revenue, whereas men's volleyball generated about $172,000.[223]

To support its larger fan base, women's volleyball sometimes has interactive fan events at the championship with corporate sponsor activations, while the men's volleyball championship has no ancillary events. The NCAA also provides significantly more signage for the larger venue at the women's championship. For example, in 2018-19, the NCAA spent $45,347 on signage at the women's tournament, but only $2,817 on signage at the men's tournament, or approximately half as much per student-athlete.[224]

https://www ncaa.com/news/volleyball-men/article/2021-04-25/ncaa-mens-volleyball-committee-announces-championship-selections.

[221] NCAA Sports & Playing Rules Committee Rosters, NCAA (last visited Oct. 19, 2021), https://www.ncaa.org/governance/committees/ncaa-sports-playing-rules-committee-rosters.

[222] Championship Attendance Summary 2015 to Present.

[223] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[224] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

Photo of the 2019 NC Men's Volleyball Championship Game[225]

Photo of the 2019 Division I Women's Volleyball Championship Game[226]

Not all items impacting the student-athlete experience at the volleyball championships are different, however. For example, the men's and women's volleyball student-athletes largely receive the same gifts and awards at the tournaments.

[225] Image from the NCAA.

[226] Image from the NCAA.

Broadcasting and marketing. As we have seen in other sports, the NCAA puts greater resources towards broadcasting and marketing women's volleyball because it generates more revenue than its men's counterpart. As one men's volleyball stakeholder stated, "I am unsure there is any effort from the national office to promote and market our championship. It is all left up to the host institution."

While the NCAA has a team of staff members who work on social media, marketing, and ticketing for the Division I Women's Volleyball Championship,[227] the Championships staff member for men's volleyball must handle these responsibilities largely on his own. In 2019, the NCAA spent more than $24,000 on promotion for Division I women's volleyball, and only about $15,000 on promotion for men's volleyball.[228] And the women's championship has its own custom championship logo, while the men's championship uses the stock logo depicted below.

Custom Logo for the 2021 Division I Women's Volleyball Championship (Left) and Stock Logo for the NC Men's Volleyball Championship (Right) [229]

The NCAA's greater focus on marketing women's volleyball was particularly noticeable this year, when the NCAA, due to limited staffing resources in its social media department, converted its Twitter handle for volleyball (@NCAAVolleyball) into an account for women's volleyball only. As a result, women's volleyball was able to keep all of the followers for the account built up over more than a decade, while men's volleyball (now @NCAAMVolleyball) was forced to start from scratch. Currently, the women's volleyball Twitter account, which is dedicated to both women's indoor and beach volleyball, has more than 195,000 followers, whereas the men's Twitter account has only about 270 followers.[230]

[227] 2021-22 NCAA Championships Marketing Groups.

[228] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019; NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

[229] 2021 Division I Women's Volleyball Championship, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/volleyball-women/d1/future-info; NC Men's Volleyball, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/ sports/volleyball-men/nc.

[230] NCAA Volleyball (@NCAAVolleyball), Twitter (last visited Oct. 24, 2021), https://twitter.com/NCAAVolleyball; NCAA Men's Volleyball (@NCAAMVolleyball), Twitter (last visited Oct. 24, 2021), https://twitter.com/ncaamvolleyball.

In addition to receiving more marketing resources from the NCAA, women's volleyball has more extensive and prominent broadcast coverage compared to the men's volleyball championship. In 2021, for example, all rounds of the women's tournament were broadcast or streamed live on an ESPN channel, with the final game broadcast on ESPN2.[231] In that same year, only the final game of the men's championship was broadcast on ESPNU, with the semifinals available via livestream on NCAA.com.[232] In December 2018, more than 1.5 million viewers tuned into the women's final match on ESPN2, whereas in May 2019, only 390,150 viewers tuned into the men's final match on the same channel.[233]

Spending. While the NCAA spends significantly more on the Division I women's championship than it spends on the NC men's championship, the amount spent per student-athlete is roughly equal. For example, in 2018-19, the NCAA spent more than $3.8 million on women's volleyball, but spent only $376,942 on men's volleyball. That amounts, however, to a roughly similar spend per student-athlete: $3,590 spent per male student-athlete and $3,970 per female student-athlete.[234]

Staffing and committees. In part because of its larger size, the NCAA dedicates substantially more staffing resources to the Division I women's championship than the NC men's championship. Whereas the men's championship is usually staffed by only one championship manager, the women's volleyball championship is usually staffed by a championship manager, an additional coordinator, and NCAA staff from broadcasting, media relations, marketing, ticketing, and corporate relations. Both championships have their own committees, but the NC Men's Volleyball Committee has five members, whereas the Division I Women's Volleyball Committee has 10 members.[235]

At least in part because the two championships occur at different times of the year, the NCAA staff and committees for men's and women's volleyball rarely communicate or coordinate around issues of gender equity. As one NCAA staff member observed, "If you think about men's and women's basketball, they play in the same season, so there's opportunities for more synergy. So often, we're not on the same planning schedule."

Participation opportunities. The proportion of volleyball student-athletes who are able to compete in the championships is greater for women (19.2%) than for men (14.6%). The official travel party size for women's volleyball is also higher: 22 for the women, 21 for the men—even though both men's and women's volleyball teams are comprised of 15 student-athletes.

[231] NCAA TV Broadcast Schedule, NCAA (last visited Oct. 19, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[232] *Id.*

[233] Division I Women's Volleyball Neilsen Ratings; NC Men's Volleyball Neilsen Ratings.

[234] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[235] Division I Women's Volleyball Committee Roster, NCAA (last visited Oct. 19, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1WVB; Men's Volleyball Committee Roster, NCAA (last visited Oct. 19, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=MVB.

Other considerations. Although women's volleyball receives far more NCAA support than its men's counterpart, women's volleyball stakeholders raised the concern that they receive less NCAA support and investment than other similarly popular sports. In particular, stakeholders point to the fact that while volleyball is the "top team sport in U.S. high schools" for girls, they receive a fraction of the resources from the NCAA that the Division I Women's Basketball Championship receives, in part because they do not have an extremely popular men's counterpart.[236]

In addition, women's volleyball raised several concerns about this year's Division I Volleyball Championship.[237] At this year's championship, the NCAA cut the total number of women's teams that could participate from 64 to 48 due to precautions related to COVID-19, even though many Division I championships held in the 2020-21 academic year did not see similar cuts.[238] And, until significant public outcry caused ESPN to reverse course on April 9, 2021,[239] ESPN had been planning to stream the first two rounds of the tournament without play-by-play announcers.[240]

Women's volleyball coaches also raised concerns about flooring provided at the NCAA championships. In particular, the Division I and NC Volleyball Championships are generally played on a surface called Sport Court instead of Taraflex, which volleyball stakeholders have described as the "standard in the sport" and which one stakeholder noted is "apparently better for the body on impact." This issue came to a head this year when, due to the COVID-19 pandemic, the Division I Women's Volleyball Championship was played entirely at a single location, with the first three rounds held at a converted convention center.[241] After coaches expressed concern about the practice court flooring in the convention center (which was "sport court layered over cement flooring"),[242] the NCAA provided Taraflex flooring for the early rounds of the championship. The remaining matches, which were not held at the convention center, were played

[236] *See Affiliations*, AVCA (May 2021), https://www.avca.org/newsletters/affiliations/may-2021 html.

[237] Madeline Coleman, *'Bush League:' Criticism of NCAA's Treatment of Women's Sports Continues Over Volleyball Tournament*, Sports Illustrated (Apr. 8, 2021), https://www.si.com/college/2021/04/09/ncaa-criticism-continues-over-womens-volleyball-tournament.

[238] *See id.*; Brent Wagner, *Decision to Have 16 Fewer Teams for NCAA Volleyball Tournament Wasn't Revisited (And More Details About the Tournament)*, Lincoln Journal Star (Apr. 1, 2021), https://journalstar.com/sports/huskers/volleyball/decision-to-have-16-fewer-teams-for-ncaa-volleyball-tournament-wasn-t-revisited-and-more/article_1c2efeea-37ad-53a5-892a-57285eec1e08 html.

[239] *Clarifications on the Division I Women's Volleyball Championship*, NCAA (Apr. 9, 2021), https://www ncaa.org/about/resources/media-center/news/clarifications-division-i-women-s-volleyball-championship.

[240] Madeline Coleman, *'Bush League:' Criticism of NCAA's Treatment of Women's Sports Continues Over Volleyball Tournament*, Sports Illustrated (Apr. 8, 2021), https://www.si.com/college/2021/04/09/ncaa-criticism-continues-over-womens-volleyball-tournament.

[241] Glynn A. Hill, *NCAA Responds After Coaches Criticize Conditions at Women's Volleyball Tournament*, Washington Post (Apr. 9, 2021), https://www.washingtonpost.com/sports/2021/04/09/ncaa-womens-volleyball-tournament-conditions/.

[242] Madeline Coleman, *'Bush League:' Criticism of NCAA's Treatment of Women's Sports Continues Over Volleyball Tournament*, Sports Illustrated (Apr. 8, 2021), https://www.si.com/college/2021/04/09/ncaa-criticism-continues-over-womens-volleyball-tournament.

on Sport Court over a wood sport flooring system.[243] The NCAA explained that it considers both flooring options similar in regard to safety.

Women's volleyball stakeholders also raised concerns about being required to play on back-to-back nights in all rounds of the NCAA tournament, except during the semifinals and finals. One women's volleyball stakeholder noted, "This limits preparation and rest during the most critical part of the season." This issue was addressed on September 8, 2021, when the Competition Oversight Committee approved a request to add a rest day between the regional semifinals and finals of the Division I Women's Volleyball Championship.[244]

5. Gymnastics

Gymnastics presents unique considerations for the NCAA that are not dissimilar to those presented by volleyball. Women's gymnastics is showing "tremendous growth" with widespread sponsorship by colleges and universities, high television ratings on ABC, and well-known student-athletes.

Championship structure and participation opportunities. There are 81 institutions that sponsor women's gymnastics.[245] Men's gymnastics, by contrast, has only 15 sponsored programs nationally.[246] As a result of these sponsorship differences, NC women's gymnastics has a significantly larger championship event, involving 36 of the 81 women's teams, as well as 28 additional student-athletes who independently qualify. Participants compete at regional rounds at four predetermined sites to qualify for the finals.[247] The men's championship is much smaller, involving only 12 teams and 35 individual qualifiers who participate in one qualifier competition (instead of multiple regional rounds) and then the finals.[248] Notably, the percentage of student-athletes who are able to participate in the championship is much higher on the men's side (80%) than on the women's (44.4%). Both championships have their own committees. The NC Men's

[243] *Clarifications on the Division I Women's Volleyball Championship*, NCAA (Apr. 9, 2021), https://www ncaa.org/about/resources/media-center/news/clarifications-division-i-women-s-volleyball-championship; *NCAA Responds to Volleyball Coaches' Concerns about Dressing Areas, Practice Courts for Tournament*, 3 News Now Omaha (Apr. 8, 2021), https://www.3newsnow.com/sports/ncaa-responds-to-volleyball-coaches-concerns-about-dressing-areas-practice-courts-for-tournament.

[244] *Committee Approves a Day of Rest at DI Women's Volleyball Regionals*, NCAA (Sept. 10, 2021), https://www ncaa.org/about/resources/media-center/news/general-committee-approves-a-day-of-rest-at-di-womens-volleyball-regionals.

[245] Composition and Sport Sponsorship of the NCAA Membership, NCAA (last visited Oct. 19, 2021), https://www ncaa.org/about/who-we-are/membership/composition-and-sport-sponsorship-membership.

[246] *Id.*

[247] 2021 Women's National College Gymnastics Host Operations 2020-21 Manual at 41; Road to the Championships, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/gymnastics-women/nc/road-to-the-championship.

[248] 2021 Men's National Collegiate Gymnastics Pre-Championships Manual.

Gymnastics Committee has six members, and the NC Women's Gymnastics Committee has seven members.[249]

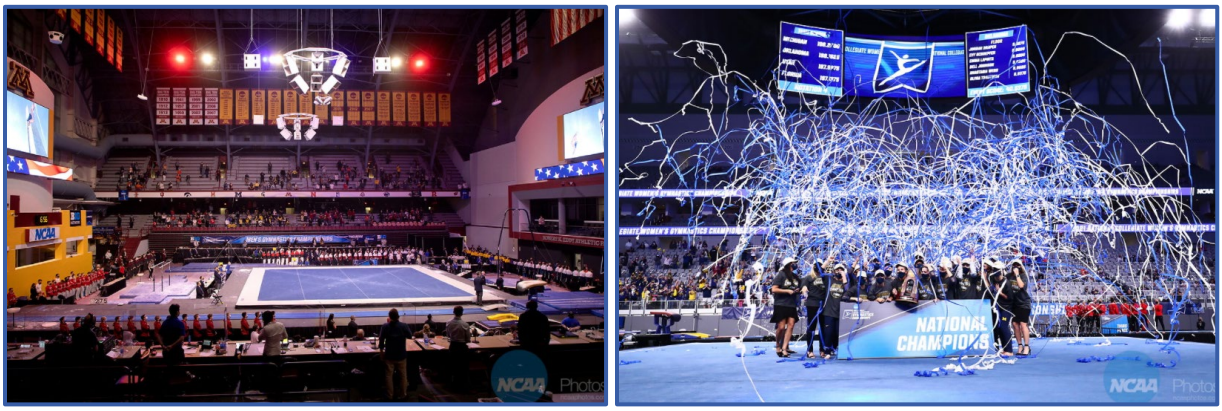


Photo of the 2021 NC Men's Gymnastics Championship (Left) and Women's Gymnastics Championship (Right)[250]

Budget, spending, and staffing resources. Due to its larger size, the NC women's championship requires—and receives—more resources from the NCAA. In 2019, for example, the NCAA spent approximately $1,164,234 on the NC women's championship and approximately $320,190 on the men's.[251] But the disparity in spending is not solely attributable to the larger size of the women's championship. The NCAA ends up spending more per student-athlete at the women's tournament ($2,050 in 2019, $1,934 in 2018) than at the men's ($1,489 in 2019, $1,423 in 2018).[252] The NCAA also dedicates more staff to the women's event who are responsible for the in-venue presentation, press and media coordination, and marketing, in addition to general operations.[253] As of 2020, the men's championship relied on a single NCAA championship manager (down from two managers in years prior).[254]

Student-athlete experience. Notwithstanding the difference in size, we received no feedback from student-athletes or external stakeholders about any differences in the student-athlete experience between the men's tournament and the women's. NCAA staff have reported that, overall, the women's tournament is "more enhanced" than the men's. That may be due, in part, to the increased corporate sponsor activations at the women's tournament.

Broadcast coverage and in-person attendance. It is undisputed that women's gymnastics has a larger fan base than men's gymnastics. The arena at the women's tournament, which is much

[249] *See* Men's Gymnastics Committee Roster, NCAA (last visited Oct. 13, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=MGY; Women's Gymnastics Committee Roster, NCAA (last visited Oct. 13, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=WGY.

[250] Images from the NCAA.

[251] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[252] *Id.*; NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2018.

[253] Championships and Alliances Staffing Allocation (as of Apr. 15, 2021); 2021-22 Tournament Operations Assignments.

[254] 2021-22 Tournament Operations Assignments; 2021-22 NCAA Championship Marketing and Ticketing Who to Contact; 2021-22 NCAA Media Coordination/Statistics Staff Who to Contact; 2021-22 NCAA Digital – Who to Contact.

larger than the men's, sold out for the finals in 2019. In fact, while the men's championship often sells at most 4,500 tickets, the women's championship sells up to 44,000 tickets.[255] This year, ESPN moved the broadcast of the final round of the women's championship to ABC, which coaches said "increased crowds and excitement."[256] The broadcast averaged 808,000 viewers, up 510% from 2019, and was the most-watched college gymnastics broadcast since 2011.[257] This increased exposure has resulted in more attention from corporate sponsors, leading in turn to the NCAA spending more time and resources on marketing and branding of the women's championship. The men's final championship round, by contrast, is livestreamed on NCAA.com or on the Big Ten Network.[258] Notwithstanding this growing popularity of the women's championship, neither the men's nor the women's championship has a fan festival.

Other considerations. Prior to this year, most Olympic gymnasts were not permitted to participate in the NCAA championships because they profited from their name, image, and likeness through sponsorship deals. Because the NCAA eligibility rules have now changed, household names in gymnastics will compete at the college level, including four female Olympic medalists—Gold Medalist and all-around champion Sunisa Lee, as well as Jordan Chiles, Jade Carey, and Grace McCallum—all of whom are set to compete in the NCAA championship next year.[259] With the addition of the world's best gymnasts to college competition, one coach hypothesized that "[w]omen's gymnastics has an opportunity to grow into a sport that rivals men's basketball."

6. Tennis

The NCAA staff who work on tennis and the broader college tennis community profess a deep commitment to ensuring gender equity in men's and women's tennis and take pride in being gender equity leaders. As one stakeholder noted, "tennis has had a good history of gender equity," with several of its key players vocally supporting the cause, including Billie Jean King, winner of 39 Grand Slam tournament titles.

In line with that commitment, the NCAA has taken specific steps to promote an equitable student-athlete experience at the Division I Men's and Women's Tennis Championships, as set forth in further detail below. Stakeholders describe the cumulative effect of these decisions as a wholly equitable experience for student-athletes. One experienced stakeholder noted that he has "not observed any disparities" in the men's and women's tournaments "while attending the NCAA Tennis Championships on an annual basis."

[255] Championship Attendance Summary 2015 to Present.

[256] NCAA TV Broadcast Schedule (last visited Oct. 19, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[257] *Ratings: NCAA Gymnastics, Racing, MLS and More*, Sports Media Watch (Apr. 16, 2021), https://www.sportsmediawatch.com/2021/04/ncaa-gymnastics-ratings-abc-most-watched-decade-f1-indycar-mls/.

[258] NCAA TV Broadcast Schedule (last visited Oct. 19, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[259] Emily Giambalvo, *Olympic Gymnasts Used to Skip College to Make the Most of Their Fame. Now They Don't Have To*, Wash. Post (July 20, 2021), https://www.washingtonpost.com/sports/olympics/2021/07/20/olympic-gymnasts-nil/.

Tournament structure, venue, and participation opportunities. The structure of the Division I men's and women's championships is identical. Both are comprised of two components: a teams tournament and a singles and doubles tournament, which follows the team competition.[260] An equal number of men and women have an opportunity to compete in each component: 64 men's and women's teams comprised of nine players each in the teams tournament, 64 men's and women's singles players, and 32 men's and women's doubles teams.[261]

Starting in 2006, the NCAA moved to a single, joint site for the final rounds of the men's and women's team competition as well as all rounds of the singles and doubles competition.[262] That decision was motivated, in part, by a desire to provide women's tennis players with a more equitable experience. As one NCAA stakeholder expressed, this decision "effectively ended any gender equity problems."

The NCAA has taken yet other steps to ensure that it lives up to that sentiment. For example, it rotates which gender competes first each year at the championships. In odd years, student-athletes competing in the women's championship play first, resulting in an extra day off between the teams quarterfinals and semifinals, and in even years, the student-athletes competing in the men's championship play first and receive the extra day off.

The 2019 Division I Men's and Women's Tennis Championship Venue[263]

Spending. The NCAA spends roughly the same amount on both the men's and women's tournaments. In 2019, for example, total NCAA expenses for the men's championship were $945,004, whereas total expenses for the women's championship were $904,488, with a key

[260] 2021 Division I Men's and Women's Tennis Pre-Championships Manual.

[261] *Id.* at 12, 15.

[262] *Women's Tennis 2007 NCAA Women's Tennis Tournament 1st & 2nd Rounds*, Florida Gators (Dec. 10, 2015), https://floridagators.com/sports/2015/12/10/_tennis_women_tour_ncaa_2007_p_overview.aspx.

[263] Image from the NCAA.

difference between the two being the cost of travel.[264] The NCAA spends the same amount on signage for both championships and virtually the same amount on gifts and mementos.[265]

Staffing. In recent years, Division I men's and women's tennis each have had their own championship manager, in addition to a single assistant coordinator who supports both championships.[266] For the upcoming championship in May 2022, however, staffing curtailments at the NCAA mean that one championship manager will oversee both the men's and women's events.

Joint committee. The NCAA has a single committee responsible for both Division I men's and Division I women's tennis. The 12-person Division I Men's and Women's Tennis Committee selects championship participants and develops the policies and procedures that govern the championships.[267] The NCAA mandates that half of this committee be made up of representatives of men's tennis interests and the other half be made up of representatives of women's tennis interests.[268] Each year the chair of the committee rotates between a committee member who represents men's tennis and a committee member who represents women's tennis. This committee structure helps to ensure that conversations occur between men's and women's tennis stakeholders and that championship planning decisions are made in concert. Moreover, while other championships may also have a joint committee for both genders, the tennis model is particularly noteworthy because the committee is comprised of an equal number of representatives of men's and women's tennis with a rotating chair.

Corporate sponsorship, fan attendance, and broadcasting. There is little to no corporate sponsorship at the men's or women's tennis tournaments, and the NCAA does not host a fan festival at either. There is also limited fan attendance at the tennis championships compared to some of the NCAA's marquee events. In 2019, for example, 6,562 people attended the finals of the Division I Men's and Women's Tennis Championships, resulting in total ticket revenue of about $93,700.[269]

There is also limited broadcasting of the men's and women's tennis championships. In 2021 and 2019, the Tennis Channel—a television network not related to ESPN—broadcast or streamed all of the matches in the men's and women's tournaments,[270] but in the years immediately

[264] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019. Travel costs inevitably vary each year based on which teams/players make it into the championships and how expensive it is for those student-athletes and teams to travel to the championship venues.

[265] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

[266] 2021 Division I Men's and Women's Tennis Championships Pre-Championships Manual.

[267] 2021 Division I Men's and Women's Tennis Committee Operations Manual.

[268] Division I Men's and Women's Tennis Committee, NCAA (lasted visited Oct. 19, 2021), https://web1 ncaa.org/committees/committees_roster.jsp?CommitteeName=1TENNIS.

[269] Championship Attendance Summary 2015 to Present.

[270] *2021 NCAA Coverage*, USTA National Campus (May 13, 2021), https://www.ustanationalcampus.com/en/home/news/2021-ncaa-coverage html; *NCAA Tennis Championships Come to Tennis Channel with 3-Year Agreement*, Tennis (May 7, 2019), https://www.tennis.com/news/articles/ncaa-tennis-championships-come-to-tennis-channel-with-3-year-agreement.

prior, all matches, except the men's and women's tennis teams finals in 2017, were streamed only on NCAA.com.[271] Since the broadcast agreement with the Tennis Channel has been in place, the NCAA has worked with the Tennis Channel to ensure that each gender has equal television airtime.

7. Swimming & Diving

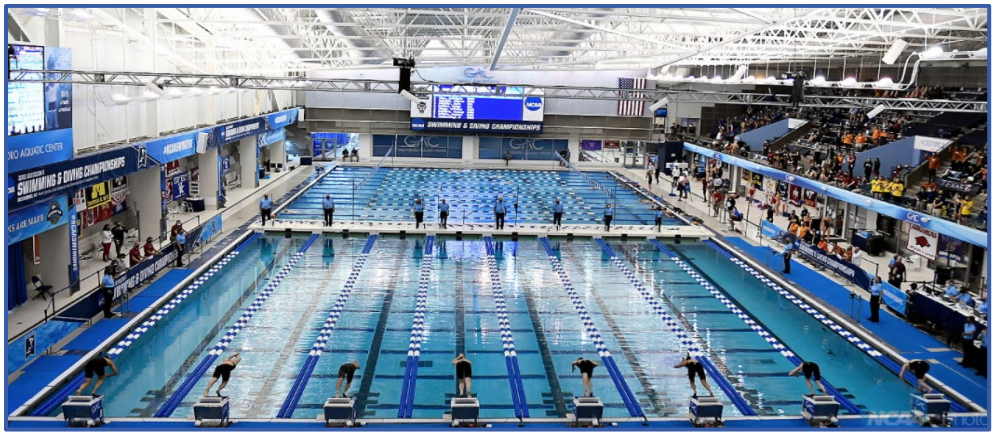
Stakeholders have overwhelmingly described the Division I Men's and Women's Swimming and Diving Championships as providing student-athletes with a gender equitable experience. One stakeholder reported that there are "minimal to no differences in championship events that the NCAA runs for Division I Men's and Women's Swimming and Diving." A coach who has "experience going to and coaching at both events" commented that "the men's and women's NCAA Swimming & Diving Championships are pretty equitable." Most strikingly, the College Swimming & Diving Coaches Association of America contacted nearly 200 coaches and administrators who had attended both the men's and women's championships since 2016, and they noted that in swimming "our coaches report that there is no measurable difference between the men's and women's championship experiences," aside from some concerns raised about insufficient participation opportunities for men.

Championship structure and venue. The championships occur consecutively, with women's swimming and diving taking place first and men's swimming and diving taking place the following week. About half the time, the championships are held back-to-back at the same site. For example, in 2022, both championships will be held at Georgia Tech in Atlanta. The other half of the time, the championships are held at separate sites. For example, in 2023, the women's championship will be held at the University of Tennessee, and the men's will be held at the University of Minnesota.[272]

When the championships are held at the same venue, both the men's and women's athletes use the same pool and facilities, guaranteeing a similar experience across genders. As one coach put it, when the Men's and Women's Swimming and Diving Committee "select[s] the same venues for championships," that "alleviate[s] any previous concerns regarding access for the best-possible venues." One challenge with hosting the championships at the same venue is that only a handful of facilities can be closed to the public for that long a period of time (two weeks). So although some stakeholders expressed that "[h]aving the men's and women's championship at the same venue would be ideal," they also recognized that it is often "difficult" to do so.

[271] NCAA TV Broadcast Schedule, NCAA (last visited Oct. 19, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[272] 2021-2026 Championships Dates and Sites for NCAA Division I Men's and Women's Swimming and Diving, NCAA (last visited Oct. 24, 2021), https://s3.amazonaws.com/ncaaorg/championships/sports/swimdive/d1/2020-21D1XSW_2021-26 ChampionshipsDatesandSites.pdf.



2021 Men's and Women's Swimming Championship (Greensboro Aquatic Center)[273]

Even in years when the championships take place at different venues, the NCAA staff report that the staff and the Division I Men's and Women's Swimming and Diving Committee work to ensure that disparities are "minimized as much as possible." They do so by working with championship hosts to sell a similar number of tickets to each event, to provide equal access to pools for practice, and to provide similar locker rooms, snacks, and gear. The schedule for swimming and diving for both the men's and the women's championships are identical, no matter the location.[274]

Signage at 2019 Division I Swimming and Diving Championships (Austin, TX)[275]

Unlike sports with back-to-back championships that alternate the order of the championships, the Division I Women's Swimming and Diving Championship always takes place before the men's. Although women-first sequencing has generated debate in connection with other sports (*e.g.*, golf), stakeholders shared that women's swimming and diving coaches are "supportive

[273] Image from the NCAA.

[274] *See* 2021 Division I Swimming & Diving Championships Pre-Championships Manual at 26-27.

[275] Image from the NCAA.

of [] going first" and, in fact, "like to go first." This is in part because the women's championship does not overlap with the later rounds of March Madness; in 2022, for example, the women's championship will primarily occur during the first weekend of March Madness, whereas the men's championship will primarily occur during the Sweet Sixteen.[276] In addition, going first gives the female swimmers and divers the benefit of a "fresh facility" where "no one is worn out yet." Stakeholders have not advocated for combining the men's and women's championships into a single event, believing instead that "each event can stand on its own."

Budget and spending. The men's and women's championships have similar budgets, although the men's championship spends more per student-athlete when accounting for the greater number of women's participants.[277] In 2019, the NCAA spent a total of $994,154 on the men's championship, with 270 male student-athletes, while spending $975,579 on the women's championship, with 322 student-athletes.[278] That equates to $3,682 per male student-athlete and $3,030 per female student-athlete. Team travel costs are the biggest variable in the expenses between the genders, and those costs vary each year based on which teams qualify and where the regional and championship rounds are held.[279]

Many elements of the championships that impact the student-athlete experience—including signage, apparel, promotion, and awards and mementos—have nearly identical spending for the men and the women. For example, in 2019, the NCAA spent $66,017 ($245 per student-athlete) on awards, mementos, and gifts at the men's championship, whereas the NCAA spent $77,565 ($241 per student-athlete) on awards, mementos, and gifts at the women's championship.[280] Trophies and participant medallions are also equitable based on student-athlete participation, with more participant gifts corresponding to the larger number of women student-athletes in the championship. That same year, the NCAA spent nearly identical amounts on signage ($8,900 for the men's championship and $9,440 for the women's).[281] These similarities in

[276] *See* 2021-2026 Championships Dates and Sites for NCAA Division I Men's and Women's Swimming and Diving, NCAA (last visited Oct. 24, 2021), https://s3.amazonaws.com/ncaaorg/championships/sports/swimdive/d1/2020-21D1XSW_2021-26 ChampionshipsDatesandSites.pdf; Future Division I Men's Basketball Championship Sites, NCAA (last visited Oct. 19, 2021) https://www ncaa.org/championships/future-division-i-mens-basketball-championship-sites.

[277] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[278] *Id.*; 2019 Division I Swimming & Diving Championships Host Operations Manual at 6.

[279] For example, in 2019, despite having similar travel policies, the men's championship spent more than the women's championship on travel ($369,600 versus $352,000). As the NCAA coordinator for the men's and women's championships explained, "Team travel is going to be the biggest variable in the expenses between the genders because of the difference in field size and which teams and individuals qualify (*e.g.* maybe there are more drivable women's participants than men's participants in a given year so even though there may be more women that qualify, if there are more men flying because they are further away from the final site, the expense could be higher for men or if charters are involved that can be a factor in the difference as well)." This dynamic is not unique to swimming and diving.

[280] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021. As explained above, *see* pp. 44-46, figures for both total and per student-athlete spending on awards, mementos, and gifts allow for imprecise comparisons of differently sized sports because spending varies by championship round. The most significant portion of the award and mementos budget in swimming and diving goes to the award given to race winners, of which there is a similar number despite the overall greater size of the women's championship. The winners at both the men's and women's events receive the same awards.

[281] *Id.*

spending provide for a more equitable student-athlete experience. As one stakeholder who helps organize the championships wrote, "travel and per diem policies are the same"; trophies and mementos are "the same"; and the marketing, tickets, promotions, event presentation, and signage "are identical," especially "in the years the championships are at the same venue back-to-back weeks."

Staffing. The men's and women's championships also have similar staffing. Prior to 2021, there was one championship manager and one assistant coordinator assigned to each championship. Following pandemic-related staffing reductions in 2021, there is now a single championship manager and a single assistant coordinator assigned to oversee both championships. Having staff that oversee both the men's and women's events does facilitate streamlined championship planning and communication with the Division I Men's and Women's Swimming and Diving Committee. But concerns have been raised that the single manager will be stretched thin when the two championships are held at different sites. As one committee member noted, using a single manager "absolutely makes sense if the venue is the same for both championships. It does not make sense if the venues are different. You need a dedicated NCAA contact for each championship for different venues."

Joint committee. There is a single men's and women's swimming and diving committee that "functions as one committee in every aspect of decision-making for the championships." Numerous stakeholders—including NCAA staff, coaches, and committee members—noted that the joint Division I Men's and Women's Swimming and Diving Committee serves to advance gender equity by facilitating better communication, planning, and execution of the championships.

As one NCAA staff member suggested, "Having one committee helps ensure gender equity as the committee is involved in all decisions affecting both championships and also staff both championships." Coaches similarly commented that "[s]wimming and diving benefit from having a shared committee structure," which "ensures consistency and fairness between the two championships." And as one committee member said, "As a committee that represents both the men's and the women's championship, I believe we are doing the best we can to provide the same experience for both genders."

Broadcast coverage and in-person attendance. The men's and women's championships currently have identical broadcast coverage on ESPN. Although there have been years where the women's championship received more linear coverage than the men's championship, ESPN3 covered all sessions of both championships equally in 2021.[282] The NCAA broadcast staff has requested that ESPN continue this identical coverage in future years.

[282] *See* NCAA TV Broadcast Schedule, NCAA (last visited Oct. 21, 2021), https://web1 ncaa.org/NCAATV/exec/query.

Attendance at the men's and women's championships is also similar. In 2019, when the championships were held at the same venue, total ticket sales were 4,562.[283] And in 2018, the men sold 2,130 tickets whereas the women sold 2,626 tickets.[284]

Other considerations. Stakeholders raised one common concern about the swimming and diving championships: that there are fewer total participation opportunities for men student-athletes than there are for women student-athletes. As one stakeholder noted, "[t]he women have more advantages. . . . They have a bigger championship field." Similarly, the College Swimming & Diving Coaches Association noted that after contacting nearly 200 coaches and administrators who had attended both the men's and women's championships since 2016, "[a]lmost every single respondent (both male and female) noted the glaring disparity in access between male and female participants."

Indeed, there are more female student-athletes participating in the championship, but that appears to reflect the fact that there are currently more schools sponsoring women's swimming and diving. There are 270 participants at the men's championship (235 swimmers and 35 divers) and 132 men's programs (with 3,757 total swimmers and divers).[285] There are 322 participants at the women's championship (281 swimmers and 41 divers) and 193 women's programs (with 5,755 total swimmers and divers).[286] That means that approximately 7.2% of Division I men's swimmers and divers are able to participate in the men's championship, whereas 5.6% of Division I women's swimmers and divers are able to participate in the women's championship. In other words, although more female swimmers and divers participate overall in the championship, a higher percentage of male swimmers and divers are able to participate in the championship.

8. Soccer

Stakeholders reported that the Division I Men's and Women's Soccer Championships, which culminate in the men's and women's four-team College Cups, provide equitable experiences for their student-athletes. Regular communication between NCAA staff and equitable budget allocations have resulted in similarly planned and executed events. As one stakeholder put it, "The student-athletes in Men's and Women's Soccer are treated similarly by the NCAA and the staff who serve the championship."

[283] Championship Attendance Summary 2015 to Present.

[284] *Id.*

[285] *See* 2021 Division I Swimming & Diving Championships Pre-Championships Manual at 14.

[286] *See id.*

Photo of the 2020 Division I Women's Soccer Championship Game[287]

Championship structure, venue, and participation opportunities. The Division I soccer championships hold preliminary and quarterfinal games at campus sites,[288] with the College Cups often rotating among repeat venues, including WakeMed Soccer Park in Cary, North Carolina; PayPal Park in San Jose, California; Stevens Stadium in Santa Clara, California; and Harder Stadium in Santa Barbara, California.[289] The men's and women's College Cups are most often, but not always, held at different venues from one another.[290]

This year, because the men's host canceled due to the pandemic, the Division I Men's and Women's College Cups were held at the same venue, at the same time. One athletic director who attended this year's combined College Cup described it as "awesome" and "a celebration of soccer." According to other stakeholders, rather than emphasizing disparities between the two genders, "the 2020-2021 College Cup . . . highlight[ed] the ability to create and reimagine a new tournament format." With the College Cups being held together, coaches reported that the tournaments were a "phenomenal, shared experience that opened the possibility for future collaborations."

With the exception of the most recent championships, the men's and women's tournaments are typically offset by one week.[291] Whether the College Cups are held at the same venue or time,

[287] Image from the NCAA.

[288] Road to the Championship, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/soccer-women/d1/road-to-the-championship.

[289] *Id.*; Road to the Championship, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/soccer-men/d1/road-to-the-championship; Championship History, Women's Soccer, NCAA (last visited Oct. 19, 2021), https://www.ncaa.com/history/soccer-women/d1; Championship History, Men's Soccer, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/history/soccer-men/d1.

[290] Championship History, Women's Soccer, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/history/soccer-women/d1; Championship History, Men's Soccer, NCAA (last visited Oct. 19, 2021), https://www.ncaa.com/history/soccer-men/d1.

[291] Road to the Championship, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/championships/soccer-women/d1/road-to-the-championship (noting championship will be held December 3 and 5, 2021); Road to the Championship, NCAA (last visited

stakeholders have reported that the NCAA maintains gender equity between the men's and women's events.

Some differences exist, however. Notably, due to significantly more sponsorship at member institutions, the Division I women's tournament has a 64-team bracket, with 19.1% of women's soccer teams able to participate, as compared with the men's 48-team bracket, with 23.5% of men's teams able to participate.[292] Because both tournaments take place over the course of three weeks, more games are played during the same amount of time at the women's tournament than at the men's.[293]

Budget and spending. The NCAA spent approximately $2.37 million in 2018 and $2.4 million in 2019 on the Division I men's tournament, and approximately $2.83 million in 2018 and $3.49 million in 2019 on the women's.[294] The primary source of the difference in the total spend is the difference in the size of the championships: the women's soccer championship has 64 teams (compared with the men's 48), and therefore significantly more student-athletes, requiring additional spending on awards, gifts and mementos, per diem, travel, and overall game expenses.[295] When examined per student-athlete, spending is similar. In 2019, the NCAA spent on average $2,392 per student-athlete at the men's tournament, and $2,477 per student-athlete at the women's tournament.[296]

Even though the NCAA spends a similar amount on men's and women's soccer student-athletes, spending within particular budget categories is not always the same. For example, despite its smaller size, the men's championship spent about $18,000 more than the women's championship on signage in 2018; spent $14,000 more on signage in 2019; and has $12,000 more budgeted to spend on signage in 2022.[297] (Breaking the trend, the women's tournament spent $3,000 more on signage than the men's tournament in 2021, although the College Cups were in the same location at the same time, meaning that the signage overlapped.)[298] The likely reason for this disparity is the NCAA's stagnant budgets; NCAA staff posit that the staff planning the men's championship likely allocated more spending for signage at the men's tournament than the

Oct. 19, 2021), https://www ncaa.com/championships/soccer-men/d1/road-to-the-championship (noting championship will be held December 10 and 12, 2021).

[292] More institutions sponsor Division I women's soccer (335 teams) than Division I men's soccer (204 teams). *See* Composition and Sport Sponsorship of the NCAA Membership (as of September 1, 2020), NCAA (last visited Sept. 28, 2021), https://www ncaa.org/about/who-we-are/membership/composition-and-sport-sponsorship-membership.

[293] 2022, 2023, 2024 & 2025 NCAA Men's College Cup, NCAA Site Selection Process at 5; 2022, 2023, 2024 & 2025 NCAA Women's College Cup, NCAA Site Selection Process at 5.

[294] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[295] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

[296] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[297] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021; Championship Budgets for Fiscal Year Ending 2022.

[298] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

women's many years ago, which has been carried over year-to-year without any attention being paid to the disparity. Current NCAA staff acknowledge that this discrepancy should be revisited.

Committees and staffing. One of the key elements identified as contributing to the soccer championships' gender equity is frequent communication among NCAA staff members. According to one NCAA staff member, the managers for women's and men's soccer stay in contact during the championship planning process, although the communication could still be improved. And before the women's soccer manager assumed her position, the Division I men's soccer manager oversaw both championships for a period of time. Contributing to these open lines of communication are the Division I Men's and Women's Soccer Committees, which have at least one joint meeting per year focused on championship planning.

Fan attendance and sponsorship. Women's college soccer is undoubtedly growing in popularity, just as the popularity of the United States Women's National Team has skyrocketed in recent years. This is reflected in increasing audience sizes, both in person (attendance for the entire tournament increased 43% between 2019 and 2021) and at home (television viewership of the final game increased 56% between 2018 and 2019, although was down from 2017).[299] Similarly, while both the men's and women's championships have a fan festival, Champions and Partners, including Buffalo Wild Wings, Buick, Capital One, Coca-Cola, Pizza Hut, Unilever, and Wilson, activate at higher rates at the women's tournament than at the men's.

Other considerations. Separately, United Soccer Coaches raised a concern that seeding for the Division I women's tournament results in the same teams playing each other every year, which "really affects the student-athlete experience." The NCAA's seeding policies for men's and women's soccer are stated somewhat differently in their respective championship manuals: both championships seed 16 teams chosen by the committee (at the men's, 33% of the teams, and at the women's, 25%), with the women's tournament placing the top 16 seeds into "pods of four," which the men's manual does not state that it does.[300]

9. Golf

The NCAA staff and the Division I Men's and Women's Golf Committees have made significant, concerted efforts to provide equitable experiences for student-athletes participating in the Division I Men's and Women's Golf Championships, although some challenges remain, especially in the regional events. Many stakeholders—including student-athletes, NCAA staff, members of the Division I committees, and coaches—suggested that those efforts have resulted in championships that are largely equitable. As various stakeholders observed, "I do not see any significant difference in how the championships are run," "[m]en's and women's golf are very much in lock step with each other," and "they are identical championships." In fact, one NCAA

[299] Championship Attendance Summary 2015 to Present.

[300] 2019 Division I Men's Soccer Championship, Pre-Championship Manual at 13; 2020 Division I Women's Soccer Championship, Pre-Championship Manual at 13.

committee member said, "From my perspective, they are viewed as one large golf championship—one held one week and one held the next week for the two genders."

Championship structure, venue, and participation opportunities. The golf championship finals occur at the same venue, on the same course, and use many of the same facilities in back-to-back weeks. In 2021, 2022, and 2023, for example, the finals for the men's and the women's championships will be held at the Grayhawk Golf Club in Scottsdale, Arizona.[301]

Sharing facilities and other resources allows for comparable championship experiences for male and female student-athletes. One interviewee stated, "They use the same facility, same hotel, same locker room, all of those things you know are going to be the exact same from week one to week two." Another observed, "I do not notice differences between the NCAA men's and women's golf championships—I am sure due in large part because the championships are held back to back weeks at the same golf course [and] staying at the same hotel." And yet another noted, "Whether it's facilities, food, practice facilities, it's all pretty equitable." Although some coaches expressed concern that always holding the women's championship the week before the men's made the women's event feel as if it served as "a test run," other stakeholders suggested that the women's teams benefited "from a course conditions standpoint," as the jointly used course is in better shape during the first week of play.

2021 Division I Men's and Women's Golf Championship (Scottsdale, Arizona)[302]

[301] 2021 Division I Women's Golf Championships Pre-Championship Manual at 8-9; 2021 Division I Men's Golf Championships Pre-Championship Manual at 8-9.

[302] Image from the NCAA.

The NCAA staff and committee members consider whether particular golf courses work for both men and women when selecting host sites—considering, for example, the contours and topography of the course and whether the course will allow the men and women to use the same iron to reach the greens. And once a venue is selected, the staff, committees, and host work to reduce any disparities that may exist between the men's and women's facilities. For example, because some golf courses cater more towards men than women, the locker room and restroom facilities for the men may be larger or nicer than for the women. The NCAA golf staff and hosts will work to address such a disparity: "[I]f the men's locker room is larger they'll switch it so women can use [the] men's locker room . . . signage was swapped out, we had temporary signage, trying to provide the same experience even in terms of those facilities."

2021 Division I Men's and Women's Golf Championship, Grayhawk Golf Club[303]

The NCAA uses many of the same regional sites for the men and women as well. This, too, helps minimize disparities between regional events, although there are issues relating to the number of regional sites, as discussed more below. The men's six regional sites have 75 participants each, and 156 men advance to the final (30 five-person teams, and six individuals from non-qualifying teams).[304] The women's four regional sites have 96 participants each, and 132 women advance to the final (24 five-person teams, and 12 individuals from non-qualifying teams).[305] The difference in the number of participants is a product of the difference in the number

[303] Image from the NCAA.

[304] 2021 Division I Men's Golf Championships Pre-Championship Manual at 11.

[305] 2021 Division I Women's Golf Championships Pre-Championship Manual at 12. Note, as discussed below, the NCAA plans to expand the Division I women's golf regionals from four sites with 18 teams and six individuals to six sites with 12 teams and six

of Division I schools that sponsor men's and women's golf. Approximately 27% of men's teams (81 of 298) and 27% of women's teams (72 of 266) participate in the Division I golf championships.

Budget and spending. For the championship finals, the men and women generally have identical facilities, celebratory banquets, and other ancillary events. They also generally receive identical mementos and equipment (*e.g.*, scoresheets, pin flags, practice balls). Much of the signage at the championship—including posters and flagsticks—are shared and say "Division I Golf Championships," rather than specifying the men's or women's championship.

Signage at the 2021 Division I Men's and Women's Golf Championships[306]

In fact, the men's and women's finals budgets are not only similar, but fungible in some respects. As NCAA staff explained, "From a planning perspective you're able to pool together your money and make it stretch more in terms of signage budget and other types of experiences that might otherwise be half as much. I think it just allows you to do more and provide the same experience for both genders and pool funding."

The overall budgets for the men's and women's championships are largely equitable but not identical, mostly due to the fact that the men's championship has more participants than the women's and has six regional sites instead of the women's four. For example, the NCAA spent the following total amounts on the men's and women's championships:

individuals in 2022. Accordingly, the women's championship will move from the current 384 total participants to 396 total participants, as reflected in the Golf Fact Sheet, *see* p. 133.

[306] Images from the NCAA.

Total NCAA Spending at the Golf Championships[307]

YEAR	MEN'S CHAMPIONSHIP	WOMEN'S CHAMPIONSHIP
2019	$1,014,937	$989,727
2018	$845,434	$813,119

The greater number of participants and regional sites for the men's championship generally increases the men's costs for per diem and travel, although the travel cost varies year to year based on the location of the regional sites. For example, the NCAA spent the following amount on team travel and per diems for the championships:

NCAA Spending on Travel and Per Diem[308]

YEAR	MEN'S CHAMPIONSHIP	WOMEN'S CHAMPIONSHIP
2019	$205,700 (travel); $203,625 (per diem)	$218,563 (travel); $185,925 (per diem)
2018	$196,294 (travel); $206,850 (per diem)	$183,814 (travel); $180,975 (per diem)

On a per-athlete basis, however, championship spending is similar, except for yearly differences in travel, which can result in slightly higher travel costs for the women's championship. For example, the NCAA spent the following amount per-athlete at the Division I golf championships:

Per Student-Athlete Spending at the Golf Championships

YEAR	MEN'S CHAMPIONSHIP	WOMEN'S CHAMPIONSHIP
2019	$2,255	$2,577
2018	$1,879	$2,117

Staffing and committees. There is equitable staffing between Division I men's and women's golf, in addition to well-established communication lines between NCAA staff members and the Division I Men's and Women's Golf Committees. As a committee member confirmed, there has been "really strong collaboration between the two committees for years." Prior to 2021, each of the championships had its own championship manager, support staffer, and media coordinator, as well as one shared branding staff member and one shared broadcast liaison. Following a staff reduction for the 2021 championships, both the men's and women's golf championships now share a single NCAA championship manager. As the NCAA staff noted,

[307] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019; NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2018.

[308] NCAA Comparison of Game Expenses for Other Championships 2015 to 2021.

having a single NCAA championship manager not only facilitates "one person trying to keep [both championships] as consistent as [they] can be," but also means that the one staff member is "working with both committees, so if the women's committee is talking about something [they can] communicate that to the men's committee."

Broadcast and marketing. The two championships are also broadcast and marketed similarly. For example, both the men's and women's championship spend the same amount on general promotion (in 2021, $13,945 each; in 2019, $0 each; and in 2018, $8,083 each),[309] and both championship finals are aired live on the Golf Channel (which is not governed by the NCAA's agreement with ESPN).[310] Which championship has greater television viewership changes year to year. One committee member observed, "I have not noticed any differences in the promotion, sponsorship, marketing or branding and broadcasting opportunities for men's and women's NCAA Golf Championships."

Other considerations. Despite golf's overall gender equity, stakeholders identified two specific issues, both of which the NCAA staff and committees have worked to address.

First, there is the disparity in the number of regional sites: six for the men and four for the women. This gives the men "more flexibility when you have weather issues—not as many people on the golf course, fewer teams on the field, gives you better flexibility." Similarly, having 96 participants at each women's regional site (as opposed to 75 at the men's) does not allow "as much flexibility or as streamlined of a playing experience as is recommended by golf organizations." It was noted that having six regional sites for women would improve the "pace of play" and increase "access to the driving range for practice."

The NCAA has resolved this disparity starting with the 2022 championship. On August 4, 2021, the Division I Women's Golf Committee recommended expansion from four to six regional sites, with each regional provided "a stipend of $23,667, which is equivalent to the stipend provided to men's regional hosts."[311] The Competition Oversight Committee considered this recommendation at its September 8, 2021 meeting, and then on September 17 approved "expanding the Division I women's golf regionals from four sites with 18 teams and six individuals to six sites with 12 teams and six individuals, effective for the 2022 NCAA regionals."[312] As we understand it, this expansion will now be presented by the SVP of Championships to the Chief Financial Officer, Division I Finance Committee, and NCAA President for final approval.

Second, multiple stakeholders raised concerns about the NCAA's decision to cancel a women's regional tournament in its entirety this year due to inclement weather. One stakeholder questioned, "if this were men's golf would we have done something to get golf in? Extend to additional days of play, travel to another golf course in the region?" A student-athlete affected by

[309] *Id.*

[310] *See* NCAA TV Broadcast Schedule, NCAA (last visited Oct. 24, 2021), https://web1 ncaa.org/NCAATV/exec/query.

[311] Report of the NCAA Division I Women's Golf Committee (Aug. 4, 2021).

[312] Report of the NCAA Division I Competition Oversight Committee (Sept. 17, 2021).

the cancellation expressed a similar sentiment: "I cannot help but wonder that if this were a male championship, would more have been done to allow the student-athletes to play through unideal conditions."

The Division I Women's Golf Committee discussed this issue on four separate occasions during the summer of 2021 and proposed several changes in response. First, the committee "directed staff to update manuals to reflect the expectation for maintenance staff to be on site during all hours needed throughout all rounds of the championships, and especially in situations involving inclement weather" and to "update bid specifications for future championships to ensure clarity regarding expectations for course maintenance."[313] Second, the committee voted to allow scheduling flexibility when conducting regionals in inclement weather (96.3% of coaches surveyed by the committee supported this adjustment), including that "the committee will allow competition to begin as early as Sunday afternoon at future regional sites."[314] The committee also noted that the aforementioned shift to six regional sites "would allow for additional flexibility in inclement weather situations."[315]

And third, the committee recommended adjusting the inclement weather policy "to require a minimum of 36 holes to be completed at regionals for advancement to the national championships, an increase from a minimum of 18 holes under the current policy."[316] In other words, student-athletes now have to play more golf in regional rounds to qualify for the final round; if inclement weather requires cancellation of a regional round before 36 holes are completed, then instead of using the few rounds of golf already played in the regional round to decide who advances, the NCAA will look to regular season performance.[317] This proposal had overwhelming support from coaches (84.9% of coaches surveyed by the women's committee supported the adjustment) because "one 18-hole round of golf should not override an entire season's body of work made up of dozens of competition rounds."[318] On October 4, 2021, the Competition Oversight Committee approved this policy adjustment and also noted that the change "aligns more closely with policies in place for men's golf."[319]

[313] *Id.*

[314] *Id.*

[315] *Id.*

[316] *Id.*

[317] Indeed, according to the current policy, "[i]f a minimum of 36 holes cannot be completed, the top-seeded teams and top-seeded individuals not on an advancing team will advance to the championships." Report of the NCAA Competition Oversight Committee (Oct. 4, 2021).

[318] Report of the NCAA Division I Women's Golf Committee (June 30, July 14 and 26, Aug. 4, 2021).

[319] *See* Report of the Competition Oversight Committee (Oct. 4, 2021).

SINGLE-GENDER SPORTS

The NCAA hosts championships for six Division I and National Championship single-gender sports. Two of these are men-only (football and wrestling), and the other four are women-only (beach volleyball, bowling, field hockey, and rowing). The men-only sports have generally been sponsored by the NCAA for far longer and, in the aggregate, receive significantly more financial and staffing support than the four women-only championships. For example, for 2018-19, the NCAA spent approximately $2,229 more per student-athlete for the men-only championships than for the women-only championships ($5,282 per student-athlete for the men and $3,053 per student-athlete for the women).

The men-only sports have a significant head-start on the women-only sports, enabling them to become better established with substantial fan bases. For example, wrestling had its first NCAA championship more than 50 years before women's field hockey and 88 years before beach volleyball. Yet some of these women-only sports are rapidly growing, creating a need for more resources year over year.

Although the NCAA has made efforts to invest more in some of these women-only championships, most notably beach volleyball, resources for expansion of participation opportunities and overall improvements in the student-athlete experience are limited for all sports at the NCAA, and these women-only sports are no exception. Such resource limitations can have a more fundamental impact on growing sports with growing needs, like some of the women-only sports discussed below, potentially holding them back from developing into more well-established sports.

1. Men-Only Sports

Football. Unique among NCAA sports, NCAA Division I football has been split into two divisions since 1978, now referred to as the Football Bowl Subdivision (FBS) and the Football Championship Subdivision (FCS).[320] The FCS Championship is operated by the NCAA, but the championship for the more competitive FBS is operated independently. A more modest event in terms of both spending and revenue generation, the FCS Championship generated $5,763,917 in revenue in 2019, and expenses for the NCAA totaled $7,137,685, or $4,889 spent per student-athlete.[321]

Because the NCAA operates only one of the two Division I football championships, it is difficult to compare that championship to other single-gender sports with a single Division I championship. Nevertheless, it is notable that although the FCS Championship is not the premier

[320] Daniel Wilco, *FCS Championship: Everything You Need to Know*, NCAA (Jan. 13, 2020), https://www ncaa.com/news/football/article/2020-01-11/fcs-championship-everything-you-need-know.

[321] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

Division I football championship and does not produce net revenue for the NCAA, the NCAA devotes substantial resources to the FCS. For the 2021-22 season, the NCAA has budgeted $3,514 in funding per student-athlete, more than any women-only championship except beach volleyball.[322]

Wrestling. Wrestling—which became an NCAA championship in 1928[323]—is the only men-only sport for which the NCAA operates the primary Division I championship, as well as the only revenue-producing single-gender sport, and it therefore presents unique considerations.[324]

Division I wrestling is a net revenue generator for the NCAA. In 2019, the Division I Wrestling Championship generated a total of $5,887,919, which, after expenses, results in net earnings of $3,570,700.[325] Because the Division I Wrestling Championship is a revenue-producing event with a large audience, requiring a substantial venue, is broadcast, and has corporate partner activations, the NCAA devotes significant resources to its operation.

Even though student-athlete participation has been declining, the Division I Wrestling Championship budget has increased in recent years, from $1,158,056 in 2014-15 to $1,460,393 in 2020-21, likely due to wrestling's continued and increasing revenue-producing status.[326] Division I wrestling has a substantial per student-athlete budget. For the upcoming 2021-22 championship, the NCAA has budgeted approximately $4,106.65 per student-athlete.[327]

2. Women-Only Sports

Beach volleyball. Beach volleyball is a relatively new but rapidly growing women-only sport. It was added as an Emerging Sport for Women in 2010 and held its first NC championship in 2016.[328] In 2016, there were 47 sponsored teams and 758 total student-athletes in Division I; by the 2018-19 season, those numbers were 60 and 1,053 respectively.[329] The tournament was broadcast on TBS in 2016 and 2017, and ESPN became a broadcast partner in 2018 and now broadcasts every match of the three-day, eight-team double elimination tournament on ESPNU and ESPN2, with the final match played on ESPN. In 2016, 288,000 households and an estimated 734,400 viewers tuned in to the final match; those numbers increased to 345,000 households and 879,750 estimated viewers by 2019. In the same period, ticket sales increased from approximately

[322] *Id.*

[323] NCAA Timeline, NCAA (last visited Oct. 21, 2021), https://www ncaa.org/history.

[324] Women's wrestling was approved as an Emerging Sport for Women in 2020.

[325] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[326] Championships Budgets 2015 to 2021; Championships Budgets 2022.

[327] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

[328] NCAA Timeline, NCAA (last visited Oct. 21, 2021), https://www ncaa.org/history.

[329] 2019-20 Sponsorship & Participation Rates Report.

2,818 to 4,198 tickets, increasing NCAA ticket revenue from $92,333 in 2016 to $199,755 in 2019.[330]

The beach volleyball championship is held in Gulf Shores, Alabama each year.[331] According to stakeholders, the city invests approximately $400,000 annually in the tournament.

Beach volleyball stakeholders reported that the NCAA has devoted significant resources to marketing and promotion, noting the organization "actively market[s] ticket sales and work[s] with Gulf Shores & Orange Beach Tourism to direct fans to accommodations," and that the NCAA staff work tirelessly to plan and operate the championship. The NCAA has budgeted $5,289 per participant for the 2022 championship, among the highest of any NCAA sport, and in 2018-19 spent $10,275 per student-athlete.[332] However, the NCAA has not funded a bracket expansion sufficient to keep up with beach volleyball's rapid growth.

When the NCAA initially funded an eight-team beach volleyball bracket in 2016, it included one bid for every seven sponsored teams, a roughly average access ratio for NCAA sports. However, due to its rapid growth, the same eight-team bracket now only allows for one bid for every 10.5 teams, a lower access ratio than any other NCAA team sport.[333] Beach volleyball sought a bracket expansion beginning in 2018, when the number of sponsored teams had reached 68 and five conferences had enough sponsorship to qualify for an automatic bid in the tournament (although none were granted due to the limited bracket size). In 2019, beach volleyball's request for a bracket expansion was again rejected; instead, a request from women's bowling, which had reached the sponsorship threshold for expansion earlier than beach volleyball, was approved.[334] To date, beach volleyball has not had its request for a bracket increase approved.

In five short years, women's beach volleyball has demonstrated its potential to be a popular and potentially revenue-producing sport for the NCAA. However, only with the room—and the resources—to grow, will beach volleyball be able to reach its full potential.

Bowling. In its inaugural NCAA championship year in 2004,[335] NC women's bowling had 42 sponsor teams and 358 total student-athletes across all three divisions. By the 2019-20 season, those numbers had risen to 87 and 820, respectively.[336] Bowling stakeholders expressed that the NCAA has invested significantly in the growth of women's bowling in the last several years, including by instituting automatic qualifying and approving a 2019 bracket expansion. Currently,

[330] Championship Attendance Summary 2015 to Present.

[331] 2021 National Collegiate Beach Volleyball Championship Pre-Championship Manual at 8-9.

[332] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019; Championship Budgets 2022.

[333] 2019-20 Sponsorship & Participation Rates Report (noting 84 sponsor teams overall in beach volleyball in 2019-20).

[334] CFO Notification FY20.

[335] NCAA Timeline, NCAA (last visited Oct. 21, 2021), https://www ncaa.org/history.

[336] 2019-20 Sponsorship & Participation Rates Report.

92 institutions sponsor bowling teams, and the championship accommodates 16 of them. The NCAA has budgeted $2,942 per student-athlete for 2021-22.[337]

While pleased with the championship's growth, stakeholders expressed concern about the quality of the venues hosting the NCAA women's bowling championships. Typically, the championships are held in outdated bowling centers that are not designed for spectators. Often, the venues do not even close to the public for the duration of the tournament, meaning customers use the lanes in the evening and can cause damage that impacts championship play the following day. Only once, in 2017, was the championship held in a large arena—the Baton Rouge convention center—and stakeholders reported a substantially improved championship experience for student-athletes that year. Additionally, stakeholders explained that the NCAA does not provide commentators for any of the tournament rounds streamed on NCAA.com; only the final game is broadcast on ESPN. Because bowling is complex and the rules are unfamiliar to many, stakeholders have suggested that commentators during earlier rounds could assist spectators and ultimately help grow bowling's fan base.

Field hockey. Field hockey was the NCAA's first women-only sport, entering the NCAA in 1981-82, the first year that the NCAA admitted women's sports.[338] Overall, the NCAA budgets the lowest amount per student-athlete of all single-gender team sports on field hockey: the 2021-22 budget allows for $1,640 per student-athlete in Division I.[339] Spending on the 2018-19 Division I Field Hockey Championship was $1,778 per student-athlete.[340]

Field hockey stakeholders reported ongoing issues with venues, equipment, and fan engagement. Field hockey games are played on a synthetic turf material that is used in few other sports. As a result, venue options are limited and often lack the amenities of larger venues that can be used by various sports. For example, some venues do not have four locker rooms to accommodate the four teams in the semifinal rounds, and venues are often located in smaller markets, rather than in major metropolitan areas, which often have limited full-service hotel options to accommodate travel parties and fans. Stakeholders also raised concerns about travel costs impacting their ability to have competitive brackets.

Field hockey lacks sponsorship activation, likely due at least in part to its relatively small audience, limited ticket sales and, until last year, lack of any network broadcast. Field hockey has no fan fest and unlike most Division I sports, Division I field hockey's supplier contract does not provide free equipment—field hockey must pay for its own game balls and volunteer apparel.

Like several other Division I non-revenue-producing sports, field hockey does not have an internal team at the NCAA devoted to marketing and ticket sales. Instead, the host location has sole responsibility for promoting the tournament. Although some progress has been made within

[337] Championship Budgets 2022.

[338] NCAA Timeline, NCAA (last visited Oct. 21, 2021), https://www ncaa.org/history.

[339] Championship Budgets 2022.

[340] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

the NCAA to promote field hockey—most notably, NCAA staff succeeded in having the field hockey championship broadcast, with ESPNU televising the semifinal and final rounds of the 2020 championship—many field hockey stakeholders continue to feel that the sport does not get the same level of support as sports with similar levels of school sponsorship,[341] and view that as a gender equity issue.

Rowing. Beginning as an Emerging Sport for Women, rowing had its inaugural NCAA championship in 1996-97.[342] Since then, Division I rowing participation has grown from 54 teams and 3,019 student-athletes in 1996-97 to 88 teams and 5,577 student-athletes in 2019-20.[343] The Division I Rowing Championship accommodates 22 teams, with 11 teams receiving an automatic qualifier.[344] Division I rowing has been allocated a budget of $1,405,830 for the 2021-22 year, which funds a number of operational expenses and infrastructure costs related to setting up a championship in a state park; the 2021-22 budget allows for $2,556 per student-athlete in Division I.[345] Actual spending on the 2018-19 Division I Rowing Championship was $2,505 per student-athlete.[346] Stakeholders noted that there "isn't significant promotion" of women's rowing, although the quality of online streaming has improved in recent years, including by using drone technology to film the championship regattas.

[341] Division I field hockey has 77 sponsor teams.

[342] NCAA Timeline, NCAA (last visited Oct. 21, 2021), https://www ncaa.org/history.

[343] 2019-20 Sponsorship & Participation Rates Report.

[344] 2021 Division I Rowing Championships Pre-Championships Manual at 12.

[345] Championship Budgets 2022.

[346] NCAA Division I and National Collegiate Championships Income Statements for Fiscal Year Ending 2019.

DIVISIONS II & III

The student-athlete experiences in Division II and III championships are more equitable overall than they are in Division I and NC championships. Division II and III championships are not viewed as revenue-producing or potentially revenue-producing, so none receive the type of preferential treatment from the NCAA that certain Division I championships receive. In addition, NCAA leadership in Divisions II and III explicitly prioritize gender equity across their championships, and there is more communication among Division II and III staff and committee members representing men's and women's programs.

Background. Of the approximately 1,100 NCAA member colleges and universities, more than 700 classify their athletics programs as Division II or III.[347] As detailed in our Phase I report, these institutions are generally smaller colleges and universities that dedicate fewer resources to athletics.[348]

Within the NCAA, there are 25 Division II championships—12 in men's sports and 13 in women's sports—and 28 Division III championships—14 in men's sports and 14 in women's sports.[349] These championships fall under the oversight of the SVP of Championships.[350] Championships staff—who split their time across multiple championships—manage and run each individual championship in conjunction with sport-specific committees.[351] While the NCAA Championships staff are in charge of the day-to-day aspects of executing the championships, the sport committees oversee the championships and make decisions and recommendations regarding who will host the championship and which teams or individuals will compete.[352] Each sport committee reports to either the Division II or III Championships Committee.[353] The Championships Committees oversee the general administration of the Division II and III championships, including their budgets, as well as the work of the sport committees. [354]

[347] Our Division II Story, NCAA (last visited Oct. 18, 2021), https://www.ncaa.org/our-division-ii-story; Our Division III Story, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/our-division-iii-story.

[348] Phase I Report at 101.

[349] Division II Championships, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/division-ii-championships; Division III Championships, NCAA (last visited Oct. 18, 2021), https://www.ncaa.org/division-iii-championships.

[350] *See* National Office Leadership Team, NCAA (last visited Oct. 18, 2021), https://www ncaa.org/about/who-we-are/office-president/ncaa-senior-leadership-team.

[351] *See* Phase I Report at 101.

[352] How the NCAA Works: Division II, NCAA (last visited Oct. 24, 2021), https://ncaaorg.s3.amazonaws.com/champion-magazine/HowNCAAWorks/D2_HowNCAAWorks.pdf; How the NCAA Works: Division III, NCAA (Oct. 24, 2021), https://ncaaorg.s3.amazonaws.com/champion-magazine/HowNCAAWorks/D3_HowNCAAWorks.pdf.

[353] How the NCAA Works: Division II, NCAA (last visited Oct. 24, 2021), https://ncaaorg.s3.amazonaws.com/champion-magazine/HowNCAAWorks/D2_HowNCAAWorks.pdf; How the NCAA Works: Division III, NCAA (Oct. 24, 2021), https://ncaaorg.s3.amazonaws.com/champion-magazine/HowNCAAWorks/D3_HowNCAAWorks.pdf.

[354] Division II Championships Committee, NCAA (last visited Oct. 19, 2021), https://www.ncaa.org/governance/committees/division-ii-championships-committee; Division III Championships Committee, NCAA (last visited Oct. 19, 2021), https://www ncaa.org/governance/committees/division-iii-championships-committee.

Unlike Division I, Divisions II and III operate on a multi-year budget cycle.[355] In Division II, that budget cycle takes place every three years. In Division III, the budget cycle generally takes place every two years, although recently, the NCAA approved a one-time, three-year budget cycle for 2021-22 through 2023-24.[356]

Gender equity infrastructure. Stakeholders and NCAA staff alike believe that the Division II and III championships generally provide equitable student-athlete experiences. As one Division II stakeholder said, "Ours is 100% equal – men's championship and women's championship are the same. Hopefully we're a model for that."

In fact, many of the sports with the greatest disparities in their Division I and NC championships offer largely equitable student-athlete experiences in their Division II and III championships. For example, while there are significant disparities in the Division I Baseball and Softball Championships, *see* pp. 60-72, the Division II and III Baseball and Softball Championships are largely equitable. In 2019, the NCAA spent approximately the same amount per student-athlete in both softball and baseball within Divisions II and III,[357] and stakeholders reported that the Division II and III championship experiences for baseball and softball student-athletes were similar. One softball coach in Division II noted that he had not "noticed any differences" between the two tournaments. Ice hockey is another example of a sport that offers student-athletes more equitable experiences in its Division III championships than its Division I and NC championships.[358]

That these championships provide more equitable experiences for their student-athletes is attributable to a few key differences between Division I and Divisions II and III. First, unlike Division I, none of the championships in Divisions II and III is viewed as revenue-producing or potentially revenue-producing. The disparities that can result from the NCAA's dedication of resources to certain championships in order to maximize their revenue do not come into play for Divisions II and III.

Second, as a general matter, stakeholders reported more communication and coordination between men's and women's sports in Divisions II and III than in Division I. In particular, while several of the Division I and NC men's and women's sport committees have almost no communication with their men's or women's counterpart, *see* pp. 75 (ice hockey), 83 (lacrosse), 89 (volleyball), men's and women's sport committees in Divisions II and III reported more frequent inter-committee communication. For example, the Division III Men's and Women's Ice

[355] DIII Strategic Planning and Finance Committee Backs Three-Year Budget Cycle, NCAA (Nov. 19, 2020), https://www ncaa.org/about/resources/media-center/news/diii-strategic-planning-and-finance-committee-backs-three-year-budget-cycle; 2021- 24 Division II Championships Budgeting Timeline for Sport Committee Liaisons.

[356] DIII Strategic Planning and Finance Committee Backs Three-Year Budget Cycle, NCAA (Nov. 19, 2020), https://www ncaa.org/about/resources/media-center/news/diii-strategic-planning-and-finance-committee-backs-three-year-budget-cycle; Report of the NCAA Division III Strategic Planning and Finance Committee June 15, 2021 Videoconference.

[357] NCAA Division II Income Statements for Fiscal Year Ending 2019; NCAA Division III Income Statements for Fiscal Year Ending 2019.

[358] NCAA Division III Income Statements for Fiscal Year Ending 2019.

Hockey Committees meet at least two times a year to discuss key items that impact both championships and, as one NCAA staff member noted, "to share ideas and thoughts." Those committees have recently discussed communicating even more frequently during the championship planning process to ensure consistency across the men's and women's championships.

Similarly, the NCAA staff members in Divisions II and III, as a general matter, strive to coordinate on championship planning decisions to ensure gender equity. One NCAA staff member reported working closely with their Division II and III counterparts so that "both sports are being served similarly." The staff members in another Division II championship also reported communicating throughout the championship planning process to ensure that student-athletes are provided similar experiences "from signage to snacks provided."

Third, as detailed in our Phase I report, the leadership in Divisions II and III prioritize gender equity among their championships. Committee members and NCAA staff stated that leadership in these divisions, including SVP of Championships Joni Comstock, Vice President of Division II Terri Gronau, and interim Vice President of Division III Louise McCleary, among others, focus on gender equity and take steps to correct any disparities of which they become aware.[359] Division III, in particular, prioritizes transparency with respect to gender equity in its championship administration. Each year Division III publishes facts and figures, including the total budgets for men's versus women's championships, on its website. For 2020-21, Division III reported that the total budget for men's championships was approximately $14 million, whereas the total budget for women's championships was approximately $12.7 million.[360]

Finally, as also detailed in our Phase I report, the Division II and III leadership structure enhances gender equity. All Division II and III sport committees report up to centralized Division II and III Championships Committees that can, and do, actively facilitate coordination between the men's and women's championships by ensuring that requests made on the men's side are also considered for the women, and vice versa.[361] Although the Division II and III Championships Committees resemble the role of the Competition Oversight Committee in Division I, the Division II and III Championships Committees appear better able to ensure gender equity in their division's championships for two key reasons. First, unlike the Competition Oversight Committee, the Division II and III Championships Committees have oversight over all Division II and III sport committees, including those for football and basketball.[362] As a result, they are able to review *all*

[359] *See* Phase I Report at 103.

[360] NCAA, Division III 2021-22 Facts and Figures (Sept. 2021), https://ncaaorg.s3.amazonaws.com/about/d3/D3_FactandFigures.pdf.

[361] *See* Phase I Report at 101-03.

[362] *Compare* Division II Championships Committee, NCAA (last visited Oct. 19, 2021), https://www ncaa.org/governance/committees/division-ii-championships-committee, *and* Division III Championships Committee, NCAA (last visited Oct. 19, 2021), https://www ncaa.org/governance/committees/division-iii-championships-committee, *with* Division I Competition Oversight Committee, NCAA (last visited Oct. 19, 2021), https://www.ncaa.org/governance/committees/ncaa-division-i-competition-oversight-committee.

sports in their divisions. In addition, Divisions II and III, unlike Division I, operate on a multi-year budget cycle, which allows for their Championships Committees to engage in a longer and more deliberative review of gender equity when approving budget requests or making decisions. As one NCAA staff member in Division II told us, the budget process—including engaging in a gender equity review of participation opportunities—"takes a long time" and, prior to adopting a "triennial" budget process, was done in a "very piecemeal" fashion.

Gender disparities. While Divisions II and III have managed to avoid many of the more significant gender equity issues that are present in Division I, some disparities do exist. The most common disparity concerns the venues for final rounds of the tournaments.

One illustration of this comes from the Division II Baseball and Softball Championships. For eleven of the last twelve years in which the championship was held, the finals of the Division II Baseball Championship have been held at the same venue in Cary, North Carolina.[363] The finals of the Division II Women's Softball Championship have had several host venues over that same time period.[364] While having consistent versus changing hosts is not inherently a gender equity issue, it can result in qualitative differences in the student-athlete experience. As one stakeholder noted, the host of the Division II Men's Baseball Championship in North Carolina is "seamless in putting on a first-class experience for all involved; identifying and providing improvements as needed each year. This allows the baseball committee to focus much of the attention on the actual on-the-field competition versus the off-the-field experiential components of the championship."

The Division III Ice Hockey Championships present a similar issue. While the Division III Men's Ice Hockey Championship usually occurs at a pre-determined final site,[365] the women compete at non-predetermined sites throughout the entire tournament.[366] As a result, one NCAA staff member noted, "the men have access to some more opportunities when it comes to marketing, sponsorship and promotions. . . . Typically, the men's host is prepared with several year's notice and therefore has more time to plan these types of things." Yet, while having the women compete at non-predetermined sites may result in marginally less marketing and promotion for the women's final matches, the Division III Women's Committee strongly favors remaining at non-predetermined sites because they believe it provides the greatest student-athlete experience. An NCAA staff member opined, "The opportunity for one of the teams to play on their home ice, for all teams to play in front of good crowds and to be the center of attention in the town hosting are all factors the committee feels outweigh anything else."

Although venues appear to be the most common source of disparities in Divisions II and III, other minor disparities in the student-athlete experience were reported. In particular, the NCAA, after conducting a review of gender equity issues across championships in the spring of

[363] Division II Baseball: Championship History, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/history/baseball/d2.

[364] Division II Softball: Championship History, NCAA (last visited Oct. 19, 2021), https://www ncaa.com/history/softball/d2.

[365] *See* 2020 Division III Men's Ice Hockey Championship Pre-Championship Manual at 9-11.

[366] *See* 2020 Division III Women's Ice Hockey Championship Pre-Championship Manual at 12.

2021, discovered several small disparities in equipment and supplies at the Division II Softball and Baseball Tournaments, which it corrected prior to this year's tournaments.

NCAA staff members also reported that there may be one-off differences between men's and women's championships relating to a particular host and its facilities. A Division III staff member observed, "Inequities at any given time could be a result of the host commitment. This could be a result of additional funds available to enhance the experience or even a larger volunteer base that would positively impact the student-athlete experience." A different Division III staff member similarly stated, "Any differences that a men's team and a women's team may experience at preliminary sites are due to the ability of the hosts."

Lacrosse. The one major exception to Divisions II and III's generally positive record on gender equity is lacrosse. According to one NCAA staff member, there are "major differences between the men's and women's lacrosse championships at the [Division III] level. . . . Men's lacrosse and women's [Division III] lacrosse seem to run as two completely different sports as if they had no relation to each other."

Most key disparities between Division II and III men's and women's lacrosse result from differences in the formats for the men's and women's finals. As detailed in the lacrosse case study, *see* pp. 78-79, the top two teams in the Division II and III Men's Lacrosse Championships advance each year to a combined championship where they compete at the same time and location as the top four Division I men's lacrosse teams. The NCAA, on the other hand, generally administers separate championships for each division in women's lacrosse.

Although this differing format for the finals affects only a small number of teams in the Division II and III Men's and Women's Lacrosse Championships, the effect on these student-athletes is significant. As one stakeholder noted, the men get to play in "marquee professional sports stadiums," often in major cities, whereas the women compete in smaller arenas. In addition, because the Division II and III men's finals take place alongside the Division I finals, the Division II and III men's teams get more promotion and marketing for their final round than the women, and the "look and feel" of the tournament is completely different. As one stakeholder put it, "[d]espite only having two teams at the championship site, the men appreciate the opportunity to play in front of big crowds and part of a [Division I] championship that generates revenue for the membership."

As detailed above, *see* pp. 78-79, this disparity came to a head recently when Gillette Stadium in Massachusetts submitted a bid to host all six NCAA lacrosse championships together in 2025 and 2026. In response, the Division I Men's Lacrosse Committee raised logistical concerns about the idea of including Division II and III women's lacrosse in a joint championship. As a result, starting in 2025 and 2026, the Division I women's championship will join the Divisions I, II, and III men's championship at a single venue, while the Division II and III women's championships will be held entirely separately. The Division II and III Women's Lacrosse Committees and the Intercollegiate Women's Lacrosse Coaches Association strongly oppose this decision. One women's lacrosse committee member stated, "I cannot think of a more textbook example of systematic gender inequity at NCAA Championships, and would anticipate strong

opposition from members of the women's lacrosse community if this is not appropriately addressed."

Likely due to the different formats of the championships, there appears to be very little to no communication between Division II and III men's and women's lacrosse. Committee members reported having no interactions with their men's or women's counterparts, and the staff liaisons to the men's and women's committees appear to work entirely independently of one another. According to one stakeholder, "unintentional inequities" likely result each year due to this lack of communication.

ENSURING PROGRESS ON GENDER EQUITY

Throughout this review, we have been very cognizant of the concerted efforts by many over the years to improve gender equity at the NCAA championships. Due to this long-standing commitment, progress has been made. The systemic and structural changes we have recommended in this report (and in our Phase I report) call for a redoubling of that commitment. Fortunately, we are already seeing a willingness to step up for change, not only in our hundreds of conversations with conference commissioners, athletic directors, senior woman administrators, coaches, student-athletes, sports groups, NCAA leadership and staff, and many, many others, but also in the actions being taken by the NCAA, both in response to our Phase I report and on its own.

As we discussed in our Phase I report, the events at this year's championships have provided the NCAA, its members, and its corporate and media partners with a unique opportunity to work together to improve the student-athlete experience at the championships going forward. We are confident that working together, the college sports community and its supporters can do just that.

Recommendation E

For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report and the Phase I report.

To keep the college sports community informed and engaged in this process, and to ensure that the best possible use is made of this opportunity to make changes at the NCAA, in our Phase I report, we recommended that the NCAA conduct an annual public assessment for the next five years of the NCAA's progress in implementing the Phase I recommendations.[367] That assessment should include the NCAA's progress in implementing the recommendations set forth in this Phase II report as well. The NCAA's assessment should be made public on the NCAA's website and provided to the following list of expanded recipients: the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Division II and III Presidents Councils, the Men's and Women's Basketball and Basketball Committees (all divisions), the Division I Competition Oversight Committee, and the Division II and III Championships Committees.

[367] *See* Phase I Report, Recommendation 7.

LIST OF RECOMMENDATIONS

Although not present in all NCAA championships, the gender equity challenges that the NCAA faces are significant and cut across the organization. The recommendations outlined above, and listed again below, provide a comprehensive roadmap for advancing the gender equity principles to which the NCAA and its members have committed.

Organizational structure and culture **(see pp. 13-27 for details)**

- Recommendation A.1: Develop clear criteria for making decisions about resource allocation among championships that integrate gender equity principles and transparency into the process.
- Recommendation A.2: Establish a system for collecting and maintaining standardized data across the NCAA's 90 championships that will facilitate future gender equity reviews and audits.
- Recommendation A.3: Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.
- Recommendation A.4: Increase the number of senior staff in the NCAA's Championships structure to improve oversight of gender equity.
- Recommendation A.5: Over the next five years, conduct a "zero-based" budget for each championship to ensure that any gender differences are necessary, appropriate, and equitable.
- Recommendation A.6: Perform a real-time gender equity audit of all men's and women's championships and prepare an annual report on the results.
- Recommendation A.7: Conduct an external gender equity assessment of all championships in five years.

Broadcast, corporate sponsorship, and branding **(see pp. 28-36 for details)**

- Recommendation B.1: Consider commissioning an independent valuation of the media rights of other championships or championship "packages."
- Recommendation B.2: Ensure equitable branding for all championships, including but not limited to gender modifiers in championship titles.

The student-athlete experience **(see pp. 37-50 for details)**

- Recommendation C.1: Ensure that items impacting the student-athlete experience at all championships are gender-equitable.
- Recommendation C.2: Create a transparent process for reviewing proposals to increase the size of a championship's bracket/field, squad, bench, or travel party size that takes gender equity into account.

Championship and committee structure **(see pp. 51-59 for details)**

- Recommendation D.1: Conduct an assessment and develop a plan for combining or co-locating men's and women's championships where appropriate.
- Recommendation D.2: For non-joint committees, establish regular communications between the men's and women's sport committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

Ensuring progress on gender equity **(see p. 121 for details)**

- Recommendation E: For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report and the Phase I report.

EXHIBIT A: SPORT-BY-SPORT FACT SHEETS

KEY[368]	
ITEM[369]	**DESCRIPTION**
Year NCAA Started Sponsoring Championship[370]	The year that the NCAA first administered a championship in the sport.
Combined Men's and Women's Championships?[371]	Whether men and women student-athletes compete in a combined championship. There are four types of combined championships: • Joint: The men's and women's championships take place entirely at the same place and time, but the men and women student-athletes compete separately. • Partial Joint: Certain rounds of the men's and women's championships take place at the same place and time, and the men and women student-athletes compete separately. • Co-located: The men's and women's championships entirely/partially take place at the same place, but on staggered dates. • Co-ed: The men's and women's championships take place entirely at the same place and time, and men and women student-athletes compete against one another or on the same teams.
Combined Men's and Women's Sport Committees?	Whether a single sport committee administers both the men's and women's championships.
Number of Teams/Individuals in Championship[372]	The number of teams or individuals that compete in the championship.
Squad Size/Travel Party Size	For team sports, squad size is the maximum number of student-athletes per team allowed to dress in uniform and participate at the championship. Travel party size is the total number of people per team for which the NCAA provides travel reimbursement and per diem.
% of Student-Athletes Who Participate in Championship	For team sports, the total number of teams that participate in the championship divided by the total number of teams at NCAA member schools who are eligible for the championship. For individual sports, the total number of student-athletes who participate in the championship divided by the total number of student-athletes at NCAA member schools who are eligible for the championship.

[368] Unless otherwise indicated, all data contained in the factsheets is for the 2021-22 academic year.

[369] The factsheets do not contain data on ticket sales or broadcast viewership. While we received some data on ticket sales and broadcast viewership from the NCAA, the NCAA does not maintain uniform data for all championships.

[370] This information was obtained through the NCAA website and other publicly available sources.

[371] The information contained in the categories "Combined Men's and Women's Championships?" and "Combined Men's and Women's Sport Committees?" was derived from communications with NCAA staff members, documents provided by the NCAA, and publicly available sources.

[372] The information contained in the categories "Number of Teams/Individuals in Championship," "Squad Size/Travel Party Size," and "% of Student-Athletes Who Participate in Championship" was provided by the NCAA.

KEY	
ITEM	**DESCRIPTION**
Broadcast Station (Final Match) (2020-21)[373]	The station or streaming service that broadcasts or streams the championship's final match or event.
NCAA Staff (FTE)	The amount of time that NCAA employees spend on the championship, in a unit called a full-time equivalent or FTE. The NCAA calculated this number for each championship in April 2021 after asking employees across all departments to allocate the percentage of their time spent on each championship.[374]
Budget Allocation[375]	The total amount that the NCAA budgeted for the championship in the 2021-22 academic year.
Budget Allocation (2018-19)[376]	The total amount that the NCAA budgeted for the championship in the 2018-19 academic year.
Total Spending (2018-19)	The NCAA's calculation of its total disbursements for the championship in the 2018-19 academic year. This number appears in the NCAA's yearly championship income statements.[377] The number is comprised of: (i) the amount that the NCAA spends directly on the championship, such as on team travel, per diems, and promotions and marketing; and (ii) any payments from the NCAA to host institutions. The number does not include the amount spent on salaries and benefits for NCAA staff who work on the championships.
Total Revenue (2018-19)	The gross revenue that the NCAA received from the championship in the 2018-19 academic year, excluding revenue generated from television and marketing rights fees. This number appears in the NCAA's yearly championship income statements.

[373] This information is from the following NCAA website: https://web1 ncaa.org/NCAATV/exec/query. If no championship was held in 2020-21, which is indicated by an asterisk (*), then the data contained in the fact sheet is from the most recent year that the championship was held.

[374] This measurement does not capture how some specialized employees can significantly impact a championship while only spending a small percentage of their time on that championship.

[375] The information contained in the categories "Budget Allocation," "Budget Allocation (2018-19)," "Total Spending (2018-19)," and "Total Revenue (2018-19)" was provided by the NCAA.

[376] The 2018-19 academic year is the last full year that the NCAA held all of its championships without accommodations due to the COVID-19 pandemic.

[377] The yearly championship income statements are unaudited financial statements.

BASEBALL/SOFTBALL				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982	1982	1982
	Men	1947	1968	1976
Combined Men's and Women's Championships?	**Women**	No	No	No
	Men			
Combined Men's and Women's Sport Committees?	**Women**	No	No	No
	Men			
Number of Teams/Individuals in Championship	**Women**	64 teams	64 teams	64 teams
	Men	64 teams	56 teams	60 teams
Squad Size/Travel Party Size	**Women**	20/28	20/26	20/25
	Men	27/35	25/29	25/30
% of Student-Athletes Who Participate in Championship	**Women**	21.6%	22.7%	15.6%
	Men	21.4%	22.4%	15.4%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPN	NCAA.com	NCAA.com
	Men	ESPN, ESPN2	NCAA.com	NCAA.com
NCAA Staff (FTE)	**Women**	3.51	0.84	0.63
	Men	5.08	0.97	0.95
Budget Allocation	**Women**	$5,018,415	$2,330,135	$1,821,027
	Men	$6,207,213	$2,393,804	$2,578,548
Budget Allocation (2018-19)	**Women**	$4,802,797	$2,029,332	$1,604,460
	Men	$6,126,157	$2,472,528	$2,339,840
Spending (2018-19)	**Women**	$6,361,695	$2,132,371	$1,676,688
	Men	$16,036,861	$2,278,858	$1,971,581
Total Revenue (2018-19)	**Women**	$4,009,901	$84,302	$102,177
	Men	$28,316,064	$157,670	$145,807

BEACH VOLLEYBALL (WOMEN ONLY)	
ITEM	**NC**
Year NCAA Started Sponsoring Championship	2016
Combined Men's and Women's Championships?	N/A
Combined Men's and Women's Sport Committees?	N/A
Number of Teams/Individuals in Championship	8 teams
Squad Size/Travel Party Size	12/17
% of Student-Athletes Who Participate in Championship	9.5%
Broadcast Station (Final Match) (2020-21)	ESPN
NCAA Staff (FTE)	1.55
Budget Allocation	$507,761
Budget Allocation (2018-19)	$491,400
Spending (2018-19)	$986,373
Total Revenue (2018-19)	$498,573

BOWLING (WOMEN ONLY)	
ITEM	**NC**
Year NCAA Started Sponsoring Championship	2004
Combined Men's and Women's Championships?	N/A
Combined Men's and Women's Sport Committees?	N/A
Number of Teams/Individuals in Championship	16 teams
Squad Size/Travel Party Size	10/13
% of Student-Athletes Who Participate in Championship	17.4%
Broadcast Station (Final Match) (2020-21)	ESPNU
NCAA Staff (FTE)	0.71
Budget Allocation	$470,743
Budget Allocation (2018-19)	$322,254
Spending (2018-19)	$403,009
Total Revenue (2018-19)	$8,870

CROSS COUNTRY				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1981	1981	1981
	Men	1938	1958	1973
Combined Men's and Women's Championships?	**Women**	Joint	Joint	Joint
	Men			
Combined Men's and Women's Sport Committees?	**Women**	Yes	Yes	Yes
	Men			
Number of Teams/Individuals in Championship	**Women**	31 teams + 38 individuals	34 teams + 24 individuals	32 teams + 70 individuals
	Men	31 teams + 38 individuals	34 teams + 24 individuals	32 teams + 70 individuals
Squad Size/Travel Party Size	**Women**	7 (squad size) 3 non-athletes per team, 1 non-athlete per 1-3 individuals, and 2 non-athletes per 4-6 individuals (travel party size)	7 (squad size) 2 non-athletes per team, 1 non-athlete per 1-4 individuals, and 2 non-athletes for 5+ individuals (travel party size)	7 (squad size) 2 non-athletes per team and 1 non-athlete per 1-5 individuals (travel party size)
	Men			
% of Student-Athletes Who Participate in Championship[378]	**Women**	4.4%	6.9%	5.5%
	Men	5.1%	6.9%	5.4%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPNU	FloSports*	FloSports*
	Men			
NCAA Staff (FTE)	**Women**	0.45	0.46	0.28
	Men	0.54	0.46	0.27
Budget Allocation	**Women**	$654,215	$647,792	$693,809
	Men	$683,235	$672,229	$671,433
Budget Allocation (2018-19)	**Women**	$629,826	$568,613	$615,980
	Men	$670,253	$618,365	$594,480
Spending (2018-19)	**Women**	$670,485	$598,101	$630,547
	Men	$641,895	$619,854	$618,373
Total Revenue (2018-19)	**Women**	$28,800	$3,485	$5,423
	Men	$28,800	$3,485	$5,423

[378] Calculated as the total number of student-athletes who participate in the championship over the total number of student-athletes at NCAA member schools who are eligible for the championship.

FENCING		
ITEM	**GENDER**	**NC**
Year NCAA Started Sponsoring Championship	**Women**	1990
	Men	1941
Combined Men's and Women's Championships?	**Women**	Co-ed
	Men	
Combined Men's and Women's Sport Committees?	**Women**	Yes
	Men	
Number of Teams/Individuals in Championship	**Women**	72 individuals
	Men	72 individuals
Squad Size/Travel Party Size	**Women**	1-12 (squad size) [379]
	Men	Maximum of 5 non-athletes (travel party size)
% of Student-Athletes Who Participate in Championship	**Women**	10.8%
	Men	
Broadcast Station (Final Match) (2020-21)	**Women**	ESPN3/ESPNU (Tape Delay)
	Men	
NCAA Staff (FTE)	**Women**	0.50
	Men	
Budget Allocation	**Women**	$535,026
	Men	
Budget Allocation (2018-19)	**Women**	$526,264
	Men	
Spending (2018-19)	**Women**	$555,050
	Men	
Total Revenue (2018-19)	**Women**	$14,375
	Men	

[379] All participants qualify as individuals; maximum number of qualifiers per institution is 12.

FIELD HOCKEY (WOMEN ONLY)			
ITEM	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	1981	1981	1981
Combined Men's and Women's Championships?	N/A		
Combined Men's and Women's Sport Committees?	N/A		
Number of Teams/Individuals in Championship	18 teams	6 teams	24 teams
Squad Size/Travel Party Size	24/28	24/30	24/29
% of Student-Athletes Who Participate in Championship	23.4%	16.7%	14.3%
Broadcast Station (Final Match) (2020-21)	ESPNU	NCAA.com*	NCAA.com*
NCAA Staff (FTE)	0.84	0.75	0.47
Budget Allocation	$708,494	$246,700	$569,995
Budget Allocation (2018-19)	$674,824	$184,419	$508,420
Spending (2018-19)	$768,055	$220,095	$480,432
Total Revenue (2018-19)	$41,567	$2,405	$22,439

FOOTBALL (MEN ONLY)			
ITEM	**DI (FCS)**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	1978	1973	1973
Combined Men's and Women's Championships?	N/A		
Combined Men's and Women's Sport Committees?	N/A		
Number of Teams/Individuals in Championship	24 teams	28 teams	32 teams
Squad Size/Travel Party Size	70/145 (final round) 64/130 (preliminary rounds)	58/70	58/68
% of Student-Athletes Who Participate in Championship	19.2%	17.2%	13%
Broadcast Station (Final Match) (2020-21)	ESPN2	ESPNU*	ESPNU*
NCAA Staff (FTE)	3.6	1.0	1.04
Budget Allocation	$5,439,377	$2,812,570	$2,185,336
Budget Allocation (2018-19)	$5,400,045	$2,487,055	$2,044,140
Spending (2018-19)	$7,137,685	$3,216,972	$2,192,360
Total Revenue (2018-19)	$5,763,917	$448,643	$615,883

GOLF				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982	1996	1996
	Men	1939	1963	1975
Combined Men's and Women's Championships?	**Women**	Co-located (finals only)	No	No
	Men			
Combined Men's and Women's Sport Committees?	**Women**	No	No	No
	Men			
Number of Teams/Individuals in Championship	**Women**	72 teams + 36 individuals	48 teams + 24 individuals	29 teams + 6 individuals
	Men	81 teams + 45 individuals	80 teams + 32 individuals	43 teams + 6 individuals
Squad Size/Travel Party Size	**Women**	5 (squad size) 3 non-athletes per team and 1 non-athlete per 1-3 individuals (travel party size)	5/6 (squad size for regionals/finals) 2 non-athletes per team and 1 non-athlete per 1-3 individuals (travel party size)	5 (squad size) 2 non-athletes per team and individuals (travel party size)
	Men	5 (squad size) 3 non-athletes per team and 1 non-athlete per 1-3 individuals (travel party size)	5/6 (squad size for regionals/finals) 2 non-athletes per team and 1 non-athlete per 1-3 individuals (travel party size)	5 (squad size) 1 non-athletes per team and individuals (travel party size)
% of Student-Athletes Who Participate in Championship[380]	**Women**	15.4%	16.9%	8.8%
	Men	18.2%	19.3%	7.3%
Broadcast Station (Final Match) (2020-21)	**Women**	Golf Channel	NCAA.com	NCAA.com
	Men	Golf Channel	NCAA.com	NCAA.com
NCAA Staff (FTE)	**Women**	0.89	0.31	0.44
	Men	1.38	0.26	0.11
Budget Allocation	**Women**	$798,357	$738,733	$560,719
	Men	$922,867	$1,016,926	$716,034
Budget Allocation (2018-19)	**Women**	$779,551	$597,596	$410,390
	Men	$889,848	$877,873	$624,180

[380] Calculated as the total number of student-athletes who participate in the championship over the total number of student-athletes at NCAA member schools who are eligible for the championship.

GOLF				
ITEM	GENDER	DI	DII	DIII
Spending (2018-19)	**Women**	$989,727	$589,664	$420,260
	Men	$1,014,937	$854,465	$615,684
Total Revenue (2018-19)	**Women**	$251,625	$15,000	$0
	Men	$251,625	$0	$0

GYMNASTICS		
ITEM	**GENDER**	**NC**
Year NCAA Started Sponsoring Championship	**Women**	1982
	Men	1938
Combined Men's and Women's Championships?	**Women**	No
	Men	
Combined Men's and Women's Sport Committees?	**Women**	No
	Men	
Number of Teams/Individuals in Championship	**Women**	36 teams + 28 individuals
	Men	12 teams + 35 individuals
Squad Size/Travel Party Size	**Women**	15/20 (squad size) Maximum of 4 non-athletes per school for individual participants (travel party size)
	Men	12/17 (squad size) Maximum of 4 non-athletes per school for individual participants (travel party size)
% of Student-Athletes Who Participate in Championship[381]	**Women**	44.4%
	Men	80.0%
Broadcast Station (Final Match) (2020-21)	**Women**	ABC
	Men	Big Ten Network
NCAA Staff (FTE)	**Women**	1.34
	Men	0.62
Budget Allocation	**Women**	$824,649
	Men	$300,366
Budget Allocation (2018-19)	**Women**	$802,246
	Men	$289,126
Spending (2018-19)	**Women**	$1,164,234
	Men	$320,190
Total Revenue (2018-19)	**Women**	$785,313
	Men	$59,093

[381] Calculated as the total number of teams that participate in the championship over the total number of teams at NCAA member schools who are eligible for the championship.

ICE HOCKEY				
ITEM	**GENDER**	**NC (W) / DI (M)**	**NC (W)**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	2001		2002
	Men	1948	N/A	1984
Combined Men's and Women's Championships?	**Women**	No		No
	Men			
Combined Men's and Women's Sport Committees?	**Women**	No		No
	Men			
Number of Teams/Individuals in Championship	**Women**	8 teams		10 teams
	Men	16 teams	N/A	12 teams
Squad Size/Travel Party Size	**Women**	24/34		23/28
	Men	27/37	N/A	23/28
% of Student-Athletes Who Participate in Championship	**Women**	19.5%		14.9%
	Men	26.7%	N/A	14.3%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPNU		NCAA.com*
	Men	ESPN	N/A	NCAA.com*
NCAA Staff (FTE)	**Women**	0.67		0.43
	Men	2.62	N/A	0.33
Budget Allocation	**Women**	$615,289		$390,678
	Men	$1,974,187	N/A	$400,608
Budget Allocation (2018-19)	**Women**	$650,041		$318,910
	Men	$1,930,094	N/A	$380,950
Spending (2018-19)	**Women**	$656,827		$299,516
	Men	$4,235,662	N/A	$455,321
Total Revenue (2018-19)	**Women**	$154,189		$37,502
	Men	$5,842,212	N/A	$100,963

INDOOR TRACK & FIELD				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1983	1985	1985
	Men	1965	1985	1985
Combined Men's and Women's Championships?	**Women**	Joint	Joint	Joint
	Men			
Combined Men's and Women's Sport Committees?	**Women**	Yes	Yes	Yes
	Men			
Number of Teams/Individuals in Championship	**Women**	284 individuals	202 individuals	396 individuals
	Men	284 individuals	202 individuals	396 individuals
Squad Size/Travel Party Size	**Women**	N/A (squad size) Maximum of 5 non-athletes (travel party size)	N/A (squad size) Maximum of 2 non-athletes (travel party size)	N/A (squad size) Maximum of 4 non-athletes (travel party size)
	Men			
% of Student-Athletes Who Participate in Championship	**Women**	2.1%	3.2%	4.5%
	Men	2.7%	3.1%	4.0 %
Broadcast Station (Final Match) (2020-21)	**Women**	ESPN3	NCAA.com	NCAA.com*
	Men			
NCAA Staff (FTE)	**Women**	0.76	0.28	0.41
	Men	0.73	0.30	0.40
Budget Allocation	**Women**	$681,932	$713,548	$807,080
	Men	$863,473	$715,223	$878,373
Budget Allocation (2018-19)	**Women**	$659,373	$641,710	$764,475
	Men	$814,046	$657,313	$842,485
Spending (2018-19)	**Women**	$658,069	$573,337	$621,968
	Men	$773,005[382]	$578,172	$734,657[383]
Total Revenue (2018-19)	**Women**	$57,623	$12,620	$23,097
	Men	$57,623	$12,620	$23,097

[382] The Division I men's indoor track and field expenses include all expenses for the Division I Men's and Women's Track and Field and Cross Country Committee, including airfare, per diem, and lodging for the championship.

[383] The Division III men's indoor track and field expenses include all expenses for the Division III Men's and Women's Track and Field and Cross Country Committee, including airfare, per diem, and lodging for the championship.

LACROSSE				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982	2001	1985
	Men	1971	1974	1980
Combined Men's and Women's Championships?	**Women**	No[384]	No	No
	Men			
Combined Men's and Women's Sport Committees?	**Women**	No	No	No
	Men			
Number of Teams/Individuals in Championship	**Women**	29 teams	16 teams	44 teams
	Men	17 teams	12 teams	36 teams
Squad Size/Travel Party Size	**Women**	32/40	28/30	28/33
	Men	32/40	32/34	32/37
% of Student-Athletes Who Participate in Championship	**Women**	24.8%	14%	15.1%
	Men	23%	16%	14.6%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPNU	NCAA.com	NCAA.com
	Men	ESPN2	NCAA.com	NCAA.com
NCAA Staff (FTE)[385]	**Women**	1.01	0.34	0.67
	Men	1.99	0.81	0.91
Budget Allocation	**Women**	$1,387,859	$619,896	$1,011,543
	Men	$1,622,229	$358,353	$751,336
Budget Allocation (2018-19)	**Women**	$1,343,722	$623,598	$853,750
	Men	$1,655,657	$336,045	$636,990
Spending (2018-19)	**Women**	$1,737,259	$566,503	$1,049,977
	Men	$2,619,073	$586,709	$961,838
Total Revenue (2018-19)	**Women**	$417,773	$20,631	$43,077
	Men	$2,716,860	$443,807	$470,572

[384] As discussed in the Lacrosse Case Study, the Divisions I, II, and III Men's Lacrosse Championship finals are joint and occur at the same place and time. In 2025 and 2026, the Division I Women's Lacrosse Championship will join the Division I, II, and III Men's Lacrosse Championships in their joint championship.

[385] In April 2021, the NCAA increased the staff assigned to the Division I Women's Lacrosse Championship to parallel the staff assigned to the Division I Men's Lacrosse Championship. That change is not reflected in these numbers.

OUTDOOR TRACK & FIELD				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982[386]		
	Men	1921	1963	1974
Combined Men's and Women's Championships?	**Women**	Joint	Joint	Joint
	Men			
Combined Men's and Women's Sport Committees?	**Women**	Yes	Yes	Yes
	Men			
Number of Teams/Individuals in Championship	**Women**	1830 individuals[387]	283 individuals	546 individuals
	Men	1830 individuals[388]	283 individuals	508 individuals
Squad Size/Travel Party Size	**Women**	N/A (squad size) Maximum of 5 non-athletes per team (travel party size)	N/A (squad size) Maximum of 2 non-athletes per team (travel party size)	N/A (squad size) Maximum of 4 non-athletes per team (travel party size)
	Men			
% of Student-Athletes Who Participate in Championship	**Women**	13.4%	3.7%	5.8%
	Men	16.1%	3.6%	4.8%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPNU	NCAA.com	NCAA.com
	Men	ESPN2		
NCAA Staff (FTE)	**Women**	0.82	0.28	0.42
	Men	0.79	0.28	0.40
Budget Allocation	**Women**	$1,824,800	$914,670	$983,266
	Men	$1,905,225	$926,444	$957,863
Budget Allocation (2018-19)	**Women**	$1,723,448	$843,697	$939,610
	Men	$1,870,723	$855,134	$931,620
Spending (2018-19)	**Women**	$1,641,014	$1,006,722	$977,121
	Men	$1,660,194	$1,011,669	$956,944
Total Revenue (2018-19)	**Women**	$232,068	$11,443	$16,099
	Men	$237,028	$11,443	$16,099

[386] Each division had a separate championship beginning in 1982.

[387] This number includes regional participants.

[388] This number includes regional participants.

RIFLE		
ITEM	**GENDER**	**NC**
Year NCAA Started Sponsoring Championship	**Women**	1980
	Men	
Combined Men's and Women's Championships?	**Women**	Co-ed
	Men	
Combined Men's and Women's Sport Committees?	**Women**	Yes
	Men	
Number of Teams/Individuals in Championship	**Women**	48 individuals
	Men	
Squad Size/Travel Party Size	**Women**	N/A (squad size) Maximum 5 non-athletes (travel party size)
	Men	
% of Student-Athletes Who Participate in Championship	**Women**	16%
	Men	
Broadcast Station (Final Match) (2020-21)	**Women**	NCAA.com
	Men	
NCAA Staff (FTE)	**Women**	0.36
	Men	
Budget Allocation	**Women**	$231,249
	Men	
Budget Allocation (2018-19)	**Women**	$225,931
	Men	
Spending (2018-19)	**Women**	$180,516
	Men	
Total Revenue (2018-19)	**Women**	$18,590
	Men	

ROWING (WOMEN ONLY)			
ITEM	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	1997	2002	2002
Combined Men's and Women's Championships?	N/A		
Combined Men's and Women's Sport Committees?	N/A		
Number of Teams/Individuals in Championship	22 teams	6 teams	8 teams
Squad Size/Travel Party Size	25/31	16/21	21/26
% of Student-Athletes Who Participate in Championship	25%	37.5%	17.4%
Broadcast Station (Final Match) (2020-21)	NCAA.com	NCAA.com	NCAA.com
NCAA Staff (FTE)	0.6	0.21	0.21
Budget Allocation	$1,405,830	$471,591	$442,495
Budget Allocation (2018-19)	$1,341,503	$276,253	$428,430
Spending (2018-19)	$1,377,527	$267,102	$370,066
Total Revenue (2018-19)	$34,192	$8,548	$14,247

SKIING		
ITEM	**GENDER**	**NC**
Year NCAA Started Sponsoring Championship	**Women**	1983[389]
	Men	1954
Combined Men's and Women's Championships?	**Women**	Co-ed[390]
	Men	
Combined Men's and Women's Sport Committees?	**Women**	Yes
	Men	
Number of Teams/Individuals in Championship	**Women**	148 individuals
	Men	
Squad Size/Travel Party Size	**Women**	Skiing participants are determined by region and event (Nordic or Alpine) Central: 7 Nordic; East: 17 Alpine, 16 Nordic; West: 17 Alpine, 17 Nordic (squad size)[391] Maximum of 5 non-athletes (travel party size)
	Men	Skiing participants are determined by region and event (Nordic or Alpine) Central: 8 Nordic; East: 17 Alpine, 15 Nordic; West: 17 Alpine, 17 Nordic (squad size) Maximum of 5 non-athletes (travel party size)
% of Student-Athletes Who Participate in Championship	**Women**	17.6%
	Men	
Broadcast Station (Final Match) (2020-21)	**Women**	NCAA.com
	Men	
NCAA Staff (FTE)	**Women**	0.43
	Men	
Budget Allocation	**Women**	$614,739
	Men	

[389] Only men participated in the championship prior to 1983, but when women joined, it became a co-ed sport and championship.

[390] Even though NCAA National Collegiate Skiing is "mixed" gender, only men can compete in the men's events and only women can compete in the women's events at the championship.

[391] In addition to these guidelines, the maximum team size shall be 12 persons, three per gender per discipline, composed of a maximum of six men and six women. The maximum entry in an individual event for any team is three individuals.

SKIING		
ITEM	**GENDER**	**NC**
Budget Allocation (2018-19)	**Women**	$600,505
	Men	
Spending (2018-19)	**Women**	$596,328
	Men	
Total Revenue (2018-19)	**Women**	$0
	Men	

SOCCER				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982	1988	1986
	Men	1959	1972	1974
Combined Men's and Women's Championships?	**Women**	Partial Joint (only this year)	Partial Joint	Partial Joint
	Men			
Combined Men's and Women's Sport Committees?	**Women**	No	No	No
	Men			
Number of Teams/Individuals in Championship	**Women**	64 teams	56 teams	64 teams
	Men	48 teams	40 teams	64 teams
Squad Size/Travel Party Size	**Women**	22/28	24/28	24/29
	Men	21/27	24/28	24/29
% of Student-Athletes Who Participate in Championship	**Women**	19.1%	22.0%	14.6%
	Men	23.5%	19.7%	15.3%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPNU	NCAA.com*	NCAA.com*
	Men	ESPN2	NCAA.com*	NCAA.com*
NCAA Staff (FTE)	**Women**	1.16	0.65	0.55
	Men	1.03	0.79	0.63
Budget Allocation	**Women**	$2,584,829	$1,613,902	$1,418,138
	Men	$2,250,368	$1,301,742	$1,399,137
Budget Allocation (2018-19)	**Women**	$2,507,718	$1,533,886	$1,330,600
	Men	$2,152,552	$1,162,992	$1,248,040
Spending (2018-19)	**Women**	$3,487,928	$1,523,331	$1,314,859
	Men	$2,411,151	$1,199,217	$1,174,260
Total Revenue (2018-19)	**Women**	$659,792	$53,915	$66,715
	Men	$496,656	$32,853	$64,481

SWIMMING & DIVING				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982	1982	1982
	Men	1938	1964	1975
Combined Men's and Women's Championships?	**Women**	Occasionally Co-located[392]	Joint	Joint
	Men			
Combined Men's and Women's Sport Committees?	**Women**	Yes	Yes	Yes
	Men			
Number of Teams/Individuals in Championship	**Women**	322 individuals	146 individuals	319 individuals
	Men	270 individuals	146 individuals	260 individuals
Squad Size/Travel Party Size[393]	**Women**	18 (squad size) Maximum of 5 non-athletes (travel party size)	18 (squad size) Maximum of 2 non-athletes (travel party size)	18 (squad size) Maximum of 4 non-athletes (travel party size)
	Men	18 (squad size) Maximum of 5 non-athletes (travel party size)	18 (squad size) Maximum of 2 non-athletes (travel party size)	18 (squad size) Maximum of 4 non-athletes (travel party size)
% of Student-Athletes Who Participate in Championship	**Women**	5.6%	6.7%	6%
	Men	7.2%	9.0%	6%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPNU	NCAA.com	NCAA.com*
	Men	ESPNU		
NCAA Staff (FTE)	**Women**	0.85	0.29	0.39
	Men	0.53	0.28	0.43
Budget Allocation	**Women**	$814,476	$614,088	$704,056
	Men	$803,952	$489,604	$675,307
Budget Allocation (2018-19)	**Women**	$790,685	$491,791	$696,960
	Men	$781,772	$420,042	$630,960
Spending (2018-19)[394]	**Women**	$975,579	$481,781	$705,166
	Men	$994,154	$414,050	$643,109

[392] In some years, the Division I Men's and Women's Swimming and Diving Championships are held at the same location; in other years, they are not held at the same location.

[393] For swimming and diving, the squad size is counted as follows: "An entrant who swims will be counted as one competitor"; "An entrant who swims and dives will be counted as one competitor"; "An entrant who only dives will be counted as one-half of a competitor in the total team limit"; and "For relays, actual participation in the preliminary heats and/or finals of an event shall be counted against the 18 competitors allowed." 2021 Division I Swimming & Diving Championships Pre-Championships Manual.

[394] The men's swimming and diving expenses include almost all of the expenses for the division's Men's and Women's Swimming and Diving Committee, including airfare, per diem, and lodging for the championship.

SWIMMING & DIVING				
ITEM	GENDER	DI	DII	DIII
Total Revenue (2018-19)	**Women**	$154,817	$23,728	$52,708
	Men	$154,817	$23,728	$52,708

TENNIS				
ITEM	**GENDER**	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1982	1982	1982
	Men	1946	1963	1976
Combined Men's and Women's Championships?	**Women**	Partial Joint	Partial Joint	Partial Joint
	Men			
Combined Men's and Women's Sport Committees?	**Women**	Yes	Yes	No
	Men			
Number of Teams/Individuals in Championship	**Women**	128 individuals + 64 teams	48 teams	49 teams + 32 singles players and 16 doubles teams
	Men	128 individuals + 64 teams	48 teams	44 teams + 32 singles players and 16 doubles teams
Squad Size/Travel Party Size	**Women**	9 (squad size) 4 non-athletes per team and 1 non-athlete per 1-3 individuals (travel party size)	9 (squad size) 2 non-athletes per team (travel party size)	9 (squad size) 2 non-athletes per team and 1 non-athlete per 1-5 individuals (travel party size)
	Men			
% of Student-Athletes Who Participate in Championship[395]	**Women**	20.6%	23.5%	13.3%
	Men	25.5%	32.2%	13.3%
Broadcast Station (Final Match) (2020-21)	**Women**	Tennis Channel	NCAA.com	NCAA.com
	Men	Tennis Channel	NCAA.com	NCAA.com
NCAA Staff (FTE)	**Women**	0.72	0.35	0.51
	Men	0.39	0.36	0.11
Budget Allocation	**Women**	$834,237	$695,572	$788,722
	Men	$845,997	$772,238	$754,694
Budget Allocation (2018-19)	**Women**	$811,885	$680,233	$742,520
	Men	$800,704	$695,198	$700,520
Spending (2018-19)	**Women**	$904,488	$638,680	$702,770
	Men	$945,004	$649,336	$670,845
Total Revenue (2018-19)	**Women**	$46,870	$1,417	$0
	Men	$47,651	$1,137	$0

[395] Calculated as the total number of teams that participate in the championship over the total number of teams at NCAA member schools who are eligible for the championship.

VOLLEYBALL				
ITEM	**GENDER**	**DI (W) / NC (M)**	**DII (W) / NC (M)**	**DIII**
Year NCAA Started Sponsoring Championship	**Women**	1981	1981	1981
	Men	1970		2012
Combined Men's and Women's Championships?	**Women**	No		
	Men			
Combined Men's and Women's Sport Committees?	**Women**	No		
	Men			
Number of Teams/Individuals in Championship	**Women**	64 teams	64 teams	64 teams
	Men	7 teams		16 teams
Squad Size/Travel Party Size	**Women**	15/22	17/20	17/22
	Men	15/21		17/22
% of Student-Athletes Who Participate in Championship	**Women**	19.2%	21.5%	14.8%
	Men	14.6%		14.8%
Broadcast Station (Final Match) (2020-21)	**Women**	ESPN2	NCAA.com*	NCAA.com*
	Men	ESPNU		NCAA.com*
NCAA Staff (FTE)	**Women**	3.11	0.52	0.40
	Men	0.62		0.45
Budget Allocation	**Women**	$2,667,567	$1,623,022	$1,227,844
	Men	$260,641		$380,719
Budget Allocation (2018-19)	**Women**	$2,547,784	$1,204,694	$1,158,420
	Men	$247,149		$319,890
Spending (2018-19)	**Women**	$3,811,633	$1,526,998	$1,185,134
	Men	$376,942		$280,464
Total Revenue (2018-19)	**Women**	$3,000,600	$72,802	$66,495
	Men	$172,806		$13,077

WATER POLO		
ITEM	**GENDER**	**NC**
Year NCAA Started Sponsoring Championship	**Women**	2001
	Men	1969
Combined Men's and Women's Championships?	**Women**	No
	Men	
Combined Men's and Women's Sport Committees?	**Women**	No
	Men	
Number of Teams/Individuals in Championship	**Women**	10 teams
	Men	8 teams
Squad Size/Travel Party Size	**Women**	16/20
	Men	16/20
% of Student-Athletes Who Participate in Championship	**Women**	15.4%
	Men	16.3%
Broadcast Station (Final Match) (2020-21)	**Women**	NCAA.com
	Men	NCAA.com
NCAA Staff (FTE)	**Women**	0.52
	Men	0.59
Budget Allocation	**Women**	$348,539
	Men	$268,030
Budget Allocation (2018-19)	**Women**	$335,336
	Men	$223,305
Spending (2018-19)	**Women**	$326,138
	Men	$265,594
Total Revenue (2018-19)	**Women**	$42,682
	Men	$78,049

WRESTLING (MEN ONLY)			
ITEM	**DI**	**DII**	**DIII**
Year NCAA Started Sponsoring Championship	1928	1963	1974
Combined Men's and Women's Championships?	N/A		
Combined Men's and Women's Sport Committees?	N/A		
Number of Teams/Individuals in Championship	330 individuals	180 individuals	180 individuals
Squad Size/Travel Party Size	Maximum of 5 non-athletes (travel party size)	Maximum of 2 non-athletes (travel party size)	Maximum of 4 non-athletes (travel party size)
% of Student-Athletes Who Participate in Championship	13.0%	9%	5.8%
Broadcast Station (Final Match) (2020-21)	ESPN	NCAA.com	NCAA.com
NCAA Staff (FTE)	2.59	0.73	0.88
Budget Allocation	$1,355,193	$562,068	$471,843
Budget Allocation (2018-19)	$1,396,043	$515,474	$455,190
Spending (2018-19)	$2,317,219	$551,468	$567,987
Total Revenue (2018-19)	$5,887,919	$70,448	$96,361

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EXHIBIT 3

To the Declaration of Rakesh N. Kilaru

REDACTED VERSION OF DOCUMENT REQUESTED TO BE FILED UNDER SEAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL LITIGATION	Case No. 4:20-cv-03919 CW

EXPERT REPORT OF BARBARA OSBORNE

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I. INTRODUCTION

A. Qualifications

1. My name is Barbara Osborne. I am a professor at the University of North Carolina at Chapel Hill with a joint appointment in the Department of Exercise and Sport Science and the School of Law. In the Exercise and Sport Science department I direct the graduate program in Sport Administration, which was the first graduate program in the country to focus solely on preparing graduate students for careers in college athletics. Additionally, I teach two graduate courses: Legal Issues in College Athletics and NCAA Governance and Compliance. At the Law School, I teach courses in Amateur Sport Law and Professional Sport Law. I also direct the dual degree (J.D./M.S.) program in Law and Sport Administration. I have taught at University of North Carolina since 1998.

2. I have a Masters' Degree in Sport Management from Boston University and a J.D. from Boston College Law School. I have been a member of the Massachusetts Bar since 1997 and the North Carolina Bar since 2002.

3. In addition to teaching, I conduct research and have written 33 book chapters for various sport law and sport management texts, published 44 articles in academic journals including 38 invited publications. Many of the numerous articles and book chapters I have authored are related to Title IX, gender equity, and other legal issues in college athletics. A complete copy of publications is detailed in the attached curriculum vitae, **EXHIBIT A**.

4. I am a co-author of the leading sport law textbook used at law schools throughout the United States. I am also the co-author of a popular undergraduate/graduate level sport law textbook. For each of these textbooks, I am the principal author for the chapters on high school and college sports, Title IX, and gender equity.

5. In addition to my educational work, I serve as an independent Title IX consultant, conducting Title IX programmatic reviews, audits, and/or evaluations for collegiate institutions, school systems, and athletics programs. In this consulting capacity I conduct Title IX related training sessions for athletics departments at all levels. I have also served as an expert witness on Title IX issues in litigation.

6. As a result of my extensive expertise in Title IX and gender equity, I have been appointed by courts in Pennsylvania and Florida to provide Title IX education and training at defendant institutions as part of settlements. More recently, I was appointed by the federal court in Connecticut to serve as an independent monitor of Title IX issues within the athletics department of a large university as part of the settlement of that case. That appointment remains ongoing and requires a periodic assessment of the entire athletics program under the requirements of Title IX.

7. Relevant to all my work, teaching, and publications is my past experience as a collegiate student-athlete and a university athletics administrator. Shortly after the passage of Title IX, I was a collegiate athlete at the University of Wisconsin-Parkside participating in cross country and track. I was able to experience firsthand the initial impact of Title IX and how differing treatment based on sex can impact the daily experience of a student-athlete. After college, I became involved in the administration and oversight of collegiate athletics by working in a university's athletics department for 15 years. During that time, I held different positions and eventually served as an Associate Athletics Director and Senior Woman Administrator ("SWA"). The SWA is the most senior woman administrator in the athletics department and often plays a key role in the oversight of the institution's compliance with Title IX. As a result of my role in that position, I was able to be a contributing member of senior management within the athletics department and came to understand and appreciate the application of Title IX in the context of the

real-life operation of an athletics department. In addition, I was able to see how decision making on issues that may not have appeared to be related to Title IX, nonetheless had Title IX impacts.

8. Relevant previous employment includes serving Of Counsel for Ice Miller, LLP in its college sports practice group, working for a sport attorney/agent, and engaging in freelance assignments in sports broadcasting.

9. I am being compensated at an hourly rate of $250 per hour for research- and analysis-related activities and $400 per hour for deposition and trial testimony, plus reimbursement of expenses. I have no financial interest in the outcome of this matter. I have not testified as an expert at deposition or trial within the last four years. A list of all publications I have authored in the last ten years is available in **EXHIBIT A**.

10. I reserve the right to amend or supplement this report, including but not limited to as new information on the subject matter of this report becomes available.

B. Assignment

11. I have been asked by counsel for Defendants the Pac-12 Conference (the "Pac-12"), the Big 12 Conference, Inc. (the "Big 12"), the Southeastern Conference (the "SEC"), the Atlantic Coast Conference (the "ACC"), and the Big Ten Conference, Inc. (the "Big Ten") (collectively, the "Conferences"), together with the National Collegiate Athletic Association (the "NCAA," and collectively with the Conferences, the "Defendants") to evaluate Plaintiffs' Motion for Class Certification and the accompanying expert reports of Dr. Daniel Rascher ("Rascher") and Mr. Edwin Desser ("Desser").

12. More specifically, I have been asked to assess whether there are Title IX implications and/or gender equity concerns raised by Plaintiffs' proposed broadcast revenue share payment model ("Broadcast Model"). To perform this assignment, I used a methodology based on the one that I normally use in the other Title IX audits or reviews that I conduct but tailored to

the facts of this case.[1] My approach in this regard included a comprehensive review of documents, a review of the depositions of the key individuals involved including Plaintiffs and Plaintiffs' expert witnesses, and then a final analysis with the requirements of Title IX in mind, and finally, the preparation of this report. It was important to review the deposition transcripts identified above and the documents referenced below so that I could have a clear understanding of the relevant facts, issues and desired approach.

13. Excerpted in **APPENDIX A** is a list of documents and information I consulted in reaching my opinions.

C. Plaintiffs' But-For World Overview

14. Having reviewed the information described above, the following is my understanding of Plaintiffs' but-for world. Plaintiffs seek to certify a Football and Men's Basketball Class, a Women's Basketball Class, and an Additional Sports Class. The first two proposed Classes are limited to student-athletes who receive full grant-in-aid ("GIA") scholarships and compete on a Division I men's or women's basketball team or an FBS football team at any Conference school.[2] Plaintiffs have proposed three damages models in their Motion for Class Certification that contemplate what would have happened in the "but-for" world, dating back to 2016:

1. Broadcast Model

15. The Broadcast Model envisions that broadcast revenues would be shared with full GIA scholarship football and basketball players (the Football and Men's Basketball Class and

[1] While I may include a campus visit as part of an institutional Title IX review, given the nature of this case, a campus visit was not relevant. In addition, while I often include a series of interviews with key individuals, in the course of litigation a review of the deposition transcripts of the relevant individuals as I have done here is more appropriate.
[2] *See* Pls.' Mot. for Class Cert., ECF No. 209, p. v.

Women's Basketball Class) participating at the Conferences' member schools and the University of Notre Dame.

(a) The Broadcast Model asserts that each Conference would have paid 10% of its respective broadcast revenue to certain qualifying student-athletes (i.e., those in the Football and Men's Basketball Class and the Women's Basketball Class) from 2016 forward.[3]

(b) Of the 10% of broadcast revenue paid directly to student-athletes in the Football and Men's Basketball Class and in the Women's Basketball Class, the Broadcast Model would allocate at least 75% to football, at least 15% to men's basketball, and no more than 5% to women's basketball.[4] (Some of the broadcast revenues are received under single-sport contracts for broadcast rights to football games, and some are received under single-sport contracts for broadcast rights to men's basketball games. Plaintiffs allocate the 10% revenue share from those single-sport contracts in full to football and men's basketball student-athletes respectively. Plaintiffs apply their allocation percentages only to broadcast revenues received under multi-sport agreements).

(c) The Broadcast Model envisions that the broadcast revenue shares allocated to football, men's basketball, and women's basketball by each Conference would be distributed by each Conference in equal payments to full GIA scholarship student-athletes who play each sport within the relevant classes.[5]

16. Plaintiffs seek to obtain a share of broadcast revenues, including past revenues, based on their Broadcast Model.

17. The Broadcast Model envisions that the overwhelming majority of broadcast

[3] *Id.*, pp. v, 30.
[4] Expert Report of Daniel A. Rascher, dated Oct. 21, 2022 ("Rascher Rep.") ¶ 176. Plaintiffs' experts do not allocate the remaining share of broadcast revenues.
[5] *Id.* ¶ 163.

revenues paid to student-athletes in the past would have benefitted male student-athletes.

18. This report will focus on the Broadcast Model, which poses significant Title IX issues.

2. Broadcast Model Revenue Overview

19. The total amount of broadcast revenue payments Plaintiffs seek through the Broadcast Model is over $4.1 billion (when trebled). Plaintiffs reserve their right to increase the claim.

20. Of the roughly 113 total student-athletes at each institution who would receive a revenue share under the Broadcast Model in each year of the class period, at least 86.7% are male student-athletes.

(a) For reference, there are up to 98 male student-athletes (the maximum number of full GIA scholarship student-athletes for football and men's basketball combined) and only 15 female student-athletes (the maximum number of full GIA scholarship student-athletes for women's basketball) at each member institution who would receive payments each year under the Broadcast Model.[6]

(b) The gender disparity inherent in the Broadcast Model is even more significant over the entire class period. The Football and Men's Basketball Class includes an average of 6,170 members, making up on average 88% of the total student-athletes per year who would receive payments under the Broadcast Model. Meanwhile, the Women's Basketball Class includes only 849 members per year on average, comprising an average of just 12% of the total

[6] NCAA rules permit each institution to offer full GIA scholarships to a maximum total of 85 football players, 13 men's basketball players, and 15 women's basketball players. *See* 2022-23 NCAA Division I Manual, Bylaw 15.5 Maximum Institutional Grant-in-Aid Limitations by Sport: Bylaw 15.5.5.1 Men's Basketball; Bylaw 15.5.5.2 Women's Basketball; Bylaw 15.5.6.1 Football (NCAAHOUSE00250045-57).

student-athletes who would receive payments per year under the Broadcast Model.[7]

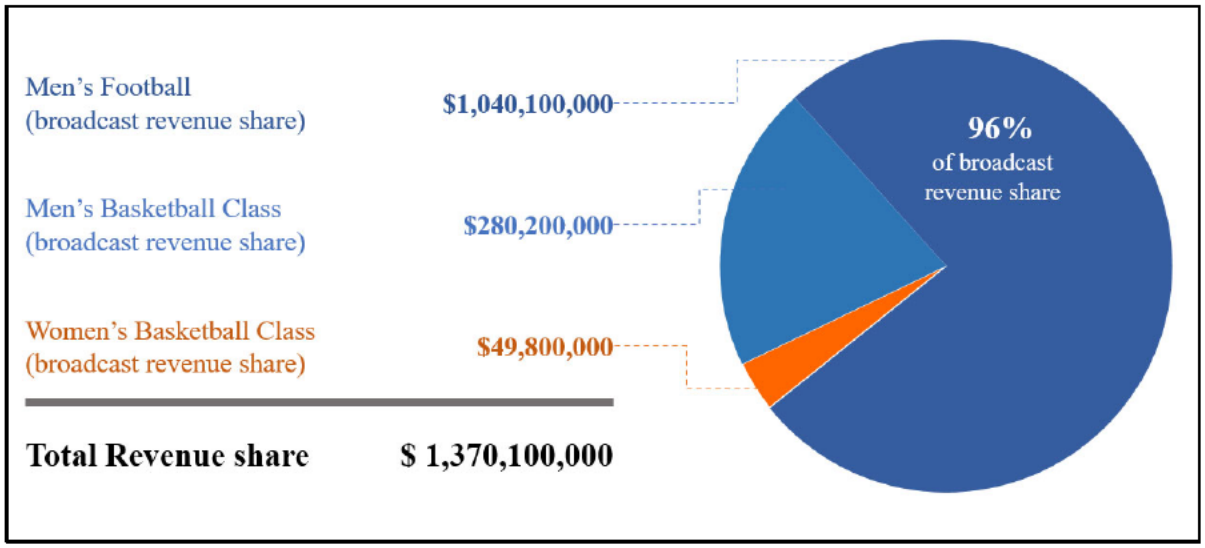
21. Plaintiffs assert that each class would have received the following total amount of broadcast revenue payments in the but-for world:

CLASS	BROADCAST PAYMENT
Football and Men's Basketball Class	$ 1,320,300,000.00
Women's Basketball Class	$ 49,800,000.00
Total Payments (before trebling)	**$ 1,370,100,000.00**
Percent of Broadcast Payments to Football/Men's Basketball Class	**96%**

22. Of the $1,370,100,000 in total payments that Plaintiffs seek through the Broadcast Model, **at least 96% of total payments ($1,320,300,000) are allocated to male student-athletes** in the Football and Men's Basketball Class.

23. A chart outlining the total payments Rascher calculates in the but-for world is excerpted in **APPENDIX B**.

24. The allocations in the above chart can be further depicted as follows, with Plaintiffs' Broadcast Model allocating overwhelmingly disproportionate revenue share payments to men's sports:



[7] Rascher Rep., p. 93, Ex. 11. *See also* **APPENDIX C**, which contains a chart depicting the total number of student-athlete class members per sport per year according to Rascher's Exhibit 11. This chart demonstrates that, each year, around 88% of the total student-athletes to receive broadcast payments are male, while only 12% are female.

25. The payments from the Conferences to male and female student-athletes contemplated by the Broadcast Model can be summarily presented as follows:

Redacted - NSC	
Sport Allocated Broadcast Revenue	**Range from 2016-2021, per player each year**
Men's Football	**$24,600 to $30,500**
Men's Basketball	**$36,000 to $57,700**
Women's Basketball	**$7,000 to $8,900**
Redacted - NSC	
Sport Allocated Broadcast Revenue	**Range from 2016-2021, per player each year**
Men's Football	**$23,500 to $34,700**
Men's Basketball	**$43,700 to $64,400**
Women's Basketball	**$5,300 to $9,600**
Redacted - NSC	
Sport Allocated Broadcast Revenue	**Range from 2016-2021, per player each year**
Men's Football	**$36,000 to $42,500**
Men's Basketball	**$52,600 to $74,000**
Women's Basketball	**$12,400 to $14,100**
Redacted - NSC	
Sport Allocated Broadcast Revenue	**Range from 2016-2021, per player each year**
Men's Football	**$23,100 to $28,000**
Men's Basketball	**$33,300 to $57,200**
Women's Basketball	**$6,000 to $7,300**
Redacted - NSC	
Sport Allocated Broadcast Revenue	**Range from 2016-2021, per player each year**
Men's Football	**$24,500 to $46,000**
Men's Basketball	**$63,700 to $85,200**
Women's Basketball	**$7,400 to $16,000**

26. As these summary charts demonstrate, Plaintiffs' Broadcast Model disproportionately benefits male student-athletes.

[8] Rascher Rep., p. 94, Ex. 12.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

II. SUMMARY OF OPINIONS

27. Title IX prohibits educational institutions from discriminating on the basis of sex in the operation of their intercollegiate athletics programs. Title IX's implementing regulations specify that institutions cannot provide financial assistance in a discriminatory manner and must make available athletic scholarships to student-athletes of both genders in an aggregate amount proportional to their athletic participation rates. The regulations also require that the treatment and benefits institutions provide to or for the men's athletic program be equivalent to those provided to or for the women's athletics program. Agency guidance published by the Office of Civil Rights explains these and other requirements in detail as they apply to intercollegiate athletics.

28. Here, Plaintiffs' Broadcast Model seeks to overwhelmingly compensate male student-athletes in the two primary "revenue-generating" sports (football and men's basketball) at a rate of 98 players per school. It then includes a token number of women (15) in the form of the women's basketball team, but intentionally excludes all other female student-athletes. The Model also ignores the deliberate balancing of support provided throughout athletic departments to the men's and women's athletic programs, as required by Title IX. Instead, as described below, Plaintiffs' Broadcast Model attempts to remove Title IX's prohibitions in the but-for world by providing a disparate level of financial assistance and treatment and benefits that disproportionately benefits football and men's basketball teams and their male student-athletes. If I were conducting a Title IX audit of an institution that provided or facilitated the payments proposed by Plaintiffs' Broadcast Model, I would advise that providing benefits to select teams in such a lopsided manner along sex-based lines would violate Title IX.

29. Congress expressly and repeatedly rejected efforts to exclude net-revenue-generating sports (such as football and men's basketball) from the requirements of Title IX. Plaintiffs' Broadcast Model would require the Court to disregard clear legislative history and

rewrite established Title IX law. Practically, such a decision would eviscerate this core requirement of Title IX, which could in turn mean that not only broadcast revenue would be excluded from Title IX's coverage but also other revenue, including private donations to institutions. Permitting private institutional funding to benefit select student-athletes and teams without regard for gender equity concerns would eliminate Title IX's equivalence standard for financial assistance, athletic scholarships, treatment, and benefits within intercollegiate athletics.

30. Institutional Title IX obligations apply to the broadcast revenue the Conferences distribute to their member schools. Indeed, a broadcast revenue sharing model (supposedly based on individual student-athletes' "NIL") necessarily requires (i) payments arising from broadcast rights that belong to and/or are controlled by educational institutions (the Conferences' individual member institutions) and (ii) disbursements to student-athletes authorized by those institutions. The direct institutional involvement necessary to make such payments implicates Title IX, which requires educational institutions to distribute financial and other resources and benefits to student-athletes in a nondiscriminatory manner.

31. If I were conducting a Title IX audit, I would flag Plaintiffs' Broadcast Model as a violation of the Title IX regulations and Policy Interpretation sections governing the provision of financial assistance. The regulatory provision on financial assistance is broader in scope than the provision on the award of athletic scholarships and would prohibit the disparate payments posited in Plaintiffs' Broadcast Model, even if those payments were made by the Conferences. Specifically, the regulation prohibits the award of financial assistance on a discriminatory basis (such as contemplated by Plaintiffs' Broadcast Model). Plaintiffs' broadcast payments overwhelmingly benefit male student-athletes which, in my opinion, is inconsistent with awarding financial assistance equitably based on sex.

32. Plaintiffs' proposed payments also create a significant disparity in the relative equivalence of treatment and benefits among the men's and women's athletic programs overall to such an extent that I would flag the payment scheme as a violation of Title IX if I were conducting an audit. Similarly, the payments would deny female student-athletes equal opportunity with respect to their treatment and participation in intercollegiate athletics.

33. In sum, as structured by Plaintiffs, the contemplated broadcast revenue share payments are not compatible with Title IX, and in particular, Title IX's financial assistance provisions, equal opportunities provision, and equal treatment provision. Plaintiffs' Broadcast Model forces schools to treat male and female student-athletes differently and offer them vastly disparate benefits. Title IX is a nondiscrimination law that was designed in part to prevent this very scenario.

III. TITLE IX FUNDAMENTALS AND LEGISLATIVE HISTORY

34. Understanding whether a course of action implicates Title IX requires familiarity with Title IX's goals, legislative history and intent, and historic application. Reviewing those areas is critical to identifying and evaluating the potential Title IX implications of Plaintiffs' Broadcast Model. I am familiar with the history and purpose of Title IX from my experiences as a student-athlete, athletics administrator, teacher, scholar, and consultant.

35. As described in detail below, Congress expressly rejected efforts to amend Title IX to exempt revenue generated by specific sports teams from the law's coverage. Such an exemption would have allowed institutions and athletics departments to use revenue to benefit only the teams responsible for the revenue generation. Despite repeated legislative attempts to create this type of carve-out for revenue-generating sports, Title IX has always prohibited universities from treating revenue-producing and non-revenue-producing sports differently.

A. The Enactment of Title IX and Its Implementing Regulations

36. Title IX of the Education Amendments of 1972 states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[13]

37. Congress enacted Title IX to address the significant educational inequalities for girls and women that existed before its passage.[14]

(a) At the college and university level, many institutions were male-only. The limited number of institutions that admitted women often did so only insofar as necessary to meet small quotas for women's admission. These institutions also typically required women applicants to exceed admissions requirements for men by demonstrating higher grades and test scores than their male counterparts.[15]

(b) For those women admitted to co-educational institutions, scholarships and curricular options were limited. Women were directed toward teacher education programs and sometimes prohibited from professional schools such as engineering, medicine, and law. Boys and men were also gender stereotyped in their academic choices, as boys were not allowed to take home economics classes and men were typically prohibited from nursing schools.[16]

(c) Athletics opportunities for women were also limited (and, in many schools, nonexistent) before Title IX's enactment.[17] Female participants in college athletics were first

[13] 20 U.S.C. § 1681(a).

[14] *See generally Equal Access to Education: Forty Years of Title IX*, U.S. Dept. of Justice (June 23, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf.

[15] *Id.* at 2.

[16] *Id*. at 2, n.7.

[17] Jocelyn Samuels & Kristen Galles, *In Defense of Title IX: Why Current Policies Are Required to Ensure Equality of Opportunity*, 14 Marq. Sports L. Rev. 11, 18–19 (2003) ("Samuels & Galles").

counted in the 1966-67 academic year. At that time, there were 10 times as many male student-athletes as female student-athletes.[18] By the time Congress passed Title IX, there were approximately 31,852 women participating in college sports, compared to 172,447 men.[19]

38. President Richard Nixon signed Title IX into law on June 23, 1972.[20]

39. The Department of Health, Education, and Welfare[21] soon promulgated regulations implementing Title IX. President Gerald R. Ford signed the Department of Health, Education, and Welfare's Title IX regulations on May 27, 1975 (the "Regulations"). The Regulations addressed Title IX's application to every aspect of sex discrimination in education, including athletics.[22]

40. Four months after the Regulations became effective, the Department of Education's Office for Civil Rights ("OCR")[23] issued its first "Dear Colleague Letter"[24] regarding Title IX.[25] This Letter (and other subsequent OCR guidance materials) clarified numerous aspects of the Regulations.[26]

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[18] In the 1966-67 school year there were 15,182 women versus 151,198 men participating in college athletics. *NCAA Sports Sponsorship and Participation Rates Report (1956-57 through 2020-21)*, p. 129 (Oct. 27, 2022), https://ncaaorg.s3.amazonaws.com/research/sportpart/2022RES_SportsSponsorshipParticipationRatesReport.pdf.

[19] Samuels & Galles, *supra*, at 18–19. For a more detailed history of college sports, *see* **APPENDIX E**.

[20] *Legislative Path to Title IX. Title IX of the Education Amendments of 1972: Resources from the Law Library*, Library of Congress, https://guides.loc.gov/title-IX-law-library-resources/legislative-path.

[21] Congress redesignated the Department of Health, Education and Welfare as the Department of Health and Human Services in 1979. At the same time, Congress established the Department of Education and transferred the Department of Health, Education and Welfare's education-related responsibilities, including Title IX administration and enforcement, to the newly formed Department of Education. *See* Pub. L. No. 96-88, 93 Stat. 668 (Oct. 17, 1979).

[22] The Regulations included provisions regarding the admissions process (34 C.F.R. § 106.21 (1975)); housing (34 C.F.R. § 106.32 (1975)); financial aid (34 C.F.R. § 106.37 (1975)); student marital and parental status (34 C.F.R. § 106.40 (1975)); employment (34 C.F.R. § 106.51 (1975)); and athletics (34 C.F.R. § 106.41 (1975)).

[23] The Office for Civil Rights is the federal agency charged with enforcing Title IX. *Title IX and Sex Discrimination*, U.S. Dep't of Educ. (Aug. 2021), https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

[24] Dear Colleague Letters are guidance documents issued by the Office for Civil Rights to advise educational institutions and others on the implementation of certain federal legislation within the education field.

[25] Peter E. Holmes, *Letter to Chief State School Officers, Title IX Obligations in Athletics*, U.S. Dep't of Educ., Off. of Civ. Rts. (Nov. 11, 1975), https://www2.ed.gov/about/offices/list/ocr/docs/holmes html ("Holmes Letter").

[26] *Id.*

41. On December 11, 1979, OCR published *A Policy Interpretation: Title IX and Intercollegiate Athletics* (the "Policy Interpretation") which provides substantive direction on how compliance with Title IX is assessed within collegiate athletics.[27]

B. Title IX Fundamentals

1. What Is Title IX?

42. Title IX, as applied to athletics, was designed to ensure that female student-athletes have equal opportunities and receive equal treatment. It places equal participation and opportunity at the core of college athletics.[28]

43. OCR assesses compliance with Title IX in three primary areas within an athletics program: (1) financial assistance; (2) treatment and benefits; and (3) participation opportunities.[29]

44. This section briefly addresses these three main components of Title IX. Later sections explain how, if I were conducting an audit, I would flag Plaintiffs' Broadcast Model as a violation of Title IX's requirements in each regard.

a. Financial Assistance

45. The Title IX financial assistance regulations[30] broadly prohibit providing different amounts or types of financial assistance based on sex.

46. The Regulations provide:

> [I]n providing financial assistance to any of its students, a recipient [of federal funding] shall not: (1) On the basis of sex, **provide different amount or types of such assistance**, **limit eligibility for such assistance which is of any particular type or source, apply different criteria**, or otherwise discriminate; [or] (2) Through solicitation, listing, **approval**, provision of facilities or other services, **assist any foundation, trust, agency, organization, or person which provides assistance to any of**

[27] Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413-23 (1979), https://www2.ed.gov/about/offices/list/ocr/docs/t9interp html ("Policy Interpretation").
[28] 34 C.F.R. § 106.41 (1975); *see also* Policy Interpretation § IV.
[29] Policy Interpretation §§ VII.A.-B.
[30] 34 C.F.R. § 106.37.

> **such recipient's students in a manner which discriminates on the basis of sex**[.][31]

47. "Financial assistance" is broad enough to include any financial assistance offered to student-athletes by an entity subject to Title IX.[32]

48. This subsection of the Regulations prohibits institutions that receive federal funds from distributing or aiding in the distribution of any form of financial assistance in a way that discriminates on the basis of sex.

49. The Regulations also include expectations regarding the distribution of athletic financial assistance which is generally viewed as consisting of athletic scholarships or GIA (collectively, "financial aid"), a narrower subset of financial assistance.[33] This subsection of the Regulations states that, "[t]o the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in . . . intercollegiate athletics."[34]

50. The Regulations' provision on athletic scholarships requires considering whether athletic scholarships are provided "in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."[35]

51. Compliance in this context requires institutions to demonstrate that the total amount of financial aid available to student-athletes of each sex is substantially proportionate to their participation rates in the institution's athletics program. An institution will be found in compliance if the proportion of all athletics aid that the institution provides to student-athletes of each sex is

[31] 34 C.F.R. § 106.37(a) (emphasis added).
[32] 34 C.F.R. § 106.37. Throughout the general provisions, the Regulations refer to "other forms of financial assistance" four separate times.
[33] 34 C.F.R. § 106.37(c).
[34] 34 C.F.R. § 106.37(c)(1).
[35] *Id*.

within 1% of the proportion of all student-athletes at the institution that are male or female, respectively, or if any disparity can be explained based on legitimate, nondiscriminatory factors.[36] An unexplained disparity of more than 1% in the financial aid budget for student-athletes of either sex gives rise to a strong presumption of a violation of Title IX's "substantially proportionate" financial aid requirement.[37]

52. The gender breakdown of the distribution of financial aid that satisfies the proportionality requirement varies based on the gender breakdown of student-athletes at each institution. As a result, the ratio of financial aid distribution that satisfies the proportionality requirement at one institution may not satisfy the requirement at another institution.[38]

(a) For example, if University 1's student-athlete population is 60% women and 40% men, the general expectation is that the women's financial aid budget must be between 59% and 61% of the total financial aid budget for all student-athletes.

(b) By contrast, if University 2's student-athlete population is 54% men and 46% women, University 2 would need to distribute between 53% and 55% of its financial aid budget to male student-athletes to trigger a presumption of compliance with the financial aid requirement. University 2 would not be presumptively in compliance with Title IX if it awarded 60% of its total financial aid to female student-athletes (absent a legitimate nondiscriminatory justification).

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[36] Policy Interpretation § VII.A.2; *see also* Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Counts I and III of Plaintiffs' Second Amended Complaint (ECF No. 49), *Fisk v. Bd. of Trs. of Cal. State Univ.*, No. 22-CV-173 TWR (MSB) (S.D. Cal. Apr. 12, 2023) ("Fisk Order") (permitting putative class action alleging violation of Title IX's financial aid provisions to proceed in part based on allegations of disproportionate availability of athletic scholarships by sex).

[37] Dr. Mary Frances O'Shea, *Dear Colleague Letter: Bowling Green State University*, U.S. Dep't of Educ., Off. for Civ. Rts. (July 23, 1998), https://www2.ed.gov/about/offices/list/ocr/docs/bowlgrn.html ("O'Shea Letter").

[38] *Id.*; *see also* Fisk Order, pp. 37-38 (finding that factual allegations detailing defendant university's historical provision of athletic scholarship dollars to student-athletes by sex were sufficient to state a claim for disparate financial aid under Title IX).

b. Equivalent Treatment and Benefits

53. Title IX and the Regulations broadly require that men and women be treated in an equitable manner in the context of intercollegiate athletics. Determining compliance with this requirement under Title IX requires examining the availability, quality and kinds of benefits, opportunities, and treatment for student-athletes across a "laundry list" of athletics program components.[39]

54. The non-exhaustive program components included in the laundry list are: (1) provision and maintenance of equipment and supplies; (2) scheduling of games and practice times; (3) travel and per diem allowances; (4) opportunity to receive coaching and academic tutoring; (5) assignment and compensation of coaches and tutors; (6) provision of locker rooms, practice and competitive facilities; (7) provision of medical and training facilities and services; (8) provision of housing and dining services and facilities; (9) publicity; (10) recruitment; and (11) support services.[40]

55. Each program component must be considered separately. Any disparities identified within a program component are examined to determine if they are unjustified and/or substantial enough to result in inequitable treatment of student-athletes by sex.[41] For each program component in the laundry list, Title IX compares the men's athletics program as a whole to the women's athletics program as a whole and then an overall assessment is made of the men's program as compared to the women's program.[42] Whether the men's and women's basketball (or soccer or swimming, etc.) teams are treated equally is not a relevant comparison; the focus is on

[39] Policy Interpretation § VII.B.2.

[40] 34 C.F.R. § 106.41(c). Recruitment and support services are not included in the text of the laundry list set forth in 34 C.F.R. § 106.41(c). That list, however, is by its own terms non-exclusive. And OCR added these components to the laundry list in the Policy Interpretation. Policy Interpretation § VII.B.1.

[41] Policy Interpretation § VII.B.5.

[42] Holmes Letter, *supra*; Policy Interpretation § VII.B.5.b.

whether male and female student-athletes are treated in an equitable manner across the totality of the athletics programs.[43]

56. Specifically, the totality of the men's program as a whole is compared to the women's program as a whole across all program components to determine:

(a) Whether policies are discriminatory on their face or as applied; or

(b) If disparities are substantial and unjustified; or

(c) If disparities are substantial enough to deny equality of athletics opportunity.[44]

57. A disparity in one program component can alone constitute a Title IX violation if it is substantial enough to deny equality of athletic opportunity to students of one sex.[45]

58. While the Policy Interpretation states that the benefits and resources an institution provides to male and female student-athletes need not be identical to satisfy the equivalent treatment test, they must be equal or equal in effect. Specifically, the Policy Interpretation states that the overall effect of any differences in the benefits, opportunities and treatment afforded to student-athletes of each sex should be negligible.[46]

59. Providing equitable treatment and benefits requires funding, and whether the funding is provided by the institution or through private sources earmarked for a particular team or program is irrelevant. Private funds are not exempt from Title IX's requirements. One of OCR's early Dear Colleague Letters provides clear direction in this regard: "the fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and

[43] Policy Interpretation § VII.B.5.b.
[44] Policy Interpretation §§ VII.B.5.a-c.
[45] Policy Interpretation, § VII.B.5.c.
[46] Policy Interpretation § VII.B.2.

non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements."[47] This is consistent with Congress's intent that institutions use all sources of institutional revenue to treat all teams of both genders fairly, not just to favor those teams that generate institutional funding.

(a) OCR again addressed this principle in a 1995 letter, writing that recipients of federal funding have "a responsibility under Title IX to ensure that boys' and girls' programs are provided with equivalent benefits, treatment, services or opportunities regardless of their source" and that private funds "are considered in combination with all benefits, services or opportunities."[48] OCR went on to explain that "private funds . . . , although neutral in principle, are likely to be subject to the same historical patterns that Title IX was enacted to address" and that "[i]f all benefits are not considered in examining interscholastic athletics, the purpose and effect of Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance."[49] OCR reiterated this principle as recently as 2014.[50]

(b) The Eighth Circuit has applied this analysis, explaining that institutions cannot avoid Title IX by using outside funding: "Once a university receives a monetary donation, the funds become public money, subject to Title IX's legal obligations in their disbursement . . . outside funding is not a defense for a university which provides more than substantially proportionate athletic opportunity to one gender in violation of Title IX."[51]

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[47] Holmes Letter, *supra*.

[48] John E. Palomino, *Letter to Jurupa Unified Sch. Dist.*, OCR File No. 09-91-1222, U.S. Dep't of Educ., Off. for Civ. Rts. (Feb. 7, 1995), https://www2.ed.gov/about/offices/list/ocr/letters/jurupa.html ("Palomino Letter").

[49] *Id.*

[50] Adele Rapport, *Letter to Indianapolis Public Schools*, U.S. Dep't of Educ., Off. for Civ. Rts. (Feb. 26, 2014), https://www2.ed.gov/about/offices/list/ocr/docs/investigations/05105002-a.pdf, p.7 ("Rapport Letter") ("("School districts have a responsibility under Title IX to ensure that equivalent benefits and services are provided to members of both sexes in its athletics programs, regardless of their funding source(s) for these benefits and services.").

[51] *Chalenor v. Univ. of North Dakota*, 291 F.3d 1042, 1048 (8th Cir. 2002) (quoting *Chalenor v. Univ. of North Dakota*, 142 F. Supp. 2d 1154, 1159 (D.N.D. 2000)) (internal quotation marks omitted).

60. Thus, under Title IX, the source of the funding is irrelevant. The institution is obligated to use all revenue from all sources to provide equitable opportunities and treatment for male and female student-athletes.[52]

c. Participation Opportunities

61. In assessing the relative level of equity in the athletic participation opportunities that are offered at each institution, the test for compliance is "[w]hether the selection of sports and levels of competition **effectively accommodate** the interests and abilities of members of both sexes."[53]

62. Section C of the Policy Interpretation addresses this test, which requires the accommodation of all student-athletes' interests and abilities by mandating equal opportunity in the selection of sports and **levels of competition** available to each sex.[54]

63. Relevant to this case, the Policy Interpretation also prohibits classifying or subgrouping sports in a manner that disproportionately offers benefits or opportunities to members of one sex.[55]

2. Who Is Subject to Title IX?

64. Title IX prohibits sex discrimination in all education programs or activities at institutions that receive federal financial assistance.[56]

65. Title IX applies to the institutions that make up the Conferences and the NCAA and not to the Conferences and NCAA themselves.[57] As explained in greater detail below, although

[52] *See* Holmes Letter, *supra*.
[53] 45 C.F.R. § 86.41(c)(1).
[54] Policy Interpretation § VII.C. While the Policy Interpretation contains a detailed three-part test to assess compliance in this area, that test is not relevant to the issues at hand and therefore discussion of it has been omitted from this report.
[55] Policy Interpretation, Appendix B, Response to Comment 7, at 71422.
[56] Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (Mar. 22, 1988).
[57] *Nat'l Collegiate Athletic Ass'n*, 525 U.S. 459, 468 (1999).

the Conferences and the NCAA are not subject to Title IX, the Broadcast Model payments Plaintiffs propose are still subject to Title IX because of a combination of factors, including that the proposed payments (i) are generated from broadcast rights payments owned or controlled by each Conference's member institutions which are subject to Title IX; (ii) decisions concerning allocation of those revenues between and among student-athletes must be made by the member institutions, which, to repeat, are subject to Title IX; and (iii) funds are not exempt from Title IX merely because they come from an outside source.

66. In 1984, the Supreme Court limited the scope of Title IX to only those educational programs and activities that directly received federal funding.[58] The Court's opinion was short-lived.

67. Congress quickly reacted negatively to the Supreme Court's narrow, program-specific application of Title IX. To overturn the Supreme Court's ruling, Congress passed the Civil Rights Restoration Act on March 22, 1988.[59] This legislation adopted an institution-wide approach, specifying that all programs and activities at educational institutions that receive federal funding directed to any part of the institution must comply with Title IX, regardless of whether the specific program or activity at issue directly receives federal funds.[60]

68. The plain language of Title IX and its implementing Regulations, combined with Congress' reaffirmed intent demonstrated in the Civil Rights Restoration Act, makes clear that Title IX reaches intercollegiate athletics and requires educational institutions to ensure that the benefits, opportunities, and treatment available to male and female student-athletes are equivalent.[61]

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[58] *See generally Grove City Coll. v. Bell*, 465 U.S. 555 (1984).
[59] Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28.
[60] *Id.*
[61] *See* Samuels & Galles, *supra*, at 18.

69. Every institution affiliated with the Conferences is a "recipient of federal financial assistance" under Title IX because each one receives funds from the federal government directly (generally, for research or facilities) or indirectly (at minimum, through grants and loans made to students enrolled at each institution).[62] The University of Notre Dame, which is affiliated with the ACC for purposes of sports other than football and ice hockey, likewise receives federal funds.[63] Thus, each of the Conferences' member institutions and Notre Dame are subject to Title IX.

70. Recipients of federal funding that are not in compliance with Title IX risk the loss of all federal funding to the institution or may face payment of damages in private lawsuits or other penalties assessed by OCR.[64]

C. Attempts to Limit Title IX[65]

71. Throughout the legislative and administrative process resulting in Title IX and its Regulations, lawmakers who opposed Title IX proposed numerous amendments to limit the reach of the legislation and the Regulations. The intent behind these amendments was to exempt athletics from the scope of Title IX's non-discrimination mandate entirely or, alternatively, to allow revenue-generating sports to retain their own revenue and not be required to contribute to (i.e., subsidize) athletic opportunities for female student-athletes.[66]

72. Congress rejected every single one of these attempts to limit Title IX:

- In 1974, Senator John Tower's "Tower Amendment" would have exempted from Title IX intercollegiate athletic activity insofar as such activity provides

[62] The U.S. Department of Education provides a Federal School Code List which identifies all schools participating in Title IV federal student aid programs. Each of the institutional members of the Conferences has been verified to receive federal funding according to this database. *2023-24 Federal School Code List of Participating Schools*, U.S. Dep't of Educ. (Feb. 2023), https://fsapartners.ed.gov/knowledge-center/library/federal-school-code-lists/2023-02-01/2023-24-federal-school-code-list-participating-schools-february-2023.

[63] *Id*.

[64] 20 U.S.C. §§ 1681 *et seq*.

[65] For a more detailed discussion of the legislative history of Title IX, see **APPENDIX F**.

[66] Samuels & Galles, *supra*, at 19–23.

to the institution gross receipts or donations required by such institution to support that activity.[67]

- In 1975, Senator Tower again proposed his amendment while Congress debated the Regulations.[68] In voicing opposition to the Tower Amendment, Title IX's authoring Senator stated that the amendment was "based upon a misunderstanding" of the Title IX regulations and the "true implications of the Tower proposal."[69]
- In June 1975, Senator Jesse Helms[70] and Representative James G. Martin[71] proposed twin bills that disapproved of the Regulations in their entirety, and alternatively disapproved those sections of the Regulations applicable to athletics programs and scholarships.
- On July 8, 1975, Representative James G. O'Hara proposed two amendments disapproving of the Regulations.[72] The goal of his amendments was to allow athletics departments to "make expenditures for a sport or team from revenues derived from that sport or team" and to prohibit the use of funds provided by revenue-generating sports to subsidize non-revenue producing sports, including women's sports.[73]
- On July 15, 1975, Senators Tower, Bartlett, and Hruska again proposed excluding revenue-producing sports from Title IX's coverage.[74]

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[67] *Id*.

[68] S. 2106 Summary, 94th Cong. (1975), https://www.congress.gov/bill/94th-congress/senate-bill/2106.

[69] *Prohibition of Sex Discrimination, 1975: Hearings Before the Subcomm. on Educ. of the Comm. on Labor & Public Welfare on S. 2016*, 94th Cong. 46-47 (1975) (statement of Sen. Birch Bayh), https://files.eric.ed.gov/fulltext/ED136136.pdf.

[70] S. Con. Res. 46 Summary, 94th Cong. (1975), www.congress.gov/bill/94th-congress/senate-concurrent-resolution/46.

[71] H. Con. Res. 310 Summary, 94th Cong. (1975), www.congress.gov/bill/94th-congress/house-concurrent-resolution/310; H. Con Res. 311 Summary, 94th Cong. (1975), www.congress.gov/bill/94th-congress/house-concurrent-resolution/311.

[72] H. Con. Res. 330 Summary, https://www.congress.gov/bill/94th-congress/house-concurrent-resolution/330; H.R. 8394 Summary, www.congress.gov/bill/94th-congress/house-bill/8394.

[73] H. Con. Res. 330 Summary, https://www.congress.gov/bill/94th-congress/house-concurrent-resolution/330; H.R. 8395 Summary, www.congress.gov/bill/94th-congress/house-bill/8395.

[74] S. 2106, 94th Cong., 1st Sess., 121 Cong. Rec. 22,775-22,778 (1975).

- On July 16, 1975, Senator Paul D. Laxalt proposed the Laxalt Resolution, which claimed that the Title IX athletics regulations exceeded the scope of the statute's authority.[75]
- On July 21, 1975, Senators Jesse Helms and James A. McClure attempted to (i) limit Title IX to programs and activities that directly receive federal financial assistance and (ii) prohibit any government agencies from setting or enforcing rules for "voluntary athletic programs."[76]
- In January 1977, Senator Helms made another attempt to exclude athletics from Title IX.[77]

73. In defeating each of these attempts, Congress has repeatedly affirmed that there is no exception to Title IX allowing athletics programs to make benefits or opportunities available to certain teams on the basis that those teams generate net revenue. This is true regardless of how significant a team's revenue may be to the athletics program or institution as a whole. Simply put, Congress has rejected the proposition "that sex discrimination is acceptable when someone profits from it and that moneymaking propositions should be given congressional absolution from Title IX."[78]

74. The federal agencies responsible for enforcing Title IX have also rejected attempts to exclude revenue-producing sports from Title IX's coverage. The Policy Interpretation references the failed legislative efforts to exclude revenue-producing teams and the revenue they generate from Title IX. While it recognized a football program's unique ability to generate revenue, the Policy Interpretation concluded that institutions must comply with the prohibition

[75] S. Con. Res. 52, 94th Cong., 121 Cong. Rec. 22,940 (1975), www.congress.gov/bill/94th-congress/senate-concurrent-resolution/52; *see also* James H. Brooks, *Measuring the Reach of Title IX: Defining Program and Recipient in Higher Education*, 17 Akron L. Rev. 335, 342 nn.53, 55 (1984) ("Brooks").

[76] S. 2146 Summary, 94th Cong. (1975), www.congress.gov/bill/94th-congress/senate-bill/2146.

[77] S. 535 Summary, 95th Cong., 1st Sess. (1977), www.congress.gov/bill/95th-congress/senate-bill/535.

[78] Samuels & Galles, *supra*, at 21.

against sex discrimination in the administration of every revenue-producing sport—and that there is no Title IX exclusion for football programs or football revenues.[79] In so doing, the Policy Interpretation reinforced the fundamental Title IX principle that all revenues, regardless of their source, must be distributed across all programs to achieve equitable treatment of male and female student-athletes. This clear directive has guided the OCR and institutions since then.

75. The legislative history outlined above makes clear that Title IX covers all revenue generated by all sports teams and does not permit revenue to be used solely to benefit the team that generated the revenue if that use would create inequalities between male and female student-athletes at the institution.[80] Those familiar with Title IX in the context of intercollegiate athletics consider this fundamental principle to be well-settled law to apply without exception.

IV. PLAINTIFFS' BROADCAST MODEL REQUIRES DISTRIBUTION OF REVENUES BY INSTITUTIONS, THEREBY REACHING ENTITIES SUBJECT TO TITLE IX

76. Plaintiffs' Broadcast Model claims that the Conferences would voluntarily decide to distribute portions of their broadcast revenue directly to certain student-athletes.[81]

77. Specifically, Plaintiffs' Broadcast Model would distribute a portion of broadcast revenue to just the members of the teams that Plaintiffs' experts say "generated" that revenue.[82] However, I cannot envision a scenario in which the approval and implementation of this structure

[79] *Id*.

[80] Holmes Letter, *supra*; Palomino Letter, *supra*; Rapport Letter, *supra* ("School districts have a responsibility under Title IX to ensure that equivalent benefits and services are provided to members of both sexes in its athletics programs, regardless of their funding source(s) for these benefits and services.").

[81] Pls.' Mot. for Class Cert., ECF No. 209, at 9.

[82] That the payments would go to individual student-athletes rather than the team as a whole is a distinction without a difference. Title IX evaluates the men's program as a whole as compared to the women's program as a whole, and in the "but-for" world 98 male athletes would benefit in a disproportionate and discriminatory manner that is so significant in amount and impact that I would flag this as a violation Title IX if I were conducting an audit.

would be viewed as compliant with Title IX, the Regulations, the Policy Interpretation, and years of application of the law to educational institutions.[83]

78. Although Plaintiffs propose that the Conferences—which are not subject to Title IX—make payments to student-athletes, the Broadcast Model still implicates Title IX compliance because:

(a) Conferences are governed and controlled by a board of directors, which is composed of representatives (usually Presidents and Chancellors) of their member institutions;

(b) Member institutions own the broadcast rights to their events and merely grant or transfer those rights to the Conferences for purposes of negotiating favorable, Conference-wide broadcast agreements;

(c) Member institutions control the distribution of broadcast revenues generated by Conference-organized and NCAA-promoted events (e.g., tournaments and championships);

(d) Conference bylaws, which are adopted or amended by each Conference's board of directors, dictate the distribution of broadcast revenue to the member institutions; and

(e) Funds are not exempt from Title IX merely because they come from an outside source.

79. In light of this combination of factors, each of which is addressed in more detail below, Plaintiffs' Broadcast Model requires member institutions' substantial involvement and approval. This substantial institutional involvement and approval implicates Title IX.[84]

[83] In my opinion, any direct or indirect judicial invalidation of the core Title IX principle that all institutional funds must be used to provide equitable treatment and benefits to male and female student-athletes could have serious ramifications on the years of progress for women's sports that thus far have been achieved because of Title IX.

[84] *See* 34 C.F.R. § 106.37(a)(1)(2).

A. The Conferences Act Through Their Member Institutions

80. The Conferences are made up of their member institutions. At least one representative from each member institution sits on each Conference's board of directors (or equivalent governing body under another title, all referred to herein as a "board of directors").

81. In this system of governance, the Conferences do not make decisions independent of their members. Instead, the Conferences' member institutions, through their representatives on each Conference's board of directors, make decisions for the Conferences.[85]

(a) This decision-making authority and framework is evident in each of the Conference's bylaws:

i. In the Big 12, each member institution must have one representative on that Conference's board of directors. This representative must be the "most senior campus executive officer" for each member institution.[86]

ii. The ACC requires that its "Board [] be composed of a representative of each Member [institution][.]"[87]

iii. The Big Ten "Council consists of the chancellor or president of each member university[.]"[88]

iv. In the Pac-12, "[e]ach member of the Conference shall have one representative on the Board which shall be the President" or Chancellor of the member institution.[89]

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[85] *See* Declaration of Greg Sankey ¶¶ 7-10; Declaration of Chad Hawley ¶¶ 7-11; Declaration of George Kliavkoff ¶¶ 7-10; Declaration of Ben Tario ¶¶ 8–9, 18; Big 12 Conference 2022-23 Handbook, Bylaws § 1.5.2, pp. 3–4 (NCAAHOUSE00250308-09).

[86] Big 12 Conference 2022-23 Handbook, Bylaws § 1.5.3, pp. 5–6, and Rules § 5.1.1, p. 22 (NCAAHOUSE00250310-11, NCAAHOUSE00250327).

[87] ACC 2020-21 Manual, Constitution § 1.5.1.2, p. 13 (ACC-HOUSE0000594).

[88] Big Ten Conference Handbook 2021-2022, Rule 4.1.1, p. 27 (BIGTEN-NIL_00256648).

[89] Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 5, § 2, p. 11 (NCAAHOUSE00250363).

v. In the SEC, "[t]he President or Chancellor of each member shall be a Chief Executive Officer [the equivalent of a director] of the Conference."[90]

B. The Member Institutions Own Their Broadcast Rights and Grant or Transfer Them to the Conferences

82. Each member institution owns the broadcast rights to its own home games as the promoter of those games.[91]

83. Each member institution grants or transfers those rights to its respective Conference for the purpose of allowing the Conference to bundle the member institutions' broadcast rights and negotiate broadcast network agreements for the Conference as a whole. These grants or transfers of rights are effectuated through Conference bylaws or agreements between the member institutions and their respective Conference.

(a) The Pac-12's member institutions effectuate their transfer and assignment of rights through the Conference bylaws, which state:

> Effective July 1, 2012, each member hereby transfers and assigns to the Conference any and all of its rights to the commercial exploitation of all audio and all video transmission or dissemination by any and all means (including without limitation internet transmission or dissemination), now known or hereafter existing, of all member competitions for all Conference sanctioned sports involving member teams as to all intra-Conference events and those inter-Conference events where the participating member controls audio and video rights.[92]

(b) The SEC's bylaws reference its member institutions' transfers of rights in separate member agreements. The bylaws commit each member to:

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[90] SEC Constitution and Bylaws 2022-2023, Constitution § 4.1.1, p. 5 (NCAAHOUSE00249794).

[91] Judicial decisions and state statutes recognize that the right to broadcast an event belongs exclusively to the event producer. *See Wisc. Interscholastic Athletic Ass'n v. Gannett Co.*, 658 F.3d 614, 624-28 (7th Cir. 2011); *Pittsburgh Athletic Co. v. KQV Broad. Co.*, 24 F. Supp. 490, 492-93 (W.D. Pa. 1938); *Twentieth Century Sporting Club, Inc. v. Transradio Press Serv., Inc.*, 165 Misc. 71, 73 (N.Y. Sup. Ct. 1937); *Sw. Broad. Co. v. Oil Ctr. Broad. Co.*, 210 S.W.2d 230, 232 (Tex. Civ. App. 1947); *Okla. Sports Props., Inc. v. Indep. Sch. Dist. No. 11 of Tulsa Cnty., Okla.*, 957 P.2d 137, 139 (Okla. Civ. App. 1998); *Post Newsweek Stations-Conn., Inc. v. Travelers Ins. Co.*, 510 F. Supp. 81, 85-86 (D. Conn. 1981).

[92] Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 3, § 2, p. 9 (NCAAHOUSE00250361).

> include provisions in each of its television, media, internet and digital rights agreements specifying that the member's agreements are subject and subordinate to all past, present, and future television, media, internet and digital rights agreements to which the Conference is or becomes a party, and further specifying that if any provision in the member's agreement is inconsistent or conflicts with any Conference agreement, the Conference agreement shall supersede the provision in the member's agreement, such that the superseded provision shall be of no effect to the extent of any such inconsistency or conflict.[93]

(c) The ACC's bylaws acknowledge a standalone Grant of Rights Agreement, stating: "The Members have granted to the Conference the right to exploit certain media and related rights of the Members (such rights, the 'Media Rights'; and the agreement pursuant to which the Members granted such rights, the 'Grant of Rights')."[94] The Grant of Rights Agreement states that each member institution "is required to, and desires to, irrevocably grant to the Conference, and the Conference desires to accept from each of the Member Institutions," the broadcast rights identified in the Grant of Rights Agreement.[95]

(d) The Big 12's bylaws also acknowledge a standalone Grant of Rights Agreement, which binds even withdrawing member institutions to comply with its terms.[96] The Big 12's Grant of Rights Agreement also states that each member institution "is required to, and desires to, irrevocably grant to the Conference, and the Conference desires to accept from each of the Member Institutions" the broadcast rights identified in the Grant of Rights Agreement.[97]

(e) The Big Ten's member institutions assign their telecast and related rights to the Big Ten Conference, which has the sole authority to package those rights together for purposes

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[93] SEC Constitution and Bylaws 2022-2023, Bylaws § 22.1.1, p. 31 (NCAAHOUSE00249820).

[94] ACC 2020-21 Manual, Bylaws § 2.10.1, p. 40 (ACC-HOUSE0000621).

[95] Atlantic Coast Conference Grant of Rights Agreement, p. 1, https://cdn.theathletic.com/app/uploads/2022/07/01185531/ACC-Grant-of-Rights-1.pdf.

[96] *See* Big 12 Conference 2022-23 Handbook, Bylaws § 3.1, p. 17 (NCAAHOUSE00250322).

[97] Big 12 Conference Amended and Restated Grant of Rights Agreement, p. 1, https://cdn.theathletic.com/app/uploads/2022/07/01185303/Big-12-Grant-of-Rights-1.pdf.

of negotiating and entering broadcast rights agreements with media rights partners on behalf of the Conference as a whole.[98]

C. Member Institutions Control the Distribution of Conference Broadcast Media Revenues by Operation of the Conference Bylaws

84. In addition to owning the broadcast rights they convey to their respective Conferences, the member institutions control how the revenues generated by NCAA and Conference broadcast agreements are distributed, including revenues arising from broadcast rights to tournaments and events organized or produced by the NCAA and by the Conferences.

85. Through each Conference's bylaws, which are voted and agreed upon by each Conference's member institutions, the member institutions dictate how each Conference may use the broadcast revenues received by the Conference.

(a) The Big 12's bylaws state that the Conference must first use broadcast revenue to pay for "the operating and other expenses incurred or fund reserves established by the Board of Directors of the Conference."[99] Only the Board of Directors has the authority to establish and fund Conference reserves.[100] The remaining net distributable revenues must be used to pay member subsidies and member-designated revenues, and then the revenue must be equally distributed among the members.[101] The Board must approve the distribution of all Conference revenues, assets, and reserves.[102]

[98] *See* Declaration of Kerry Kenny, ¶ 8.
[99] Big 12 Conference 2022-23 Handbook, Bylaws § 2.3, pp. 15–16 (NCAAHOUSE00250320-21).
[100] *Id.* § 2.5, p. 16 (NCAAHOUSE00250321).
[101] *Id.* § 2.3, pp. 15–16 (NCAAHOUSE00250320-21).
[102] *Id.* § 2.5, p. 16 (NCAAHOUSE00250321).

(b) The ACC's bylaws provide that the Conference will pay its reserves and then divide the remaining revenue equally among its member institutions.[103] Revenues derived from the ACC-ESPN agreement are divided equally among the ACC's member schools.[104]

(c) The Big Ten's Conference Handbook requires the Conference to divide the net receipts from Conference television revenue equally to its member institutions.[105]

(d) The Pac-12's Executive Regulations dictate that "[a]ll media rights net revenue generated by the Conference shall be distributed equally among all members."[106]

(e) The SEC's bylaws provide that Conference revenues must first be used to pay any outstanding debts of the Conference[107] and to reimburse certain expenses incurred disproportionally by certain members but that are for the benefit of all members.[108] After any such payments are made, revenue generated by all sports is distributed evenly among the SEC's member institutions.[109]

86. Any changes to these or related bylaws require an affirmative act by the Conferences' member schools.[110]

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[103] ACC 2020-21 Manual, Bylaws § 2.5.2, p. 34 (ACC-HOUSE0000615).

[104] *Id.* § 2.10.9, p. 41 (ACC-HOUSE0000622). The University of Notre Dame is excluded from the distribution of ACC revenues attributable to football media or broadcast rights. *Id.* § 2.12, pp. 45-46 (ACC-HOUSE0000626-27).

[105] Big Ten Conference Handbook 2021-2022, pp. 106–07, 110–11.

[106] Pac-12 2021-22 Handbook, Executive Regulations, ch. 1, § 1, p. 22 (NCAAHOUSE00250374).

[107] SEC Constitution and Bylaws 2022-2023, Bylaws § 31.10.1, p. 36 (NCAAHOUSE00249825).

[108] *Id.* §§ 31.20, 31.21, 31.22, pp. 36-38 (NCAAHOUSE00249825-27).

[109] *Id.*, art. 31, pp. 36–39 (NCAAHOUSE00249825-28).

[110] *See* ACC 2020-21 Manual, Constitution § 1.6.2, pp. 21-22 (ACC-HOUSE0000602-03) (requiring vote of 2/3 or 3/4 of Directors to amend relevant bylaw provisions); Big 12 Conference 2022-23 Handbook, Bylaws § 1.5.2, pp. 3-5 (NCAAHOUSE00250308-10) (requiring vote of supermajority or 75% of disinterested directors to amend relevant bylaw provisions); Big Ten Conference Handbook 2021-22, Rule 4.1.3, pp. 27-29 (BIGTEN-NIL_00256648-50) (requiring vote of 60% of Council to amend bylaws); Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 7, § 4, p. 14 (NCAAHOUSE00250366), ch. 13, § 1, p. 20 (NCAAHOUSE00250372), and Executive Regulations, ch. 1, § 10, p. 26 (NCAAHOUSE00250 378) (requiring vote of 2/3 or 3/4 of Board to amend relevant bylaw provisions and Executive Regulations); SEC Constitution and Bylaws 2022-2023 Foreword and Bylaws § 5.3.1.3, p. 9 (NCAAHOUSE00249784, NCAAHOUSE00249798) (requiring 2/3 or majority vote to amend relevant bylaw provisions).

87. Under their existing bylaws, no Conference could distribute broadcast revenue to student-athletes without permission from its member schools. The distribution of revenue that Plaintiffs' Broadcast Model contemplates would require amendments to the Conferences' bylaws and, therefore, the affirmative vote of the Conferences' member institutions to distribute revenue to student-athletes that would otherwise be paid to the member institutions.

88. Although the Conferences' member institutions own the broadcast rights to their own home events, the Conferences own the broadcast rights to Conference-hosted events, including Conference tournaments and Conference championships. The NCAA similarly owns the broadcast rights for its own events, like the NCAA Tournament.

89. However, it is important to note that a Conference's member institutions control the distribution of **all** broadcast revenues received by a Conference, whether those revenues are attributable to broadcast rights transferred to the Conference by a member institution or not. Put another way, the member institutions control the distribution of the revenues generated by Conference-hosted events pursuant to the bylaws outlined above.

90. In fact, some Conferences' bylaws specifically dictate the manner in which revenue from Conference-hosted events is distributed.

(a) For example, the Pac-12's Executive Regulations provide that "[t]he Conference shall retain all revenues generated by the Conference Football Championship Game and related activities and shall distribute all net revenues equally among the member institutions after payment of game-related expenses."[111] The Pac-12's Executive Regulations also state that gross revenues from the Conference's men's and women's basketball tournaments, minus

[111] Pac-12 2021-22 Handbook, Executive Regulations, ch. 1, § 2, p. 22 (NCAAHOUSE00250374).

approved expenses for participants in the tournaments, "shall be distributed by the Conference office equally to the Conference's member institutions."[112]

(b) The SEC's Bylaws include similar provisions in Article 31.[113]

91. The same control provisions govern distribution of broadcast revenues generated by NCAA-hosted events, bowl games, and the College Football Playoff.

(a) For example, the ACC's bylaws provide that the Conference's receipts from the NCAA men's basketball tournament are divided equally among all member schools after the schools that participated in the tournament receive cost reimbursement as set forth in the bylaws.[114] The ACC's bylaws also provide that bowl revenues, including revenues resulting from the College Football Playoff, are divided equally among member schools after participating schools receive an expense allotment established by the bylaws.[115]

(b) The Pac-12 similarly retains "all revenue generated through bowl games," provides expense allowances for participants, and "distribute[s] the remaining revenue equally among the members."[116]

92. As discussed above (and further detailed in **APPENDIX D)**, any changes to Conference bylaws governing the distribution of broadcast revenue would require an affirmative act by the Conferences' member schools to amend the relevant bylaws.

93. Because of this unique confluence of factors—namely, the member institutions' ownership of the broadcast rights and control over the distribution of Conference broadcast revenues—Plaintiffs' Broadcast Model implicates Title IX even though it contemplates that the

[112] *Id.*, ch. 1, § 5, p. 25 (NCAAHOUSE00250377).
[113] SEC Constitution and Bylaws 2022-2023, art. 31, pp. 36-39 (NCAAHOUSE00249825-28).
[114] ACC 2020-21 Manual, Bylaws § 2.5.7, p. 35 (ACC-HOUSE0000616).
[115] *Id.* § 2.5.10, pp. 35-36 (ACC-HOUSE0000616-17).
[116] Pac-12 2021-22 Handbook, Executive Regulations, ch. 1, § 3, p. 22 (NCAAHOUSE00250374).

Conferences,[117] and not their member institutions, would "make" the broadcast revenue payments to student-athletes. If this were not the case, institutions could easily circumvent Title IX by using the Conferences or other third-parties formed or governed by the institutions themselves intentionally to distribute benefits, opportunities, and payments to student-athletes in a way that discriminated based on sex. Title IX guidance and the Eighth Circuit have rejected this type of end-run around the requirements of Title IX through the use of outside or third-party funding.[118]

94. Moreover, even if the Conference bylaws could somehow be amended to permit Conferences to distribute broadcast revenue without member institutions' direct involvement, the Broadcast Model revenue payments still would implicate Title IX even if they are not made by the schools directly. Under the Broadcast Model, the Conferences would need their member institutions to provide names, contact information, and participation and financial aid records for all student-athletes claiming to be class members. This information is necessary for the Conferences to make the payments Plaintiffs posit. Section 106.31(b)(6) of the Title IX Regulations prohibits educational institutions from perpetuating discrimination by providing significant assistance to an entity that discriminates on the basis of sex in the course of providing any financial assistance to students. In my opinion, providing personal information for student-athletes to facilitate the disparate payments Plaintiffs propose constitutes "significant assistance,"

[117] In the case of Notre Dame, Rascher conjectures that the institution itself would pay certain football student-athletes some portion of the broadcast media revenue attributable to its football program (which is not affiliated with any Conference and for which Notre Dame retains broadcast media rights) and that the ACC (of which Notre Dame is a member for purposes of all sports except football and ice hockey) would pay certain student-athletes some portion of its basketball broadcast media revenue. For the reasons set forth above, any payment to student-athletes by the ACC would require Notre Dame's involvement. As for the hypothetical direct payment from Notre Dame to certain football student-athletes, this disbursement of funds from Notre Dame—an educational institution that is a recipient of federal funds subject to Title IX—implicates Title IX because it would be a direct payment by the institution of institutional funds to student-athletes.

[118] *See Chalenor*, 291 F.3d at 1048; *see also* Holmes Letter, *supra*.

and I would advise any institution for which I was conducting an audit that such facilitation of disproportionate financial assistance along gender lines would be at odds with Title IX.[119]

V. PLAINTIFFS' BROADCAST MODEL VIOLATES TITLE IX

95. Based on my experience, my opinion is that Plaintiffs' Broadcast Model violates Title IX by creating a significant disparity in the financial support provided to student-athletes based on sex. The Broadcast Model predominantly provides broadcast revenue share payments to football and men's basketball student-athletes. Women's basketball student-athletes receive significantly smaller revenue share payments. Plaintiffs' characterization of the significant broadcast revenue share payments for men's basketball and football student-athletes as payments for "NIL" does not change this analysis.[120]

96. Whether Plaintiffs intend the Broadcast Model to violate Title IX is irrelevant. The critical inquiry is whether an institution treats student-athletes of one sex in a discriminatory manner.[121] In this regard, it is undisputed that Plaintiffs' Broadcast Model directs almost all of the Broadcast Model payments to men. For that reason, if I were conducting an audit, I would have to conclude that the Broadcast Model violates Title IX.

A. Plaintiffs' Broadcast Model Generally

97. Plaintiffs claim that, in the but-for world, the Conferences would have sought licenses for the supposed broadcast NIL rights[122] of all full GIA scholarship football and basketball players at their member schools and that the Conferences would have paid 10% of the total revenue

[119] 34 C.F.R. § 106.31(b)(6).

[120] There is no practical distinction between the payments contemplated by Plaintiffs' Broadcast Model and earmarked payments made to institutions by private donors for equipment, uniforms, travel gear, spring training trips, and foreign trips for tournaments and competitions. Both the broadcast revenue share and earmarked payments are payments from external sources designed to benefit specific teams and both are captured by the requirements of Title IX. As explained elsewhere, there are no exceptions to this requirement.

[121] *Pederson v. La. State Univ.*, 213 F.3d 858, 881 (5th Cir. 2000).

[122] Courts have found that student-athletes have no right of publicity or NIL rights in live broadcasts. *See generally Marshall v. ESPN Inc.*, 111 F. Supp. 3d 815 (M.D. Tenn. 2015); *Dryer v. NFL*, 814 F.3d 938 (8th Cir. 2016).

from their broadcast agreements to those student-athletes.[123] Plaintiffs claim that the Conferences would allocate the broadcast revenue payments by providing over 75% of the revenue-share to football, over 15% of the revenue-share to men's basketball, and no more than 5% of the revenue-share to women's basketball.[124]

98. Despite the substantial disparity of broadcast revenue payments directed to men compared to women, neither of Plaintiffs' experts considered Title IX in developing their models or opinions. Rascher admitted that he did not consider Title IX in his revenue share model, or any other but-for world model.[125] Desser similarly testified that he had not considered Title IX.[126]

B. Plaintiffs' Broadcast Model Creates New and Discriminatory Levels of Athletic Participation Opportunities

99. Plaintiffs' Broadcast Model creates new and different levels of athletic participation opportunities based on sex that, if I were conducting an audit, I would flag as a violation of Title IX because they offer vastly disproportionate benefits at each level.

100. Specifically, Plaintiffs' Broadcast Model provides significant financial benefits to the Football and Men's Basketball Class and a much smaller benefit to a much smaller Women's Basketball Class, essentially creating a separate class or **level of opportunity** for these student-athletes that is disproportionate based on sex in violation of Title IX.[127] Worse still, the Broadcast

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[123] *See* Pls.' Mot. for Class Cert., ECF No. 209, at 9.

[124] Rascher Rep. ¶ 176. Plaintiffs' broadcast industry expert, Edwin Desser, determined that other sports—namely, Olympic sports—make up the remaining 5% of the pool. *See* Expert Report of Edwin S. Desser, dated Oct. 21, 2022 § 17.4. Rascher does not explain how the remaining 5% of the pool would be allocated.

[125] Rascher Dep. Tr. at 111:19-21 ("Q. Have you tried to account for Title IX in any of your damages models in this case? A. No.").

[126] Desser Dep. Tr. at 64:12-19 ("Q. Have you given any consideration to Title [IX] in your preparation of this report? A. That's not within the scope of what I was assigned to work on. Q. So the answer is: 'No' you have not given any consideration to it, because you weren't asked to do that? A. No, I have not.").

[127] *See Cohen v. Brown Univ.*, 991 F.2d 888, 905-06 (1st Cir. 1993), *aff'd*, 101 F.3d 155 (1st Cir. 1996). Brown University "cut" sports by moving them from fully funded status down to donor-funded status, changing the level of athletics opportunity for the affected student-athletes, which violated Title IX because it resulted in a failure to provide equitable participation opportunities. While the Broadcast Model does the opposite of the action in *Cohen* by elevating some teams to a higher level of treatment to the exclusion of all others, the result is the same—unequal participation opportunities based on sex for approximately 98 male athletes and only 15 female athletes per institution.

Model permits no benefits for female student-athletes outside the Women's Basketball Class, with over 95% of broadcast revenues set aside for sharing with football and men's and women's basketball players.

101. To illustrate, the Broadcast Model seeks compensation on a yearly basis for 85 full-GIA scholarship football student-athletes, 13 full-GIA scholarship men's basketball student-athletes, and 15 full-GIA scholarship women's basketball student-athletes at each of the Conferences' member institutions. This means that the Broadcast Model provides this compensation opportunity to 86.73% men and only 13.27% women each year—a huge disparity in the participation opportunities offered to female student-athletes. This percentage is worse when looking at the average total number of putative class members per year who would benefit from this Model, as the Football and Men's Basketball Class includes an average of 6,170 members, making up on average 88% of the total student-athlete class members, while the Women's Basketball Class includes only 849 members on average per year, comprising just 12% of the total student-athletes who would receive Broadcast Model payments per year.[128]

102. The Broadcast Model further creates a subgrouping of three major sports and all other minor sports. The Policy Interpretation flatly rejected this type of classification system:

> [N]o subgrouping of male or female students (such as a team) may be used in such a way as to diminish the protection of the larger class of males and females in their rights to equal participation in educational benefits or opportunities. Use of the 'major/minor' classification does not meet this test where large participation sports (e.g., football) are compared to smaller ones (e.g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex.[129]

[128] Rascher Rep., p. 93, Ex. 11; *see also* **APPENDIX C**.

[129] Policy Interpretation App'x B, Resp. to Cmt. 7, at 71.422.

103. Further, the Broadcast Model excludes non-scholarship student-athletes (walk-ons) from participating in broadcast revenue sharing—even though these student-athletes engage in the same activities as scholarship athletes on their respective teams and their "NIL" would likely appear in televised broadcasts alongside their full-scholarship teammates.[130] This creates confounding Title IX difficulties, given that walk-ons must be counted as "participants" for purposes of determining Title IX compliance.[131]

C. The Broadcast Model Implicates the Financial Assistance Regulation

104. The Broadcast Model also implicates (1) the financial assistance requirements[132] and (2) the financial aid requirements of Title IX's financial assistance regulations.[133]

1. Financial Assistance

105. Plaintiffs' Broadcast Model requires Conference member institutions to provide inequitable financial assistance to male and female student-athletes, which I would flag as a violation of Title IX's financial assistance requirements if I were conducting an audit.[134]

106. The Broadcast Model provides $1.32 billion to Football and Men's Basketball student-athletes and only $49.8 million to Women's Basketball student-athletes, creating a disproportionate payout based on sex: 96.37% of the funds going to males and only 3.63% of the funds awarded to females.[135] The Broadcast Model payments are in direct contravention of the

[130] Oliver Dep. Tr. at 125:17-127:1 (testifying that "walk-ons should be treated as equal, important members of [a] team, just like the teammates who were on scholarship," and that walk-on players at times made greater in-game contributions than scholarship players); *id.* at 277:16-278:10 (testifying that walk-ons and other student-athletes who do not play during a season should receive equal portions of broadcast revenue "[b]ecause they are part of the team").
[131] Policy Interpretation § VII.A.
[132] 34 C.F.R. § 106.37(a).
[133] 34 C.F.R. § 106.37(b).
[134] 34 C.F.R. § 106.37(a).
[135] Rascher Rep., p. 92, Ex. 10.

Regulations' prohibition on discriminatory financial assistance because they clearly favor members of one sex over the other.

107. Importantly, the fact that football and men's basketball generate more broadcast revenue than women's basketball (or other women's teams) is not a permissible basis for providing football and men's basketball student-athletes with a discriminatory, disproportionate share of the total available financial assistance.[136] As Congress directed time and time again, revenue-generating sports are not exempt from Title IX,[137] and all sources of institutional revenues, including from third-party sources, must be used to treat all teams of both genders fairly, not just to favor teams that generate external, private funding.[138]

108. The Broadcast Model unmistakably requires institutions to "assist" in disproportionately distributing broadcast revenue based on sex. I would advise schools for which I was conducting a Title IX audit that engaging in this behavior would violate Title IX's financial assistance provisions.[139]

2. Financial Aid

109. Plaintiffs' Broadcast Model also requires Conference member institutions to provide inequitable financial aid for male and female student-athletes without regard to the institutions' obligations under Title IX. As explained above, Title IX's Regulations separately address[140] athletic scholarships and GIA, dictating that a recipient that awards athletic scholarships or GIA "must provide reasonable opportunities for such awards for members of each sex in

[136] 34 C.F.R. § 106.37(a)(1).
[137] *See supra* Section III.C.
[138] Holmes Letter, *supra*.
[139] *See supra* Section V.(C).
[140] The Regulations' provisions on these athletic scholarships constituting "financial aid" are distinct from the Regulations' provisions on general "financial assistance."

proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."[141]

110. The Regulations' provisions on athletic scholarships are distinct from the Regulations' provisions on general "financial assistance" but are instructive as to how Title IX compliance would be measured for the Broadcast Model payments.

111. Compliance with the athletic scholarships component under Title IX requires an institution receiving federal funds to show that the total amounts of scholarship aid it makes available to male and female student-athletes is substantially proportionate to the participation rates of male and female student-athletes participating in athletics at the institution.[142] Applying this framework, I would conclude in a Title IX audit that the proposed Broadcast Model payments run afoul of Title IX's substantial proportionality requirement because Plaintiffs propose allocating the payments almost entirely to male football and basketball student-athletes, with a vanishingly small proportion of the payments directed to women's basketball student-athletes and no payments made available to other female student-athletes.

112. Under Plaintiffs' Broadcast Model, female student-athletes would receive less than 5% of the total pool of available broadcast revenue. But female student-athletes make up much more than 5% of every institution's athletics program.[143] No mathematical calculation is needed to grasp this obvious proportionality issue under Title IX's financial aid test.

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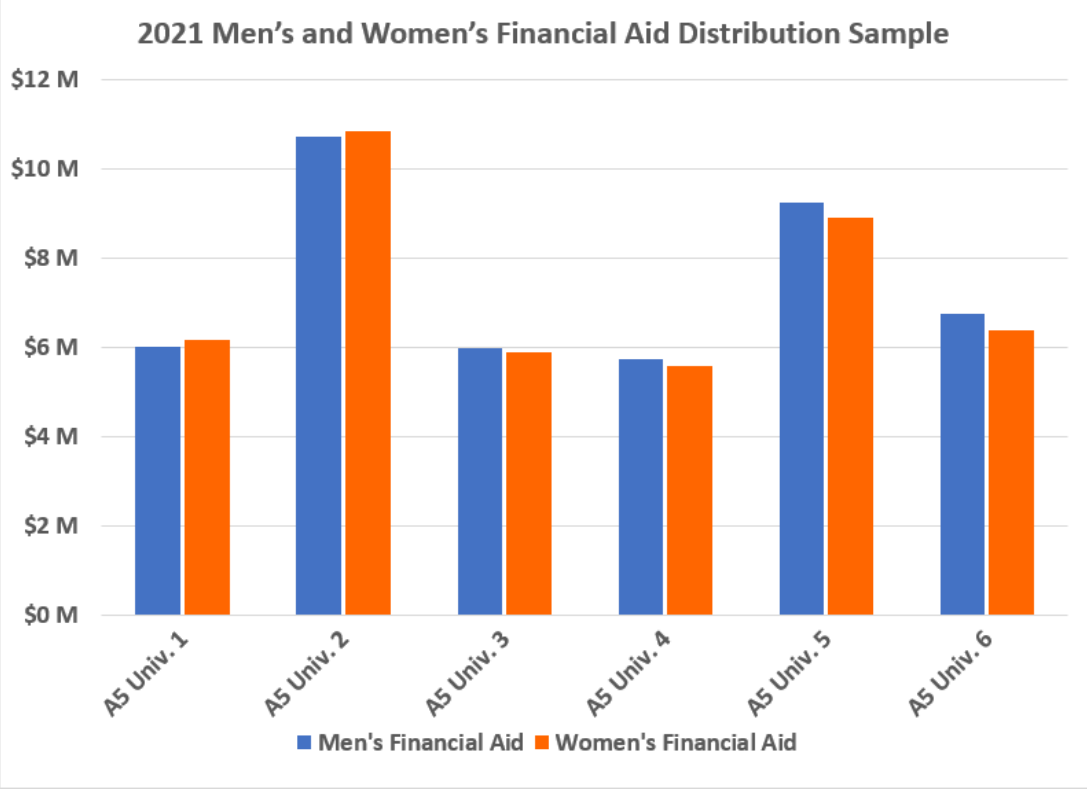
[141] 34 C.F.R. § 106.37(c).

[142] *See* O'Shea Letter, *supra*; *see also* Fisk Order at 37.

[143] Financial aid data was collected using the Equity in Athletics Data Analysis Cutting Tool provided by the Office of Postsecondary Education of the U.S. Department of Education available at https://ope.ed.gov/athletics/#/. The database consists of athletics data submitted annually by all co-educational postsecondary institutions that receive Title IV funding for federal student aid programs and have an intercollegiate athletics program as required by the Equity in Athletics Disclosure Act (EADA). Although the definitions and assessments under Title IX differ from those under the EADA, the selected information is being used solely for illustrative purposes to demonstrate the potential impact of the Broadcast Model payments based on a common set of publicly available financial aid data for all institutions. *See also* Fisk Order, p. 5, n.8 (explaining why EADA data may be referenced at the early stages of litigation).

113. Beyond this straightforward percentage split, in looking at the underlying numbers and allocations to determine whether implementing Plaintiffs' Broadcast Model would violate Title IX, the Court would have to conduct an institution-by-institution analysis. The differing numbers and proportions of male and female student-athletes participating in athletics at each institution and the differing total amounts of financial aid offered to student-athletes at each institution necessitate separate calculations to determine each institution's compliance with the financial assistance regulations. Neither Plaintiffs nor Plaintiffs' experts have considered these complications on a university-by-university basis or a year-by-year basis, as Title IX requires.

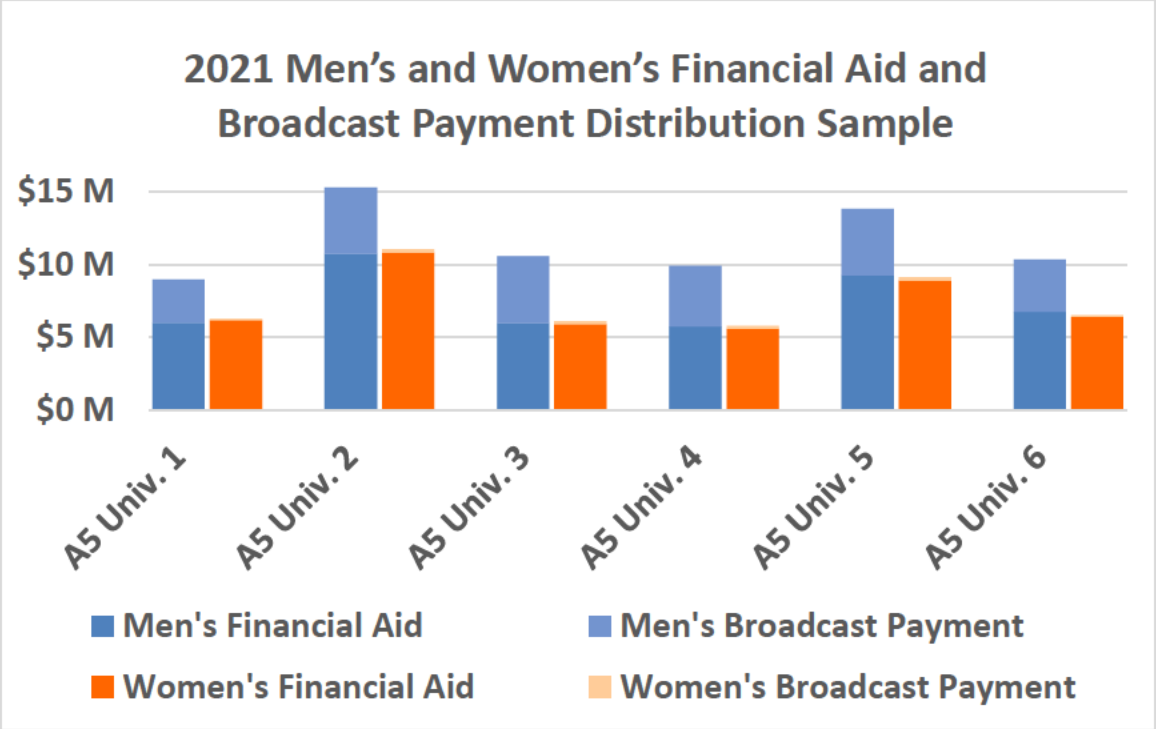
114. The following bar chart provides a visual representation of the 2021 financial aid distributions for male and female student-athletes at six randomly selected institutions from the Autonomy 5 Conferences:[144]



[144] *See supra* n.143.

115. Notwithstanding the institution-specific nature of the analysis, it is difficult to imagine a scenario in which the grossly disproportionate distribution of broadcast revenue share that Plaintiffs propose would satisfy Title IX's financial-assistance requirements for any member institution in the Conferences.

116. The following bar chart provides a visual representation of the impact the proposed Broadcast Model payments would have on the same institutions' ability to provide equitable financial assistance in compliance with Title IX:[145]



117. Once a share of over 96% of earmarked broadcast revenues is allocated to male student-athletes, achieving substantial proportionality in financial assistance as required by Title IX[146] becomes impossible.

[145] The 2021 Broadcast Model payment as proposed in Rascher's report, Appendix C was added to the 2021 financial aid data collected from the EADA cutting tool provided by the Office of Postsecondary Education of the U.S. Department of Education and available at https://ope.ed.gov/athletics/#/.

[146] 34 C.F.R. § 106.37(c)(1).

D. The Broadcast Model Directly Implicates the Equitable Treatment Provisions

118. The disproportionate payments in Plaintiffs' Broadcast Model create a significant disparity in the treatment afforded to men's athletics programs overall as compared to women's programs overall. I would flag these disproportionate payments as a violation of Title IX's equitable treatment provisions if I were conducting an audit.

119. Title IX's implementing regulations require all recipients that "operate[ ] or sponsor[ ] . . . intercollegiate . . . athletics [to] provide equal athletic opportunity for members of both sexes."[147] OCR determines overall compliance with the equal treatment requirement by considering, among other factors, the "laundry list" of benefits and opportunities the institution affords to male and female student-athletes.

120. Although "identical benefits, opportunities, or treatment are not required," any "overall effect[s] of any differences [must be] negligible" to satisfy Title IX when comparing the men's program as a whole to the women's program as a whole.[148] A disparity in one program component alone can constitute a Title IX violation if it is substantial enough to deny equality of athletic opportunities to students of one sex.[149] The fundamental question is therefore whether male and female student-athletes have equal access to equivalent "quality and kinds of benefits, opportunities, and treatment[.]"[150]

121. Equitable treatment claims "can be based on a program-wide imbalance in the allocation of benefits between sexes, or alternatively, 'substantial' disparities in the treatment

[147] 34 C.F.R. § 106.41(c).

[148] Policy Interpretation § VII.B.2.

[149] *Id.* § VII.C.6.c (stating that the overall determination of compliance with Title IX's equal opportunity provisions involves considering "[w]hether disparities in individual segments of the program with respect to benefits, treatment, services, or opportunities are substantial enough in and of themselves to deny equality of athletic opportunity").

[150] *Id.* § VII.B.2.

afforded to comparable male and female teams."[151]

122. Given the vastly disproportionate distribution of broadcast revenue to men's sports that Plaintiffs' Broadcast Model contemplates, I would advise any school for which I was conducting a Title IX audit that the distribution of those broadcast revenue benefits under the Broadcast Model is substantial enough on its own to result in a Title IX violation.

123. Indeed, in comparing the overall men's and women's athletics programs as required under Title IX, I cannot find a justification for the disparity between the total amount of resources provided under Plaintiffs' Broadcast Model to male versus female student-athletes. The intentional and discriminatory nature of Plaintiffs' approach is highlighted by the fact that the "NIL" payments contemplated by Plaintiffs' Broadcast Model would be made to all full-scholarship members of the football and men's basketball teams regardless of whether their individual name, image, or likeness ever appeared on or was referenced in the broadcast. In other words, there is no direct relation between any alleged "NIL" and the payments. Instead, Plaintiffs propose distributing certain proportions of broadcast revenue based solely on team membership—which is, by nature, discriminatory treatment based on sex. That the broadcast revenue Plaintiffs propose to distribute is allegedly generated primarily by male football and basketball student-athletes is irrelevant under Title IX, as all institutional revenue sources must be used to support the equitable distribution of benefits and opportunities to all student-athletes.[152]

124. Furthermore, the decision to devote a substantial portion of each institution's total broadcast revenue solely to supposed broadcast "NIL" payments diverts funding ordinarily available to the athletics department as a whole in favor of benefitting only a few teams. This means that the financial resources that athletics departments otherwise could use to provide

[151] *Anders v. Cal. State Univ., Fresno*, No. 1:21-cv-00179, 2021 WL 3115867, at *14 (E.D. Cal. July 22, 2021).
[152] *See* Holmes Letter, *supra*.

equitable opportunities and treatment for both male and female student-athletes would overwhelmingly go to provide additional financial assistance to male student-athletes in revenue-generating sports, without consideration for the vast majority of female student-athletes.

125. In short, Plaintiffs' Broadcast Model looks exactly like the model Congress rejected eight times over the course of five years.[153] The Model would compensate certain male student-athletes more because of the revenue generated by their sport. This is not consistent with Title IX. Congress made clear from the beginning that there is a need to protect female student-athletes by ensuring that benefits are not disproportionately awarded to male athletes even if men's sports have greater revenue-generating capacity.[154]

126. Similarly, Plaintiffs' Broadcast Model would also lead to inequitable treatment in individual program components such as recruiting.

(a) For example, Rascher contends that, in the but-for world, the Conferences would have competed to attract—in other words, recruit—Football and Men's and Women's Basketball players by offering broadcast revenue payments as inducements.[155] If schools offered financial recruiting inducements in the form of Plaintiffs' proposed Broadcast Model payments, schools would need to provide an equitable amount of inducements for men's and women's programs.[156] Similarly, using Broadcast Model payments as recruiting inducements would create inequitable financial resources for recruiting in violation of Title IX.[157]

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[153] *See supra* Section III.C.

[154] *See supra* Sections III.A.–C.

[155] Rascher Rep. § 7.2.1.

[156] Policy Interpretation § VII.B.4.a.1. The proposed model would provide recruiting inducements for a significantly disproportionate number of recruits—a minimum of 25-30 male football and basketball recruits as compared to about 4 female basketball recruits (based on the assumption that coaches sign approximately 20-25% of their total roster numbers each year).

[157] *Id.* § VII.B.4.a.2. Under Plaintiffs' Broadcast Model, football and men's basketball recruits would receive approximately 96% of the broadcast revenue payments while women's basketball recruits would receive approximately 4%.

127. The bottom line is that grossly disproportionate broadcast revenue payments to football and men's basketball student-athletes create a huge disparity in benefits available to male and female student-athletes that are not offset by the miniscule amount provided to women's basketball players.

128. This outcome contradicts Title IX and its underlying goals, which focus on increasing athletics participation opportunities for the underrepresented sex (typically women) and leveling the playing field for all student-athletes, regardless of their gender or the capacity of their selected sport to generate self-sustaining revenue.

E. Plaintiffs' Broadcast Model Cannot Be Adjusted to Comply With Title IX

129. The numerous Title IX concerns outlined herein cannot be cured by adjusting the proposed Broadcast Model. For example, an attempt to restructure the Broadcast Model to reach Title IX compliance by simply splitting the broadcast revenue 50-50 between men's and women's sports would still require a proportionality test for each campus under Title IX's financial aid regulations. In this regard, Plaintiffs would face at least two logistical challenges.

130. First, Title IX does not require that equal dollars be spent on men's and women's sports; rather, Title IX requires that financial aid be provided proportional to participation and financial assistance of all types be distributed in a nondiscriminatory manner. Determining compliance with these requirements necessitates a highly individualized inquiry based on the percentage of men and women participants in athletics at each member institution.[158]

(a) Even if Plaintiffs attempted to revise their Broadcast Model to allocate revenue share payments per school on a proportional basis, the historical numbers and

[158] *See* Policy Interpretation § VII.A.1. Indeed, OCR has expressly recognized that the financial aid analysis is tailored to and dependent upon the facts and circumstances present at each individual institution: "OCR judges each matter on a case-by-case basis with due regard for the unique factual situation presented by each case." O'Shea Letter, *supra*.

corresponding split would be difficult (if not impossible) to deduce on a class-wide basis because of the separate analysis that would still need to be performed every year at each school. In other words, the resulting percentage-based differences in the allocation of financial assistance (inclusive of the Broadcast Model Payments) would differ from institution to institution and from year to year. Because of that, there is no uniform formula for aid allocations that could be applied in an across-the-board manner to all institutions.

(b) As an added layer of challenge, differences in the total amount of financial aid distributed to male and female student-athletes may be explained by various non-discriminatory factors such as: the amount paid by each school for in-state and out-of-state scholarships or for tuition for international students; a decision to spread out the award of aid over a period of years to help in the steady development of a particular team; an athletics department decision to infuse additional aid into selected teams to generate an increase in the number of participants on those teams in order to move toward compliance with Title IX's accommodation of interests requirement; and unexpected fluctuations in the participation rates of males and females based on, for example, a decision by an athlete who had accepted an athletic scholarship to enroll at another school at the last minute and/or the unexpected and unplanned decisions of existing student-athletes to join the transfer portal and the resulting inability to replace them in a timely manner with newly recruited high school student-athletes and/or incoming student-athlete transfers.[159]

(c) The presence of these factors varies at each institution and must be considered in any financial aid analysis under Title IX. The resulting school-specific financial aid compliance calculations are inevitably complex and necessarily change from year-to-year. Given

[159] *See* O'Shea Letter, *supra*.

the constantly changing and individualized nature of the factors associated with performing such a calculation, a uniform percentage-based allocation of the Broadcast Model payments to all institutions is both impractical and unworkable given Title IX's financial aid and assistance requirements. Instead, the calculations would need to be made for each of the institutions annually, on both a retrospective basis and a prospective basis.

131. Second, even assuming Plaintiffs could overcome complex proportionality calculations to ensure Title IX compliance with percentage-based disbursements, the sheer amount of broadcast revenue that would be redirected toward student-athlete payments would require massive overhauls to athletics programs.

(a) It is well known that most schools do not profit from college sports; their general student body financially supports the athletics department rather than the other way around.[160] Indeed, football and men's basketball are typically the only two net-revenue generating sports at most Conference schools.[161]

132. Neither Plaintiffs' experts nor the named Plaintiffs account for these considerations. For example, Rascher testified that he neither accounted for Title IX nor attempted to model any effects of the Broadcast Model on any other student-athletes at the Conferences' member institutions.[162]

133. Plaintiffs may attempt to claim that revenue to fund other men's sports can be earmarked or secured from additional sources—but this prospect runs headlong into established

[160] Mark J. Drozdowski, *Do Colleges Make Money from Athletics?*, Best Colleges (updated Aug. 24, 2022), https://www.bestcolleges.com/news/analysis/2020/11/20/do-college-sports-make-money/.

[161] NCAA, *Finances of Intercollegiate Athletics Database, Net Generated Revenue: 2012-2021*, https://www.ncaa.org/sports/2019/11/12/finances-of-intercollegiate-athletics-database.aspx (noting that in 2021 nine Division I FBS Autonomy schools have a positive net generated revenue while 56 have a negative net generated revenue).

[162] Rascher Dep. Tr. at 111:19-21, 130:20-24.

realities. It would be virtually impossible to locate sufficient additional funds to ensure some form of compensation for female student-athletes proportional to the significant amounts that Plaintiffs contemplate for male student-athletes under the Broadcast Model. And in any event, Rascher claims that the value of the Broadcast Model payments is based on the value of student-athletes' NILs.[163] Any offsetting payments to female student-athletes would not be based on payments for the value of their NILs, but rather outright payments to equalize financial assistance; by definition, having devoted over 90% of broadcast revenues to compensation for male student-athletes, there would not be sufficient broadcast revenue to provide equitable compensation to female student-athletes. Thus, those additional payments to female student-athletes would amount to prohibited pay-for-play.

134. Under Plaintiffs' Broadcast Model, institutions would need to find an equivalent amount of funding to provide equitable financial support for women's athletics programs in order to comply with Title IX.[164] Athletics departments have fixed budgets, so difficult business decisions would need to be made about the continuation of various aspects of each athletics program.[165] History tells us that this process would likely lead to the elimination of participation opportunities for men (and possibly even women) in non-revenue-generating sports.[166] This type of budgetary adjustment would then free up the money that could be reallocated to the women's program to even out the financial playing field created by Plaintiffs' Broadcast Model and the

[163] Rascher Rep. ¶¶ 64–68.
[164] 34 C.F.R. § 106.37.
[165] *See generally* John Patrick Marsh, Jeffrey C. Petersen & Barbara Osborne, *Sport Discontinuation: An Assessment of Goal Achievement via Empirical Measures*, 2 J. of Amateur Sport, Special Issue: Political Economy (2016).
[166] *See Neal v. Bd. of Trs.*, 198 F.3d 763, 769-70 (9th Cir. 1999) (compiling cases that discuss the economic reality of Title IX compliance may include the elimination of teams); *see also Intercollegiate Athletics – Four-Year Colleges' Experiences Adding and Discontinuing Teams*, U.S. General Accounting Office, No. 01-297 (Mar. 2001), www.gao.gov/assets/gao-01-297.pdf. More recently, more than 300 teams were eliminated due to financial hardship caused by COVID-19. AB Staff, *Cutting Sports in the Context of Title IX, COVID-19*, Athletic Business (May 6, 2021), https://www.athleticbusiness.com/operations/legal/article/15161296/cutting-sports-in-the-context-of-title-ix-covid-19.

requirements of Title IX.

(a) By way of example, consider a member institution of the SEC. Using Rascher's broadcast revenue share calculations, the SEC would owe the following to the Football and Men's Basketball Class and the Women's Basketball class:[167]

Plaintiffs' Calculation of SEC Broadcast Revenue: 2016-2021		
Sport	**Total Revenue**	**Total Athlete Share (10% of Total Revenue)**
Football	Redacted - NSC	Redacted - NSC
Men's Basketball		
Women's Basketball		
Total		

(b) There are 14 member institutions of the SEC. Assuming the revenue is split evenly, student-athletes at each institution would receive a total of about NSC in broadcast revenue. NSC would be allocated to men, while only NSC would be allocated to women. To comply with Title IX, each university would need to adjust its overall athletics spending to make up for this additional expenditure on male student-athletes and ensure proportional financial assistance is provided to female student-athletes. Assuming an even 50% split for male and female student-athletes, the member institution would need to either (a) find roughly NSC to provide additional financial assistance for female athletes or (b) reduce financial assistance to other male athletes NSC. Achieving Title IX compliance with Plaintiffs' Broadcast Model could thus have a sizable impact on the viability of athletics programs overall (both men's and women's sports)—a reality that Plaintiffs' experts have not considered.[168]

135. Furthermore, if schools were forced to eliminate men's participation opportunities to provide equitable financial assistance, this could create a domino effect on other Title IX

[167] *See* Rascher Rep., p. 130, App'x Ex. C.8.

[168] Rascher Dep. Tr. at 111:19-21; Desser Dep. Tr. at 64:12-19.

compliance areas such as equitable participation opportunities, which commonly requires athletics schools to provide opportunities in proportion to the gender composition of the undergraduate student body.[169]

136. In light of these realities, and based on my experience, Plaintiffs' Broadcast Model would likely result in a reduction of overall participation opportunities in college sports, which could harm certain class members in the Additional Sports Class, among others. These concerns make any attempt to achieve Title IX compliance unrealistic and unworkable in the real world.

VI. OTHER CONSIDERATIONS WITH PLAINTIFFS' BROADCAST MODEL

A. Plaintiffs' Broadcast Model Is Contrary to Title IX Equity Principles

137. Given its disproportional allocation of funds between men's and women's sports, the Broadcast Model also runs afoul of the gender equity principles underlying Title IX, which the NCAA has incorporated into its own governing documents.

138. Although the Supreme Court has held that the NCAA is not subject to Title IX,[170] the NCAA is committed to gender equity. In 1992, the NCAA created a Gender Equity Study and Task Force, which adopted a definition for gender equity to guide member institutions: "[a]n athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender."[171] The Principle of Gender Equity (NCAA Constitution, Article 2.3) was added to the

[169] Policy Interpretation § VII.C. Although compliance can generally be demonstrated under any one of three tests, the first of which is referenced above, if as a result of team eliminations or caps on team rosters in the men's program, men may become the underrepresented sex in terms of athletics participation if their numbers are not substantially proportionate to their undergraduate enrollment percentages, resulting in a failure to provide equitable participation opportunities in compliance with Title IX. In order to come into compliance, reductions will then be necessary within the women's program in order to "equalize" the relative participation numbers to the undergraduate enrollment on both sides, which would then result in disparities in equitable financial assistance.

[170] *Nat'l Collegiate Athletic Ass'n*, 525 U.S. at 468.

[171] *Inclusion, Gender Equity and Title IX*, NCAA, https://www ncaa.org/sports/2016/3/2/gender-equity-and-title-ix.aspx.

NCAA Constitution on January 11, 1994. Also in 1994, the NCAA adopted a certification program requiring each member institution to establish a gender equity plan.

139. On December 14, 2021, the NCAA released its new Constitution. The Association states its commitment to gender equity in Article 1.G:

> Gender Equity. The Association is committed to gender equity. Activities of the Association, its divisions, conferences and member institutions shall be conducted in a manner free of gender [bias]. Division, conferences and member institutions shall commit to preventing gender bias in athletics activities and events, hiring practices, professional and coaching relationships, leadership and advancement opportunities.[172]

140. As these provisions make clear, although the NCAA is not required to comply with Title IX, NCAA members (including the Conferences' member institutions) are expected to adhere to these constitutional principles.[173]

141. So, even though the NCAA is not required to comply directly with Title IX, Plaintiffs' Broadcast Model runs afoul of NCAA principles on and commitment to gender equity where, as here, the outcome is payments that overwhelmingly support male student-athletes.

B. Title IX Is Designed to Maximize Opportunities for Female Student-Athletes

142. Title IX is designed to maximize opportunities for women's sports. After Title IX's enactment, institutions were required to treat women's sports equitably. No longer could they cite the lack of revenue generated by women's sports as an excuse not to offer, support, or promote women's sports. Instead, after Title IX, many institutions used their football and men's basketball revenue (along with many other sources) to ensure equal opportunities and treatment for women's

[172] 2022-23 NCAA Division I Manual, p. 2 (NCAAHOUSE00249849).

[173] Some Conferences have also made independent commitments to gender equity and diversity, equity, and inclusion principles. *See, e.g.*, Big Ten Conference Handbook 2020-2021, App'x E, Gender Equity Action Policy Plans, pp. 121-25 (BIGTEN-NIL_00036382-86); Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 3, § 4, p. 10 (NCAAHOUSE00250362); Big 12 Conference 2020-21 Handbook, App'x II, Policy on Gender Equity, p. 51 (BIG12_HOUSE00000526); SEC Constitution and Bylaws 2022-2023, Bylaws § 23.1, p. 32 (NCAAHOUSE00249821).

sports. This shift in the revenue-distribution paradigm played an indispensable role in the expansion of women's sports in the wake of Title IX's implementation.[174]

143. Under Title IX, college athletics programs strive to maximize participation opportunities for both male and female athletes across all sports.[175] This approach, especially for female athletes, is the reason that thousands of members of the Women's Basketball and Additional Sports Class, male and female alike, are able to participate in college athletics at all. Plaintiffs' Broadcast Model would undermine these principles by creating a level of participation opportunity for many more male student-athletes than female student-athletes.

C. Broad-Based Participation Opportunities Benefit All Student-Athletes

144. Providing broad-based athletics participation opportunities provides significant benefits to all student-athletes. From the 1990s to the present, research shows that college athletics participation has a positive effect in the following ways:

(a) Growth of interpersonal skills, relationships with peers, and leadership development;[176]

(b) Increase in student-athletes' personal, psychological, and social well-being;[177]

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[174] *Neal*, 198 F.3d at 773 ("Title IX has enhanced, and will continue to enhance, women's opportunities to enjoy the thrill of victory, the agony of defeat, and the many tangible benefits that flow from just being given a chance to participate in intercollegiate athletics."); *Cohen*, 101 F.3d at 188 ("There can be no doubt that Title IX has changed the face of women's sports as well as our society's interest in and attitude toward women athletes and women's sports. . . . What stimulated this remarkable change in the quality of women's athletic competition was not a sudden, anomalous upsurge in women's interest in sports, but the enforcement of Title IX's mandate of gender equity in sports.").

[175] U.S. Dep't of Educ., Off. for Civ. Rts., *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (July 11, 2003), www2.ed.gov/about/offices/list/ocr/title9guidanceFinal html (stating "that the elimination of teams is a disfavored practice.").

[176] Alexander W. Astin, *What matters in college? Four critical years revisited* (Jossey-Bass 1997); Mary Robeson Plunkett et al., *The Value of Intercollegiate Athletics Participation from the Perspective of Former ACC Athletes*, 17 Int'l J. of Sport Mgmt. 1-12 (2016); Frank J. Ryan, *Participation in Intercollegiate Athletics: Affective Outcomes*, 30 J. of Coll. Student Dev. 122–128 (1989).

[177] Erianne A. Weight et al., *Quantifying the psychological benefits of intercollegiate athletics participation: Implications for higher education policy and practice*, 7 J. of Issues in Intercollegiate Athletics 390-409 (2014).

(c) Increase in students' commitment to their academic institution;[178]

(d) Student-athletes fare better[179] or just as well[180] academically as their non-athlete peers; and

(e) Male student-athletes had improved interpersonal and leadership skills and were more motivated to complete a degree than their non-athlete peers.[181]

145. Two studies also show that participation in college athletics benefits student-athletes tangibly through increased marketability and salary compared to non-athlete peers.[182] A longitudinal study found significant differences between athletes and non-athletes, with former student-athletes having higher salary, total work engagement, dedication, vigor, job satisfaction, and promotion than their non-athlete peers over three measured time periods in their careers post-graduation. This study also found no significant difference between Olympic sport athletes and revenue-generating sport athletes in these outcomes, contradicting previous research suggesting that revenue-generating sport athletes perform poorly compared to Olympic sport athletes.[183]

146. Participation in a broad range of college sports therefore provides benefits to student-athletes on and off the field. Title IX is designed to ensure that institutions do not discriminate on the basis of sex in providing athletic opportunities to student-athletes. This notion

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[178] Alexander W. Astin, *What matters in college? Four critical years revisited* (Jossey-Bass 1997); Elizabeth Aries et al., *A Comparison of Athletes and Non-Athletes at Highly Selective Colleges: Academic Performance and Personal Development*, 45 Research in Higher Education 577-602 (2004).

[179] Elizabeth Aries et al., *A Comparison of Athletes and Non-Athletes at Highly Selective Colleges: Academic Performance and Personal Development*, 45 Research in Higher Education 577-602 (2004).

[180] *Id*.; Ernest T. Pascarella & John C. Smart, *Impact of intercollegiate athletic participation for African American and Caucasian men: Some further evidence*, 32 J. of Coll. Student Dev. 123-130 (1991).

[181] Ernest T. Pascarella & John C. Smart, *Impact of intercollegiate athletic participation for African American and Caucasian men: Some further evidence*, 32 J. of Coll. Student Dev. 123-130 (1991).

[182] William G. Bowen & Sarah A. Levin, *Reclaiming the Game: College Sports and Educational Values* (Princeton University Press 2003); James Shulman & William G. Bowen, *The Game of Life: College Sports and Educational Values* (Princeton University Press 2002); Peter Chalfin, et al., *The Value of Intercollegiate Athletics Participation from the Perspective of Employers who Target Athletes*, 8 J. of Issues in Intercollegiate Athletics 1-27 (2015).

[183] Erianne Weight et al., *Occupational measures of former NCAA athletes and traditional* students, 19 Int'l J. of Sport Mgmt. 1-26 (2018).

of equal participation and opportunity is at the core of college athletics,[184] yet Plaintiffs' Broadcast Model would go against this central principle of Title IX.

VII. CONCLUSION

147. While Plaintiffs' Broadcast Model presents a novel payment scheme for college football and basketball players, the application of such a model is something Title IX was designed to prohibit.

148. Congress already considered—in rejecting numerous proposed amendments to exempt revenue producing sports from Title IX—the import of a scheme like Plaintiffs' Broadcast Model that would allow different treatment for football and men's basketball as net revenue-producing sports. In short, Plaintiffs' Broadcast Model is as inconsistent with the application of Title IX as the many amendments that were rejected.

149. Plaintiffs' proposal to direct broadcast revenue share payments overwhelmingly to male student-athletes solely based on team membership (instead of the actual use of any particular team member's name, image and likeness) attempts to use the cover of student-athletes' purported "NIL" to sidestep Title IX's requirements and the law's prohibitions against sex-based discrimination. But longstanding Title IX principles prohibit this seemingly novel approach.

150. Plaintiffs' Broadcast Model fails to account for the financial aid and assistance requirements set forth in the Regulation and Policy Interpretation requiring that they be awarded in a manner that is substantially proportionate to the athletics participation percentages of each

[184] The OCR continues to actively ensure equal participation in college sports today. As recently as April 6, 2023, in the preamble to its proposed changes to Title IX regulations to address the participation of transgender students, the Department of Education stated: "Participation in school athletics is an important component of education and provides valuable physical, social, academic, and mental health benefits to students. The proposed rule affirms that students benefit from the chance to join a school sports team to learn about teamwork, leadership, and physical fitness." *See* U.S. Dep't of Educ., *FACT SHEET: U.S. Department of Education's Proposed Change to its Title IX Regulations on Students' Eligibility for Athletic Teams* (Apr. 6, 2023), https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams.

sex. The award of payments is so disproportionately discriminatory on the basis of sex under Plaintiffs' Broadcast model that the implementation of the Model is impractical if not impossible given the requirements of Title IX.

151. Plaintiffs' Broadcast Model also fails to consider the significant imbalance in treatment and benefits that it would create between the male and female athletics programs as a whole. The significance of the resulting disparity is so great that it would be difficult to conclude that Plaintiffs' Broadcast Model was anything other than a violation of Title IX's equitable treatment requirements.

152. Plaintiffs' proposal that the Conferences make the revenue share payments that the Broadcast Model contemplates does not allow the Model to evade Title IX. The Conferences' member institutions own and/or control the broadcast revenue Plaintiffs seek to redistribute and they would have to be integrally involved in facilitating the revenue share payments under the Model; Title IX applies in these circumstances. Further, funds are not exempt from Title IX merely because they come from an outside source. Because the payments contemplated by Plaintiffs' Broadcast Model are wholly inconsistent with Title IX's requirements, if I were conducting an audit, I would find that institutions that implement Plaintiffs' broadcast revenue share payments are in violation of Title IX.

153. In sum, Title IX was enacted to ensure equal opportunities for female athletes in college sports. While progress has certainly been made in this regard, the efforts to achieve Title IX's goals remain ongoing.

154. In my view, Plaintiffs' Broadcast Model would reflect a reversal of those efforts. By requiring the compensation of men's sports at such a disparate level, Plaintiffs' Broadcast Model could invite a new era of discriminatory treatment of female student-athletes, open the door

to creative ways to reallocate revenue and funds for the benefit of men's revenue-generating teams, and undermine the years of advancement and increasing support for women's sports since Title IX's enactment.

Date: 4/27/2023

Barbara Osborne

Barbara Osborne, J.D., M.S.

APPENDIX A: DOCUMENTS RELIED UPON

Pleadings/Court Documents:

- Plaintiffs' Motion for Class Certification, ECF No. 209
- Declaration of Greg Sankey
- Declaration of Chad Hawley
- Declaration of George Kliavkoff
- Declaration of Kerry Kenny
- Declaration of Ben Tario
- Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Counts I and III of Plaintiffs' Second Amended Complaint (ECF No. 49), *Fisk v. Bd. of Trs. of Cal. State Univ.*, No. 22-CV-173 TWR (MSB) (S.D. Cal. Apr. 12, 2023)

Deposition Transcripts:

- Deposition Transcript of Edwin Desser, Jan. 12, 2023
- Deposition Transcript of Tymir Oliver, Jan. 23, 2023
- Deposition Transcript of Daniel Rascher, Jan. 10, 2023

Expert Reports:

- Expert Report of Daniel A. Rascher, dated Oct. 21, 2022
- Expert Report of Edwin S. Desser, dated Oct. 21, 2022

Congressional Materials/Regulations:

- 34 C.F.R. § 106.4
- 34 C.F.R. § 106.8
- 34 C.F.R. § 106.21
- 34 C.F.R. § 106.31
- 34 C.F.R. § 106.32
- 34 C.F.R. § 106.37
- 34 C.F.R. § 106.40
- 34 C.F.R. § 106.41
- 34 C.F.R. § 106.51
- 45 C.F.R. § 86.41
- Pub. L. No. 93-380, 88 Stat. 484 (1974)
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- Pub. L. No. 100-259, 102 Stat. 28 (1988)
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- *Dear Colleague Letter: Bowling Green State University*, U.S. Dep't of Educ., Off. for Civ. Rts. (July 23, 1998), https://www2.ed.gov/about/offices/list/ocr/docs/bowlgrn.html

Conference Handbooks, Bylaws & Constitutions

- 2022-23 NCAA Division I Manual, NCAAHOUSE00249835-50299
- ACC 2020-21 Manual, ACC-HOUSE0000582-744
- Big 12 Conference 2020-21 Handbook, BIG12_HOUSE00000470-539
- Big 12 Conference 2022-23 Handbook, NCAAHOUSE00250300-352
- Big Ten Conference Handbook 2020-2021, BIGTEN-NIL_00036257-386
- Big Ten Conference Handbook 2021-2022, BIGTEN-NIL_00256617-749
- Pac-12 2021-22 Handbook, NCAAHOUSE00250353-591

- SEC Constitution and Bylaws 2022-2023, NCAAHOUSE00249782-834

APPENDIX B: PLAINTIFFS' "BUT FOR WORLD" TOTAL BROADCAST PAYMENTS

TOTAL BUT FOR WORLD PAYMENTS		
Football and Men's Basketball Class	**$**	Redacted - Counsel Only
Video Game	$	
Broadcast	$	1,320,300,000.00[186]
Other Lost NIL	$	21,200,000.00[187]
Women's Basketball Class*	**$**	**50,900,000.00**
Broadcast	$	49,800,000.00[188]
Other Lost NIL	$	1,100,000.00[189]
Additional Sports Class	**$**	Redacted - Counsel Only
Video Game	$	
Other Lost NIL	$	10,700,000.00[191]
TOTAL BUT FOR WORLD PAYMENTS	**$**	Redacted - Counsel Only
Payment Percentage to Football and Men's Basketball Class		**96%**

* Rascher apparently miscalculated women's basketball at $50.1M

TOTAL BUT FOR WORLD BROADCAST PAYMENTS		
Football and Men's Basketball Class Broadcast Payments	**$**	**1,320,300,000.00[192]**
Women's Basketball Class Broadcast Payments	**$**	**49,800,000.00[193]**
TOTAL BUT FOR WORLD BROADCAST PAYMENTS	**$**	**1,370,100,000.00**
Broadcast Percentage to Football and Men's Basketball Class		**96%**

[185] Rascher Rep., pp. 72-73, Exs. 3 and 4.
[186] *Id.*, p. 92, Ex. 10.
[187] *Id.*, p. 104, Ex. 14
[188] *Id.*, p. 92, Ex. 10.
[189] *Id.*, p. 104, Ex. 14.
[190] *Id.* ¶ 11(e).
[191] *Id.*, p. 104, Ex. 14.
[192] *Id.*, p. 92, Ex. 10.
[193] *Id.*, p. 92, Ex. 10.

APPENDIX C: TOTAL CLASS MEMBERS PER SPORT PER YEAR

Total Class Members per Sport				Total Class Members per Year	Percentage Male S-As	Percentage Female S-As
Year	Men's Football[194]	Men's Basketball[195]	Women's Basketball[196]			
2016	5338	764	840	6942	**87.90%**	**12.10%**
2017	5312	778	853	6943	**87.71%**	**12.29%**
2018	5357	803	849	7009	**87.89%**	**12.11%**
2019	5396	789	839	7024	**88.06%**	**11.94%**
2020	5410	803	856	7069	**87.89%**	**12.11%**
2021	5477	791	855	7123	**88.00%**	**12.00%**
Average	**5382**	**788**	**849**	**7018**	**87.91%**	**12.09%**

[194] Rascher Rep., p. 93, Ex. 11.
[195] *Id.*
[196] *Id.*

APPENDIX D: RELEVANT CONFERENCE BYLAW CITATIONS

The following principles and corresponding Conference bylaw citations are relevant to the Title IX analysis of Plaintiffs' Broadcast Model:

The Conferences are made up of their member institutions, with at least one representative from each institution on the boards of directors.

- **Big 12**: Each member institution has one representative on the Board of Directors, which is the "most senior campus executive officer" and explains the "special relationship of the Directors to the Members."[197]
- **ACC**: "The Board shall be composed of a representative of each Member[.]"[198]
- **Big Ten**: "The Council consists of the chancellor or president of each member university[.]"[199]
- **Pac-12**: "Each member of the Conference shall have one representative on the Board which shall be the President of the member ("Chief Executive Officer"), except as to the University of California, Berkeley; the University of California, Los Angeles; and the University of Colorado, Boulder, the respective Chancellor shall be considered the Chief Executive Officer."[200]
- **SEC**: "The President or Chancellor of each member shall be a Chief Executive Officer of the Conference. Accordingly, there shall be one Chief Executive Officer for each member."[201]

Each Conference's member institutions grant or transfer the rights to negotiate, enter into, and receive payments related to broadcast deals to the Conference.[202]

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[197] Big 12 Conference 2022-23 Handbook, Bylaws § 1.5.3, pp. 5–6, and Rules p. 22 (NCAAHOUSE00250310-11, NCAAHOUSE00250327).

[198] ACC 2020-21 Manual, Constitution § 1.5.1.2, p. 13 (ACC-HOUSE0000594).

[199] Big Ten Conference Handbook 2021-2022, Rule 4.1.1, p. 27 (BIGTEN-NIL_00256648).

[200] Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 5, § 2, p. 11 (NCAAHOUSE00250363).

[201] SEC Constitution and Bylaws 2022-2023, Constitution § 4.1.1, p. 5 (NCAAHOUSE00249794).

[202] The Big 12 and the ACC have separate contracts signed by the members granting the rights rather than granting the rights through the Bylaws. These contracts were made public in an article published by The Athletic. Andy Staples, *Staples: How would a school challenge a grant of rights? We asked a lawyer (who happens to have ACC, Big 12, Pac-12 copies)*, The Athletic (July 1, 2022), https://theathletic.com/3396108/2022/07/01/acc-grant-of-rights-

- **ACC**: "The Members have granted to the Conference the right to exploit certain media and related rights of the Members (such rights, the 'Media Rights'; and the agreement pursuant to which the Members granted such rights, the 'Grant of Rights')."[203] "Unless otherwise determined by the Board, all revenues from the sale, licensing, distribution and other exploitation of the Media Rights shall be deposited with the Conference."[204] "The Commissioner shall negotiate all contracts and agreements for the sale, licensing, distribution and other exploitation of the Media Rights on behalf of the Conference . . . provided that any Material Media Rights Agreement shall require the approval of two-thirds (2/3) of the Directors and all other Media Rights agreements shall be subject to approval by the Executive Committee."[205] "Notwithstanding Section 2.10.3, but only to the extent permitted by the Conference's Media Rights agreements, each Member shall retain such rights that are expressly retained by the Members under the Grant of Rights and any other rights that the Board may from time to time determine may be exploited by the Members."[206] "Unless otherwise determined by the Board, all revenues derived from the exploitation by any Member of its football games and basketball games that are not included in or selected for distribution as part of any Conference Media Rights agreement . . . shall be deposited with the Conference."[207] Note that the University of Notre Dame retains "all media and broadcast rights and revenues associated with its football and ice hockey teams, including rights and revenues related to its participation in Postseason Football Games."[208]
- **Pac-12**: "Effective July 1, 2012, each member hereby transfers and assigns to the Conference any and all of its rights to the commercial exploitation of all audio and all video transmission or dissemination by any and all means (including without limitation internet transmission or dissemination), now known or hereafter existing,

staples/. The SEC's member schools also convey their rights through member and letter agreements with the Conference. These member agreements are not publicly available.

[203] ACC 2020-21 Manual, Bylaws § 2.10.1, p. 40 (ACC-HOUSE0000621).

[204] *Id.* § 2.10.2, p. 40 (ACC-HOUSE0000621).

[205] *Id.* § 2.10.3, p. 41 (ACC-HOUSE0000622).

[206] *Id.* § 2.10.5, p. 41 (ACC-HOUSE0000622).

[207] *Id.* § 2.10.6, p. 41 (ACC-HOUSE0000622).

[208] *Id.* § 2.12.b, p. 45 (ACC-HOUSE0000626).

of all member competitions for all Conference sanctioned sports involving member teams as to all intra-Conference events and those inter-Conference events where the participating member controls audio and video rights."[209]

- **SEC**: The SEC's member schools transfer their rights through separate agreements with the Conference. The Conference's bylaws also state that "[e]ach member shall include provisions in each of its television, media, internet and digital rights agreements specifying that the member's agreements are subject and subordinate to all past, present, and future television, media, internet and digital rights agreements to which the Conference is or becomes a party, and further specifying that if any provision in the member's agreement is inconsistent or conflicts with any Conference agreement, the Conference agreement shall supersede the provision in the member's agreement, such that the superseded provision shall be of no effect to the extent of any such inconsistency or conflict."[210] The Bylaws also state that members "must fully conform to and comply with all current broadcast guidelines and broadcast agreements of the Conference."[211]
- **Big Ten**: The Big Ten's member institutions assign their telecast and related rights to the Big Ten Conference, which has the sole authority to package those rights together for purposes of negotiating and entering broadcast rights agreements with media rights partners on behalf of the Conference as a whole.[212]

The Conferences' use and distribution of revenue from broadcast deals is established by the bylaws. In general, the Conferences must disburse the funds to their member institutions, with limited exceptions for Conference operating expenses, reserve funds, and other uses authorized by the member schools through the Conferences' bylaws.[213] There are also limited exceptions to the requirement to disburse broadcast revenue to member schools based on misconduct, sanctions, withdrawal, and the like.

[209] Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 3, § 2, p. 9 (NCAAHOUSE00250361).
[210] SEC Constitution and Bylaws 2022-2023, Bylaws § 22.1.1, p. 31 (NCAAHOUSE00249820).
[211] *Id.*
[212] *See* Declaration of Kerry Kenny ¶ 8.
[213] There are sometimes reserves set and money is withheld from a member (e.g., Baylor Investigation/Withdrawal or Buyout Amount). But this is also pursuant to the bylaws and cannot change without board approval.

- **ACC**: The Conference should pay its reserves and then divide the net revenue equally.[214] Reserves are established by the Conference's Board.[215] Receipts from the NCAA Men's Basketball Championship are also divided equally among all member schools after making certain payments (for participation cost reimbursement) to the member schools that participate in the Tournament.[216] Receipts from the NCAA Women's Basketball Championship and any NIT tournaments are distributed to participating teams only.[217] The Conference shares all bowl revenues (including CFP revenues) equally among members, with participating member schools receiving an expense allotment.[218] Revenues derived from the ACC-ESPN agreement are also divided equally among member schools.[219] The University of Notre Dame is excluded from the distribution of Conference revenues attributable to football media or broadcast rights.[220] Member institutions that are sanctioned may be prohibited from sharing in the distribution of Conference funds under certain circumstances.[221]
- **Big 12**: The Conference must first use revenue to pay for "the operating and other expenses incurred or fund reserves established by the Board of Directors of the Conference[.]" The remaining net distributable revenues must be used to pay member subsidies and member-designated revenues, and then the revenue must be equally distributed among the members.[222] The Board of Directors has the authority to establish reserves for the Conference and to fund those reserves from Conference revenues, and the Board must approve the distribution of all revenues, assets, and reserves.[223] There is an exception to distributions for withdrawing members, who are deemed to agree to forfeit all distributions they were otherwise

[214] ACC 2020-21 Manual, Bylaws § 2.5.2, p. 34 (ACC-HOUSE0000615).
[215] *Id.* § 2.5.3, p. 34 (ACC-HOUSE0000615).
[216] *Id.* § 2.5.7, p. 35 (ACC-HOUSE0000616).
[217] *Id.* § 2.5.8, p. 35 (ACC-HOUSE0000616); *id.* § 2.5.9, p. 35 (ACC-HOUSE0000616).
[218] *Id.* § 2.5.10, pp. 35-36 (ACC-HOUSE0000616-17).
[219] *Id.* § 2.10.9, p. 41 (ACC-HOUSE0000622).
[220] *Id.* § 2.12.e, p. 46 (ACC-HOUSE0000627).
[221] *Id.*, App'x 2-5, p. 58 (ACC-HOUSE0000639).
[222] Big 12 Conference 2022-23 Handbook, Bylaws § 2.3, pp. 15–16 (NCAAHOUSE00250320-21).
[223] *Id.* § 2.5, p. 16 (NCAAHOUSE00250321).

owed under the Bylaws.[224] There is also an exception for member institutions sanctioned by the Conference with restrictions on revenue distributions.[225] Separately, member institutions that televise football games outside of the Conference's Media Rights Agreement have their distribution amounts reduced as set forth in the Bylaws.[226]

- **Big Ten**: The Conference must divide equally the net receipts from television revenue, football and basketball gate receipts, bowl payouts, receipts from men's basketball conference tournament, and receipts from the football championship game, with participating teams receiving authorized "participating team shares."[227] Member institutions that are sanctioned may be prohibited from sharing in the distribution of Conference income from television and bowl games under certain circumstances.[228]
- **Pac-12**: "All media rights net revenue generated by the Conference shall be distributed equally among all members."[229] Additionally, "[t]he Conference shall retain all revenues generated by the Conference Football Championship Game and related activities and shall distribute all net revenues equally among the member institutions after payment of game-related expenses."[230] The Conference also retains "all revenue generated through bowl games," provides expense allowances for participants, and "distribute[s] the remaining revenue equally among the members."[231] Gross revenues from the Conference men's and women's basketball tournaments, minus approved expenses for participants in the tournaments, "shall be distributed by the Conference office equally to the Conference's member institutions."[232]

[224] *Id.* § 3.4 p. 18 (NCAAHOUSE00250323).
[225] *Id.* § 3.6 p. 19 (NCAAHOUSE00250324).
[226] *Id.* § 2.4 p. 16 (NCAAHOUSE00250321).
[227] Big Ten Conference Handbook 2021-2022, pp. 106–07, 110–11; *id.*, Agreements 18.7 and 31, pp. 99-111 (BIGTEN-NIL_00256720-32).
[228] *Id.*, Rule 19.5, pp. 64-65 (BIGTEN-NIL_00256685-86).
[229] Pac-12 2021-22 Handbook, Executive Regulations, ch. 1, § 1, p. 22 (NCAAHOUSE00250374).
[230] *Id.*, ch. 1, § 2, p. 22 (NCAAHOUSE00250374).
[231] *Id.*, ch. 1, § 3, p. 22 (NCAAHOUSE00250374).
[232] *Id.*, ch. 1, § 5, p. 25 (NCAAHOUSE00250377).

- **SEC**: Before any Conference revenues are distributed, the Conference must make provision for payment of any outstanding debts. "The Conference shall make provision for such debt service amounts first from the revenues received by the Conference under its media agreements (allocated among the media agreements and sports as determined by the Commissioner), and if the revenues from the media agreements are not sufficient, from other revenues of the Conference determined by the Commissioner."[233] The Bylaws provide clear instructions for evenly dividing revenue generated through basketball, football, and baseball among the member institutions and the Conference after making payments to specific members (who have incurred individual member expenses associated with generating the revenue) from each source of revenue.[234] Revenue from all other sports is distributed in equal shares to the Conference office and to those "institutions which sponsor teams in th[e] particular sport" with which the net revenues are associated.[235] There are exceptions to member distributions for withdrawing members, who must pay an established fee for withdrawal.[236] There are also exceptions to distributions for member institutions prohibited from participating in postseason men's basketball and football events that generate revenues for the Conference.[237] The Chief Executive Officers of the Conference have the authority to prohibit any member institution from participating in the distribution of Conference funds, as set forth in the Constitution.[238]

The Conferences require that their directors (representatives of the member schools) vote on amendments to the bylaws governing distributions of Conference funds to the member institutions.

- **ACC**: Certain matters (including amendment to Article 2.5 of the Bylaws (finances) and entering into or amending Material Media Rights Agreements) require the vote of "two-thirds (2/3) of all the Directors of the Board, even if one

[233] SEC Constitution and Bylaws 2022-2023, Bylaws § 31.10.1, p. 36 (NCAAHOUSE00249825).
[234] *Id.* §§ 31.20 (basketball), 31.21 (football), 31.22 (baseball), pp. 36–38 (NCAAHOUSE00249825-27).
[235] *Id.* § 31.23.1 (all other sports), p. 38 (NCAAHOUSE00249827).
[236] *Id.*, Constitution §§ 3.1, 3.2, pp. 3–4 (NCAAHOUSE00249792-93).
[237] *Id.*, Bylaws § 31.26, pp. 38-39 (NCAAHOUSE00249827-28).
[238] *Id.*, Constitution § 4.1.2, p. 5 (NCAAHOUSE00249794).

or more of such Directors is not present for such vote[.]"[239] Certain matters (including admission of new members; expulsion, suspension or probation of members; amendments to Constitution; amendments to Bylaws other than Section 2.5 (Finances)) require the vote of "three-fourths (3/4) of all the Directors of the Board, even if one or more of such Directors is not present for such vote[.]"[240]

- **Big 12**: Certain actions, including "[a]mendments and modifications to the role and authority of the Board of Directors and the Advisory Committees" and "[a]pproval or modification of: (i) Section 2 . . . or any other policies and procedures relating to the revenue distribution to the Members; and (ii) the establishment and funding of, terms or, maintenance of, and release or dissolution of, any reserves funded with Conference assets or revenues pursuant to Section 2.5," require a supermajority vote of the Directors.[241] The Conference Bylaws "may be altered, amended or repealed and new Bylaws may be approved by the Board of Directors at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose only by the affirmative vote of seventy-five percent (75%) or more [of] the Disinterested Directors Entitled to Vote on such issue, except for the provisions of Section 1.5.2 above and bylaws relating to matters for which a greater affirmative vote is required pursuant to Section 1.5.2, which may be amended only by the affirmative vote of the number of Directors that would be required to take the action provided for in such bylaw."[242]
- **Big Ten**: Amending or repealing any Conference Bylaws can occur "only upon the vote of not less than sixty percent (60%) of the entire Council."[243]
- **Pac-12**: "A vote of at least three-fourths vote of the entire Board shall be required to amend the Constitution and Bylaws and Executive Regulations 1 through 7. A vote of at least two-thirds of the entire Board shall be required to amend Executive Regulations 8 and 9."[244] "Amendment to this Constitution and Bylaws shall be

[239] ACC 2020-21 Manual, Constitution § 1.6.2, pp. 21–22 (ACC-HOUSE0000602-03).
[240] *Id*.
[241] Big 12 Conference 2022-23 Handbook, Bylaws § 1.5.2, pp. 3–5 (NCAAHOUSE00250308-10).
[242] *Id.* § 1.10, pp. 13–14 (NCAAHOUSE00250318-19).
[243] Big Ten Conference Handbook 2021-22, Rule 4.1.3, pp. 27-29 (BIGTEN-NIL_00256648-50).
[244] Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 7, § 4, p. 14 (NCAAHOUSE00250366).

approved by three-fourths vote of the entire Board. Proposals for amendments may be made by the Board, the Commissioner or the Council. All proposed amendments must be presented to the Board in writing."[245] "Amendments to [Executive Regulation 1 regarding financial distributions] shall be approved by three-fourths vote of the entire Board. Proposals for amendments may be made by the Board, the Commissioner, or the Council. All proposed amendments must be presented to the Board in writing."[246]

- **SEC**: "Provisions in the manual, which require a two-thirds vote for amendment and a unanimous vote for suspension, are called dominant provisions and are denoted in the margin by an asterisk (*). All others require a majority vote for amendment and a two-thirds vote for suspension."[247] "An amendment (or amendment to amendment) of a dominant provision (denoted by an asterisk in the margin of the provision) requires a two-thirds vote of all of the members of the Conference in good standing, whether all of the members of the Conference are present at or participating in the meeting or not. All other amendments require a vote of a majority of all the members of the Conference in good standing, whether all the members of the Conference are present at or participating in the meeting or not."[248] Sections 3.1.6 (Effect of Withdrawal from or Termination of Membership), 3.2.4 (Reduction of Distributions to Withdrawing Member), 22.1 (Media and Related Agreements) and 31.10 (Payment of Debt Service) to the Bylaws require a two-thirds vote for amendment.[249] Sections 31.20 (Revenue Distribution – Basketball), 31.21 (Revenue Distribution – Football), 31.22 (Revenue Distribution – Baseball), and 31.23 (Revenue Distribution – All Other Sports) require a majority vote for amendment.[250]

[245] *Id.*, ch. 13, § 1, p. 20 (NCAAHOUSE00250372).

[246] *Id.*, Executive Regulations, ch. 1, § 10, p. 26 (NCAAHOUSE00250378).

[247] SEC Constitution and Bylaws 2022-2023, Foreword (NCAAHOUSE00249784).

[248] *Id.*, Constitution § 5.3.1.3, p. 9 (NCAAHOUSE00249798).

[249] *Id.*, Constitution § 3.1.6, p. 3, § 3.2.4, p. 4 (NCAAHOUSE00249793); *id.*, Bylaws § 22.1.1, p. 31 (NCAAHOUSE00249820); *id.* § 31.10.1, p. 36 (NCAAHOUSE00249825).

[250] *Id.*, Bylaws §§ 31.20 (basketball), 31.21 (football), 31.22 (baseball), 31.23 (other sports), pp. 36-38 (NCAAHOUSE00249825-27).

The funds the Conferences would be distributing to student-athletes are technically funds belonging to the member schools, implicating Title IX.

- **ACC**: "[A]ll of the powers of the Conference shall be . . . managed by or under the direction, and subject to the oversight, of the Board in accordance with th[e] Constitution and the Bylaws. . . . [T]he Board shall have the right to take any action or any vote on behalf of the Conference, and each Director shall have the right to take any action or any vote on behalf of the Member it represents, even if such right could be taken or exercised by another committee or person if the Board or such Director did not choose to exercise such right."[251] "The Board shall be composed of a representative of each Member (each a 'Director'), provided that each Director must be the most senior executive officer of such Member, whether such position is characterized as president, chancellor, chief executive officer or otherwise."[252] "Each Director shall be entitled to one vote each. . . . [I]f a quorum is present when a vote of the Directors is taken, the affirmative vote of a majority of all Directors present for such vote shall be an act of the Board."[253] The Conference's Board controls the participation of any new members in the distribution of Conference revenues.[254] The Board considers and approves the Conference's operating budget and must approve any changes to the approved budget.[255]
- **Big 12**: The Conference's members are its member institutions.[256] The Chief Executive Officer of each member institution is automatically appointed as a Director on the Conference's Board of Directors, and each member institution receives distributions of Conference revenue as provided by the bylaws and rules.[257] The Director for each member institution must "be the most senior campus executive officer (President or Chancellor)" of each member institution.[258] "[A]ll

[251] ACC 2020-21 Manual, Constitution § 1.5.1.1, pp. 12-13 (ACC-HOUSE0000593-94).
[252] *Id.*, Constitution. § 1.5.1.2, p. 13 (ACC-HOUSE0000594).
[253] *Id.*, Constitution § 1.6.2, pp. 21-22 (ACC-HOUSE0000602-03).
[254] *Id.*, Constitution § 1.4.3, p. 11 (ACC-HOUSE0000592).
[255] *Id.*, Bylaws § 2.5.1.2, p. 34 (ACC-HOUSE0000615).
[256] Big 12 Conference 2022-23 Handbook, Bylaws § 1.2.2, p. 1 (NCAAHOUSE00250306).
[257] *Id.* § 1.4.1, p. 3 (NCAAHOUSE00250308).
[258] *Id.* § 1.5.3, pp. 5-6 (NCAAHOUSE00250310-11); Rules § 5.1, p. 22 (NCAAHOUSE00250327); § 5.2, p. 24 (NCAAHOUSE00250329).

corporate powers shall be exercised by or under the authority of, and the business and affairs of the Conference shall be managed by the Board of Directors in accordance with the[ ] Bylaws."[259] The Board may take action by unanimous written consent of all disinterested directors or the affirmative vote of a majority of disinterested directors entitled to vote who are present at a duly called meeting at which a quorum is present.[260] The vote of a majority of disinterested directors is required for numerous actions, including the "[a]pproval of any contract of the Conference that can be expected to involve more than ten percent (10%) of the income or expenditures of the Conference for a fiscal year" and "[a]pproval of the operating budget of the Conference for each fiscal year[.]"[261] The vote of a supermajority of disinterested directors is required for some actions, including "[a]mendments or modifications to the role and authority of the Board of Directors and the Advisory Committees[.]"[262] The Board authorizes officers and agents to enter contracts in the name of and on behalf of the Conference.[263] "All checks, drafts and other orders for payment of money, notes or other evidences of indebtedness issued in the name of the Conference, shall be signed by such Officer or Officers, agent or agents of the Conference and in such manner as shall from time to time be determined by the Board of Directors."[264] The Board also approves the Conference operating budget, "including the amount of revenue to be distributed. Distribution of revenue in excess of the annual budgeted distributable net revenue from additional sources (e.g., second BCS bowl appearance) shall be determined by the Board of Directors[.]"[265]

- **Big Ten**: "[T]he ultimate authority and responsibility in Big Ten Conference governance is vested in the Council of Presidents/Chancellors. All policy will be decided at the Council of Presidents/Chancellors level. This includes the annual budget for the Conference office and all other Conference financial matters

[259] Big 12 Conference 2022-23 Handbook, Bylaws § 1.5.1, p. 3 (NCAAHOUSE00250308).
[260] *Id.* § 1.5.1.1, p. 3 (NCAAHOUSE00250308).
[261] *Id.* § 1.5.2, pp. 3-4 (NCAAHOUSE00250308-09).
[262] *Id*.
[263] *Id.* § 1.8.1, p. 13 (NCAAHOUSE00250318).
[264] *Id*.
[265] *Id.* § 2.1, p. 15 (NCAAHOUSE00250320).

including budgetary guidelines that may be promulgated for campus athletics programs."[266] Similarly, "[t]he Conference is governed by the Board of Directors (also known as the Council of Presidents/Chancellors, hereafter referred to as the Council), subject to its Certificate of Incorporation, its Bylaws and this Handbook. It is fundamental that the ultimate authority in the Conference resides in the Council. The affairs and business of the Conference are managed and conducted by its Council, unless the Council properly delegates any such affairs and business to others."[267] "The Council consists of the chancellor or president of each member university, constituted for the purposes set forth in the Certificate of Incorporation and the Bylaws."[268] The Council has control over policy matters including preparing and approving the Conference budget and all other financial matters; enforcing any Conference rules, agreements, or bylaws that would reduce the revenue received by any member; enter into contracts involving telecast rights agreements for football and basketball, football bowl contracts, or any other contracts requiring the Conference to spend more than $1 million; amending or repealing any bylaws; amending or deferring publication of the Conference Handbook.[269]

- **Pac-12**: The Conference's members are its member schools.[270] "[T]he business and affairs of the Conference shall be managed by or under the direction of the Board. The Board shall be the governing body of the Conference."[271] "Each member of the Conference shall have one representative on the Board which shall be the President [or Chancellor] of the member."[272] "Except as otherwise provided by law or in this Constitution and Bylaws, the act of the Board, the Council or committee . . . by vote of a majority of the members present at the time of the vote,

[266] Big Ten Conference Handbook, 2021-22, Delegation and Communications Guidelines, p. 19 (BIGTEN-NIL00036280).
[267] *Id.*, Rule 1.3, p. 24 (BIGTEN-NIL_00036285).
[268] *Id.*, Rule 4.1.1, p. 27 (BIGTEN-NIL_00036288).
[269] *Id.*, Rule 4.1.3, pp. 27-29 (BIGTEN-NIL_00036288-90).
[270] Pac-12 2021-22 Handbook, Constitution and Bylaws, ch. 2, § 1, p. 7 (NCAAHOUSE00250359).
[271] *Id.*, ch. 5, § 1, p. 11 (NCAAHOUSE00250363).
[272] *Id.*, ch. 5, § 2, p. 11 (NCAAHOUSE00250363).

if a quorum is present at such time."[273] The Board approves the annual budget for the Conference.[274]

- **SEC**: "The President or Chancellor of each member shall be a Chief Executive Officer of the Conference. Accordingly, there shall be one Chief Executive Officer for each member."[275] "The Chief Executive Officers shall have plenary power and authority with respect to all affairs of the Conference of any type or nature whatsoever, subject only to any specific provisions and restrictions imposed by the Constitution and Bylaws," including prohibiting any member institution from participating in the distribution of Conference funds.[276] Member school representatives on the Executive Committee approve the Conference's annual operating budget and oversees all "financial and fiscal affairs of the Conference[.]"[277] Member schools are entitled to vote at Conference meetings, unless the member is not in good standing.[278] "A vote of a majority of the members present and voting at a duly convened meeting at which a quorum is present shall constitute action of the Conference unless a supermajority vote is otherwise required by the Constitution or Bylaws. . . . The vote of each member shall be cast by the [CEO] who is the President or Chancellor of the member; provided, however, that a [CEO] may designate another representative of the member to attend . . . and vote[.]"[279] Certain votes require a supermajority of members entitled to vote.[280]

[273] *Id.*, ch. 7, § 1, p. 14 (NCAAHOUSE00250366).
[274] *Id.*, ch. 12, § 1, p. 20 (NCAAHOUSE00250372).
[275] SEC Constitution and Bylaws, 2022-2023, Bylaws § 4.1.1, p. 5 (NCAAHOUSE00249794).
[276] *Id.* § 4.1.2, p. 5 (NCAAHOUSE00249794).
[277] *Id.* § 4.3.1.1(f), p. 6; § 4.4.2(f), p. 7 (NCAAHOUSE00249795-96).
[278] *Id.* § 5.1.1, p. 8 (NCAAHOUSE00249797).
[279] *Id*.
[280] *Id.*, Foreword and Bylaws § 5.3.1.3, p. 9 (NCAAHOUSE00249784, NCAAHOUSE00249798).

APPENDIX E: BROAD-BASED SPORT OPPORTUNITIES FOR THE BENEFIT OF ALL STUDENT-ATHLETES FROM THE BEGINNING OF COLLEGE ATHLETICS

While college students were playing a variety of games on college campuses in the 1840's, college sport did not become popular until schools began to organize and compete against one another.[281] The very first intercollegiate competition was a regatta between Harvard and Yale in 1852. As schools began to schedule competition in a variety of sports, the Intercollegiate Association of Amateur Athletes of America ("IAAAA") was created in 1875 to create uniform rules and championships. Track and field was the first IAAAA national championship in 1876; the Intercollegiate Football Association was created that same year. While baseball was already popular on campuses in the 1850s, the Intercollegiate Baseball League was not created until 1879. Sport participation led the transition from colleges being places where students focused only on their academic and moral development to institutions that embraced physical prowess for the benefit of the participants but also for the contribution to student life.[282]

The NCAA was formed in December 1905 as colleges debated whether to reform or abolish football.[283] For the first half of the twentieth century, the NCAA was primarily an opportunity for faculty athletics representatives to debate the appropriate role of athletics within the academy.[284] Broad-based participation was generally favored for the positive impact on participants, the campus community, and alumni engagement.

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[281] Guy Lewis, *The Beginning of Organized Collegiate Sport*, 22 Am. Quarterly 222-229 (Summer 1970), https://history msu.edu/hst329/files/2015/05/LewisGuy-TheBeginning.pdf.

[282] *Id*. at 229 ("[T]he outcome of events was considered 'sacredly connected with the glory of Alma Mater herself.'").

[283] Ronald A. Smith, *Pay for Play: A History of Big-Time College Athletic Reform*, Univ. of Ill. Press (2010), pp. 48-50.

[284] *Id*.

The NCAA began tracking sport participation in the 1956-57 academic year in five-year intervals.[285]

Men's participation in 1957 was 105,613. The first female participants were counted in the 1966-67 academic year; that year there were 15,182 women and 151,918 men participating in college athletics. Women's athletics continued to grow, initially as club sport programs and then as full varsity programs though membership in the Association of Intercollegiate Athletics for Women ("AIAW").[286] The NCAA added women's championships beginning in the 1981-82 academic year.[287] Table 1 shows the number of male and female participants in that year, and in the last year recorded, 2020-2021.

Table 1. NCAA Men's and Women's Participation

1981-1982	169,800 men	75,491 Men Division I	23 sports
	74,239 women	31,686 Women Division I	23 sports
2020-2021	275,769 men	98,198 Men Division I	19 Championship sports
	215,486 women	86,024 Women Division I	21 Championship sports

NCAA Sports Sponsorship and Participation Rates Report (1956-57 through 2020-21), pp. 7-8, 85-86.

[285] *NCAA Sports Sponsorship and Participation Rates Report (1956-57 through 2020-21)*, https://ncaaorg.s3.amazonaws.com/research/sportpart/2022RES_SportsSponsorshipParticipationRatesReport.pdf.

[286] Ronald A. Smith, *Pay for Play: A History of Big-Time College Athletic Reform*, Univ. of Ill. Press (2011), pp. 144-149.

[287] Justin Whitaker, *Looking back at the first women's champions in NCAA history*, NCAA (Mar. 10, 2023), https://www.ncaa.org/news/2023/3/10/media-center-looking-back-at-the-first-womens-champions-in-ncaa-history.aspx.

APPENDIX F: A CHRONOLOGICAL NARRATIVE FOR THE HISTORY OF TITLE IX

The purpose of this appendix is to provide a more complete narrative of the history and development of Title IX as relevant for a better understanding of the application of the principles addressed in the expert report.

A. The Need for Title IX

Title IX of the Education Amendments of 1972 was signed into law on June 23, 1972. The legislation states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]"[288]

Title IX was necessary because of significant educational inequalities for girls and women prior to its enactment.[289] Girls had limited access to various academic courses, such as higher level math and science courses as well as vocational track classes such as wood shop, auto mechanics, or metal shop. At the college and university level, many institutions were male-only and others set small quotas for allowing women's admission, and required those women to be exceptional, with higher grades and test scores. For those women admitted to a co-educational institution, scholarships were limited as well as curricular options. Women were directed toward teacher education programs and sometimes prohibited from professional schools such as engineering, medicine, and law. Boys and men were also gender stereotyped in their academic choices as boys were not allowed to take home economics classes and men were typically prohibited from nursing schools.[290]

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[288] 20 U.S.C. § 1681.

[289] *Equal Access to Education: Forty Years of Title IX*, U.S. Dept. of Justice (June 23, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf.

[290] *Id*., p. 2 n.7.

Backed up by volumes of data identifying and analyzing the gender-based inequities, Congresswoman Edith Green, who was chair of the House Education Committee, and Congresswoman Patsy Mink quietly shepherded Title IX through the House as an amendment to the broader Education Act. Senator Birch Bayh wrote the final version and brought it to the Senate.[291]

Even before the statute was enacted, athletics leaders were concerned that teams would be required to be co-ed (117 Cong. Rec. 30,406-407, 1971). Once Title IX was signed into law, Senator John G. Tower of Texas and four other senators proposed an amendment exempting revenue producing sports from Title IX:

> Provides that title IX of the Education Amendments of 1972, relating to discrimination, shall not apply to an intercollegiate athletic activity insofar as such activity provides to the institution gross receipts or donations required by such institution to support that activity.[292]

The proposed Tower Amendment was passed by the Senate, but was eliminated in the Senate-House conference, which approved the Javits Amendment instead.[293] Senator Jacob Javits of New York simply proposed that the Department of Health, Education and Welfare should determine how Title IX would be implemented. The Javits Amendment stated:

> The Secretary shall prepare and publish, not later than 30 days after the date of enactment of this Act, proposed regulations implementing the provisions of title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.[294]

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[291] Margaret Wood, *Happy Belated Birthday, Title IX*, Library of Congress, Blogs (Nov. 27, 2012), https://blogs.loc.gov/law/2012/11/happy-belated-birthday-title-ix.

[292] S. 2106 Summary, 94th Cong. (1975), https://www.congress.gov/bill/94th-congress/senate-bill/2106.

[293] *History, The Living Law*, TitleIX, http://www.titleix.info/history/the-living-law.aspx.

[294] Educ. Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974). Introduced as H.R. 69 in the 93rd Congress on January 3, 1973, available at https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg484.pdf.

B. The Regulations (1975)

On May 27, 1975, the Title IX regulations were signed by President Gerald R. Ford. Every aspect of sex discrimination in education was addressed in the Regulations: the admissions process (34 C.F.R. § 106.21, 1975); housing (34 C.F.R. § 106.32, 1975); financial aid (34 C.F.R. § 106.37, 1975); marital and parental status of students (34 C.F.R. § 106.40, 1975); employment (34 C.F.R. § 106.51, 1975); and athletics (34 C.F.R. § 106.41, 1975).

The athletics regulations allowed for separate teams by sex, and if a team was not offered for a member of the underrepresented sex, the participant must be allowed to try out for that team if it is a non-contact sport (34. C.F.R. § 106.41(b), 1975). Ten factors were to be considered in providing "equal opportunity" in athletics:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services; and

(10) Publicity (34 C.F.R. § 106.41(c), 1975).

C. Objections to the Proposed Regulations

As required by the General Education Provisions Act, the regulations were then submitted to Congress for review, resulting in several more attempts to change the athletics regulations. All attempts were rejected. Senator John Tower once again attempted to exempt revenue-generating sports from Title IX.[295] At the congressional hearings pertaining primarily to the proposed Tower Amendment, Senator Birch Bayh specifically stated:

> As the Senate author of title IX . . . I am opposed to the Tower bill, not because I am oblivious to the economic concerns of those members of the NCAA opposing title IX, but because I think their concern is based upon a misunderstanding of both what is required under the title IX regulations and the true implications of the Tower proposal.[296]

Others proposed legislation to eliminate the Regulations, eliminate the section related to athletics, or make alterations to the regulations related to athletics.

- Twin bills proposed by Senator Jesse Helms[297] on June 5, 1975 and Representative James G. Martin[298] on June 17, 1975 disapproved of the Regulations in their entirety, and alternatively disapproved the specific sections of the regulations applicable to athletics programs and grants.[299]
- Rep. James G. O'Hara proposed two amendments, H.R. 8394 and 8395, on July 8, 1975. H.R. 8394 claimed that the Regulations related to athletics should be

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[295] S. 2106 Summary, 94th Cong. (1975), https://www.congress.gov/bill/94th-congress/senate-bill/2106 ("Provides that title IX of the Education Amendments of 1972, relating to discrimination, shall not apply to an intercollegiate athletic activity insofar as such activity provides to the institution gross receipts or donations required by such institution to support that activity.").

[296] *Prohibition of Sex Discrimination, 1975: Hearings Before the Subcomm. on Educ. of the Comm. on Labor & Public Welfare on S. 2106*, 94th Cong. 46-47 (1975) (statement of Sen. Birch Bayh), https://files.eric.ed.gov/fulltext/ED136136.pdf.

[297] S. Con. Res. 46 Summary, 94th Cong. (1975), https://www.congress.gov/bill/94th-congress/senate-concurrent-resolution/46.

[298] H. Con. Res. 310 Summary, 94th Cong. (1975), www.congress.gov/bill/94th-congress/house-concurrent-resolution/310; H. Con Res. 311 Summary, 94th Cong. (1975), www.congress.gov/bill/94th-congress/house-concurrent-resolution/311.

[299] Samuels & Galles, *supra*, at 41.

disapproved because they were inconsistent with the Education Amendments of 1972 upon which they derived their authority.[300] H.R. 8395 would have allowed athletics departments to "make expenditures for a sport or team from revenues derived from that sport or team" essentially exempting these sports or teams from "the provisions of the Education Amendments of 1972 prohibiting sex discrimination."[301]

- The Laxalt resolution, proposed by Senator Paul D. Laxalt on July 16, 1975 also claimed that the Title IX athletics regulations exceeded the scope of the statute's authority as "they seek to regulate athletic programs and activities which receive no Federal financial assistance."[302]
- Senator Jesse Helms made a second attempt to limit the Title IX regulations by proposing "that the provisions of the Education Amendments relating to nondiscrimination on the basis of sex shall apply only to education programs and activities which directly receive financial assistance from the Federal Government."[303]

All proposals were rejected. Representative Mink described the resolutions as implying "that sex discrimination is acceptable when someone profits from it and that moneymaking propositions should be given congressional absolution from Title IX."[304]

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[300] H. Con. Res. 330 Summary, https://www.congress.gov/bill/94th-congress/house-concurrent-resolution/330; H.R. 8394 Summary, www.congress.gov/bill/94th-congress/house-bill/8394.

[301] H. Con. Res. 330 Summary, https://www.congress.gov/bill/94th-congress/house-concurrent-resolution/330; H.R. 8395 Summary, www.congress.gov/bill/94th-congress/house-bill/8395.

[302] S. Con. Res. 52 Summary, 94th Cong.; 121 Cong. Rec. 22940 (1975), https://www.congress.gov/bill/94th-congress/senate-concurrent-resolution/52; *see also* Brooks, *supra*, at 342, nn. 52, 55.

[303] S. 2146 Summary, 94th Cong. (1975), https://www.congress.gov/bill/94th-congress/senate-bill/2146.

[304] Samuels & Galles, *supra*, at 21.

D. The Regulations become Law

Congress was clear in its intent that Title IX's prohibition on sex discrimination in educational programs or activities was applicable to athletics programs regardless of their revenue generating ability and that all programs or activities at educational institutions that received federal funding were subject to Title IX. The Title IX regulations were approved by Congress and became effective on July 21, 1975.[305]

E. The First "Dear Colleague Letter"

Just four months after the Regulations became effective, the Office of Civil Rights issued their first "Dear Colleague Letter." This memorandum clarified that each of the line items in the program component list of the Title IX Regulations is considered separately, and each segment must comply with Title IX "whether or not that segment is the subject of direct financial support through the Department."[306] For each segment, the boys' program as a whole is compared to the girls' program as a whole and disparities are noted. The focus is on the totality of the athletics program instead of a sport-by-sport comparison. A disparity in one program component can alone constitute a Title IX violation if it is substantial enough to deny equality of athletic opportunity to students of one sex. Identical programming is not required, and differences in treatment due to the application of gender-neutral rules are permissible, as long as the application does not create a discriminatory disparity. Similarly, the needs of various sports may differ and therefore equal spending for each team is not required. However, if lack of funding creates differences in the

[305] As stated in the statute, all educational institutions that receive federal funding are prohibited from discriminating on the basis of sex, and the Regulations provided an adjustment period of up to three years to comply, which meant that all institutions would be in compliance no later than 1978 (34 C.F.R. § 106.41(d) (1975)). Educational institutions receiving federal funds are also required to provide assurance of compliance with the statute or indicate they are taking remedial measures to comply (34 C.F.R § 106.4 (1975)). Other broad policy rules include the requirements to designate a Title IX coordinator, disseminate a non-discrimination policy, and adopt grievance procedures (34 C.F.R. § 106.8 (1975)).

[306] Holmes Letter, *supra*.

quality of the student-athlete's experience based on sex, the educational institution would be in violation. Finally, institutions were reminded that separate sources of funding for athletics programs do not remove the program from Title IX compliance.[307]

F. More Attempts to Amend Title IX

While the Department of Health, Education and Welfare was strengthening Title IX by providing additional direction to all schools that received federal funding so that they could comply, lawmakers who opposed Title IX continued to propose amendments to limit its reach within athletics.[308] Senator James A. McClure of Idaho proposed an amendment to S.2657 of the Education Amendments of 1976 to limit the meaning of "education program or activity" in the Title IX statute to the "curriculum or graduation requirements of the institutions."[309] This amendment would have eliminated all extracurricular activities from Title IX's reach. Senator Birch Bayh opposed the amendment, and it was rejected on its first day.[310]

Senator Jesse Helms made a third attempt, on January 31, 1977, to limit Title IX's applicability to only those educational programs or activities that directly received federal financial assistance and to exempt educational programs or activities that are integral to the required curriculum.[311] The amendment further specified that athletics was not a required part of the curriculum, and again tried to prohibit any "regulations, rules or orders" related to the "actual or potential marital or parental status" of applicants or students at institutions that receive federal funding.[312] Throwing in everything but the kitchen sink, Helms mandated that Title IX could not require classes to be offered in "mixed groups of both sexes" and prohibited any Federal

[307] *Id*.
[308] Samuels & Galles, *supra*, at 19–23.
[309] 122 Cong. Rec. 28,136 (1976).
[310] Brooks, *supra*, at 359.
[311] S. 535 Summary, 95th Cong., 1st Sess. (1977), www.congress.gov/bill/95th-congress/senate-bill/535.
[312] *Id*.

department or agency from requiring affirmative action programs or imposing quotas.[313] While this third attempt by Helms was his most comprehensive effort to nullify Title IX, it died on the Senate floor like each of his previous attempts.[314]

On July 15, 1977, Senators Tower, Bartlett, and Hruska introduced Senate Bill (S. 2106), once again proposing to exclude revenue-producing sports from Title IX coverage. Like its predecessor, the bill died in committee before reaching the Senate floor.[315]

G. The 1979 Policy Interpretation and the Three-Part Test

On December 11, 1979, the Office for Civil Rights (OCR) of the newly created U.S. Department of Education published *A Policy Interpretation: Title IX and Intercollegiate Athletics* to provide additional guidance for colleges and universities to comply with Title IX by providing specific factors to examine and tests to apply. The Policy Interpretation includes a detailed explanation of how OCR will determine compliance in intercollegiate athletics programs, provides a process to evaluate the program components in the Regulations and adds two new components to evaluate (recruiting and support services), and provides tests for compliance with scholarships and participation opportunities.

> **Financial Aid.** Section A of the Policy Interpretation addresses equity in athletics-related financial aid/athletic scholarships. The test for compliance requires institutions to determine whether the total amount of financial assistance provided to each sex is proportionately equal to the number of male and female participants in the athletics program. Disparities based on legitimate, non-discriminatory factors such as the difference between in-state and out-of-state tuition will be taken into consideration.[316]

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[313] *Id*.
[314] Samuels & Galles, *supra*, at 43.
[315] S. 2106, 94th Cong., 1st Sess., 121 Cong. Rec. 22,775-22,778 (1975).
[316] Policy Interpretation § VII.A.2.a.

The "Laundry List". Section B provides a four-factor process to evaluate program components two through ten listed in §106.41 of the 1975 Regulations, plus the new components of recruiting and support services. Schools are expected to:

(1) Examine the availability, quality and kinds of benefits, opportunities, and treatment for student-athletes of both sexes and disparities for each component and identify disparities;

(2) Determine whether the disparity can be justified by non-discriminatory factors (such as the unique needs of a particular sport);

(3) Apply the individual criteria in the Policy Interpretation specific to that program component; and

(4) Compare the men's program as a whole to the women's program as a whole to determine:

(a) Whether policies are discriminatory on their face or as applied, or

(b) If disparities are substantial and unjustified; or

(c) If disparities are substantial enough to deny equality of athletics opportunity.[317]

Effective Accommodation. Section C addresses the accommodation of student-athletes' interests and abilities by providing equal opportunity in the selection of sports and levels of competition available to members of both sexes. The Three-Part Test was introduced to provide three alternative ways to determine compliance:

(1) Substantial proportionality measured by comparing the percentage of undergraduates enrolled to the percentage of student-athletes by sex; or

[317] Policy Interpretation §§ VII.B.3-5.

(2) History and continuing practice of program expansion which is responsive to the developing interest and abilities of the underrepresented sex; or

(3) Demonstrate that the interest and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program.[318]

Additional measures for compliance in this section include determining whether proportionately similar numbers of male and female athletes have equivalent competitive schedules on a program-wide basis or if there is a history and continuing practice of upgrading competitive opportunities as abilities of the underrepresented sex develop.[319]

The Title IX statute, the Regulations and the Policy Interpretation provide the foundational regulatory framework applied to determine whether an educational institution that receives federal funding provides equal opportunity in college athletics. Litigation and more legislation in the 1980s would continue to shape the impact of Title IX.

H. Program-specific Versus Institution-wide Approach

One of the earliest Title IX cases was a complaint made by women athletes at Temple University who claimed they did not receive equal opportunities in intercollegiate athletics.[320] Because the athletics department at Temple did not receive federal funding, the issue was whether the federal funding provision in Title IX was program-specific or institution-wide. The district court ruled using the institution-wide approach and required the athletics department to be Title IX compliant. The Third Circuit Court of Appeals upheld the ruling.[321]

However, in 1984, the Supreme Court succeeded in doing what the Title IX opponents in Congress could not—it limited the scope of Title IX to only those educational programs or

[318] *Id*. § VII(C)(5)(a).
[319] *Id*. § VII(C)(5)(b).
[320] *Haffer v. Temple Univ*., 688 F.2d 14 (3d Cir. 1982).
[321] *Id*.

activities that directly received federal funding.[322] In *Grove City College v. Bell*, Grove City College was a private institution that received federal funding for its students through the federal Basic Educational Opportunity Grants (BEOG). As a recipient of federal funding, the school was required to complete an "Assurance of Compliance" form for Title IX. The college refused and sued the US Department of Education, claiming that Title IX did not apply to the BEOGs. The Supreme Court found that the college was subject to Title IX, but took a program-specific approach —the application of Title IX was limited to the school's financial aid program rather than the entire institution.[323] For the next three years, Title IX's prohibition of sex discrimination only applied to educational programs and activities that directly received federal funding, effectively eliminating Title IX protections in athletics programs.

Congress disagreed with the Supreme Court's narrow application of Title IX to specific educational programs and activities that directly received federal funding and passed the Civil Rights Restoration Act on March 22, 1988 over President Ronald Reagan's veto.[324] This legislation clearly specifies that all programs and activities at educational institutions that receive any federal funding must comply with Title IX. This is known as the institution-wide approach and applies for all civil rights spending-clause legislation.

While college athletics was not openly contemplated when Title IX was proposed, it is clear that athletics programs at educational institutions that receive federal funding are educational programs and activities that are included in Title IX.[325]

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[322] *Grove City Coll. v. Bell*, 465 U.S. 555 (1984).
[323] *Id*.
[324] Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28.
[325] *See* Samuels & Galles, *supra*, at 19.

I. Courts Give Deference to the Policy Interpretation and the Three-Part Test

Economic challenges in the United States had a dramatic impact on school budgets through the 1980s and 90s. While girls were still filing lawsuits to gain access to athletics opportunities, schools were decreasing budgets and cutting sports. The economic realities of the 1990s forced many colleges and universities to eliminate athletics teams to cut costs.[326] However, women whose teams were eliminated were now using the courts to fight back.

Perhaps the most famous lawsuit against a school for cutting women's teams was *Cohen v. Brown University* (1996).[327] Brown University had been a single-sex men's institution until 1971 when it's sister school, Pembroke College was subsumed by the university. Over the years, Brown increased its women's sports. In 1991, Brown offered 16 sports for men and 15 sports for women.[328] In a stated effort to contain costs, Brown demoted four teams (women's volleyball and gymnastics and men's golf and water polo) from varsity to unfunded status.[329] Gymnast Amy Cohen and other members of the gymnastics and volleyball teams filed a class action lawsuit claiming that the university was not in compliance with Title IX and asked for an injunction to reinstate the women's teams.[330]

The district court conducted a thorough examination of the factual and legal context the case presented, providing a road map for analysis of Title IX compliance in providing participation opportunities and giving significant deference to the Title IX regulations and Policy Interpretation.[331] The plaintiffs proved that Brown was not in compliance with the Three-Part Test: the proportionality requirement was not met because Brown's student body was

[326] T. Jesse Wilde, *Gender Equity in Athletics: Coming of Age in the 90's*, 4 Marq. Sports L.J. 217 (1994), http://scholarship.law.marquette.edu/sportslaw/vol4/iss2/3.
[327] *Cohen v. Brown Univ.*, 101 F.3d. 155 (1st Cir. 1996).
[328] *Cohen v. Brown Univ.*, 809 F. Supp. 978, 980 (R.I. Dist. Ct. 1992).
[329] *Id*. at 981.
[330] *Id*. at 980.
[331] *Id*. at 981–84.

approximately 51.8% men and 48.2% women, but athletics opportunities were 63.4% men and 36.6% women resulting in a disparity of 11.%.[332] As women were clearly the underrepresented sex, demoting women's sports was the opposite of showing a continuing practice of program expansion.[333] Similarly, the school was fully accommodating the interests and abilities of the underrepresented sex when there was interest and ability on the teams that were being demoted to club sport status.[334]

Brown argued that it was effectively accommodating the interests and abilities of its students as the athletics program consisted of a wide variety of opportunities from physical education classes, intramural sports, club sports, intercollegiate club sports, and junior varsity and varsity sports.[335] The university further argued that changing the status of the team from varsity to intercollegiate club was "not legally significant" because it was merely a shift in funding status.[336] The district court found the university did not meet any of the three parts of the test, and then addressed the question of levels of opportunity.[337] Finding that "intercollegiate club status is not equivalent to varsity status" the district court recognized that demotion to fundraising status put the burden on the student-athletes to survive as a team.[338] Brown appealed and the First Circuit affirmed, clearly signaling that the Regulations were controlling and that the Policy Interpretation warranted substantial deference.[339] The preliminary injunction to prevent Brown from demoting the women's gymnastics and volleyball teams was upheld and the case was remanded back to the

[332] *Id.* at 991.
[333] *Id*.
[334] *Id*. at 991–93.
[335] *Id*. at 988.
[336] *Id*.
[337] *Id*. at 991–92.
[338] *Id*. at 992.
[339] *See generally Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993).

district court for further proceedings.[340] The case continued through another appeal to the First Circuit[341] which was upheld in favor of the plaintiffs and the Supreme Court denied certiorari.[342]

J. The Equity in Athletics Disclosure Act 1994

The Equity in Athletics Disclosure Act was enacted as an amendment to the Higher Education Act of 1965.[343] The legislation would require institutions of higher education to disclose participation rates, and program support expenditures in college athletics programs. Taking a consumer protection approach, the amendment was intended to provide prospective student-athletes with a snapshot of colleges and universities commitment in providing equitable opportunities and treatment for its male and female student-athletes. Each college or university that receives federal funding and sponsors an athletics program must submit data regarding enrollment and number of student-athletes by sex as well as spending on men's and women's sports.[344] This data is available to the general public through the U.S. Department of Education *Equity in Athletics Data Analysis Cutting Tool*.[345]

K. Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996)

In response to a growing number of inquiries, complaints and cases, OCR issued a *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* on January 16, 1996.[346] The purpose for the *Clarification* was to provide more detailed guidance and examples

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[340] *Id.* at 907.
[341] *Cohen v. Brown Univ*., 101 F.3d 155 (1st Cir. 1996).
[342] *Brown Univ. v. Cohen*, 520 U.S. 1186 (1997).
[343] H.R. 921 Summary, 103rd Cong. (1993), available at https://www.congress.gov/bill/103rd-congress/house-bill/921; 20 U.S.C. § 1092 n.(b)(3), §1092 n.(b)(7)-(8), § 1092 (g) (1994).
[344] Pub. L. No. 103–382, 108 Stat. 3518, § 360B, Disclosure of Athletic Program Participation Rates and Financial Support Data (1994).
[345] *The Equity in Athletics Data Analysis Cutting Tool*, Office of Postsecondary Educ., http://ope.ed.gov/athletics/.
[346] U.S. Dep't of Educ., Off. for Civ. Rts., *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996), http://www.ed.gov/about/offices/list/ocr/docs/clarific html.

for schools to be compliant. OCR emphasized that any of the three options was a viable route in proving compliance.

L. OCR Guidance Financial Aid (1998)

Although a significant amount of litigation and OCR complaints had focused on participation opportunities and compliance with the Three-Part Test, schools needed to be reminded that they were still responsible for meeting all of the equity requirements in the Title IX regulations. A "technical assistance letter" was issued by the Office of Civil Rights to 25 NCAA members named in a complaint filed by the National Women's Law Center stating that there will be a strong presumption of non-compliance if a school's allocation of athletic scholarship money is not within 1% of the ratio of the genders in the population of student-athletes at the school.[347] The guidance explained OCR's process for determining compliance with the financial aid regulation, which requires each institution to be investigated on a case-by-case basis. Once the actual amount spent for each sex is determined, then all legitimate nondiscriminatory reasons for a disparity are considered. Examples of justifiable reasons were previously provided in the 1979 Policy Interpretation such as differences in in-state versus out-of-state tuition, unexpected fluctuations in student-athlete participation or undergraduate student enrollment by sex, and other factors such as gradually increasing the number of scholarships for a new team.

M. The NCAA Is Not Subject to Title IX

As the Civil Rights Restoration Act clarified, all educational institutions that receive federal funding for any program or activity within the institution must comply with Title IX. However, the Supreme Court held in *National Collegiate Athletic Association v. Smith* that the

[347] O'Shea Letter, *supra*.

NCAA is not a recipient of federal funding, and therefore is not subject to comply with Title IX.[348] In 2003, OCR issued *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* to address the issue of courts referring to the proportionality test as a "safe harbor."[349] The *Clarification* reiterated that all three parts of the Three-Part test were equally viable to prove compliance and emphasized that cutting or reduction of teams in order to comply with Title IX is disfavored practice.[350]

N. Conclusion

Congress' commitment to equal opportunity and treatment in college athletics has been consistent since the inception of Title IX. The law's application to college athletics has continued to evolve through various regulations, interpretations, and clarifications as well as numerous lawsuits brought by individuals and groups who have felt discriminated against within these educational programs and activities. These regulations, interpretations, clarifications and lawsuits have then determined the extent of the application of Title IX to athletics and contributed to the understanding and development of the law. Congress' commitment to Title IX is still apparent in recent proposed legislation: on December 20, 2022, the Fair Play for Women Act of 2022 was proposed by Senator Chris Murphy (D-Conn.) and Representative Alma Adams (D-N.C.-12) to strengthen Title IX. If passed, this legislation will subject the NCAA as a governing body to Title IX compliance.[351]

[348] *Nat'l Collegiate Athletic Ass'n*, 525 U.S. at 468.
[349] U.S. Dep't of Educ., Off. for Civ. Rts., *Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance* (July 11, 2003), https://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal html.
[350] *Id*.
[351] Fair Play for Women Act, S. 5307; 117th Congress H.R. 9615 (2021-2022).

Exhibit A

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EDUCATION

J.D., Boston College Law School, Newton, MA, 1997.
North Carolina State Bar, admitted to practice 12/03/2002
Massachusetts State Bar, admitted to practice 5/22/1998

M.Ed., Human Movement (Sport Management Concentration), Boston University, Boston, MA, May 21, 1989.

B.A., cum laude, Communication, University of Wisconsin-Parkside, Kenosha, WI, 1982.

PROFESSIONAL EXPERIENCE

University of North Carolina, Chapel Hill, NC
Professor July 2017 - present
Associate Professor with tenure July 2004 – June 2017
Assistant Professor July 1998 – June 2004
Teach undergraduate and graduate courses in the department of Exercise and Sport Science. Directed graduate program and undergraduate program in sport administration. Co-direct dual degree program in law and sport administration. Created undergraduate and dual degree programs. Advise students, direct independent study and honors research for undergraduate, graduate and law students. Research focuses on legal issues in intercollegiate athletics, gender discrimination in sport, and sport medicine liability.

Professor, School of Law January 2007 - present
Teach two sports law courses at the law school. Faculty advisor for the Sport and Entertainment Law Society student organization. Direct independent study. Identify and facilitate sports related externship experiences. Joint appointment approved in 2015.

Ice Miller, LLP, Indianapolis, IN September 2009 – June 2012
Of Counsel
Consultant with the College Sports Practice, providing legal representation and advise for colleges and universities relative to NCAA governance, compliance, infractions, and gender equity issues.

Brandeis University, Waltham, MA
Associate Director of Athletics August 1990 - July 1998
Coordinate business operations, scheduling, team travel, facilities, special events, student/athlete support programs, and fundraising. Administer $2.6 million budget. Liaison for construction of $25 million sports and recreation complex. Supervise facilities, equipment, and athletic training personnel. Liaison with Boston Celtics and New England Revolution professional franchises.

Assistant Director of Athletics August 1987- July 1990
Managed budget, scheduling, and compliance. Coordinated athletic team travel, meals and accommodations. Supervised office personnel and student employment payroll. Planned special events and student programs.

Assistant to the Athletic Director October 1983 - July 1985
Office management, travel coordination, scheduling, bookkeeping, and secretarial duties.

Prime Network, ESPN
Television Analyst 1984 – 1995
Freelance color commentator for running races such as the Red Lobster 10K, Old Reliable Run and the international broadcast of the Boston Marathon.

Needham High School, Needham, MA
Head Coach, Boys and Girls Track and Field 1985-1987
Full coaching responsibilities including organization of practice, home meet management, equipment issue and inventory, and fundraising.

Massachusetts RacePlace, Wellesley, MA
Publisher and Editor 1985 - 1987
Created, edited and published a newspaper for the running community.

Bob Woolf Associates, Inc., Boston, MA
Public Relations Coordinator February 1983 – October 1983
Arranged interviews, appearances, and promotions for sports attorney Bob Woolf and sport and entertainment celebrity clients including Larry Bird, Carl Yastrzemski, and over one hundred other athletes.

HONORS

Honorary Inductee, University of Wisconsin-Parkside Athletics Hall of Fame, October 2022.

Distinguished Alumni Award, University of Wisconsin-Parkside, May 2021.

Distinguished Educator Award, North American Society for Sport Management, May 2020.

J. Carlyle Sitterson Teaching Award, University of North Carolina, February 2015.

Betty van der Smissen Leadership Award, Sport and Recreation Law Association, March 2014.

Research Fellow, Sport and Recreation Law Association, March 2012.

Bradford High School Alumni Association Distinguished Alumnae Award, June 2011.

University of Wisconsin-Parkside Athletics Hall of Fame, October 2010.

Edward Kidder Graham Outstanding Faculty Award, University of North Carolina, May 2005.

Kenosha Sports Hall of Fame, Inducted April 24, 1999.

MAIAW Rowlands Award for Outstanding Achievement in Women's Sports, May 8, 1998.

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5. Mitten, M.J., Davis, T., Shropshire, K., Osborne, B. & Smith, R.K. (2016). *Sports Law: Governance, and Regulation Teacher's Manual* (2nd ed.) (pp. 1-238). New York, NY: Wolters Kluwer.

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7. Mitten, M.J., Davis, T., Shropshire, K., Osborne, B. & Smith, R.K. (2013). *Sports Law: Governance, and Regulation Teacher's Manual* (pp. 1-227). New York, NY: Wolters Kluwer.

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4. Osborne, B. (2021). Title IX. In D. Cotton & J. Wolohan (eds.), *Law for Recreation and Sport Managers* (8th ed.) (pp. 412-426). Dubuque, IA: Kendall Hunt Publishing Company.

5. Osborne, B. (2021). Legal Issues in Sport Communication. In Petersen, P., Laucella, P., Kian, T., and Guerin. A. (Eds.), *Strategic Sport Communications* (3rd ed.) (pp. 377-400). Champaign, IL: Human Kinetics.

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Refereed Published Abstracts

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Refereed Unpublished Oral Presentations

1. Cottingham, M., Osborne, B., Biskynis, S. & Hu, T. (Feb. 2023). *NCAA Disability Sport Inclusion and its Impact on Title IX*. Presented at the Sport and Recreation Law Association annual conference, Las Vegas, NV.

2. *Schwam, I. & Osborne, B. (Feb. 2023). *Expanding the Rights of College Athletes? How the Collee Athletes Bill of Rights Could Alter Title IX*. Presented at the Sport and Recreation Law Association annual conference, Las Vegas, NV.

3. *Rapisarda, L. & Osborne, B. (Feb. 2023). *Student-athletes as Employees and Title IX Compliance*. Presented at the Sport and Recreation Law Association annual conference, Las Vegas, NV

4. Zonder, E., Houghton, E. & Osborne, B. (Feb. 2023). *Title IX Retaliation: Expanding Student-athlete Protections for Gender Equity Complaints.* Presented at the Sport and Recreation Law Association annual conference, Las Vegas, NV

5. Osborne, B., Dodds, M. & Greene, D. (Feb. 2023). *NIL, Collectives and Corruption*. Presented at the Sport and Recreation Law Association annual conference, Las Vegas, NV.

6. Yeargin SW, Meyer CM, Winkelmann ZK, Scarneo-Miller SE, Bockwinkel B, Bolno AL, Johnson SD, Kingsley AM, Ulshafer SA, McCool CR, McCullough GA, Osborne B, Kucera KL. (2022, June). *Prevalence of Legal Proceedings in Exertional/Medical Causes of Sport-related Sudden Death*. Abstract presented at the National Athletic Trainers Association (NATA) Annual Meeting and Symposia, Philadelphia, PA.

7. Meyer CM, Yeargin SW, Winkelmann ZK, Scarneo-Miller SE, Bockwinkel B, Bolno AL, Johnson SD, Kingsley AM, Ulshafer SA, McCool CR, McCullough GA, Osborne B, Kucera KL. (2022, June). I Abstract presented at the National Athletic Trainers Association (NATA) Annual Meeting and Symposia, Philadelphia, PA.

8. *Bermudez, J., Weight, E., Osborne, B., & Bates, B. (2022, March). *Fostering student success: Academic experiences of Division I, Power 5 football student-athletes.* Presented at the College Sport Research Association annual conference, Columbia, SC.
9. Osborne, B. (2022, February). *When did working out become work?* Presented at the Sport and Recreation Law Association annual conference, Atlanta, GA.
10. Osborne, B. & Ingersoll, M. (2022, February). *The NIL Market is Open: What Attorneys Need to Know.* Presented at the Festival of Legal Learning annual conference, Chapel Hill, NC.
11. *Timpton, S. & Osborne, B. (2021, June). *Experiences of Black Athletes with White Fandom.* Presented at the North American Society for Sport Management annual conference, Minneapolis, MN.

12. *Nottage, G. & Osborne, B. (2021, June). *Experiences of Black Women Athletics Administrators in the NCAA Division I Workplace.* Presented at the North American Society for Sport Management annual conference, Minneapolis, MN.

13. *Rush, C. & Osborne, B. (2021, Feb.). *Benefits and Concerns Abound, Regulations Lack in Collegiate Athlete Biometric Data Collection.* Presented at the Sport and Recreation Law Association annual conference, Atlanta, GA.

14. Osborne, B. (2021, Feb.). *The Evolution of Name, Image and Likeness Rights in Collegiate Sport.* Presented at the Sport and Recreation Law Association annual conference, Atlanta, GA.

15. Grady, J., Osborne, B., & Schoepfer, K. (2021, Feb.). *Signs of the Pandemic: A Law and Risk Management Analysis.* Presented at the Sport and Recreation Law Association annual conference, Atlanta, GA.

16. Osborne, B. (2021, Feb.). *The Complicated Legal Realm of the NCAA and Student-athlete Name, Image and Likeness Rights*. Presented at the Festival of Legal Learning annual conference, Chapel Hill, NC.

17. *Kantor, K., Osborne, B., & Weight, E. (2020, May). *A Data-Driven Approach to NCAA Scholarships Distribution Limits.* Presented at the North American Society for Sport Management annual conference, San Diego, CA.

18. Osborne, B. (2020, May). *Semenya v. IAAF: Targeted Discrimination or Necessary for Fair Competition?* Presented at the North American Society for Sport Management annual conference, San Diego, CA.

19. Cebula, K., Dodds, M., & Osborne, B. (2020, March). *As the College Basketball Bounces: Part III.* Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

20. Rose, R. & Osborne, B. (2020, March). *Apparel Brand Contracts in Collegiate Athletics: The Title IX Implications*. Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

21. *Lennon, K. & Osborne, B. (2020, March). *Trademark Protection and the 2%.* Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

22. *Haroldson, M. & Osborne, B. (2020, March). *Continued Abuse: Are Colleges and Universities Hiding Behind Legal Regulations at the Expense of Collegiate Athletes?* Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

23. *Kavanaugh, A. & Osborne, B. (2020, March). *Protecting Student-Athlete Free Speech Rights in Athletics Department Social Media Policies.* Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

24. *Martensson, A. & Osborne, B. (2020, March). *The Legality of Symptom Reporting in Student-Athletes with Concussions. I* Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

25. *Bermudez, J.R. & Osborne, B. (Advisor) (2020, March). Presented at the Sport and Recreation Law Association annual conference, Louisville, KY.

26. Osborne, B., Dodds, M., & Cebula, K. (2019, March). *The Power of the Courts to Enforce NCAA Rules: The NCAA Basketball Corruption Trials*. Presented at the Sport and Recreation Law Association annual conference, Philadelphia, PA.

27. Osborne, B. (2020, Feb.). *Gender Games: Discrimination in Women's Sport*. Presented at the Festival of Legal Learning, Chapel Hill, NC.

28. Osborne, B. & Drayer, J. (2019, Feb.). *The Status of Daily Fantasy Sports Post* Murphy v. NCAA: *A Modest Proposal*. Presented at the Sport and Recreation Law Association annual conference, Philadelphia, PA.

29. Osborne, B. (2019, Feb.). *NCAA Basketball Corruption Scandal: Are Violations of NCAA Rules Federal Crimes?* Presented at the Festival of Legal Learning, Chapel Hill, NC.

30. Dodds, M., Heisey, K., Osborne, B., & Cebula, K. (2018, September*). Impact Of NCAA Corruption on the Adidas Brand*. Presented at the European Association for Sport Management annual conference, Malmo, Sweden.

31. Osborne, B., Dodds, M., & Cebula, K. (2018, Sept.). *Honest Services Fraud: How a Little Known U.S. Statute is Battling Sport Corruption*. Presented at the European Association for Sport Management annual conference, Malmo, Sweden.

32. Morton, J., Hanna, C., Jensen, J.A., & Osborne, B. (2018, May). *Impact of Prior Practical Experience on Sport Management Professors' Research and Teaching.* Presented at the North American Society for Sport Management annual conference, Halifax, Nova Scotia, Canada.

33. Osborne, B., Dodds, M. & Cebula, K. (2018, March). *As the college basketball bounces: Bribery, fraud and NCAA violations?* Presented at the Sport and Recreation Law Association annual conference, San Antonio, TX.

34. *Mascarella, C. & Osborne, B. (2018, March). *The status of Title IX in 2017.* Presented at the Sport and Recreation Law Association annual conference, San Antonio, TX.

35. *Wayland, E. & Osborne, B. (2018, March). *Gambling and bribery and conspiracy, oh my! A historical review of point shaving in college sport.* Presented at the Sport and Recreation Law Association annual conference, San Antonio, TX.

36. Osborne, B. (2018, Feb.). *Biometric Data Collection and Privacy in Sports.* Presented at the 2018 Festival of Legal Learning, Chapel Hill, NC.

37. Osborne, B. & Jensen, J.A. (2017, Nov). *Using legal cases in sport marketing case studies*. Presented at the Sport Marketing Association annual conference, Boston, MA.

38. Ammon, R., Osborne, B., and Eichkorn, A. (2017, June). *An analysis of concussion legislation in the United States: Is anyone paying attention?* Presented at the North American Society for Sport Management annual conference, Denver, CO.

39. Osborne, B. and *Cunningham, J. (2017, April). *Legal and ethical issues related to use of athletes' biodata in professional sport.* Presented at the Law, Ethics and Big Data Colloquium, hosted by the Wharton School, University of Pennsylvania, Philadelphia, PA.

40. Osborne, B. (2017, March). *Unequal scholarships opportunities in collegiate sport.* Presented at the Title IX: Presented at the Title IX: History, Legacy, and Controversy conference, Knoxville, TN.

41. Cottingham, M., Moorman, A.J., & Osborne, B. (2017, March). *Does Title IX handicap advancement of disability sports?* Presented at the Sport and Recreation law Association annual conference, Las Vegas, NV.

42. McArdle, D., & Osborne, B. (2016, September*). Pregnancy discrimination, Title IX, and the unintended pregnancy consequences in United States College Sports.* Presented at the Society of Legal Scholars annual conference, Oxford, England.

43. Moorman, A. & Osborne, B. (2016, May). S*exual violence and college athletics: an examination of how higher education institutions are managing sexual violence and sexual misconduct investigations*. Presented at the North American Society for Sport Management annual conference, Orlando, FL.

44. McArdle, D. & Osborne, B. (2016, April). *Pregnancy Discrimination, Governance Feminism and the US Model of College Sports.* Presented at the Socio-Legal Studies Association annual conference, Lancaster, England.

45. Moorman, A., Osborne, B., & Dodds, M. (2016, February). *Sexual assault and college athletics: What is being done?* Presented at the Sport and Recreation Law Association annual conference, New Orleans, LA.

46. *Hegarty, E. & Osborne, B. (2016, February). *The role of the NCAA in medical care of student-athletes*. Presented at the Sport and Recreation Law Association annual conference, New Orleans, LA.

47. *Leeke, R. & Osborne, B. (2016, February). *Leveling the playing field: legal ramifications of transgender student-athlete participation in intercollegiate athletics.* Presented at the Sport and Recreation Law Association annual conference, New Orleans, LA.

48. *McCollum, E. & Osborne, B. (2016, February). *Title IX financial aid compliance and full cost of attendance stipends: can they coexist?* Presented at the Sport and Recreation Law Association annual conference, New Orleans, LA.

49. *Lievense, E. & Osborne, B. (2016, February). *The protection assumed by loss of value contracts and the rights of the student-athlete.* Presented at the Sport and Recreation Law Association annual conference, New Orleans, LA.

50. *Isom, J. & Osborne, B. (2016, February). *An inquiry into the legal ramifications of religious practices in college athletics*. Presented at the Sport and Recreation Law Association annual conference, New Orleans, LA.

51. Osborne, B. & Hammer, K. (2016, February). *Student-athletes and the right of publicity*. Presented at the Festival of Legal Learning sponsored by the University of North Carolina Law School, Chapel Hill, NC.

52. Osborne, B. (2015, September). Anti-trust or Anti-NCAA? Presented at the European Association of Sport Management annual conference, Dublin, Ireland.

53. Osborne, B. (2015, March). *Sexism, sport and the Fair Labor Standards Act.* Presented at the Sport and Recreation Law Association annual conference, Charlotte, NC.

54. Moorman, A.M. & Osborne, B. (2015, March). *Sexual assault and college athletics: Why are institutions of higher education failing to protect students?* Presented at the Sport and Recreation Law Association annual conference, Charlotte, NC.

55. *Herzog, C. & Osborne, B. (2015, March). *Heads up: The duty of the NCAA to protect its student-athletes.* Presented at the Sport and Recreation Law Association annual conference, Charlotte, NC.

56. *Richards, J. & Osborne, B. (2015, March). *Are student-athletes the only ones who pay for their head injuries?* Presented at the Sport and Recreation Law Association annual conference, Charlotte, NC.

57. *Rankin, C.A. & Osborne, B. (2015, March). *All pay for no play: Title IX implications of full cost of attendance scholarships.* Presented at the Sport and Recreation Law Association annual conference, Charlotte, NC.

58. Osborne, B. & Batista, P. (2015, February). *Four Lawsuits and the NCAA Apocalypse.* Presented at the Festival of Legal Learning sponsored by the University of North Carolina Law School, Chapel Hill, NC.

59. Osborne, B., & Lough, N. (2014, October). *An innovative perspective of marketing implications in college sport.* Presented at the Sport Marketing Association annual conference, Philadelphia, PA.

60. Osborne, B. (2014, October). *Title IX and sexual assault: the strengths and weaknesses of the sexual violence policy.* Presented at the World Association of Sport Management bi-annual conference, Madrid, Spain.

61. Sartore-Baldwin, M., Osborne, B., McCullough, B., Vermillion, M., & Quatman-Yates, C. (2014, May). *Social connection and shared responsibility in sport: Locating sport management's role in issues of exploitation and social justice*. Symposium presented at the North American Society for Sport Management annual conference, Pittsburgh, PA.

62. Weight, E., Osborne, B., & *Chalfin, P. (2014, April). *The value of intercollegiate athletic participation from the perspective of employers.* Paper presented at the College Sport Research Institute annual conference, Columbia, SC.

63. *Hunter, C.J. & Osborne, B. (2014, February). *Go ahead and sign.* Paper presented at the Sport and Recreation Law Association annual conference, Orlando, FL.

64. Pauline, G., & Osborne, B. (2014, February). *Participate at your own risk.* Paper presented at the Sport and Recreation Law Association annual conference, Orlando, FL.

65. *Ketterer, M. & Osborne, B. (2014, February). *Could Sideline 1 be sidelined by antitrust?* Paper presented at the Sport and Recreation Law Association annual conference, Orlando, FL.

66. Osborne, B. (2013, May). *Is the OCR sexual violence liability standard "reasonable"?* Paper presented at the North American Society for Sport Management, Austin, TX.

67. Osborne, B., *Mitchell, C. & *Chalfin, P. (2013, April). *New Criminal Adjudication in Athletics: Did the NCAA properly punish Penn State?* Paper presented at the Scholarly Conference on College Sport, Chapel Hill, NC.

68. *Sawyer, K. & Osborne, B. (2013, April). *The NCAA's authority to ban post-season bowl participation*. Paper presented at the Scholarly Conference on College Sport, Chapel Hill, NC.

69. Osborne, B. (2013, February). *Sex, Violence, and Student-Athletes: Penn State and Beyond*. Paper presented at the Festival of Legal Learning sponsored by the University of North Carolina Law School, Chapel Hill, NC.

70. Osborne, B. (2013, January). *Cost of attendance and scholarship equity.* Paper presented at the Scholarly Colloquium on Intercollegiate Sports sponsored by the National Collegiate Athletic Association, Grapevine, TX.

71. Osborne, B. & Altman, S. (2012, November). *If you build it, they will have to go: Eminent domain and sports facilities*. Paper presented at the Sports and Entertainment Venues Today annual conference, Columbia, SC.

72. Osborne, B. & Ammon, R. (2012, May). *Heading off traumatic brain injury: An analysis of concussion legislation in the United States.* Paper presented at the annual meeting of the North American Society for Sport Management, Seattle, WA.

73. *Howell, S. & Osborne, B. (2012, April). *A spike in female participation: A study on the viability of sand volleyball sponsorship at the NCAA Division I level.* Paper presented at the Scholarly Conference on College Sport, Chapel Hill, NC.

74. *Lutz, N. & Osborne, B. (2012, April). *Engaging search firms in the hiring process in Division I athletic departments.* Paper presented at the Scholarly Conference on College Sport, Chapel Hill, NC.

75. Osborne, B. & Davis, T. (2012, March). *Using the Case Note Method to Teach Sports Law to Undergraduate and Graduate Students.* Paper presented at the annual meeting of the Sports and Recreation Law Association, Greensboro, NC.

76. *Lewinter, G. & Osborne, B. (2012, March). *Don't Ask, Don't Tell? Coaches' Restriction on Intra-team Dating.* Paper presented at the annual meeting of the Sports and Recreation Law Association, Greensboro, NC.

77. *Washington, E. & Osborne, B. (2012, March). *To Separate from the Schools or Not: Examining the Legal Organizational Structures of Athletics Departments*. Paper presented at the annual meeting of the Sports and Recreation Law Association, Greensboro, NC.

78. Osborne, B. (2011, November). *Legal Rights of Student-athletes.* Paper presented at the annual meeting of Sports and Entertainment Venues Today, Columbia, SC.

79. Osborne, B. (2011, July). *Hot Topics in Women's Sports.* Paper presented at the annual conference of the Southeastern Association of Law Schools, Hilton Head, SC.

80. Osborne, B. (2011, June). *Cheerleading and Title IX: A legal feminist analysis.* Paper presented at the annual meeting of the North American Society for Sport Management, London, Ontario, Canada.

81. Osborne, B., & Anderson, P. (2011, March). *Scholarship Equity: A new look at an old requirement.* Paper presented at the annual meeting of the Sport and Recreation Law Association, Savannah, GA.

82. *Howell, S., & Osborne, B., (2011, March). *The impact of Biediger v. Quinnipiac on the NCAA emerging sport of sand volleyball.* Paper presented at the annual meeting of the Sport and Recreation Law Association, Savannah, GA.

83. Ammon, R., & Osborne, B. (2010, November). *Balancing act: Advances in stadium security vs. privacy.* Paper presented at the Sport and Entertainment Venues Today conference, Columbia, SC.

84. Armentrout, S., Bruening, J., Dixon, M., Massengale, D., Mechels, B., Miller, L., & Osborne, B. (2010, June). *Balancing careers and motherhood: Experiences of female professors in Sport Management.* Paper presented at the annual meeting of the North American Society for Sport Management, Tampa, FL.

85. Ammon, R., Hall, S., & Osborne, B. (2010, June). *Anti-terrorism strategies at sport venues: A legal analysis of personal rights.* Paper presented at the annual meeting of the North American Society for Sport Management, Tampa, FL.

86. 43. Osborne, B. (2010, March). *Women only need apply.* Paper presented at the annual meeting of the Sport and Recreation Law Association, Albuquerque, NM.

87. Anderson, P. & Osborne, B. (2010, March). *Title IX: The 2000s and Beyond*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Albuquerque, NM.

88. *Lancaster, E. & Osborne, B. (2010, March). *Does Congress have the power to force the NCAA/BCS into a post-season playoff?* Paper presented at the annual meeting of the Sport and Recreation Law Association, Albuquerque, NM.

89. *Daly, J. & Osborne, B. (2010, March). *Is the National Letter of Intent legally enforceable in North Carolina?* Paper presented at the annual meeting of the Sport and Recreation Law Association, Albuquerque, NM.

90. *Zullo, R. & Osborne, B. (2010, January). *Outsourced marketing professionals' perceptions on women's sports.* Paper presented at the NCAA Scholarly Colloquium "College Sports in Recessionary Times: Assessing Challenges and Opportunities" at the annual meeting of the National Collegiate Athletic Association, Atlanta, GA.

91. Osborne, B., (2010, January). *To tax or not to tax?* Paper presented at the NCAA Scholarly Colloquium "College Sports in Recessionary Times: Assessing Challenges and Opportunities" at the annual meeting of the National Collegiate Athletic Association, Atlanta, GA.

92. Osborne, B., & Ammon, R. (2009, November). *Ladies night: Promotion or discrimination?* Paper presented as the Featured Legal Research Presentation at the annual meeting of Sports and Entertainment Venues Today, Columbia, SC.

93. Osborne, B., & *Jaco, L. (2009, May). *Pregnancy: An exploratory study of student-athlete knowledge and decision making.* Paper presented at the annual meeting of the North American Society for Sport Management, Columbia, SC.

94. Pedersen, P.M., Osborne, B., Whisenant, W., & Lim, C. (2009, May). *Professionals' perceptions of sexual harassment: An analysis of journalists in the sport industry.* Paper presented at the annual meeting of the North American Society for Sport Management, Columbia, SC.

95. Osborne, B. & Anderson, P. (2009, March). *Is Title IX an exclusive remedy?* Paper presented at the annual meeting of the Sport and Recreation Law Association, San Antonio, TX.

96. Anderson, P. & Osborne, B. (2009, March). *An analysis of litigation involving collegiate coaches in the new millennium.* Paper presented at the annual meeting of the Sport and Recreation Law Association, San Antonio, TX.

97. *Maddux, B. & Osborne, B. (2009, March). *"I'll take the buyout to go": Contract termination and college coaches.* Paper presented at the annual meeting of the Sport and Recreation Law Association, San Antonio, TX.

98. Osborne, B. (2008, November). *Employer liability for sexual harassment.* Paper presented at the Sport, Entertainment, and Venues Tomorrow international conference, Columbia, SC.

99. Osborne, B. (2008, May). *Choose life or scholarship: the pregnant student-athlete dilemma.* Paper presented at the annual meeting of the North American Society for Sport Management, Toronto, Ontario, Canada.

100. Lough, N., Osborne, B., & Tiell, B. (2008, May). *Perceptions of NCAA athletics directors and senior woman administrators towards work-life conflict: a divisional comparison.* Paper presented at the annual meeting of the North American Society for Sport Management, Toronto, Ontario, Canada.

101. Osborne, B. (2008, April). *Drafting and enforcing a student-athlete code of conduct*. Paper presented at the meeting of the College Sport Research Institute, Memphis, TN.

102. *Meissen, K. & Osborne, B. (2008, March). *Does APR create a contractual right to an education for student-athletes?* Paper presented at the annual meeting of the Sport and Recreation Law Association, Myrtle Beach, SC..

103. Osborne, B. (2008, February). *University liability for sexual assaults by student-athletes.* Paper presented at the annual meeting of the Sport and Recreation Law Association, Myrtle Beach, SC.

104. *Cooper, J. & Osborne, B. (2008, February). *Illegal gambling: How does the enforcement of illegal gambling impact intercollegiate athletics?* Paper presented at the annual meeting of the Sport and Recreation Law Association, Myrtle Beach, SC.

105. Osborne, B. & Pittman, A. (2008, February). *I've been scalped*! Paper presented at the annual meeting of the Sport and Recreation Law Association, Myrtle Beach, SC.

106. *Jaco, L. & Osborne, B. (2008, February). *Protecting pregnant student-athletes' rights.* Paper presented at the annual meeting of the Sport and Recreation Law Association, Myrtle Beach, SC.

107. Osborne, B. (2008, February). *Regulating the off-field behavior of student-athletes*. Paper presented at the Festival of Legal Learning, Chapel Hill, NC.

108. Osborne, B. & Ammon, R. (2007, November). *Marketing intercollegiate sports: What's Title IX got to do with it?* Paper presented at the annual meeting of the Sport Marketing Association, Pittsburgh, PA.

109. Ammon, R. & Osborne, B. (2007, June). *Title IX compliance past & present: A comparative analysis of Favia v. Indiana University of Pennsylvania (1992), Barrett v. West Chester University (2003), and Choike v. Slippery Rock University (2006).* Paper presented at the annual meeting of the North American Society for Sport Management, Fort Lauderdale, FL.

110. Osborne, B. (2007, April). *Research on the 'Front Porch': Scholarship and practice in intercollegiate athletics*. Paper presented at the annual meeting of the American Educational Research Association, Chicago, IL.

111. Osborne, B. (2007, March). *"No Lesbians": Sexual orientation discrimination in sport and Title IX.* Paper presented at the Girls and Women Rock: Celebrating 35 Years of Sport & Title IX Academic and Legal Conference, Cleveland, OH.

112. Tiell, B., Lough, N. & Osborne, B. (2007, March). *Influence of gender on policy development for life and work balance.* Paper presented at the Girls and Women Rock: Celebrating 35 Years of Sport & Title IX Academic and Legal Conference, Cleveland, OH.

113. *Sorensen, D. & Osborne, B. (2007, March). *Offensive impact of the "catalyst" bat on Division I collegiate softball programs*. Paper presented at the annual meeting of the American Alliance for Health, Physical Education, Recreation, and Dance, Baltimore, MD.

114. *Gale, D. & Osborne, B. (2007, March). *How much due process does the NCAA actually provide?* Paper presented at the annual meeting of the Sport and Recreation Law Association, Chapel Hill, NC.

115. *Jones, R. & Osborne, B. (2007, March). *Third party interaction with current or future student-athletes.* Paper presented at the annual meeting of the Sport and Recreation Law Association, Chapel Hill, NC.

116. Anderson, P. & Osborne, B. (2007, March). *A historical review of Title IX litigation*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Chapel Hill, NC.

117. *Stoute, S. & Osborne, B. (2007, March). *An analysis of intercollegiate athletics coaches salaries at state institutions in North Carolina*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Chapel Hill, NC.

118. Osborne, B. (2007, February). *Applying Title IX to cases of sexual orientation discrimination in intercollegiate athletics*. Paper presented at the Festival of Legal Learning, Chapel Hill, NC.

119. Osborne, B. (2006, June). *Work-life balance and the law*. In *Work-Life Balance in the Sport Industry.* Symposium conducted at the meeting of the North American Society for Sport Management, Kansas City, MO.

120. Pittman, A. & Osborne, B. (2006, March). *Naughty or Tice: Ticket scalping issues in college and professional sports*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Albuquerque, NM.

121. Pittman, A. & Osborne, B. (2005, March). *Lord of the Rings: The selling of the rings – U.S. v. Welch*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Virginia Beach, VA.

122. Osborne, B. (2005, March). *Sexual harassment policies of NCAA-I athletics departments*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Virginia Beach, VA..

123. Osborne, B. & Tomasini, N. (2004, June). *Adding non-performance values to the NCAA revenue distribution scheme*. Paper presented at the annual meeting of the North American Society for Sport Management, Atlanta, GA.

124. Osborne, B. (2004, April). *The role of the Senior Woman Administrator*. Paper presented at the annual meeting of the American Alliance of Health, Physical Education, and Dance, Atlanta, GA.

125. Pittman, A. & Osborne, B. (2004, March). *Legislating gambling: A risk worth taking?* Paper presented at the annual meeting of the Sport and Recreation Law Association, Las Vegas, NV.

126. Osborne, B. (2004, March). *Handicapping Title IX: The Heather Sue Mercer case*. Paper presented at the annual meeting of the Sport and Recreation Law Association, Las Vegas, NV.

127. *Brunner, J. & Osborne, B. (2003, May). *Using the SportsBusiness Journal in graduate courses*. Paper presented at the annual meeting of the North American Society for Sport Management, Ithaca, NY.

128. Osborne, B. (2003, March). *Title IX in the 21st Century*. Paper presented at the annual meeting of the Society for the Study of the Legal Aspects of Sport and Physical Activity, Atlanta, GA.

** denotes graduate student*

Unrefereed Works

Invited Presentations and Engaged Scholarship

1. Speaker (October, 2022). *Title IX Impact in Women's Sports: A Personal Account.* SMP Title IX 50th Anniversary Celebration, UW-Parkside, Kenosha, WI.

2. Speaker (October, 2022). *Transgender Participation at the Intersection of Law and Science,* National Sport Law Institute Fall Symposium, Marquette School of Law, Milwaukee, WI.

3. Speaker (2022, August). *Title IX.* The SERMA (Sports and Entertainment Risk Management Association) Podcast. Available at

4. Osborne, B. & Myers, J. (2022, June). *Legal Concerns Associate with Wearable Devices and Sport.* Presentation at the National Athletic Trainers Association (NATA) annual convention, Philadelphia, PA.

5. Speaker (2022, April). *Title IX.* Panel presented at UW-Parkside Sport Management Conference, Kenosha, WI.

6. Speaker (2022, April). *Transgender athlete hormones and performance: Understanding the law and the medicine.* EXSS graduate seminar, Chapel Hill, NC.

7. Speaker and facilitator (2022, April). *What do you want to know about Name, Image and Likeness?* Hosted by Sport and Entertainment Law Association, NC School of Law, Chapel Hill, NC.

8. Guest expert (2022, April). *Name, Image and Likeness Regulation.* WUNCPolitics Podcast.

9. Guest expert (2022, February). *Student-athletes, Name, Image and Likeness, and the NCAA.* WCHL Radio, Who's Talking with D.G. Martin. https://chapelboro.com/category/wchl/weekend-shows/whos-talking

10. Moderator and speaker (2021, Nov.). *Title IX Athletics Requirements, Myths and Cases.* Sport Lawyers Association "Nine for IX" Title IX Celebration Seminar Series, Zoom.

11. Guest speaker (2021, Oct.). *NLRB, Labor Laws and Impact on NCAA Athletes.* Womble Bond Dickenson podcast, Charlotte, NC.

12. Speaker (2021, Oct.). *Legal and Ethical Issues Related to Athlete Biometric Data.* United States Olympic and Paralympic Committee (USOPC) Data Summit, Colorado Springs, CO.

13. Speaker (2021, Sept.). *Contracts 101 for Student-Athletes*, Name, Image and Likeness Education Seminar, University of North Carolina, Chapel Hill, NC.

14. Panelist (2021, April). *Current Issues for Intercollegiate Athletes*, Sport Management Symposium, UW-Parkside, Kenosha, WI.

15. Featured speaker (2021, March). *Everything you need to know about Name, Image and Likeness and the NCAA*, Sport and Entertainment Law Student Association Lunch and Learn, University of North Carolina School of Law, Chapel Hill, NC.

16. Speaker (2020, Dec.). *Student-athlete Rights and College Athletics*, Sport Law Speaker Series sponsored by the UNC School of Law Development Program, Chapel Hill, NC.

17. Featured speaker (2020, Sept.). *The NCAA, Amateurism, and Name, Image and Likeness: It's Complicated*, Legal and Ethical Issues in Sports and Entertainment Law symposium, National Sport Law Institute, Marquette University School of Law, Milwaukee, WI.

18. Guest speaker (2020, Sept.) *Conducting Legal Research in Sport Management,* IDST 194: Modes of Inquiry, University of North Carolina at Chapel Hill, NC.

19. Panelist (2020, March). *Hot Topics in Sport Law.* Brandeis School of Law, University of Louisville, Louisville, KY.

20. Moderator (2019, Oct.). *The Caster Semenya case*. UNC Sport and Entertainment Law Student Association Lunch and Learn program, Chapel Hill, NC.

21. Expert commentator (2019, Oct.). *Should students athletes get compensated for use of their likeness?* The State of Things, WUNC 91.5, Durham, NC.

22. Speaker (2019, Oct.). *Creating Opportunity: Gender Discrimination and Title IX.* U.S. State Department Sport Diplomacy Program/Zimbabwe Delegation, Chapel Hill, NC.

23. Keynote Speaker (2019, April). *Legal and Ethical Issues Related to Biometric and Activity Data Tracking for Athletes at all Levels.* American Medical Society for Sports Medicine annual conference, Houston, TX.

24. Panelist (2019, April). *Medical Retirement vs. Return to Sports with Multiple Head Injuries?* Neurology panel at American Medical Society for Sports Medicine annual conference, Houston, TX.

25. Featured Speaker (2019, March). *Adidas, Fraud and How the College Basketball Bounces.* Cardozo Society monthly luncheon speaker, Raleigh, NC.

26. Panelist (2019, Feb.). *The Future of Biometrics in the Sport and Entertainment Industry.* Commercial Sport and Entertainment Safety and Security Summit (NCS4). Durham, NC.

27. Speaker (2019, Jan.). *Legal and Ethical Issues for Biometric Data Use in Sport*. US Lacrosse Sports Medicine Symposium, Philadelphia, PA.

28. Speaker (2018, Nov.). *Women's Leadership in Male Dominated Professions.* Piedmont International University Women's Leadership Forum, Winston-Salem.

29. Expert commentator (August 2018). *The Adventures of Janet Guthrie,* documentary film presented nationally on Fox Sports 1, NASCAR Race Hub.

30. Panelist (2018, April). *Impact of the #MeToo Movement on the Sport and Entertainment Industries.* Sponsored by the Sports and Entertainment Law Society and Women in Law at Wake Forest Law School.

31. Panelist (2017, Oct.). *Intersex and Transgender Issues in Sports.* 2017 National Sports Law Institute annual symposium, Marquette Law School, Milwaukee, WI.

32. Panelist (2017, Oct.). *Athletes' Rights.* 2017 National Sports Law Institute annual symposium, Marquette Law School, Milwaukee, WI.

33. Speaker (2017, June). *Athletes, Biometrics and Ethical Implications.* Legal and Ethical Issues in Sport and Entertainment Ethics CLE, Marquette Law School, Milwaukee, WI.

34. Speaker (2017, April). *Who Owns Biometric Data for Sports Teams?* 2017 Intellectual Property Law and Sports & Entertainment Law Sections Joint Annual Meeting, Wilmington, NC.

35. Panelist (2017, April). *Top Ten Cases: Year in Review.* 2017 Intellectual Property Law and Sports & Entertainment Law Sections Joint Annual Meeting, Wilmington, NC.

36. Featured speaker (2017, February). *Women and the Global Sports Industry.* Dunlevie Honors Colloquium, University of North Carolina at Chapel Hill, NC.

37. Speaker (2016, December). *Legislative Efforts and Federal Regulatory Framework of Daily Fantasy Sports.* The Rise and Current Status of Daily Fantasy Sports Leagues conference hosted by Wake Forest School of Law, Winston-Salem, NC.

38. Panelist. (2016, October). *Gender Issues in Collegiate Athletics.* The Changing Landscape of Collegiate Athletics: Legal and Business Issues conference hosted by the National Sports Law Institute and Marquette School of Law, Milwaukee, WI.

39. Lecture. (2016, April). *Title IX: Past, Present and Future Issues*. UNC-Charlotte School of Law, Charlotte, NC.

40. Panelist. (2016, April). *Athletes and Right of Publicity*. UNC Sport and Entertainment Law Spring Symposium, Chapel Hill, NC.

41. Speaker. (2016, February). *Feminism and Title IX.* Lecture at Duke University Cultural Anthropology department, Durham, NC.

42. Speaker. (2015, October). *Gender issues in athletics.* Campbell University Law School, Raleigh, NC.

43. Panelist. (2015, October). *Sexual harassment and collegiate athletics*. Maintaining Fairness, Integrity and Safety in Sports symposium hosted by the National Sport Law Institute, Marquette University Law School, Milwaukee, WI.

44. Panelist. (2015, June). *Academic survival tips for new student-athletes*. UNC Student-Athlete Academic Support Center, Chapel Hill, NC.

45. Guest speaker (2015, June). *Current Title IX litigation*. NACWAA Title IX Circle.

46. Panelist (2015, March*). Crime in sports.* UNC Sports and Entertainment Law Association Spring Sports Symposium, Chapel Hill, NC.

47. Speaker (2014, November). *Student-athletes and sexual assault: understanding institutional obligations*. Carolina Meadows lecture series, Chapel Hill, NC.

48. Faculty/Presenter (2014, November). *The (r)evolution of women in sport.* Sports in American Society program sponsored by the UNC Humanities and Human Values Program, UNC Center for School Leadership Development, Chapel Hill, NC.

49. Panelist (2014, November). *The Future of Football.* Wake Forest School of Law, Winston-Salem, NC.

50. Symposium Panelist (2014, October). *Through the looking glass: a year in the life of an academic*. Sport Marketing Association annual conference, Philadelphia, PA.

51. Panelist (2014, August). *Is it time for a Uniform Bullying Statute?* Southeastern Association of Law Schools Annual Conference, Amelia Island, FL.

52. Panelist (2014, May). *Celebrating and understanding Title IX.* Women's Leadership Symposium, Charlotte, NC.

53. Panelist (2014, April). *Non-traditional careers.* Outside the Box with Sports and Entertainment conference sponsored by the North Carolina Central University Sports and Entertainment Law Society, Durham, NC.

54. Panelist (2014, April). *Minority representation.* Outside the Box with Sports and Entertainment conference sponsored by the North Carolina Central University Sports and Entertainment Law Society, Durham, NC.

55. Panelist. (2014, March). *O'Bannon and NCAA Litigation.* Legal Issues in College Athletics symposium sponsored by the UNC Sports & Entertainment Law Association, Chapel Hill, NC.

56. Panelist. (2013, November). *What does it take to get students to come to class prepared?* Center for Faculty Excellence 4th Annual Faculty Showcase, University of North Carolina, Chapel Hill, NC.

57. Guest Speaker (2013, July). *Title IX at 41*. UNC-Charlotte School of Law, Charlotte, NC.

58. Panelist (2013, March). *Penalties for Athletes.* Vice and Morality in Sports Symposium sponsored by the University of Virginia Sports and Entertainment Law Journal, Charlottesville, VA.

59. Panelist (2013, March). *Legal and Practical Issues for Women in Sports and the Sports Law Industry.* Vice and Morality in Sports Symposium sponsored by the University of Virginia Sports and Entertainment Law Journal, Charlottesville, VA.

60. Panelist (2013, March). *Dual Degree and Non-Traditional Jobs in Sports*. University of North Carolina Sports and Entertainment Law Symposium presented by the Sports and Entertainment Law Student Association, Chapel Hill, NC.

61. Lecturer (2012, November). *Careers in Sports*. Durham Academy Sports Administration class.

62. Featured Speaker (2012, October). *Title IX at 40: Past, Present and Future.* Presentation sponsored by the Duke University Sports and Entertainment Law Society, Women Law Student Association and the American Constitution Society, Durham, NC.

63. Panelist (2012, October). *NASCAR-Live Nation Mock Negotiation*. Sports and Entertainment Law School Symposium sponsored by the North Carolina Bar Association Sports and Entertainment Law Section, Raleigh, NC.

64. Lecturer (2012, October). *Title IX – Global Implications.* Sports and Globalization program sponsored by UNC Global Studies, Chapel Hill, NC.

65. Panelist (2012, October). *Why Can't We Tweet? The First Amendment, UNC Athletes and Social Media.* First Amendment Day panel discussion sponsored by the UNC Center for Media Law and Policy, Chapel Hill, NC.

66. Lecturer (2012, August). *The Legacy and International Impact of Title IX on Women's Sports.* Invited lecture for study abroad students from Keele University, England.

67. Panelist (2012, May). *Title IX: 40 Years Later.* Plenary Panel at the Sports Lawyers Association annual conference, San Diego, CA.

68. Speaker (2012, May). *Teaching Sports Law.* Two breakout sessions at the Sports Lawyers Association annual conference, San Diego, CA.

69. Panelist (2012, April). *Wrestling with Title IX: A Discussion of the Historic Legislation on its 40th Anniversary.* Scholarly Conference on College Sport, Chapel Hill, NC.

70. Speaker (2011, October). *Sexual Assault and Sexual Violence: The OCR Dear Colleague Letter*. National Sports Law Institute annual symposium, Milwaukee, WI.

71. Speaker (2011, October). *The Emerging Sports Debate.* National Association of Collegiate Women Athletics Administrators annual convention, Pittsburgh, PA.

72. Speaker (2011, September). *Examining the NCAA's Collegiate Model: The Line between Professionalism and Amateurism in Intercollegiate Athletics.* Parr Center for Ethics Lunch and Learn Program, University of North Carolina, Chapel Hill, NC.

73. Speaker (2011, August). *Title IX Compliance and Interscholastic Athletics Programs.* Training for the Orange County Public Schools, Hillsborough, NC.

74. Panelist (2011, June). *Beyond Participation Opportunities: What should I know about Title IX…Now?* CLE Panel discussion at the National Association for Athletics Compliance annual convention, Orlando, FL.

75. Panelist (2011, June). Interview/discussion on CBC Public Radio.

76. Moderator/Panelist (2011, May). *Emerging Sports*. Panel discussion at the NCAA Gender Equity and Issues Forum, Bethesda, MD.

77. Moderator (2011, March). *An incipient crisis of legitimacy: Doping, the WADA Code and US sports.* Panel discussion at the annual meeting of the Sport and Recreation Law Association, Savannah, GA.

78. Speaker (2010, September). *Everything you really need to know about Title IX.* Presented at Slippery Rock University, Slippery Rock, PA.

79. Speaker (2010, August). *Title IX Issues in High School Athletics*. Presented at the Florida High School Athletics Association Compliance Seminar, Boca Raton, FL (repeated in Ocala, FL).

80. Speaker (2010, April). *Institutional Liability for Athlete Abuse.* Presented at the NCAA Gender Equity and Issues Forum, Chicago, IL.

81. Panelist (2009, November). *Equity, Employment and Title IX.* Presented at the Title IX: Beyond Sports to the Fair Pay Act and Salary Negotiation sponsored by the University of North Carolina Office of the Provost, Graduate and Professional Student Federation, Student Government, Association of Women and Faculty Professionals, Diversity and Multicultural Affairs, American Association of University Women and the Carolina Women's Center, Chapel Hill, NC.

82. Panelist (2009, October). *Examining Drug Testing & Drug Education.* Presented at the annual meeting of the National Association for Collegiate Women Athletics Administrators, Denver, CO.

83. Speaker (2009, October). *It's all fun and games until someone gets hurt.* Presented at Hot Topics in the Sports and Entertainment Industries, North Carolina Bar Association, Winston-Salem, NC.

84. Speaker (2009, September). *Sexual harassment.* Presented at the Title IX Symposium sponsored by Wake Forest Law School, Winston-Salem, NC.

85. Speaker (2009, April). *Conducting legal research in sport management.* Presented at doctoral seminar lecture series, Texas A&M University, College Station, TX.

86. Panelist (2009, March). *Sex and sexual orientation discrimination.* Presented at the Sport, Sexuality and Culture International Conference, Ithaca, NY.

87. Speaker (2009, March). *Women and sport: Contemporary issues.* Presented at the W.E.L.L. lecture series, University of North Carolina, Chapel Hill, NC.

88. Speaker (2008, October). *Negotiating contracts*. Presented at the annual meeting of the National Association for Collegiate Women Athletics Administrators, Atlanta, GA.

89. Speaker (2008, October). *Managing game environments.* Presented at the annual meeting of the National Association for Collegiate Women Athletics Administrators, Atlanta, GA.

90. Moderator (2008, February). Moderated academic seminar on C*urrent issues in collegiate conference administration featuring Jim Delany, Commissioner of the Big 10* sponsored by the UNC Law School Alumni Speaker Series.

91. Speaker (2008, February). *Contemporary Title IX Issues in High School Athletics*. Presented at the bi-annual meeting of the North Carolina High School Athletics Association City/County Athletics Directors, Chapel Hill, NC.

92. Speaker (2007, November). *Conducting Legal Research in Sport Management*. Presented at a doctoral seminar in Sport Management, Indiana University, Bloomington, IN.

93. Panelist (2007, October). *Finding Equal Footing: Gender Issues in Sports*. Presented at Reversing Field: Examining Commercialization, Labor & Race in 21st Century Sports Law Conference sponsored by the West Virginia University College of Law, Morgantown, WV.

94. Panelist (2007, May). *Regulation of Athlete Conduct*. Presented at the annual meeting of the Sports Lawyers Association, Cambridge, MA.

95. Panelist (2007, February). *Gender and Sexual Orientation Discrimination in College Athletics*. Presented at the Association for Applied Sport Psychology Southeast Regional Conference, Greensboro, NC.

96. Featured Speaker (2007, January). *Title IX Issues in Intercollegiate Athletics.* Presented at the Northern Illinois University Sport Management Colloquium, Dekalb, IL.

97. Lecture (2007, January). *Athletics Department Responsibility and Control Over Student-Athlete Conduct.* Presented for students, faculty, and athletics department staff at Northern Illinois University, Dekalb, IL.

98. Panelist (2006, December). *Athletic Department Culture and the Influence on Student-Athlete Behavior.* Presented at the annual Intercollegiate Athletics Forum sponsored by SportsBusiness Journal, New York, NY.

99. Speaker (2006, October). *Gender Discrimination and Sexual Harassment in the Golf Industry.* Presented at the Individual Performer Sports: Emerging Legal and Business Issues Annual Symposium of the National Sports Law Institute, Milwaukee, WI.

100. Panelist (2006, March). *Writers Wanted – What's the Process?* Presented at the annual meeting of the Sport and Recreation Law Association, Albuquerque, NM.

101. Speaker (2005, September). *Gender, Employment and Sexual Harassment Issues.* Presented at the Sport and Entertainment Law section annual meeting sponsored by the North Carolina Bar Association, Greensboro, NC.

102. Facilitator (2005, May). S*how Me the Money.* Presented at the Women's Leadership Symposium on Intercollegiate Athletics, Indianapolis, IN.

103. Facilitator (2005, May). *Can I be a Mom, Too?* Presented at the Women's Leadership Symposium on Intercollegiate Athletics, Indianapolis, IN.

104. Speaker (2004, October). *Title IX and Sexual Orientation Discrimination in Intercollegiate Athletics.* Presented at the Evolving Nature of High School, College and Olympic Sports in the 21st Century Symposium by the National Sports Law Institute, Milwaukee, WI.

105. Panelist (2004, September). *Are Youth Sports Too Competitive?* Presented at the University of North Carolina School of Journalism and Mass Communications, Chapel Hill, NC.

106. Speaker (2003, July). *What is a SWA?* Presented to the Committee on Women's Athletics of the National Collegiate Athletics Association, Sante Fe, New Mexico.

107. Speaker (2003, April). *Title IX 101*. Presented at the NCAA Compliance Seminar, Charlotte, NC.

108. Panelist (2002, February). *Issues in College Athletics*. Presented at the North Carolina State Bar Association Young Lawyer's Division, Arts, Entertainment and Sports Law Symposium, Chapel Hill, NC.

109. Speaker (2001, October). *Issues Related to the NCAA*. Presented at the annual meeting of the Sports and Entertainment Law section sponsored by the North Carolina Bar Association Foundation, Southern Pines, NC.

110. Panelist (2001, March). *Getting a Jump on the Game: Current Issues and Opportunities in College Athletics*. Presented at the North Carolina State Bar Association Young Lawyer's Division, Arts, Entertainment and Sports Law Symposium, Chapel Hill, NC.

111. Panelist (2000, June). *Economics of Women's Sports*. Presented at *Show Me the Money: the Business of Sports* seminar sponsored by the University of North Carolina School of Journalism and Mass Communication, Chapel Hill, NC.

112. Panelist (2000, April). *Issues in College Athletics*. Presented at the North Carolina State Bar Association Young Lawyer's Division, Arts, Entertainment and Sports Law Symposium, Chapel Hill, NC.

113. Panelist (2000, February). *Enforcement Mechanisms and Title IX*. Presented at the *Competing in the 21st Century: Title IX, Gender Equity, and Athletics* symposium sponsored by the University of Michigan Journal of Law Reform, Ann Arbor, MI. February 4-5, 2000.

114. Panelist (1999, March). *Marketing and the Popularity of Women's Basketball*. Presented on *The State of Things* WUNC radio, Chapel Hill, NC.

115. Expert guest (1999, February). *Equal Pay Act and Gender Equity in Athletics Employment*. Presented at a Sport Management seminar at UW-Parkside, Kenosha, WI.

116. Interview (1999, February). *Title IX*. Interviewed on *The State of Things*, WUNC radio, Chapel Hill, NC.

117. Panelist (1998, June). *Risk Management for Division III Athletics*. Presented at the annual meeting of the National Association of Collegiate Directors of Athletics, Marco Island, FL.

Invited Publications and Engaged Scholarship

1. Dodds, M. & Osborne, B. (2021). Law. *Encyclopedia of Sport Management* (Paul M. Pedersen, ed.). Cheltenham, UK: Edward Elgar Publishing, p. 250-253. **ISBN:** 978 1 80088 327

2. Kantor, M.K., Weight, E.A., Osborne, B. (2019). NCAA Scholarship Model History Report. Chapel Hill, NC: Center for Research in Intercollegiate Athletics.

3. Kantor, M.K., Osborne, B., Weight, E.A. (2019). NCAA Financial Aid Proposal Database (1971-2019). Chapel Hill, NC: Center for Research in Intercollegiate Athletics.

4. Osborne, B. (2018). Student-athlete protests, free speech and political retaliation. *Legal Issues in Collegiate Athletics*.

5. Osborne, B. (2016). Hey! Hey! Can we pray? Cheerleader case won't go away. *Sport Litigation Alert,* 13(6) n.p. April 1, 2016.

6. Osborne, B. (2015). NCAA Concussion lawsuits a plea for strict liability. *Concussion Litigation Alert,* (June 12, 2015), n.p. Reprinted in *Legal Issues in Collegiate Athletics*, 16(9), p.9.

7. Osborne, B. (2014). Learn to recognize and minimize risks and liabilities. *College Athletics and the Law*, (January 2014), p. 4.

8. Osborne, B. (2014). Case involving cheerleaders and free speech turns on mootness doctrine. *Sports Litigation Alert,* 11(15), p. 3-5. Reprinted in *Legal Issues in High School Athletics*, Sept-Oct 2014, pp. 5-7.

9. Osborne, B. (2013). "Rawlings Panel" provides recommendations for athletics reform. *Legal Issues in College Athletics,* 14(12), p. 12.

10. Osborne, B. (2012). Concussion legislation: Worth the paper it's written on? *Concussion Litigation Reporter*, 1(3). Reposted on *Concussion Policy and the Law* blog at concussionpolicyandthelaw.com.

11. Osborne, B. (2011). Heading off traumatic brain injury. *North Carolina Bar Association Sports and Entertainment Law* Newsletter, 12(1), p. 1-3.

12. Osborne, B. (2011). Title IX: A bump on the road to pay-for-play. *Sports Litigation Alert*, (August 26, 2011) n.p. Reprinted in *Legal Issues in College Athletics,* 12(11), p. 5-6.

13. Osborne, B. (2011). Varsity Cheer: Proceed with caution. *Legal Issues in College Athletics,*12(8), 5-6.

14. Osborne, B. (2011). Scholarships Equity: Have you reviewed your athletics related financial aid ratios? *Legal Issues in College Athletics,* 12(5), 5, 11.

15. Osborne, B., & Jones, M. (2011). Reflecting on the Past and Planning for the Future. *Legal Issues in College Athletics*, 12(3), p. 3.

16. Osborne, B. (2010). "Welcome Back – Please Behave!" Regulating the Off-Field Behavior of Student-Athletes. *Legal Issues in College Athletics,* 11(11), p. 5.

17. Tiell, B., Dixon, M., Sweeney, K., Lough, N., Osborne, B. and Bruening, J. (2006). Stopping the Pull. *Athletic Management,* XVIII (5), 63-67.

18. Osborne, B. (2006). Sexual Orientation Discrimination in Intercollegiate Athletics. *Sports and Entertainment,* 6(4), 1, 3-4.

19. Osborne, B. (2006). Ask the Expert. *From the Gym to the Jury*, 16(5), 11.

20. Osborne, B. (2005). Gender, Employment and Sexual Harassment Issues in the Golf Industry. *North Carolina Bar Foundation Continuing Legal Education*, IV, 1-39.

21. Osborne, B. (2001). Ensuring Equity. *Training and Conditioning*, XI(3), 23-27.

22. Bickford, B.(2000). Risk Management: Is Your Program Safe? *The Tiger's Tale II*, 2(2), 4.

23. Bickford, B. (1999). Sweatshirts and Sweatshops. *Directing Athletics*, 2(2), 8-11.

24. Bickford, B. (1999). In the Long Run: Setting up a Department Wide Plan for Detecting Eating Disorders. *Athletic Management*, XI(4), 26 - 29.

25. Bickford, B. (1994). Trouble in the Long Run? *Training and Conditioning*, IV(3), 14-19.

26. Bickford, B. (1994). Creatine Supplements: A Tough Pill to Swallow. *Training and Conditioning*, IV(2), 52-56.

27. Bickford, B. (1993). Dropping the Scale, *Training and Conditioning*, III(4), 35-39.

28. Bickford, B. (1993). Trouble in the Long Run? *Athletic Management*, V(5), 23-26.

29. Bickford, B. (1993). Edible Energy. *Training and Conditioning*, III(2), 29-35.

30. Bickford, B. (1992). Screening the Choices. *Training and Conditioning*, II(4), 15-19.

31. Bickford, B. (1992). Appropriate Measures. *Athletic Management*, IV(5), 21-26.

32. Bickford, B. (1992). A Deadly Image. *Training and Conditioning*, II(2), 11-15.

33. Bickford, B. (1991). A Deadly Image. *College Athletic Management*, III(4), 14-17.

34. Bickford, B. (1991). The Nutritional Edge. *College Athletic Management*, III(2), 19-21.

35. Bickford, B. (1990). Fitting the Pieces. *College Athletic Management*, II(5), 56-57.

36. Bickford, B. (1990). Eating Disorders, Part 3: Treatment and Prevention. *Scholastic Coach*, 59(8), 86-88.

37. Bickford, B. (1990). Eating Disorders, Part 2: Anorexia and Bulimia. *Scholastic Coach*, 59(6), 124-127.

38. Bickford, B. (1989). Eating Disorders, Part 1. *Scholastic Coach*, 59(5), 76-77, 88.

Book Reviews

Sports Law and Regulation: Cases, Materials and Problems (Second Ed.), by Matthew J. Mitten, Timothy Davis, Rodney K. Smith, and Robert C. Berry. Aspen Publishers, 2009.

Sport Law: A Managerial Approach, by Linda Sharp, Anita Moorman, and Cathy Claussen, Holcomb Hathaway, Publishers, 2004.

Management of Physical Education and Sport, 11th edition by Charles A. Bucher and March L. Krottee, McGraw Hill, 2003.

TEACHING RECORD

Teaching Assignments for Past 5 Years

Semester	Course Name	Number of Students
Spring 2023	EXSS 326 Legal Aspects of Sport	117
	EXSS 749	12
Fall 2022	EXSS 748 Legal Issues in Collegiate Athletics	10
	LAW 506 Amateur Sport Law	25
	EXSS 395 Independent Research	1
	LAW 399 Research	1
Summer 2022	EXSS 326 Legal Aspects of Sport	35
Fall 2021	EXSS 748 Legal Issues in Collegiate Athletics	13
	LAW 200 Professional Sport Law	30
	EXSS 395 Independent Research	1
Summer 2021	EXSS 326 Legal Aspects of Sport	29
Spring 2021	EXSS 326 Legal Aspects of Sport	103
	EXSS 749 NCAA Governance and Compliance	13
Fall 2020	EXSS 748 Legal Issues in Collegiate Athletics	13
	LAW 506 Amateur Sport Law	24
Summer 2020	EXSS 326 Legal Aspects of Sport	47
Spring 2020	EXSS 326 Legal Aspects of Sport	104
	EXSS 395 Independent Research	1
	EXSS 749 NCAA Governance and Compliance	11
Fall 2019	EXSS 748 Legal Issues in Collegiate Sport	11
	LAW 200 Professional Sport Law	30
Summer 2019	EXSS/WGST Women and Sport	43
	EXSS 326 Legal Aspects of Sport	31
	EXSS 223 International Sport Management	20
Spring 2019	EXSS 326 Legal Aspects of Sport	102
	EXSS 395 Independent Research	21
	EXSS 749 NCAA Governance and Compliance	11
Fall 2018	LAW 506 Amateur Sports Law	37

All Courses Taught

EXSS 050 Discrimination and Sport (First Year Seminar), 2009 - 2014

EXSS 260 Women in Sport, undergraduate course, 1998 - 2019

EXSS 221 Introduction to Sport Administration, undergraduate course, 1998 – 2008, 2013

EXSS 223 International Sport Management, undergraduate course, 2019

EXSS 326 Legal Aspects of Sport, undergraduate course, 2004 - present

EXSS 244 Legal Issues in Collegiate Sport, graduate course, 1998 - present

EXSS 246 Organizational and Financial Management of Sport, graduate course, 2002 – 2003

EXSS 249 Practicum in Sport Administration, graduate course, 2002 - 2006

EXSS 248 Collegiate Sports Marketing, graduate course, 1998 – 2002

EXSS 395 Independent Research, 2019 – present

EXSS 749 NCAA Governance and Compliance, graduate course, 2007 - present

EXSS 750 Sport Administration Leadership Seminar I, graduate course, 2005 – 2008, 2012

EXSS 751 Sport Administration Leadership Seminar II, graduate course, 2006 - 2008

LAW 200 Professional Sports Law, 2007, 2011, 2013, 2015, 2017, 2019, 2021

LAW 506 Amateur Sports Law, 2016, 2018, 2020

Additional Instruction

Doctoral Committee

2011 -2012
Andrew Westney, School of Journalism and Mass Communication, *Barbarians' gate: Inside the business of mixed martial arts.*

2002 – 2005
Pamela Laucella, School of Journalism and Mass Communication, *Sonya Henie and Jesse Owens: A Case Study of Press Coverage on Both 1936 Olympic Games in Garmisch-Partenkirchen and Berlin.*

Master's Theses Directed

2021-2022
Grayson Atkins, *Performance under pressure: an analysis of field goal attempts in pressure situations*

Joshua Gupton, *Student-athlete opinions on aspects of the NCAA Name, Image, and Likeness Policy*
Kerrigan Miller, *The grad transfer experience: Challenges, well-being, and institutional support systems for graduate transfer student athletes at ACC institutions*
Camille Wilson, *Lack of Participation by Black Male Student-Athletes in Academic and Life Skills Programming*

2020-2021
Kelsey Grambeau, *Student-athlete Perceptions of Name, Image, and Likeness Compensation*

Tim Kubel, *A Successful Athletic Talent Development Environment - A Holistic Ecological Case Study of an Elite College Soccer Program*

Kelly Lennon

Annika Martensson, *Collegiate Coaches' Knowledge of Disordered Eating Behaviors: A replica study of Joanne C. Turk's "Collegiate Coaches' Knowledge of Eating Disorders" (1999)*

2019-2020
Nicole Alexander, *Reported versus Perceived Workload of College Coaches and Athletic Trainers*

Brett LeClair, *The Lassiter Rank II: A Renewed Ranking System and Analyis of Division I Athletic Department Success*

Gabrielle Nottage, *Raise Up: An Analysis of the Experience of Black Women Senior Level Administrators in College Athletics*

Saadia Timpton, *Looking Into the Stands- An Analysis of the Relationship Between the White Fan and the Black Athlete*

2018-2019
Olivia Dwyer, *Coaches Perceptions of Gender Bias in Collegiate Sport*

Courtney Mascarella, *Gender Bias in Collegiate Sport Social Media Posts*

Sarah Sessoms, *A History of Women's Athletics at the University of North Carolina at Chapel Hill, 1920 – 1970.*

2017-2018
Katherine L. Burger, *The Alchemy of Competitive Success: An Analysis of Division I Women's Rowing Resources*

Simon Carcagno, *Assessing the Effect of Collegiate Head Coach's Gender on Female Athlete Outcomes*

Clay Pfeiffler, *An Analysis of Student-Athlete-Centric Expenses In NCAA Power 5 Athletic Departments*

2016-2017
Shinann Featherston, *Building an alternative NCAA Division I competition model*

Ethan Lievense, *Adaptive sports: Assessing the inaugural year of the ECAA and adaptive sport NCAA championships*

M. Emilee McCollum, *The impact of the NCAA emerging sports program for women on Title IX compliance: A 10-year longitudinal study.*

2015-2016
Kate Kantor, *Title IX compliance vs. NCAA scholarship limits.*

Tori Krause, *Investigating the handling of sexual assaults involving collegiate student-athletes.*

2014-2015
Mark Ketterer, *Analysis of university mission statements and the missions and strategic plans of athletics departments.*

C.J. Hunter, *Side Out: The effects of early recruiting on NCAA Division I volleyball student-athlete retention.*

Jessica Rippey, *An analysis of NCAA Division I institution and conference Senior Woman Administrators' self-perception and career intentions*

2013-2014
Allison Bass, *Recent Graduate Donor Motivations*

John Dougherty, *An Empirical Analysis of Correlation between Incentive Clauses and Performance among Coaches at NCAA Football Bowl Series Public Institutions*

Brie Farley, *An analysis of the NCAA appeals process and the new "Abuse of Discretion" standard for appealing a penalty*

Grant Leiendecker, *Examining relationships between athletic department finances, athletic success, and academic success among NCAA Division I FBS institutions*

Catherine Mitchell, *The prevalence of legal issues in NCAA Division I college athletics and how departments manage these issues*

2012-2013
Justin Freeman, *Examining the Relationship between Athletics Spending and Directors' Cup Standings*

Patrick Marsh, *An Analysis of Equity in Athletics Disclosure Act Data at NCAA Division I Institutions that have Discontinued Sports*

Ernie Washington, *An Analytical and Empirical Study of the Legal Entity Structures of Football Bowl Subdivision Athletic Departments*

Brandon Yeargan, *Athletics Administrators Motivations for Starting Intercollegiate Football Programs*

2011-2012
Scott Howell, *A Spike in Female Participation: A Study on the Viability of Sand Volleyball Sponsorship at the NCAA Division I Level*

Natalie Lutz, *Engaging Search Firms in the Hiring Process in Division I Athletic Departments*

2010-11
Elizabeth Lancaster, *Content Analysis of Violent Incidents in College Sports by Gender*

Erin Lindsey, *Head Coaching Intentions of NCAA Division I Assistant Women's Volleyball Coaches*

Jordan Skolnick, *Trimming Teams: An Examination of Decision Making Processes in Intercollegiate Athletic Departments when Multiple Varsity Sport Programs are Eliminated*

2009-10
Emily Cozart, *The Relationship between the Online Secondary Ticket Market and College Athletics.*

Meeghan Ford, *Perceived Effectiveness of the NACWAA/HERS Institute for Administrative Advancement.*

Brandon Maddux, *Where did the handshake go? A Legal Analysis of College Coaching Contract Litigation.*

Che Mock, *Policies and Procedures: An Analysis of the UNC Rams Club's Decision Making Process*

Brett Smith, *Should the NCAA be above the law?: An examination of the NCAA's Antitrust Status.*

2008-09
Brandon Fanney, *The effect of one-and-done players on Division I men's college basketball programs.*

Blake Griffin, *An examination of division level and player position ont he preferred leadership behaviors of NCAA men's soccer athletes*.

Sarah Humphries, *An examination of the relationship between end of season conference rankings and the bowl game selection process in the Atlantic Coast Conference.*

Lindsey Jaco, *Pregnancy prevalence, outcomes and knowledge of rights for NCAA Division I female student-athletes.*

Kristina Meissen, *A critical analysis of the Carolina Leadership Academy's CREED Program at the University of North Carolina-Chapel Hill.*

Jacklin Wallgren, *An Examination of Criminal Arrests and Convictions of Football Student-Athletes at Atlantic Coast Conference Institutions as Reported by the Media*

2007-08

Lauren Bifulco, *Justifications and Perceived Effectiveness of Leadership Academies Within Collegiate Athletics.*

Amanda Cooley, *The Atlantic Coast Conference: A Pre- and Post-Expansion Analysis.*

Kristian Graves, *An Examination of the Potential for Expansion of Outsourced Marketing into NCAA Division I-AA.*

Shelly Green, *A Profile of the Ineligible and Not-Retained (0/2) Student-Athletes of the Atlantic Coast Conference.*

Ryan Jones, *Motivations behind financial philanthropy from former athletes to the University of North Carolina.*

Robert Ockenfuss, *An Analysis of Decision-Making by Non-Revenue Sports Student-Athletes in Choosing the University of North Carolina at Chapel Hill*

Anna Tharrington, *An Analysis of the Presence and Perception of the Juris Doctorate Degree in Division I College Athletics.*

2006-07

Shoshanna Engel, *A Case Study of Vanderbilt University's New Model of Intercollegiate Athletics Administration.*

Trevor Gorman, *An Examination of the NCAA Men's Soccer College Cup.*

Amy Howe, *A Study of the Financial and Participatory Opportunities Afforded to Women's Athletics by North Carolina NCAA Member Institutions*

Steve Stoute, *A Cross Sectional Study of Intercollegiate Basketball and Soccer coaches Salaries at State Institutions in North Carolina.*

Andre Williams, *An Examination of the National Collegiate Athletic Association's Transfer Rule and its Effect on Academic Success at a Division I-A Institution.*

2005-2006
Mary Ball, *A Comparison of Gender Equity at Institutions with a Female Athletic Director versus Institutions with a Male Athletic Director*

Shelley Johnson, *The Effects of Gender, Source of Evaluation and Sport on Perceived Leadership Ability of Student-Athletes on Olympic sports at the University of North Carolina at Chapel Hill.*

Dana Sorensen, *The Statistical Impact of the Louisville Slugger "Catalyst" Bat on the 2005 Division I Collegiate Softball Season*

2004 – 2005
Ronald Brewer, *Analysis of the Relationship Between College Football Student-Athlete's Hometown Environment and their Athletic and Academic Success*

Aimee Carpenter, *Analysis of the Relationship between Institutional Factors and NCAA Major Violations*

Sandra Duncan, *Factors Affecting Institutional Funding of NCAA Division I Athletics Programs*

Malaika Underwood, *Student-Athlete Resource Program: A Curriculum Designed to Provide Recruiting and Academic Resources to Underprivileged College-Bound Student-Athletes*

2003-2004
Clare Duffy, *Analysis of NCAA Division IA Athletics Department Sexual Harassment Policies and Procedures*

Vanessa Fuchs, *A Comparison of the Career Paths of NCAA Division I, II and III Female Directors of Athletics and Senior Woman Administrators*

Panos Manologlou, *Achieving UEFA Licensing for the Greek Football Federation: A Case Study*

Daniel Satter, *An Empirical Analysis of the Final Four Teams in the NCAA Division I Men's Basketball Tournament, 1987-2003*

Cobey Shoji, *Identification and Career Paths of Minority Senior Level Athletic Administrators in NCAA Division I-A*

Colleen Wrenn, *An Examination of Administrative Support Factors to Improve Olympic Sport Coaches Job Satisfaction*

Sean Wright, *An Examination of Athletic Spending and Relationship to Success in NCAA Division III Athletics*

2002-2003

John Brunner, *Women and Minority Recruitment and Retention Policies and Procedures of Graduate Sport Management and Related Educational Programs*

Christyn Chambers, *NCAA Division I-A Graduation Rates and NACDA Directors' Cup Points System*

Richie Grimsley, *Factors Associated with the Changes in Football and Men's Basketball Season Ticket Prices in the ACC and Southeastern Conference from 1997-2001.*

Nicole A. Hudson, *The History and Significance of the Women's Central Intercollegiate Athletic Association Basketball Tournament*

Wilson Lloyd, *Contemporary Athletics Directors: Traditional vs. Business Models*

2001-2002
Kyle Johnson, *Multi-Media Rights Analysis in Major College Athletics*

Jacqueline Schuman, *An Evaluation of the NCAA CHAMPS/Life Skills Program.*

Cara Turano, *A Qualitative Analysis of Fund Raising in Women's Intercollegiate Athletics.*

Stacy Warner, *Analysis of Recruiting Expenses and Coaching Salaries and their Relationship to Conference Success for Female Athletic Programs at all NCAA Divisional Levels.*

2000-2001
Samantha Baggett, *The Most Desired Characteristics of an Intercollegiate Women's Soccer Team Head Coach from the Student-athlete's Perspective.*

Rachel Melchiorre, *A Comparison of Gender Equity at Universities with Separate versus Merged Men's and Women's Athletic Departments.*

Amy Schaeperkoetter, *The Development of a Compliance Manual for the University of North Carolina Athletic Department.*

Suzette Thweatt, *Collegiate Licensing at the University of North Carolina.*

1999-2000
Thomas Stepp, *An Analysis of NCAA Division I-A Football Sports Information Directors' Experiences with Independent Internet Sites.*

Cheryl Wah, *A Comparison Between the Levels of Satisfaction with Collegiate Experience Between NCAA Division I and Division III Softball Players*

1998-1999
Amanda Braun, *Twenty Five Years of Women's Varsity Intercollegiate Basketball at Duke University*

Master's Theses Committee Member

2021-2022
Araad Fisher, *A false promise? Evaluating intercollegiate athletics as a tool for socioeconomic uplift*

Elizabeth Roberts, *The value of experience: Analyzing experience as a predictor for success in the NCAA women's basketball tournament*

2020-2021
Carrigan Bain, *NCAA Suicides: An Examination of Crisis Communication Around Student-Athlete Suicides*

Jordan Bermudez

2019-2020
Kerren Kollock, *Tackling the Exploration of Football Player Disc Profiles*

2018-2019
Cameron Johnson, *Analyzing the Graduate Transfer Rules in NCAA Division I Men's Basketball*

2017-2018
Jordan Fieulleteau, *Portrayal of White and Black NFL Athletes with Regards to Violence Against Women: A Comparative Content Analysis*

Alexander Kimura, *The Impact of Search Firm Use in Athletic Director Hires Based on Athletic, Academic, And Financial Measures of Division I Power Five Institutions*

2015-2016
Archer Bane, *To serve and protect: does selling alcohol at intercollegiate football stadiums equate to higher criminal activity?*

Amy Bonfiglio, *Occupational Measures of Former NCAA Athletes and Traditional Students.*

Jonathan Teich, A*n analysis of coach perspectives on intercollegiate athletics scholarship models.*

2014-2015
Stephen Ianotta, *An analysis of current practices for NCAA Division I-FBS student-athlete exit interviews.*

Ross Schwarzber, *Indirect Effects Of Reclassification From The Football Championship Subdivision To The Football Bowl Subdivision*

2013-2014
Peter Chalfin, *The Value of Intercollegiate Athletics Participation from the Perspective of Employers*

Caroline Dressler, *Student-athlete educational outcomes: A retrospective evaluation*.

2012-2013
Brian Day, *Athletic Director Leadership and Success in NCAA Division III Athletic Departments*

Greg Lewinter, *Employee Satisfaction with Academics (Standards, Performance, and Integrity) Governance, and Finance of Intercollegiate Athletics at the University of North Carolina at Chapel Hill (UNC-CH)*

Mary Rob Plunkett, *The Value of Intercollegiate Athletics Participation from the Perspective of Former Athletes*

2011-2012
Patricia Early, *An Investigation of the Relationship Between Junior Girl's Golf Ratings and NCAA Division I Women's Golf Ratings*

2010-2011
Danielle Gaynor, *A Financial Analysis of Revenue and Expenditure Trends within Division IA Athletic Departments.*

2009-2010
Gerry Fisk, *An Examination of Associated Costs with Reclassification for a Private Christian College in the Northeast*

Blythe Worley, *The Organizational Culture of Learfield Sports Properties*

2007-2008
Jason Howell, *A Comparative Study Examining the Difference Between the Offensive Production of the -5 Length to Weight Collegiate Baseball Bat and the -3 Length to Weight Collegiate Baseball Bat.*

2005-2006
Sam Albert, *An Analysis of the Relationship between Athletic Expenditures and Success of Olympic Sports Teams at NCAA Division I Institutions*

Ward Gibson, *A Comparison of Sponsorship Recognition Ability Among UNC Student Men's Basketball Fans*

Andy Pogach, *A Study of the Opinions of Ivy League Men's Basketball Student-Athletes and coaches on a Potential Post-Season Conference Tournament*

2004 – 2005
Kevin Gailey, *Permanent Corporate Signage at the University of North Carolina at Chapel Hill: A Survey of Student and Faculty Opinions*

Carrie Havel, *The NCAA Division I Women's Basketball Championship: An Analysis of First and Second Rounds and the Change to Predetermined Sites*

Seth Reeves, *Financial Impacts of the Bowl Championship Series in Division IA College Football*

2003-2004
Neilia Bliss, *Relationship between Obesity, Physical Activity and Diet in Youth*

John Erck, *The Academic and Economic Effects of Conference Expansion on Schools that Change Affiliation*

Lance Markos, *A Study of the Relationship between a Successful Career in the NFL and the Quality of University Attended*

2002-2003
Katherine V. Brown, *An Analysis of the 2002 NCAA Men's Basketball Championship Bracketing Procedures*

Nick Conway, *An Analysis of the 2002 Carolina Field Hockey Season and System*

Jacob Hepp, *The Relationship between Draft Position and Success in the NBA*

2001-2002
Lisa Barringer, *A Comparison of the Perceptions of Athletic Directors, Head Coaches, and Student-Athletes Regarding Recruited Foreign Student-Athletes in the Atlantic Coast Conference.*

Brian Frerking, *Analysis of Factors Influencing College Selection by prospective Elite High School Basketball Players*

Zack Lassiter, *The Lassiter Rank: A New Ranking and Analysis of Division IA Athletic Department Success.*

2000-2001
John Mark Adkison, *Expectations for Institutions Deciding whether to Terminate NAIA Membership and Join the NCAA.*

Heather Deaner, *An Exploratory Factor Analysis of Collegiate Athletes' Perceptions of Psychological Adjustment to Sport Disengagement*

Elizabeth Freeland, *Perceptions of Collegiate Coaches on Coach Education and Certification in the United States*

Keith Howard, *Desegregation of College Football in the Southeast.*

Nyaka Nii Lampti, *An Assessment of Fear of Failure as Related to Gender, Athletic participation, Level of Athletic Competition and Sport Type.*

Jonathan Metzler, *The Relationship Between Fear of Failure and Persistence on a Motor Task.*

Melissa Perry, *An Analysis of NCAA Major Violation Penalties and On-the-Field Success.*

Eric Roedl, *An Analysis of the Opinions of Athletic Directors and Athletic Academic Support Directors Regarding Freshman Eligibility.*

Daniella Rubin, *Insulin Response to Moderate-intensity 30-minute Swim in Healthy, Active Individuals.*

1999-2000
Kevin Hendrick, *A History of the North Carolina Governor's Council on Physical Fitness and Health*

Kelly Mieszkalski, *Perceptions of Sexual Harassment: Collegiate Female Athletes and Non-Athletes.*

Nicole Saunches, *Analysis of Exit Survey of Student-Athletes at the University of North Carolina at Chapel Hill from 1994 to 1999.*

Robert Zullo, *A Study of the Level of Satisfaction with Outsourcing Marketing Groups at NCAA Division I-A Schools*

Undergraduate Honors Thesis

2013-2014
Beth Sherling, *Club rugby players perceptions of the viability of elevating women's rugby from club to varsity status*

Independent Study Advisor

2020-2021
Chelsea Rush, *Legal Issues Related to Collection and Use of Student-Athlete Biometric Data*

2016-2017
Jennie Cunningham, *Use of athlete biometric data in sport: Legal considerations*

Antwan Alexander, *The NCAA's Focus on the Student in Student-Athlete*

2015-2016
Josephine Kim, *Contemporary issues in entertainment law*

Stacy Kelly, *Gender and sexuality discrimination in international sport*

2014-2015
Danielle Eustace, *Title IX inequities in marketing women's collegiate sport*

2013-2014
Jenifer Polera, *Title IX's contact sport exception: Clinging to stereotypes to the detriment of everyone.*

2012-2013
Ryan Eletto, *The NBA's Single entity Argument After* American Needle: *Close but no cigar.*
Ellyn Henderson, *Contemporary Athletic Conference Realignment and the Law*

2011-2012
Michael Coletta, *Is the BCS system a violation of anti-trust law?*

2010-2011
Stephanie Delgado, *Time Out: A Legal, Economic, and Policy Analysis of the Current NBA One-and-Done Rule*

2008-2009
Jaime Gilbert, internship
Darren Hill, internship
Nick Hutchins, *The Role of Agents in Professional Sports*
Derrick Pitts, internship
Jennifer Redman, internship
Chris Weatherly, internship

2007-2008
Sean Alford, *The Art of Negotiating an NFL Rookie Contract*

2006-2007
Brad Darby, *Steroids: The New Era in Sports; Testing, Federal Investigations, and Today's Top Athletes*
Julie Gladchuk, *Managing Special Events*
Nicole Jhabvala, *Sports Law and the Media*
Jennifer Jones, *The Arbitrary Punishment of Professional Athletes for "Immoral" Behavior by Professional Sports Leagues, Commissioners, Teams, and Corporate Sponsors*

2005-2006
Lindsay Tarpley, *Title IX and the Growth of Women's Soccer*
Christopher Wood, *Anti-Trust: Maurice Clarett and the NFL Initial Eligibility Rule*

2004-2005
Cheryl Wah, *The Red Sox, Doug Mientkiewicz, and "The Ball"*

2002- 2003
Sean Wright, *Profiling Senior Woman Administrators*
Christopher Roberts, *Full Scholarships and NCAA Division I Football*
Rebecca Post, *The Future of Female Athletes: Will Title IX Fail Them?*
Brian Smouse, *Commercialization in College Athletics: Businesses or Educational Organizations?*

2000-2001
Melissa Coyne, *Issues in Intercollegiate Sport Administration*
Amy Whittier, *Legal Issues Related to Red-Shirting and Medical Eligibility*

1999-2000
Siri Mullinx, *Coaching Female Athletes.*
Erin Berg, *Commercialism in Athletics*
Chase Martin, *The Amateur'$ World: Professionalization of College Sport.*

Independent Research Advisor

Spring 2022
- 1 student: examination of best practices for black football student-athlete success programming

Spring 2021
- 2 students: examination of NCAA major infractions cases, 2003 to present

Spring 2020
- 1 student: sex discrimination and pay inequity in women's sport

Spring 2019
- 6 students: archival research on history of women's athletics at the University of North Carolina
- 10 students: quantitative study on gender bias in college social media accounts

GRANTS

Funded

2022 Summer Legal Research Assistance Grant (PI-100%)
Funded by the UNC School of Law ($5,460).

2021 Miller, K. (PI), Osborne, B. (PI), Pauline, G. (Co-I), & Hancock, M. (Co-I). *Experiences of Graduate-Transfer Student-Athletes.* ACC Innovation Grant ($1,200).

2021 Summer Legal Research Assistance Grant, (PI-100%)
Funded by the UNC School of Law ($3,500).

2020	Weight, E. (PI), Popp, N. (Co-I), Osborne, B. (Co-I), Jensen, J. (Co-I), Bates, B. (Co-I), Malekoff, R. (Co-I), Smith, D. (Co-I). *Leading the Industry in Data-Driven Decision Making: The ACC Innovation Initiative.* Atlantic Coast Conference. ($30,000).	
2020	Weaver, K. (PI), Weight, E. (Co-I), Haagen, P. (Co-I), Broome, L. (Co-I), Osborne, B. (Co-I), Bates, B. (Co-I), Cooper, J. (Co-I), Schmalbeck (Co-I). *"Reform" Review to Inform New Governance Structure Modelling Proposal.* The Knight Commission on Intercollegiate Athletics ($30,000).	
2018	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$3,990
2017	Weight, E. (PI), Harry, M. (Co-I), Lewis, M. (Co-I), Jensen, J. (Co-I) Popp, N. (Co-I), Osborne, B. (Co-I) (2017). *The educational impact of physical activity: The Walking Institute program evaluation.* The Oak Foundation **($50,000).**	
2017	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$3,990
2016	*Durham Bulls Market Research Grant.* Popp, N. (PI), Weight, E., Jensen, J., & Osborne, B. (15%) Funded by Durham Bulls Baseball Club.	$2,200
2016	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$3,990
2015	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$3,458
2014	Exploring a Division I conference model federated by sport. Weight, E., (P.I.) Malekoff, R., Cooper, C., Osborne, B. (10%) Popp, N. Funded by The Knight Commission on Intercollegiate Athletics	$15,000
2014	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$3,458
2013	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$1,500
2012	Summer Legal Research Assistance Grant, (PI-100%) Funded by the UNC School of Law	$3,420
2012	Student-Athlete Exit Survey Project, (PI-100%) Funded by the UNC Department of Athletics	$400
2009	*What I See at UNC*, (teaching grant, 100%)	$500

	Funded by the Office of Undergraduate Education and the Johnston Center for Undergraduate Excellence	
2008	Cobey Course Development Grant (teaching grant, 100%) First Year Seminar – Discrimination and Sport	$3,500
Fall 2004	*Evaluation of Conference Expansion and Women's Championships* (PI-100%). Funded by the Atlantic Coast Conference.	$ 400
2002-2003	*What is a SWA?* (PI-100%). Funded by NCAA Education and Outreach.	$3,325
1998 – 1999	*Women's Leadership in Intercollegiate Sport* (PI-100%) Funded by the Program for Public Policy and Sport	$500

Non-Funded

2020	Wolohan, J. (PI) & Osborne, B. (Co-I) (2020). *Recruitment of International Athletes: A comparison of social networks vs. agency.* ACC Innovation Initiative Research Grant Program ($4,800).	
2019	Weight, E. (PI), Popp, N. (Co-I), Osborne, B. (Co-I), Jensen, J. (Co-I), Malekoff, R. (Co-I), Smith, D. (Co-I), (2019). *Leading the Industry in Data-Driven Decision Making: The ACC Innovation Initiative.* Atlantic Coast Conference. ($500,000).	
2018	*ACC Academic Consortium Athletics in Higher Education Research & Collaboration Initiative.* Investigators: Weight, E**.** Popp, N., Osborne, B., Malekoff, R., Renner, J., Broome, L. (2018). Submitted to Atlantic Coast Conference Academic Consortium. ($410,000).	
2015	Proposal submitted to the Knight Commission on Intercollegiate Athletics. Principal investigators Weight, E.A. & Malekoff, R.; co-investigators Popp, N., Osborne, B., Warner, S. Ridinger, L., Shapiro, S., Dwyer, B. *Creating an Alternative Division I Competition Structure Model.*	$20,000
2014	Proposal submitted to Guilford County Schools School District *Title IX compliance and administrative education*	$60,000
2013	Proposal submitted to Sport, Health and Activity Research and Policy Center for Women and Girls (SHARP). *Evaluating Title IX Scholarships Compliance*	$12,500
2012	Proposal submitted to Arts and Sciences Grants for Interdisciplinary Initiatives. Principal investigator: Weight, E.A. Co-investigators: Smith, A, Boxill, J, Reznick, S., Groff, D., and Osborne, B.	$10,000
2011	Proposal submitted to Arts and Science Grants for	$10,000

	Interdisciplinary Initiatives	
2010	Proposal submitted to Arts and Sciences Grants for Interdisciplinary Initiatives	$15,000
2008	Application submitted for the Institute for the Arts and Humanities Academic Leadership Program (ALP) for 2009-2010.	$7,000
2007-2008	Pre-proposal submitted to the National Operating Committee on Standards for Athletic Equipment; Joseph Myers, principle investigator.	
2007-2008	Carolina Women's Center Faculty Scholar proposal	
2006-2007	Robertson Scholars Grant proposal	
2005-2006	Proposal to Knight Commission on Athletics for funding to develop a center for the study of intercollegiate athletics	
2002-2003	University Research Council grant	
2000-2001	University Research Council grant	

PROFESSIONAL SERVICE

To Discipline – Sport Management

College Sport Research Institute, research affiliate, 2007 – 2013

European Association for Sport Management
Annual conference, Law and Ethics Section Chair, 2019 – present

European Sport Management Quarterly
Reviewer, 2015 - present

Journal of Applied Sport Management
Manuscript reviewer, 2018 – present

Journal of Contemporary Athletics
Editorial Review Board, 2008 – present

Journal of Global Sport Management
Guest editor with Erianne Weight and Jonathan Jensen for special issue *Beyond the US: The Globalization of Intercollegiate Athletics*

Journal of Intercollegiate Sport
Editorial Board, 2012 - present
Manuscript reviewer, 2012 – present

Journal of Issues in Intercollegiate Athletics
Manuscript reviewer, 2018 – present

Journal of Sport
Manuscript reviewer, 2019 - present

Journal of Sport History
Manuscript reviewer, 2012 – present

Sports Management and Marketing, 2020 – present
Review Editor, Editorial Board, 2020 - present

National Collegiate Athletic Association
Board of Directors, Forum for the Scholarly Study of Intercollegiate Athletics in Higher Education, 2012 - 2015
Chair, Credentials Committee 1993-94
Credentials Committee, 1991- 1994

North American Society for Sport Management, member, 1998 – present
Strategic Planning Committee, 2012 – 2015
Women in NASSM (WIN) section member, 2006 – present
Journal of Sport Management reviewer, 2009 – present

NASSM Annual Conference Abstract Section Head, 2012 - present

National Association of Collegiate Women Athletic Administrators
General Counsel, 2009 - 2012
Title IX Advocacy Committee, 2002 – present
Research Cluster, 1991 - present
Fall Forum, Boston Organizing Committee, 1992-93

Sport Management Review
Reviewer, 2014 – present

The Collective, member, 2020 - present

Women's Sports Foundation, member, 1990 – present
Dorothy Harris Scholarship committee, March 2008

Women's Sport and Physical Activity Journal
Editorial Board, 2012 – present
Reviewer, 2011 – present

World Association for Sport Management (WASM)
Scientific Review Committee, 2019 - present

Eastern Collegiate Athletic Conference
Award of Valor Committee, 1992 - present, Chair 1994-95
Baseball Tournament Selection committee, 1992 - 1994
Women's Basketball Awards Committee, 1991 - 1994, Chair 1993-94

Governor's Committee for Women's Health and Fitness (Massachusetts), 1991 – 1993

United States Olympic Committee Athlete Education Mentoring Network, 1990 – 1998

To Discipline – Law

American Bar Association, member 1997 – present
Sport and Entertainment Law section, member 1997 – present

National Women's Law Center
Title IX Leaders Network, 2005 – present

North Carolina Bar Association
Member, Sport and Entertainment Law Section
--Past Chair, 2009 - 2010
--Chair, 2008 - 2009
--Vice Chair, 2007 - 2008
--Section Council, 2006 – 2009, 2012 – 2015
--Executive Committee, 2007 – 2010, 2012 – present
--Pro Bono Committee chair, 2021 – present

--CLE Committee member, 2004 – present
--Program Planner, 2008, 2009, 2015
--Amateur Sports Committee member, 2004 – present
--Lawyers in the Schools (pro bono): February 2, 2008; October 3, 2007.

Rocky Mountain Law Journal, Editorial Board, 2015 – present

Sport and Recreation Law Association, member, 1998 – present
Board of Directors, Member at Large, 2005 – 2007
Host, 20th Annual Conference on Sport, Physical Activity, Recreation and Law, 2007
Journal of Legal Aspects of Sport Editorial Board, 2005 – present
--Co-Editor, Special Issue on Legal Issues in College Athletics, 2023
Marketing Committee, 2005 – 2012; Chair, 2005-2007.

Sports Lawyers Association, member 2001 – present
CLE Committee Member, 2007 – present

To UNC-Chapel Hill

College of Arts and Sciences Administrative Review Board, 2020- present

College of Arts and Sciences Diversity Liaison for EXSS, 2021 - present

Academic Support Program for Student-Athletes (ASPSA) Advisory Board, 2019 – 2020

Title IX Compliance Review Committee, Spring 2016 – Spring 2018

Search Committee, Title IX Coordinator, Fall 2013

Administrative Review for Donna Bickford, Director Carolina Women's Center, 2011

Carolina Women's Center, Gender Equity Committee, 2008 – 2012

Faculty Athletics Committee (faculty elected position), 2008 – 2014

Faculty Committee on the Status of Women, 2005 – 2011
Chair, 2008 - 2010

Faculty Nominating Committee, Spring 2009

Student Recreation Center Board of Directors, 2002 – 2004

Study Abroad EXSS liaison, 2020 - present

UNC Advance Team, Internal Advisory Committee, 2009 – 2010

To Department of Exercise and Sport Science

Diversity Committee, 2017 – present; Chair, 2020-21

Departmental Faculty Executive Committee, 2015 – present

Curriculum Committee, Fall 1999 – Fall 2018, Fall 2022- present

Lifetime Fitness Program Review committee – Fall 2018

Undergraduate Sport Administration Track Coordinator, Fall 2007 – Spring 2013

Graduate Sport Administration Specialization Coordinator, Fall 2000-Spring 2008;
Fall 2015 – Spring 2020; Fall 2022- present

Blyth Lecture committee
Spring 2008: Travis Tygart, Chief Executive Officer USADA
Fall 2006: Hodding Carter, University of North Carolina at Chapel Hill
Spring 2006: Len Kravitz, University of New Mexico and Michael Clark, NASM
Spring 2004: Jamie Pollard, CFO, University of Wisconsin Athletics
Spring 2001: Robin Green, Deputy Director NCAA Division I
Spring 1999: James Delany, Commissioner Big 10 Conference

Search Committee
For Teaching Assistant Professor, EXSS experiential education and DEI, 2023
For fixed term Sport Psychology position, 2016
For Lecturer/Advisor in Sport Administration, 2013; 2017
for Assistant Professor in Sport Administration, 2010-2011 (Co-chair)
for Visiting Lecturer in Exercise Physiology, 2008
for Assistant Professor in Sport Administration, 2008-2009
for Lecturer in Sport Administration, 2008-2009
for Associate Professor in Sport Administration, 2006-2007; 2007-2008
for Assistant Professor in Sport Administration, 2002-2003 (Chair)
for Assistant Professor in Athletic Training, 2000 - 2001
for Woollen Office Staff , 1999-2000; 2001-2002; 2002-2003

EXSS Earey Award Committee, Spring 2014, Spring 2017

EXSS Faculty Awards Nominating Committee, Fall 2015

EXSS Scholar Athlete Committee, Spring 2014

EXSS Strategic Plan Committee, 2004 – 2006; 2015

EXSS Tenure and Promotion Documents Committee, Fall 2012

Lifetime Fitness Program Evaluation Committee, Chair, 2010

Nominating Committee for Department Chair
Chair, 1999 – 2000
Member, 2009 – 2010

Program for Public Policy in Sports
Secretary/Treasurer, 1999-2004
Ad hoc committee member, 1998 - 1999

Hiring freezes, fewer grad students: Funding uncertainty hits colleges

With federal support at risk, universities are scrambling to curtail costs.

March 3, 2025 at 6:00 a.m. EST

By Susan Svrluga

Some universities are freezing hiring, admitting fewer graduate students and warning that recent federal changes and proposals pose an existential threat to higher education.

A U.S. judge last month put a temporary block on Trump administration orders for deep cuts to federal funding rates that the National Institutes of Health provides to support overhead costs for research at academic institutions. But the uncertainty around that and other potential federal actions has already prompted some university officials to scramble contingency plans and incise budgets where they can, in ways that could have a lasting impact on scientific research in this country.

“We talk a lot about being in this intense competition with China for technology and science,” said L. Rafael Reif, president emeritus of the Massachusetts Institute of Technology. “Is this a way in which we can compete? This is a very difficult time to create such a mess.”

Last month, NIH announced it would save $4 billion per year by immediately and drastically cutting the rates for the facilities and administrative costs of biomedical research, the indirect costs that universities spend on things such as utilities in labs, safety and compliance with government regulations. “The United States should have the best medical research in the world,” NIH said in its announcement. “It is accordingly vital to ensure that as many funds as possible go towards direct scientific research costs rather than administrative overhead.”

Critics see taxpayer dollars wasted on administrative bloat. And the government argued in a response to legal challenges that the new policy will not change NIH’s total grant spending, but will reallocate the spending “away from indirect costs and toward the direct funding of research.” But researchers and scientists say indirect costs cover essential infrastructure, such as heating and cooling to keep delicate lab experiments at the right temperature, collective costs for hazardous waste disposal and personnel. University

leaders say that the indirect rates are carefully negotiated and audited reimbursement essential to research — and that the decision would devastate efforts that lead to lifesaving discoveries and innovations that power the economy.

Filling budget gaps

Coalitions of university leaders, hospitals, Democratic attorneys general and others quickly filed lawsuits to stop the cuts. But that's just one of the places where federal funding could be slashed. And some lawmakers have already warned they will try to increase taxes on university endowments.

In the meantime, the cycles of academic life go on, and university officials are having to make decisions without knowing whether they will soon have gaping budget shortfalls.

With its announcement, NIH posted a message on X spotlighting indirect cost rates in the 60-70 percent range for research at three elite universities: Harvard, Yale and Johns Hopkins. But the proposal would cap the rate at 15 percent for all institutions, not just well-known universities with large endowments. Schools in both red and blue states, public and private, would take a hit.

In court documents challenging NIH rate cuts, university leaders forecast stark consequences if they were implemented: At Morehouse College in Atlanta, the medical school's president and chief executive said in court documents that if the cuts go through, it would need to lay off 66 research and clinical staff members, cut salaries 2 percent across the school, freeze hiring and consider rescinding offers made to new faculty. Beth Israel Deaconess Medical Center in Boston said the cuts would force it to terminate leases for labs and lay off hundreds of employees. Tulane University in New Orleans predicted cuts to faculty, postdoctoral researchers and staff. The University of Pittsburgh said the rate cut would amount to a loss of reimbursement this year of $168 million, perhaps halting clinical trials — which, if interrupted, could jeopardize scientific discoveries and patients' lives.

Federal funding freeze

A consultant estimated in court documents that the total impact of the rate cuts for research institutions nationwide, based on 2024 data, was $6.5 billion.

On Wednesday, Stanford University's president and provost announced a freeze in staff hiring — a decision that does not apply to faculty and student workers — citing uncertainties over federal policy proposals.

MIT instituted a hiring freeze on most nonfaculty positions last month, a spokeswoman said, driven by the uncertain outlook for federal funding and policy.

On Feb. 24, J. Larry Jameson, a physician-scientist who is the interim president of the University of Pennsylvania, told the campus community that the school was "modeling different financial scenarios and actions that may need to be implemented, and we are working closely with school and center leaders to seek input and ideas around possible cost containment measures and new sources of revenue."

The university could lose $240 million annually if the indirect rate cuts go through.

Jameson said recent and possible federal actions "represent an existential threat across our University and American higher education."

Shrinking staff, grad student admissions

Some faculty members at schools across the country are already seeing the impact of the uncertainty firsthand.

At the University of California at San Diego, Kimberly Cooper, a professor of cell and developmental biology, said she and colleagues were midway through interviews for a faculty position when they learned of a hiring pause. They had to tell a candidate in the midst of two days on campus that the position was no longer available — as well as those who had already visited — and cancel the travel plans for those who had not yet come.

This is the time of year when graduate admissions decisions are being made, and some schools or individual departments are pausing or limiting the number of offers they make for doctoral degree candidates, or informing applicants that those offers are conditional only.

Annika Barber expected to offer at least two first-year graduate students a place in her biology lab at Rutgers University this spring. But now she doesn't know whether she will have funding for them, unsure of what will happen to federal support for biomedical research. And she has heard from many students that they were told by other labs that they did not know if they would have funding, either.

"It's going to be so hard to get into a biomedical doctoral program this year," Barber said, "because — whether the program says so or not — they're admitting fewer students." Students are panicking about whether they are going to get in anywhere, she said, and those about to graduate have started to question whether they can have a viable career in academia.

Barber is worried about her future, too. She started her lab, which investigates the biological basis of complex behaviors by studying decision-making in flies, in 2020. And like other young colleagues, she's trying to recruit graduate students to it.

“We need doctoral students and funding to get tenure,” she said. New labs are in a particularly precarious spot at a time of so much uncertainty. “I like to think that we baby professors are the future of science: We’re the ones who are hopefully still going to be here in 20 and 30 years moving things forward. But we don’t have a lot of cushion.”

At UC-San Diego, Cooper said the School of Biological Sciences and graduate program leadership typically admits 25 applicants for the doctoral program but decided this year it needed to cut that to 17.

The reduction hurts the school’s labs and the classrooms where they serve as teaching assistants, as well as the undergraduates whom they would be mentoring, she said, but it goes beyond that: These are students who might go on to postdoctoral work and academic careers after they graduate, or they might go to work for companies making medical devices or law firms specializing in intellectual property.

“A lot of the U.S. economy is based on scientific discoveries, and the strength of our economy now is based on past discoveries,” Cooper said. “If we stop investing in those discoveries, the long-term effects on the economy are going to be crushing.”

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED
DEC 30 2024
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

January 28, 2025

The Honorable Claudia Wilken
United States District Court Northern District of California
1301 Clay Street Oakland, CA 94612

Re: *In re College Athlete NIL Litig. ("House")*, No. 4:20-CV-03919 (N.D. Cal.)

BY FAX

Dear Judge Wilken,

This letter identifies and addresses our concerns with the proposed "*House*" settlement and its broader implications for college sports and athletes' rights.

We respectfully request this document be included in the docket and considered by the Court.[1]

I. Introduction

This Court has navigated the delicate balance between institutional interests and athlete rights for fifteen years with great care, sensitivity, and wisdom.

We appreciate the difficulty of that task—for the Court and Class Counsel—particularly when the competing interests seem irreconcilable.

Is it possible to equitably balance institutional principles that hold that college athletes cannot be paid with principles of American law that demand athletes have the opportunity to seek their value in free markets?

Our concerns with the settlement are based around the belief that this balancing should always err on the side of American freedoms, rather than private interests that benefit from economic restraints.

We believe the settlement reconciles these competing interests—perhaps irrevocably—in favor of deeply rooted institutional power.

Broadly, we believe the settlement produces a newer version of an old status quo where athletes may have more money but no more power.

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[1] Michele Roberts is the former National Basketball Players Association Executive Director, former litigation attorney, and advisor to Did You Know Media (DYK). Ms. Roberts was the first woman to lead a major professional sports union in North America. During her years in private practice, the media described her as the "finest pure trial lawyer" in Washington, D.C. Among her many accolades, Ms. Roberts is a fellow in the American College of Trial Lawyers. Richard Ford is the CEO and Co-founder of DYK (www.dykmedia.io), a former litigation attorney, and Duke basketball player. Casey Floyd is Co-founder of DYK and NOCAP Sports. Full bios can be found here. DYK is an education and advocacy platform designed to inform athletes and stakeholders about college sports' legal and regulatory environments, emphasizing unreported and underreported issues and narratives.

Specifically, we question whether the settlement meets Rule 23 requirements because it: (1) imposes a revenue sharing cap that may be unlawful, (2) acts as a collective bargaining agreement without including the laborers in the negotiations, (3) impedes, rather than promotes, future collective bargaining for athletes (with employee status and protectable rights under the National Labor Relations Act), (4) may lead to federal legislation that makes Defendants' regulatory authority unchallengeable and permanently impairs athletes' rights (5) preserves and extends the NCAA's amateurism-based regulatory authority, (6) uses *Carter's* pay-for-play claims to serve primarily strategic settlement purposes rather than genuine compensatory purposes, and (7) unfairly excludes Division I men's basketball players from class representation.

We want to be clear that by critiquing the settlement, we do not question Class Counsels' commitment to a just result for college athletes.

Nevertheless, given the settlement's complexity[2] and its potential as an industry-shifting milestone, we believe the approval process should be informed by a broad range of perspectives.

Ours is but one perspective, and we offer it in the spirit of constructive engagement[3] and the best possible outcome for athletes.

II. The Cap on Revenue Sharing Violates Antitrust Laws and is Not Protected by the Collective Bargaining Non-Statutory Labor Exemption

The parties have agreed to a cap on athlete compensation via revenue sharing that is no different in theory or purpose than previous caps found to violate antitrust laws. In essence, the parties seek to solve existing antitrust violations by creating new ones that look better than the old ones.

In its Statement of Interest, the United States said, "[t]he proposed settlement…continues to restrict the compensation college athletes may receive from their school, replacing one cap with another….under the Proposed Settlement, a Member Institution is ***not*** permitted to spend what it wants—or what the market would dictate—to compete for the services of college athletes. The Proposed Settlement increases the cap on what college athletes can be paid for the use of their NIL from zero to a new amount. But that new amount is still fixed by agreement among organizations that collectively control the entire labor market."[4] (emphasis in original)

Because the cap was not negotiated through collective bargaining under the National Labor Relations Act, it cannot be insulated from antitrust scrutiny by the non-statutory labor exemption

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[2] Since July 26, 2024, the parties have filed approximately two thousand pages of documents memorializing and defending the settlement. The settlement is so complex (and vague on key components) that even the parties who drafted it cannot seem to agree on what it permits and prohibits. During the September 5, 2024, preliminary approval hearing, the parties expressed confusion or disagreement over the settlement's most material terms, including (1) the scope of the released claims, (2) the regulation of third-party NIL deals post-settlement, and (3) the NCAA's ability to enforce amateurism rules after making payments for athletic services in the settlement.

[3] We are mindful that we do not have standing to offer a legal objection to the settlement. Thus, this letter is akin to an amicus brief.

[4] Statement of Interest of the United States of America (SOI of USA) (ECF No. 595 at 6, 1/17/2025)

or any other labor exemption,[5] yet the settlement *acts as a substitute* for a collective bargaining agreement.[6]

Class Counsel appear to concede the revenue sharing cap is vulnerable under antitrust laws. A primary reason the parties jointly seek statutory antitrust immunity from Congress—via the promises in Article 7 of the Injunctive Relief Settlement—is to obtain iron-clad protection for the cap in the future.

In comments to *CBS Sports* in May 2024, Mr. Kessler said, "[w]e would support a limited antitrust exemption [from Congress], so when they implement this great new system to give all these benefits to the athletes, someone can't say, well, the settlement itself, that sets a 22% cap on new benefits is an antitrust violation."[7]

Similarly, Mr. Berman told the *Washington Post* in June 2024[8] that "[i]f the NCAA asks us, we will go to the Hill and say we think [the settlement] is a great solution for college athletes and that the NCAA should be given antitrust immunity for pay for play and for NIL. That's all we're willing to do. We're not going to advocate for about the employment issue or unionization, or any of that. We're not involved with that."[9]

Class Counsel have also suggested that in settlement discussions, the NCAA and Conference Defendants "conspir[ed] to fix the price of paying college athletes."[10]

In short, Defendants have engaged in "collective bargaining" negotiations with Class Counsel and Congress—everyone except the athletes—to shape college sports' legal and regulatory environments to their liking.

Now, "an adjudicated monopsonist seeks this Court's imprimatur to impose a salary cap that may suppress competition in unforeseen ways."[11] And that suppression of competition may then be

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[5] SOI of USA at 8, 9

[6] Id, at 8 (citing from Plaintiffs' Motion for Preliminary Settlement Approval that the settlement was "an extraordinary recovery given that plaintiffs didn't have the leverage of a collective bargaining agreement")

[7] *Gut-wrenching choices, Title IX complications face college athletics in wake of House v NCAA settlement* (Brandon Marcello, CBS Sports, May 30, 2024)

[8] *Why Capitol Hill remains a key battleground in college sports* (Jesse Dougherty, Washington Post, June 7, 2024)

[9] Notably, Class Counsel made these comments before the parties filed their settlement documents on July 26, 2024. As discussed in more detail in Section IV, Article 7 of the Injunctive Relief Settlement *requires* Class Counsel to lobby Congress for antitrust immunity, preemption of state laws (which has nothing to do with issues raised in the underlying litigation or the settlement), and to remain "neutral" on any bill that would strip athletes of employee status, thus permanently eliminating the possibility of protectable collective bargaining rights under the NLRA. Article 7 also requires that Class Counsel "not oppose, advocate against, lobby in any way against, or otherwise attempt or seek to undermine legislation implementing/codifying this Injunctive Relief Settlement."

[10] During a podcast interview the day after Class Counsel filed their amended settlement documents, Steve Berman said of the settlement negotiations: "…[t]he very first time we met, we were at the O'Hare Hilton—a very depressing place—and the mediator comes down and he goes, we're going to start half an hour later because they're all meeting upstairs. I turned to Kessler…in most antitrust cases, we try to find evidence that they met. Here, they're asking us to wait while they're all upstairs *conspiring on how to fix the price of paying college athletes.* There were a lot of ironies in the settlement process." (SportsWise podcast, Episode 74: *The Latest on the House Settlement with Co-Counsel for the Plaintiffs, Steve Berman*, September 27, 2024, at approx. 14:00 – 15:20) (emphasis added)

[11] SOI of USA at 7

adopted through a bill in Congress permanently ending athletes' quest for fair treatment under American laws.

In the underlying litigation, Class Counsel made compelling arguments that the nascent, less regulated third-party NIL market has not brought college sports to a fatal collapse or caused any measurable economic harm.

Since the adoption of the NCAA's Interim NIL Policy on June 30, 2021,[12] (the day before several state NIL laws became effective), the college sports marketplace has enjoyed a historic bull market with increasingly lucrative broadcast media deals, football-driven conference consolidation that brings big-time college football even closer to an NFL-like product, an expanded College Football Playoff (CFP) worth additional billions of dollars, an explosion in the value of Division I women's basketball, increasing coach salaries, and new revenue streams from emerging technologies.

Even assuming that *every* payment from an NIL collective to an athlete is outright "pay-for-play,"[13] the evidence suggests that college sports can accommodate *that* market without harm to institutions or consumers.

Indeed, "the games go on."[14]

III. The Settlement Preserves and Expands the NCAA's Amateurism-Based Regulatory Authority

Among the many myths the settlement has spawned is that it marks the "end of amateurism." In fact, the settlement preserves and expands the NCAA's authority to arbitrarily determine what constitutes impermissible "pay," and what does not.

The concept of "pay" in NCAA regulation has been at the center of class action antitrust litigation since *White v NCAA* in 2006.

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[12] *NCAA adopts interim name, image, and likeness policy* (June 30, 2021); The Interim Policy marked the beginning of the "NIL era."

[13] As used by the NCAA, "pay-for-play" is an amateurism-based pejorative because it assumes there is something morally corrupt with college athletes receiving payment for their athletic services. In fact, since the advent of the athletic scholarship in 1956, college athletes have received "pay-for-play." The NCAA uses the term "grant-in-aid" to suggest the athletic scholarship is an educational benefit and disguise its pay-for-play purpose. However, in the settlement, the NCAA now appears to acknowledge the athletic scholarship as payment for athletic services because Dr. Daniel Rascher's July 26, 2024, expert report treats the athletic scholarship as pay in his analysis of the *Carter* claims. (ECF No. 450, #4, at Pars. 45, 46, and Exhibit 7 ["Estimated damages for additional compensation for athletic services"]). We use the terms "pay-for-play," payment for "athletic services," and payment for "athletic performance" interchangeably to mean the same thing.

[14] "'That *some* restraints are necessary to create or maintain a league sport does not mean *all* 'aspects of elaborate interleague cooperation are.' While a quick look will often be enough to approve the restraints 'necessary to produce a game,' a fuller review may be appropriate for others. The NCAA's rules fixing wages for student-athletes fall on the far side of this line. Nobody questions that Division I basketball and FBS football can proceed (and have proceeded) without the education-related compensation restrictions the district court enjoined; the games go on." *NCAA v Alston*, 594 U.S. 69 (2021), at 91(emphasis in original, cites omitted)

In *Alston*, this Court offered the definitive description of the NCAA's conceptualization of "pay" as expressed through amateurism rules:

"…the rules that permit, limit, or forbid student-athlete compensation and benefits do not follow any coherent definition of amateurism, including Defendants' proffered definition of no 'pay for play,' or even 'pay.' The only common thread underlying all forms and amounts of currently permissible compensation is that the NCAA has decided to allow it."[15]

The settlement permits the NCAA to continue its Alice in Wonderland[16] application of amateurism by explicitly making "pay for play" payments via the *Carter* claims—and receiving broad releases from liability on those claims—while at the same time preserving its authority to enforce all existing (and undisclosed new) NCAA rules prohibiting "pay for play."

In essence, the NCAA is paying athletes for the value of their athletic services to preserve the authority to prohibit such payments going forward.

At the September 5, 2024, hearing on preliminary approval, this Court exposed the absurdity of the NCAA's position and logic:

THE COURT: But in this House settlement if it is approved, you will be explicitly paying for play or allowing schools to pay-for-play. So, this no play for pay thing isn't going to be there anymore, is it?

MR. KILARU: It is, Your Honor. There is still going to be a prohibition on pay-for-play, and there is discretion for schools to make payments as they see fit under the new regime.

THE COURT: And that won't be pay-for-play?

MR. KILARU: No, Your Honor. But, I mean, whatever -- I think that's correct, but I think setting that aside, the fact of the matter is bans on pay-for-play have been upheld time and time again. This is litigation challenging bans on pay-for-play. This is something that came out of the settlement process. I believe Plaintiffs believe it is an improvement for the status quo, and for us it is an essential part of the deal.

THE COURT: Wow.

(Tr., pp 69-70)

Logical inconsistency notwithstanding, buried in the byzantine settlement documents is a two-sentence provision that asks this Court to bless as legitimate and unchallengeable *all* NCAA amateurism-based compensation and benefits rules.

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[15] *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1074 (N.D. Cal. 2019)

[16] "When I use a word, Humpty Dumpty said, in a rather scornful tone, it means what I choose it to mean—neither more nor less." Lewis Carroll, *Through the Looking Glass* (1871)

Article 4 (NCAA and Conference Rules), Section 2 (Existing NCAA Compensation Rules) of the Amended Injunctive Relief Settlement provides that:

"Except to the extent that modification or elimination is required by the terms of this Injunctive Relief Settlement, *the NCAA's and conferences' existing rules limiting the amount of compensation and benefits* to *Division I student- athletes may remain in effect. The Parties shall request that the Court approve all existing NCAA rules regarding compensation and benefits that may or may not be provided by Division I conferences or schools to student-athletes*, revised as necessary to conform to the terms of this Injunctive Relief Settlement." (emphasis added)

Thus, the language in Article 4, Section 2 appears to confer upon the NCAA something that neither the settlement releases nor prior court decisions do: a definitive legal determination that all NCAA amateurism-based compensation limits—notably including prohibitions on pay-for-play—are valid.[17]

We don't have to speculate how the NCAA will use this sweeping language in future litigation if the settlement is approved.

In the pending *Brantmeier v NCAA* class action suit[18] involving a challenge to the NCAA's limits on prize money NCAA tennis players may receive from non-NCAA entities, the NCAA specifically invokes Article 4, Section 2 to bolster its amateurism-based regulatory authority, attempting to turn the clock back to a pre-*O'Bannon* legal environment.

In briefing on Plaintiff's motion for a preliminary injunction[19], the NCAA relied on a Declaration from Jenn Fraser (NCAA Vice President of Division I Governance) that listed NCAA Bylaws prohibiting pay-for-play to support its amateurism-based defenses.[20]

The NCAA also addressed the impact of the settlement on its amateurism rules:

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[17] Relying on *O'Bannon II* and *Alston I, II, and III*, the NCAA suggests this provision merely *affirms* the legitimacy of NCAA compensation limits including pay-for-play restrictions. However, the history and current state of "pay-for-play" rules is more nuanced than Defendants' portray. Thus, when Defendants' say the Supreme Court in *Alston* "did not question the basic prohibition on pay-for-play" (see, Defendants' Reply ISO Motion for Preliminary Settlement Approval, ECF No. 495 at 10, 1), they overstate the Supreme Court's ruling. Class Counsel *abandoned* their pay-for-play claims in the Supreme Court by not cross-appealing to keep them alive. (see exchange between Justice Sotomayor and Class Counsel during oral argument on March 31, 2021 [Oral Argument Transcript, at 53]) Accordingly, the Supreme Court was not called upon to decide, nor did it decide, that the NCAA's amateurism-based compensation limits banning pay-for-play were presumptively legitimate under antitrust laws.

[18] *Brantmeier v. Nat'l Collegiate Athletic Ass'n*, 1:24-CV-238 (M.D.N.C. Oct. 7, 2024). Mr. Rakesh Kilaru is lead counsel for the NCAA in *Brantmeier* and *House/Hubbard/Carter*.

[19] This briefing occurred after the parties filed their settlement papers in *House*.

[20] *Brantmeier* ECF No. 33, Exhibit A, Par. 24 Decl. of Jenn Fraser (July 30, 2024) ("The Division I members adopted parameters for eligibility whereby an 'individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: (a) *Uses athletics skill (directly or indirectly) for pay in any form in that sport*; (b) *Accepts a promise of pay* even if such pay is to be received following completion of intercollegiate athletics participation…'") (emphasis added) The NCAA's use of these principles and rules in a post-settlement environment harkens back to the "magic dicta" from *Board of Regents* which the Supreme Court rejected in *Alston*.

"Nothing about the NCAA's recent settlement of broad-ranging antitrust lawsuits challenging its compensation and benefits rules changes the validity of these rules. *See* Mot. for Prelim. Settlement Approval, ECF 450, *In re College Athlete NIL Litig. ("House")*, No. 4:20-CV-03919 (N.D. Cal. July 26, 2024). The settlement, if approved, would be effective in the 2025-26 academic year. While the settlement does modify some of the rules mentioned above on a forward-going basis, *it will not write them out of the rulebook or undermine their validity under the antitrust laws*. *See id.* at 9-11; ECF 450-3 at 68-70, *House*, No. 4:20-CV-03919 (N.D. Cal. July 26, 2024). *On the contrary, the parties to the settlement will jointly request that the court approve these rules and their continued enforcement in light of their validity under the antitrust laws.*"[21] (emphasis added)

At the hearing on the motion for preliminary injunction on August 15, 2024, the NCAA cited specifically to Article 4, Section 2 for the proposition that the settlement preserves and protects all post-settlement amateurism rules including rules limiting tennis prize money:

[NCAA ATTORNEY]: For the record, we're now at page 68 of 133. It talks about Section[2], existing NCAA compensation rules. That section states: Except to the extent that modification or elimination is required by the terms of this injunctive relief settlement, the NCAA's conferences existing rules limiting amount of compensation and benefits to Division 1 student-athletes may remain in effect. *The parties shall request that the court approve all existing NCAA Rules regarding compensation and benefits that may or may not be provided by Division 1 conferences or schools to student-athletes revised as necessary to conform to the terms of this injunctive relief settlement*, and that's -- and there is additional --

THE COURT: So what does all that mean?

]NCAA ATTORNEY]: What all that means, Your Honor, and why it is outside of what has been approved in the settlement, *the other rules remain unchanged, and that includes these prize money rules.*[22] (emphasis added)

The NCAA also attempted to revive an argument that died in *O'Bannon* a decade ago: that NCAA compensation limits are merely "eligibility rules" rather than rules limiting compensation and therefore are"not subject to the Sherman Act because they do not regulate commercial activity. To support this argument, the NCAA relied on precedent from the 1970s, 1980s, 1990s and pre-*O'Bannon* 21st century.[23]

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[21] *Brantmeier,* ECF No. 33, at 6

[22] *Brantmeier,* ECF No. 40 at 46, 47

[23] *Brantmeier,* ECF No. 33 at 17, 18; In *O'Bannon II*, the Ninth Circuit forcefully rejected this word play argument: "The mere fact that a rule can be characterized as an 'eligibility rule,' however, does not mean the rule is not a restraint of trade; were the law otherwise, the NCAA could insulate its member schools' relationships with student-athletes from antitrust scrutiny by renaming every rule governing student-athletes an 'eligibility rule.' The antitrust laws are not to be avoided by such 'clever manipulation of words'… [t]he NCAA's argument that its compensation rules are "eligibility" restrictions, rather than substantive restrictions on the price terms of recruiting agreements, is but a sleight of hand. There is real money at issue here." *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1064, 1065 (9th Cir. 2015)

Brantmeier demonstrates that the NCAA is already using the settlement and will continue using it "as a defense to antitrust liability...in [cases] brought by a future plaintiff seeking to achieve more fulsome protections for the free market opportunities of student-athletes than the [settlement] affords. The risk that defendants will attempt to use a private, negotiated settlement as a shield in future litigation underscores the importance of determining carefully whether it is fair and adequate."[24]

IV. Article 7 of the Injunctive Relief Settlement is Designed to Permanently Strip Athletes of Antitrust Protection, the Benefit of State Laws, and Labor Rights

Article 7 (Legislation and Alternative Structures) represents an unprecedented attempt to leverage a private settlement agreement to achieve sweeping federal protections and immunities for the NCAA and Power 5[25] conference that would eliminate athletes' ability to assert their rights through antitrust laws, federal labor laws, or state legislation.

Article 7 is directly linked to Defendants' five-year campaign in Congress for federal protections and immunities that would eliminate athletes' rights and grant the NCAA absolute regulatory supremacy.

A. Article 7, Section 1 (Legislation)[26]

Article 7, Section 1 extracts promises from Class Counsel, ostensibly for the purpose of "implementing/codifying" the settlement in Congress.

Class Counsel must:

1. not oppose or undermine any legislation "implementing/codifying" the Injunctive Relief Settlement

2. take no position and thus be "neutral" on any legislation that would provide athletes additional benefits

3. lobby with the NCAA *for antitrust immunity*[27]

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[24] SOI of USA (*House* ECF No. 595 at 10, 1/17/2025)
[25] We use the terms "Power 5" (ACC, Big Ten, Big 12, Pac-12, and SEC) and "Power 4" (ACC, Big Ten, Big 12, SEC), as appropriate.
[26] ECF No. 535-1, Exhibit 1, Appendix A (Amended Injunctive Relief Settlement) at 27, 28
[27] Prior to the settlement, Class Counsel lobbied in Congress *against* statutory antitrust immunity: "Throughout this litigation, Defendants engaged in an aggressive, years-long campaign to lobby for legislation that would exempt them from the antitrust laws and allow them to continue their unfair restrictions on college athletes, collectively spending nearly $10 million dollars on lobbying between 2021 and 2024. Class Counsel expended significant effort and resources, to protect the classes' interests against Defendants' attempts to kill this lawsuit, including by meeting with legislators, analyzing proposed legislation and advising Congressional committees, and submitting written testimony before Congressional panels. That included expending significant funds on lobbyists, for which Class Counsel does not seek direct reimbursement." Class Counsels' promise to now lobby in *favor* of statutory antitrust immunity for a recidivist antitrust violator is a stunning reversal. Antitrust law has been the primary vehicle for

4. lobby with the NCAA *for preemption of state laws*[28]

5. take no position and thus be "*neutral*" on whether athletes should be considered/deemed "employees" (or whether collective bargaining should be permitted for compensation of athletes)[29]

These are extraordinary promises and Court approval of Article 7 would have far-reaching implications.

First, it would transform Class Counsel from advocates for their clients into lobbyists for the NCAA, creating a conflict of interest.

Second, the Court would tacitly endorse Defendants' narrative that federal legislation "codifying" the settlement is not only reasonable but desirable.

Third, Class Counsels' endorsement of Defendants' congressional asks presumes that hundreds of thousands of athletes have consented to legislation that impairs their rights. Athletes have no idea what is happening in Congress or that Class Counsel has promised to lobby against their interests. Approval of Article 7 may suggest that this Court is satisfied that athletes understand and agree with its consequences.

Fourth, this Court could be perceived as wading into a partisan political debate in a separate branch of government, placing its thumb on the scale in favor of sweeping federal legislation that would permanently limit athletes' rights.

The NCAA (and its allies in Congress and the media) have pitched Congress' role as merely complementary to the settlement and the need to tie up a few loose ends the settlement can't address.

In fact, the opposite may be more accurate.

The settlement is an appeasement to Congress that serves as a temporary financial offering to athletes to achieve Defendants' ultimate goal of permanent regulatory supremacy in college

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athletes to protect their economic rights in response to Defendants' unlawful market behavior. It is also the only leverage athletes have until they may secure protectable collective bargaining rights under the NLRA.

[28] Through preemption, the NCAA and Power 5 seek to eliminate states from the college sports regulatory field. Preemption would nullify any state laws that conflict with NCAA rules and regulatory authority. Preemption has nothing to do with the underlying litigation cases or the settlement's substantive terms. Some objectors have pointed out that the settlement may conflict with a number of state laws or governors' executive orders that, for example, permit schools to make direct NIL payments to athletes with few restrictions. Preemption would nullify those state laws.

[29] As discussed below, Defendants quest to deny athletes employee status is designed to permanently deprive athletes of the protections of America's foundational labor laws. Without employee status, athletes could not seek protectable, enforceable collective bargaining rights under the NLRA. Thus, in any non-NLRA "bargaining," athletes would be left to the mercy of the very institutional power structures that have refused to even listen to their concerns, much less change their behavior to accommodate them. We believe that "neutrality" on this core issue is acquiescence to the existing power imbalance between athletes and institutions.

sports. It ties up a substantial loose end for lawmakers who have grown skeptical of the NCAA's willingness and ability to solve its own problems,[30] and weary of Defendants' sky is falling narratives on NIL that never came to fruition.

To make sense of Article 7, it's important to understand Defendants' five-year campaign in Congress.[31]

1. The Origins of Defendants' Congressional Campaign

For nearly 70 years, the NCAA enjoyed monopoly control over college sports regulation and athlete labor. The NCAA has come to believe that it, and it alone, should continue to be the sole regulator in college sports. It wants plenary authority to make, interpret, and enforce the rules governing college sports.

This institutional hubris has been the hallmark of the NCAA's regulatory reign. The NCAA's stubborn refusal to modify its rules to align with the times and the increasing professionalization and commercialization of college sports has inspired compelling critiques on the disconnect between the NCAA's mythology-based values and the reality of its business model.[32]

Heading into the 21st century, various external regulators began challenging the NCAA's regulatory hegemony. These threats came from federal class action litigation, federal administrative agencies (primarily the National Labor Relations Board), Congress, state legislatures, and in the NIL era, free markets.[33]

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[30] See, e.g., *Baker: Antitrust settlement creates certainty for new system*, Dan Murphy, *ESPN*, June 10, 2024 ("[NCAA President] Baker and many others in college sports are hoping the plans to share revenue with athletes in the future will spur Congress to write a new law that will prevent athletes from becoming employees. 'If the court blesses [the pending settlement], then it puts [the NCAA] in a position where we can go to Congress and say '*One of the three branches of the federal government blessed this as a model to create compensation without triggering employment…I think that's a good place to start a conversation with Congress.*'" (emphasis added); see also, *How the NCAA Plans to Stop Employment in its Tracks After the Settlement*, Amanda Christovich *Front Office Sports*, June 5, 2024)

[31] DYK has researched and analyzed the NCAA/Power 5 congressional campaigns. Our data includes a comprehensive timeline of congressional activity beginning in February 2019, congressional hearing information with hearing summaries and links to hearing videos, a federal legislation chart that includes key bills/discussion drafts introduced with bill summaries, analysis, and links to each bill, overall lobbying expenditures, and all Senate Lobbying Disclosure Reports since 2020 with links to each.

[32] See, generally, Southall, R. M., Nagel, M. S., Staurowsky, E. J., Karcher, R. T., & Maxcy, J. G. (2023, May 4) *The NCAA and the Exploitation of College Profit-Athletes: An Amateurism That Never Was.*, Zimbalist, A. (1999, July1), *Unpaid Professionals: Commercialism and Conflict in Big-Time College Sports.*, Sack, A. L., & Staurowsky, E. J. (1998, January 1) *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth*, Byers, W., & Hammer, C. (1995, October 3) *Unsportsmanlike Conduct: Exploiting College Athletes.*, Smith, R. A. (1988, November 3) *Sports and Freedom: The Rise of Big-Time College Athletics.*, Devenzio, D. (1986, January 1) *Rip-Off U: The Annual Theft and Exploitation of Major College Revenue Producing Student-Athletes.*

[33] Free markets may be the most efficient external regulator of all. Free markets have quickly ripped through Defendants' fearmongering narratives on the necessity for government intervention. In the "natural" economic experiment of a largely unregulated NIL market—whether "true" NIL or "pay-for-play"—none of the harms Defendants predicted came to pass. This is a primary reason Defendants have aggressively pressed for a quick pullback on free market NIL activity. The longer the market is operating outside Defendants' control, the weaker their case for regulating it.

Historically, the NCAA and power conferences would deal with external regulatory threats one at a time—a "wac-a-mole" approach.

However, in 2019, the NCAA and Power 5 began formulating a comprehensive strategy to address and eliminate all external regulatory threats simultaneously with one powerful blow.

A critical inflection point came in February 2019 with the introduction of California's name, image, and likeness law, SB 206 (the "Fair Pay to Play Act")[34] that permitted NIL payments from third parties only, and a federal NIL bill proposal in the House of Representatives.[35]

While aggressively opposing both laws,[36] the NCAA formed a working group[37] on May 14, 2019, to decide whether to continue its opposition to NIL or change NCAA rules to permit some NIL activity.

In late 2019, the working group issued an interim report that recommended the NCAA consider changing its rules to permit NIL within amateurism-based "guardrails."[38] The NCAA Board of Governors adopted the working group's recommendations and asked the Divisions to have NIL legislation ready for consideration and possible enactment by January 2021.[39]

However, at the same time, the NCAA and Power 5 launched a historic campaign in Congress—under the guise of "NIL compensation"—to eliminate any legal and regulatory pathway athletes might have to protect their rights as American citizens.

Thus, for public consumption, the NCAA was leading stakeholders to believe it would change its own NIL rules, but behind the scenes, it was launching the most audacious regulatory power grab in the history of American sports.

2. The Asks

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[34] SB 206 (September 30, 2019).
[35] H.R. 1804 ("Student-Athlete Equity Act"), March 14, 2019, Mark Walker (R-NC)
[36] The NCAA threatened to sue the state of California under a dormant commerce clause theory.
[37] NCAA Board of Governors Federal and State Legislation Working Group announcement and Charge
[38] Almost all of the state bills that followed SB 206 contained amateurism-based" guardrails" that aligned with the Working Group's recommendations.
[39] To this day, the NCAA has not made good on its promise. The Interim Policy and the muddled "guidance" memos that followed are not *rules* changes. The Interim Policy is "interim" until one of two things occurs: (1) the NCAA actually changes its rules, which has not happened or (2) the NCAA receives federal protections and immunities from Congress that would permit the NCAA to do whatever it wants with the NIL market without any legal accountability.

From a secret Power 5 meeting in December 2019[40], and the Final Report of the Working Group in April 2020[41], the NCAA and sought three extraordinary federal protections and immunities from Congress unprecedented in colleges sports:

(1) antitrust immunity to eliminate federal antitrust litigation from the regulatory field,

(2) preemption of state laws to eliminate states from the regulatory field, and

(3) a statutory prohibition on athletes being employees which would remove athletes from the protection of labor laws that require employee status.

In essence, these powerful immunities would make the NCAA—a private nonprofit entity—a sovereign regulatory state with full governmental powers and complete governmental immunity.

As evidenced by Article 7, these three essential components of the Defendants' congressional campaign have not changed since 2019.

3. The lobbyists

Rather than change their unlawful business practices, the NCAA and Power 5 seek to change the law.

This is no small task. The NCAA and Power 5 therefore turned to the most powerful lobbyists in Washington, D.C to do their bidding. [42]

The NCAA and Power 5 have amassed a veritable army of highly skilled lobbyists.

More than eight lobbying firms and approximately thirty-five lobbyists work for the NCAA and Power 5 at any given time and have coordinated their efforts.

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[40] *Power Five document: "We don't think Mark [Emmert] or the NCAA should be taking the lead in Washington*, Andy Wittry, *Out of Bounds* (November 10, 2020)

[41] NCAA Board of Governors Federal and State Legislation Working Group Final Report (April 17, 2020, p. 27) "In light of the above and driven by our desire to do what is best for our student-athletes, the Presidential Subcommittee urges the NCAA Board of Governors to:

1. Support the ongoing modernization effort of NCAA rules in areas of student-athlete well- being, including student-athlete experience, health and safety and academic success; and
2. **Immediately engage Congress** to accomplish the following:
    1. Ensure **federal preemption** over state name, image, and likeness laws;
    2. Establish an **antitrust exemption** for the Association;
    3. Safeguard the **nonemployment status** of student-athletes;
    4. Maintain the distinction between students-athletes and professional athletes; and
    5. Uphold the NCAA's values including diversity, inclusion and gender equity." (emphasis added)

[42] *'A Breathtaking Lobbying Campaign': The NCAA's Sophisticated Effort to Save Amateurism*, Amanda Christovich, *Front Office Sports*, May 18, 2024 (utilizing DYK's lobbying research)

The NCAA also has an in-house Office of Government Relations in D.C whose lobbyists work full-time to influence Congress.

The NCAA's and Power 5's outside lobbying firms are the very best in the business and some are consistently ranked among the top firms in D.C.[43]

The NCAA retains Brownstein Hyatt (BH), the number 1 ranked lobbying firm in D.C.

BH's lobbying division has a "Crisis Management and Strategic Response" team with expertise in helping clients protect their "bottom line" and their "brand."[44]

Three members of BH's twelve-member Crisis Management team currently lobby for the NCAA, including the Crisis Management Department Chair.[45] That number has been higher in prior years.

These same lobbyists have also lobbied for opioid manufacturer Purdue Pharma.[46]

Purdue Pharma's crisis is obvious: they produced a dangerous, addictive drug and misled the public.

What is the NCAA's "crisis?"

Having to comply with America's foundational free competition and labor laws.

To support the lobbying campaign, NCAA executives, Power 5 conference power brokers, university presidents, and Hall of Fame coaches have worn a path to Washington, D.C. in their quest for regulatory supremacy and control of the athlete labor force.[47]

Importantly, athlete labor funds all of these expenses.[48]

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[43] Most of these lobbyists were onboarded in early 2020 as the NCAA and Power 5 launched their congressional campaign in earnest. On February 13, 2020, the SEC hired the number 2 ranked lobbying firm, Akin Gump. On March 20, 2020, the Pac-12 retained the 14th ranked firm, Cassidy and Associates. On May 18, the Big Ten hired FGS Global. On July 9, 2020, the ACC retained DLA Piper. The Big 12 used Kit Bond Strategies, a firm it hired in 2015. And on March 9, 2020, all Power 5 conferences retained Subject Matter (f/k/a Elmendorf Ryan) ranked number 17 and Marshall and Popp, an influential boutique firm.

[44] See, BH Website

[45] See, BH's Q4 2024 Lobbying Report for the NCAA

[46] See, BH's Q3 2024 Lobbying Report for Purdue Pharma

[47] See, e.g., *NCAA leaders warn college sports at risk of 'permanent' damage without action from Congress, Manu Raju, CNN* (December 3, 2023); *Saban goes to Washington: Alabama coach set to lead SEC contingent on lobbying trip*, Ralph Russo, *Associated Press* (June 1, 2023); *Notre Dame implores Congress to save 'great American institution' after 'undesirable' $2.8B NCAA settlement*, Bridget Reilly, *New York Post* (May 24, 2024); *Members, student-athletes picking up steam on congressional engagement*, NCAA website (July 28, 2023)

[48] Since 2019, the NCAA and Power 5 have spent approximately $12 million on professional lobbying expenses. This amount reflects only figures disclosed in lobbying disclosure reports. The NCAA and Power 5 have also engaged in "grassroots" lobbying and many member institutions have also used their in-house lobbyists.

As discussed in Section VI below, revenue from the labor of Division I men's basketball players pays for *all* of the NCAA's lobby costs. Power 5 lobbyists are likewise paid from athlete-generated revenue from both football and basketball.

In essence, the athletes whose labors underwrite the entire college sports industry are funding the weapons being used to limit their rights as Americans.

4. The Hearings

Beginning with a hearing in a Senate Commerce Subcommittee on February 11, 2020—stacked with NCAA/Power 5 witnesses—the NCAA laid the foundation for federal legislation that would place the NCAA on the Iron Throne of college sports regulation and end the athletes' rights movement.[49]

In an eight-month period in 2020, the Republican-controlled Senate held four hearings in three key committees: Commerce (2), Judiciary, and Health, Education, Labor and Pensions (HELP).[50] Under the banner of preserving the "integrity of college sports," and through NCAA mythologies of amateurism, the "student-athlete," and the "collegiate model," the Committee Chairs[51] dutifully promoted the NCAA/Power 5 party-line on preemption, antitrust immunity, and no-employee.

Notably, three of these hearings occurred during the COVID lockdowns. While America was sheltering in place and Congress was struggling to keep Americans safe and our economy functioning, the NCAA and Power 5 sought and were granted an audience with the United States Senate to promote legislation that would strip college athletes of basic free market and labor rights.[52]

In this critical time frame, the NCAA and Power 5 accomplished several important goals.

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[49] The ratio of NCAA-friendly witnesses to athletes advocates was 5-1. NCAA witness included former House member Anthony Gonzalez, former NCAA President Mark Emmert, former Big 12 Conference Commissioner Bob Bolwsby, and University of Kansas Chancellor Doug Girod.

[50] The jurisdiction of these committees aligns perfectly with Defendants' "asks." Commerce has original jurisdiction over sports matters and also regulates interstate commerce and would therefore "bless" federal preemption. Judiciary has jurisdiction over antitrust issues and would approve any antitrust exemption. HELP has jurisdiction over labor matters and approve a no-employee prohibition.

[51] Roger Wicker (R-MS) Commerce, Lindsey Graham (R-SC) Judiciary, and Lamar Alexander (R-TN) HELP

[52] See, *Proposed NCAA NIL Legislation Is A Restrictive First Step for Student-Athletes*, Ross Dellenger *Sports Illustrated* (July 17, 2020) ("Power 5 athletic leaders, feverishly working this summer [2020] on NIL legislation, plan to present the semi-finished product to Congress next week in a Senate Judiciary Committee hearing on Capitol Hill, the latest step in advancing NIL down the path to a universal Congressional bill."); see also, NCAA Board of Governors Federal and State Legislation Working Group Final Report p. 3 ("Finally, the working group is mindful of the COVID-19 pandemic as it delivers this report, and the impact the pandemic is having on higher education and college sports. The effects of the pandemic have caused enormous disruption to many, including student-athletes. Although the ultimate impact of the pandemic remains uncertain, this uncertainty must not hinder the efforts to modernize NIL rules intended to benefit student-athletes."

First, they normalized protective federal legislation as an inevitable necessity. There was never a debate about *whether* the federal government should pass college sports legislation to protect the economic interests of a group of private, education nonprofits; the only questions were *how* and *when*.

Second, through their "crisis management" lobbyists and allies in the sports and mainstream media, the NCAA and Power 5 created a nationwide crisis mentality around the prospect of NIL compensation. The hearings were flooded with sky is falling narratives, none of which occurred.

The NCAA and Power 5 wanted to Congress, stakeholders and consumers to believe that if athletes got paid for their NIL in a market the NCAA/Power 5 did not control, chaos would reign, and athletics departments nationwide would go broke leaving thousands of athletes—particularly "Olympic" sport athletes—without a scholarship of an opportunity to participate in college sports.

Third, through the "crisis" mindset, stacked witness lists[53], and repetitive talking points, the NCAA, Power 5, and their lobbyists have created the illusion of "consensus" on the need for protective legislation.[54]

5. The Bills

By hitting the ground running in Congress in 2020, the NCAA and Power 5 scored another victory in shaping the debate to fit their goals: the first three bill proposals gave the NCAA and Power 5 everything they asked for.

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[53] Through twelve hearings over four years, there were sixty-two witness slots (a number of witnesses testified more than once). Thirty-one of those slots went to institutional representatives, including NCAA Presidents (6 slots), conference commissioners (6 slots), university presidents/chancellors (6 slots), and athletics directors (9 slots). In eight of the hearings (accounting for the purpose of the hearing), there was only *one* athlete advocate. Ten athletes (current or recently graduated) testified. Nine participated in non-revenue sports and eight were women. There was only *one* Power 5 athlete (football) and, stunningly, *not a single* Division I men's basketball player. Moreover, Defendants have used NCAA-sanctioned and controlled Student Athlete Advisory Committees to lobby for Defendants' goals in Congress to falsely suggest athlete consensus. (see, DYK Congressional Hearings Chart)

[54] A noteworthy example of this manipulative dynamic occurred during the October 17, 2023, hearing in the Senate Judiciary Committee. Seven witnesses testified: (1) Charlie Baker, NCAA President (2) Tony Petitti, Big Ten Conference Commissioner (3) Jack Swarbrick, Notre Dame Athletics Director (4) Walker Jones, Exec. Dir. of The Grove Collective (5) Jill Bodensteiner, St. Joseph's Athletic Director (6) Trinity Thomas, University of Florida gymnast, and (7) Ramogi Huma, Exec. Dir. National College Players Association. Sen. Ted Cruz asked the group: "Going down the panel, do you believe student-athletes should be treated as employees, yes or no? **No. No. No. Yes** (for FBS football, Division I men and women's basketball). **No. No. No.**" The lone yes was Mr. Huma. To anyone watching that hearing, and to other lawmakers who know very little about college sports, the chorus of "no" was a powerful, "consensus" condemnation of athletes as employees. However, four of the no votes came from people with disqualifying conflicts of interest. The NCAA, Big Ten, and Notre Dame representatives in particular (Baker, Petitti, and Swarbrick) make millions and millions of dollars from the status quo and their task at this hearing was to protect it. See, "*Name Image, and Likeness and the Future of College Sports*", Senate Judiciary Committee (October 17, 2023) at approx. 2:04:50 – 2:06:20

On June 18, 2020, Sen. Marco Rubio introduced the first federal "NIL" law.[55] It offered little in terms of NIL benefits but provided the NCAA with preemption, antitrust immunity, and no-employee status.

The NCAA lauded the bill on its website the day it was introduced saying "We commend Senator Rubio for introducing this critical piece of federal legislation…[h]is bill sets out federal parameters for allowing student-athletes to profit from the use of their name, image and likeness without turning them into employees; preempts legislation at the state level; and importantly protects the Association from ongoing litigation as we move forward with establishing national rules on name, image and likeness."[56]

On September 24, 2020, Ohio Representative Anthony Gonzalez (R-OH)[57] and Missouri Representative Emanuel Cleaver introduced H.R. 8382 ("Student-Athlete Level Playing Field Act") which likewise contained preemption, antitrust protection, and no-employee statusprovisions.[58]

Then, on December 10, 2020, Sen. Roger Wicker (R-MS) (then-Commerce Committee Chair) introduced S. 5003 ("Collegiate Athlete Compensation Rights Act") which provided the NCAA and Power 5 expansive versions of these three extraordinary federal protections and immunities.[59]

In response to these naked power grabs, Democrats began to push back with the introduction of S. 5062 ("College Athletes Bill of Rights")[60] on December 20, 2020, which offered revenue sharing, health and safety benefits and standards, and a federal corporation to administer the bill that explicitly excluded from membership any person who was, or had been, employed by the NCAA, a conference, or a school.

The primary sponsors of the bill were Sens. Cory Booker (D-NJ) and Richard Blumenthal (D-CT). The bill leaned into the civil rights implications of college sports business model and the exploitation of African American labor (in Power 5 football and men's basketball).

On May 27, 2021, Sens. Chris Murphy (D-CT) and Bernie Sanders (I-VT) introduced S. 1929 the "College Athlete Right to Organize Act." The bill would amend the NLRA to make universities employers and scholarship athletes employees. The bill would also make conferences multiemployer bargaining units.[61]

The NCAA aggressively pushed back against the bill.[62]

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[55] S. 4004 ("Fairness in Collegiate Athletics Act").
[56] NCAA statement on Sen. Marco Rubio bill (6/18/2020)
[57] Rep. Gonzalez was the first witness to testify at the first hearing on February 11, 2020.
[58] H.R. 8382 (September 24, 2020) (see Sections 6 and 7)
[59] S. 5003 ("Collegiate Athlete Compensation Rights Act")
[60] S. 5062 ("College Athletes Bill of Rights") (December 20, 2020) (see, Sections 5, 6, 7, 11(c)(E)(i) and (ii))
[61] S. 1929 ("College Athlete Right to Organize Act") (May 27, 2021) (Sec. 3)
[62] See, *NCAA statement on Murphy-Sanders bill* (May 27, 2021)

The College Athletes Bill of Rights and the College Athlete Right to Organize Act were the high-water marks for athletes.[63]

From 2021 through 2024, a variety of bills have been proposed that have moved the debate in Congress closer to NCAA/Power 5 interests.

Proposals by Senators Jerry Moran (R-KS),[64] Tommy Tuberville (R-AL)/Joe Manchin (D-WV),[65] Ted Cruz (R-TX; discussion draft),[66] and House members Gus Bilirakis (R-FL; discussion draft),[67] Mike Carey (R-OH)/ Greg Landsman (D-OH),[68] Russell Fry (R-SC)/Barry Moore (R-AL),[69] and Bob Good (R-VA)[70] contain all or some combination of preemption, antitrust immunity, and no-employee.

The Cruz, Bilirakis, Moore-Fry, and Good[71] bills are naked power grabs.

To "codify/implement" the settlement, the NCAA and Power 5 are seeking a "bipartisan compromise bill" framed around existing proposals.

The most likely candidate is a discussion draft proposal by Sens. Moran, Booker and Blumenthal released on July 20, 2023, titled "College Athletes Protection and Compensation Act."[72] (CAPCA) This bill is a combination of Moran's 2021 bill and the second version of the Athletes Bill of Rights (without revenue sharing).

The CAPCA, like Moran's original bill (and both versions of the Athletes Bill of Rights) uses a federal corporation to operate the federalized compensation market. However, where the Athletes Bill of Rights *prevented* NCAA and Power 5 insiders from serving on the corporation's board, the CAPCA *requires* them.[73]

This bill essentially replicates the NCAA bureaucracy under federal law.

By acquiescing to this fundamental shift in decision-making structures, Sens. Booker and Blumenthal appear to be advocates for the status quo more than athletes' rights.

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[63] The Athletes Bill of Rights was re-released in 2022. The new version (S. 4724) removed the revenue sharing component which was a retreat from its original civil rights focus. The College Athletes Right to Organize Act was re-released twice but failed to gain support.
[64] S. 414 ("Amateur Athletes Protection and Compensation Act of 2021") (February 24, 2021) (Secs. 5, 12, 13)
[65] S. 2495 ("Protecting Athletes, Schools, and Sports Act of 2023") (July 25, 2023) (Secs. 10, 11, 12(b))
[66] Cruz discussion draft (untitled, July 21, 2021) (Secs. 7, 8(a), 8(b))
[67] H.R. _ ("Fairness, Accountability, and Integrity in Representation of College Sports Act") (Secs. 106, 201, 301(c))
[68] H.R. 3630 ("Student Athlete Level Playing Field Act") (May 24, 2023) (Secs. 7, 8(c), and 8(d))
[69] H.R._ ("Protecting the Benefits for Athletes and Limit Liability Act of 2024") (May 8, 2024) (Sec. 3)
[70] H.R. ("Protecting Student Athletes' Economic Freedom Act") (May 23, 2024) (Sec. 2)
[71] Good's bill is a single-issue bill that makes it impossible for athletes to be employees. The Power 4 conference commissioners issued a statement endorsing it and the SEC's lobbying firm—Akin Gump—added it to their 2024 Q2 disclosure report as a "specific lobbying issue." (Line 16)
[72] "College Athletes Protection and Compensation Act" (July 20, 2023)
[73] CAPCA (Secs. 8 (c) and (d))

The CAPCA illustrates how Defendants' relentless five-year campaign in Congress has moved the debate quietly but unmistakably towards Defendants' agenda.[74]

Despite recent movement towards a "bipartisan" bill, the debate in Congress has evolved though an undeniable partisan lens. Republicans in both chambers have uniformly supported some form of protective legislation for the NCAA and Power 5 while Democrats have been more cautious on protecting institutional priorities and somewhat more attuned to athlete interests.

The new Congress—with Republicans controlling both chambers—is the ideal political landscape for Defendants and their lobbyists. Even skeptics who believe Congress will never pass a bill substantively regulating college sports have to concede it is more likely now than ever, particularly with the settlement as leverage.

In the new Senate, Sen. Cruz is Chair of the Commerce Committee, the most influential committee in Congress on college sports and the committee from which any bill "codifying/implementing" the settlement is likely to originate. Sen. Cruz is expected to join Sens. Moran, Booker, and Blumenthal in the "compromise" bill.[75]

Cruz's discussion draft proposal is among the most regressive on athletes' rights. It is also quite efficient. In less than a page it kills the athletes' rights movement through expansive preemption, antitrust immunity, no-employee provisions.[76]

As the new Commerce Chair, Senator Cruz has said he will make college sports legislation a "very, very high priority."[77]

With Republicans in control of the key committees, they have control over the legislative agenda.[78]

It's also noteworthy that John Thune (R-SD) is the new Senate Majority Leader. Sen. Thune has been attentive to college sports issues. His views are aligned with Defendants, and he may play a crucial role in moving and promoting legislation favoring institutional interests.[79]

The history of Defendants' congressional campaign and the current lay of the land in Congress puts Article 7, Section 1 and its likely impact in proper perspective.

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[74] The filibuster (at least for now) would be available to opponents of a compromise bill that goes too far in protecting Defendants' interests and would require sixty votes to pass. However, assuming that all fifty-three Republicans supported such a bill and with Sens. Booker and Blumenthal on board, Defendants and their lobbyists would need to secure only five Democrat votes.

[75] *Texas senator aims to help NCAA regulate athlete payments*, Dan Murphy *ESPN* (January 9, 2025)

[76] Cruz discussion draft (untitled, July 21, 2021) (Secs. 7, 8(a), 8(b))

[77] "*This could be the most consequential election in college sports history*", Ross Dellenger, *Yahoo! Sports* (November 4, 2024)

[78] In Commerce, Cruz is Chair and Maria Cantwell (D-WA) is the Ranking Member. In Judiciary, Charles Grassley (R-IA) is Chair and Dick Durbin (D-IL) is the Ranking Member. In HELP, Bill Cassidy (R-LA) serves as Chair and Bernie Sanders (I-VT) is the Ranking Member.

[79] "*NCAA Scores Win With Thune As Senate Majority Leader*", Daniel Libit, *Sportico* (November 13, 2024);

Class Counsels' promise to become Defendants' lobbying agents will likely carry great weight in Congress.

This Court's tacit approval of it may carry even greater weight.

B. Article 7, Section 2 (Alternative Structures)[80]

Section 2 suggests that athletes may utilize "alternative structures" that could provide additional benefits to athletes, including "collective bargaining."

Class Counsel and Defendants appear to have two irreconcilable views of the prospects for future "collective bargaining."

Class Counsel pitches Section 2 and the settlement as a viable bridge to collective bargaining.[81]

Conversely, Defendants appear to believe the settlement meets all athlete needs, which obviates the need for additional bargaining or employee status.[82]

In essence, Defendants' suggest the settlement *is* the "collective bargaining" and the final say on athletes' negotiation rights.

So, which of these two scenarios is most likely post-settlement?

A quick read of Section 2 suggests that Class Counsels' may be correct.

However, there are significant issues with Section 2 that cut the other way.

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[80] *House* ECF No. 535-1, Exhibit 1, Appendix A (Amended Injunctive Relief Settlement) at 28

[81] *House* ECF No. 494 at 19 ("The Injunctive Relief Settlement *explicitly allows collective bargaining in the future* if the law permits, including to 'agree[] upon additional, expanded or different benefits than those permitted by this Injunctive Relief Settlement.' The Injunctive Relief Settlement would thus be a leg up to athletes in any collective bargaining negotiations that might take place if unions are recognized in the future.") (emphasis added)

[82] According to Defendants' lead counsel Rakesh Kilaru: "We have come up with a structure that we think works, that we think is durable, that provides additional benefits to student athletes without needing collective bargaining without needing employment. And I think there was a real question about whether you can build that. We think we built it. And so I think we're hopeful coming out of that, that we'll be able to *make it permanent in the courts*, but then also be able to make it *permanent in other ways* [via Congress] *as well."* (SportsWise podcast, Episode 63: *Breaking Down the Landmark House v NCAA Settlement with Rakesh Kilaru*, May 24, 2023 at approx. 36:00 – 36:30) (emphasis added); More from Mr. Kilaru: "I think it's notable to just take a step back and look at what happened here, which is we negotiated this settlement with a group of lawyers who are not shy about suing, not just the NCAA, but professional sports leagues, and engage in collective bargaining with professional sports leagues and vigorously negotiate in those negotiations. And the fact that they came to the table in this case and negotiated what we negotiated without going through collective bargaining…*tells you whether or not it's really necessary to do collective bargaining in college sports or whether employment is actually a good idea for college athletes versus the structure that we've built* that I think is consistent with the values of college sports, and will continue to provide broad opportunities to a broad group of people." (SportsWise podcast, Episode 68: *Lead Counsel for the NCAA, Rakesh Kilaru, on what the finalized House settlement means for the future of college sports*, July 31, 2024, at approx. 53:11 – 54:01) (emphasis added)

One is that Section 2 does not explicitly distinguish between true collective bargaining with employee rights under the NLRA or some model that envisions bargaining rights without employee status.[83] The use of the term "alternative structures" could suggest the latter even though Section 2 speaks in terms of "collective bargaining."

The other is the use of the term "student-athlete."

Article 7—a very short provision—uses the term "student-athlete" eight times (it is used liberally throughout the settlement documents as well), including this:

"Class Counsel will also take no position, and thus be neutral, in all instances and in all forums and venues on the issue of whether *student-athletes should be considered 'employees'* or *whether collective bargaining should be permitted for compensation of student-athletes*."

The term "student-athlete" has an ignominious history. It was invented out of whole cloth in the 1950s by former NCAA Executive Director Walter Byers and NCAA lawyers to combat workers' compensation claims filed by injured athletes (or deceased athletes' relatives). Workers' compensation benefits require employee status.

Since its invention, the term "student-athlete" has been ensconced into the language of college sports to reinforce the NCAA's view that athletes are students first which aligns with the NCAA's stated educational purpose.[84]

In courts and Congress, Defendants use "student-athlete" to mean the legal *opposite* of employee. To Defendants, it is a legal immunity shield from any labor laws that require employee status.

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[83] This could be a key distinction. "Bargaining" rights (through an athlete association, for example) without employee status would not solve the power imbalance and athletes would be at the mercy of institutional authority. Some commentators and some in Congress have suggested a statutory bargaining model with "special status" for athletes and precludes employee status and NLRA protections, but theoretically provides athletes some leverage. (see, ECF 596) This option is illusory because it would be an indirect way to give the NCAA and Power 4 permanent protection from the NLRA. Moreover, by suggesting that a "special status" is necessary to deprive athletes of employee status, Defendants may unintentionally concede that athletes (or certain classes of them) are indeed employees.(see, NCAA Request for Athlete 'Special Status' Could Backfire in Court, Michael McCann, *Sportico* (October 23, 2023); "No special status would be needed—unless the athletes are, in fact, employees.") In a similar vein, at a Temple Law Review Symposium in October 2024, former NLRB General Counsel Jennifer Abruzzo questioned the purpose of a "special status" designation arguing that we already have a law that governs athletes' labor status: the NLRA. Under the NLRA, workers are *presumed* to be employees. The NLRA places the burden of proof on the putative employer to prove a worker is not an employee.

[84] Byers was the NCAA's first and longest serving CEO (1951-1987). He built the modern NCAA regulatory model. In his 1995 tell-all book, *Unsportsmanlike Conduct: Exploiting College Athletes*, Byers turned against the very principles he once aggressively defended, including the "student-athlete." (Byers, *Unsportsmanlike Conduct*, Chapter 5: "Full Rides in the Name of Amateurism," pp. 67-70) ("That threat [full athletics scholarship as "pay for play" which implies employee status] was the dreaded notion that NCAA athletes could be identified as employees by state industrial commissions and the courts. We 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").

Thus, when Section 2 says "…whether student-athletes should be 'employees,'" it presents a logical absurdity under the NCAA's definition and use of the term. Moreover, by placing employees in quotes standing next to student-athletes, Section 2 delegitimizes any claim that college athletes are or could become employees.

This is not mere word play.

The term leads athletes to believe they have no protectable labor rights. This effect alone may be a violation of the NLRA.[85]

Defendants' use of the term "student-athlete," and Class Counsels' acquiescence to it suggests that the settlement, if approved, supports Defendants' no-employee campaign in Congress.

Two other things are important in assessing Section 2 and the wisdom of this Court endorsement of Article 7.

First, because of fears that the new administration and the NLRB may not support athletes' labor rights, movants in the pending NLRB actions (Dartmouth, USC/Pac-12/NCAA, and several others) have dismissed their petitions or charges to preserve favorable precedent and avoid creating bad precedent.

This has created a perception that athletes as employees has hit a roadblock[86] which gives life to the no-employee campaign either as a blunt force "no," or as a "special status" bill.

Second, as schools participating in the revenue sharing component of the settlement "negotiate" with athletes, schools are using what look very much like employment contracts instead of the bare-boned traditional scholarship offer. Many of these "employment" contracts contain language and provisions that limit athletes rights but afford maximum protection to schools. Ironically, a common provision asks athletes to represent that they are *not employees*.[87]

As always, Defendants' want to have it both ways. They want the benefits and protections of employment contracts while denying athletes employee rights.

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[85] On September 29, 2021, Ms. Abruzzo published a policy memorandum saying the use of the term "student-athlete" may be a substantive violation of the NLRA as to certain athletes because it misclassified them as non-employees. Ms. Abruzzo refused to use the term because it "was created to deprive those individuals of workplace protections." (see, Memorandum GC 21-08, 9/29/21)

[86] It appears that the only remaining case seeking employee status is *Johnson v NCAA* under the Fair Labor Standards Act. The parties, with this Court's approval, "carved out" *Johnson* (and the NLRB actions) from the settlement so it can proceed. However, if Congress passes a bill that prohibits employee status, *Johnson* may be in peril as well.

[87] See, e.g., *Inside a Big Ten Athlete Revenue Sharing Agreement*, Daniel Libit, Eben-Novy Williams, Michael McCann *Sportico* (January 19, 2025) ("The [Big Ten Memorandum of Understanding] aggressively attempts to extinguish the prospect of an athlete arguing the deal reflects an employment agreement. Most directly, one clause is bluntly coined "No Employment." It states the MOU "does not create a fiduciary relationship," and that the athlete "acknowledges and agrees" they are not an employee and, further, "waives, "forever discharges" and agrees "not to sue the [college], NCAA [and] Conference" on the basis of them being an employee because of the MOU or by "serving as a marketing agent" as part of the deal.")

This new environment places enormous pressure on Defendants to get a bill from Congress that prohibits employee status. Without it, these contracts will undoubtedly be challenged in court. If those challenges are successful, it may move athletes *closer* to employee status.

Defendants' are essentially playing a game of high stakes "chicken" on employee status. In their quest for control over the athlete labor force, they may unwittingly be barreling full speed towards losing it.

In light of all of these factors relating to the entirety of Article 7 and context in which it arises, we believe this Court should not provide its imprimatur on a congressional campaign that would result in athletes losing fundamental protections under American law.[88]

V. *Carter's* Pay for Play Claims and the Massive Expansion of Those Claims Serve Primarily a Strategic Settlement Purpose Rather Than a Genuine Compensatory Purpose

Carter is a critical piece of the settlement but has received the least scrutiny.

Carter made pay-for-play claims and sought damages in addition to injunctive relief. The *Carter* damages class was comprised of Power 5 football, men's basketball, and women's basketball athletes only.

The damages claim in *Carter* was precedent-setting in Class Counsels' body of work because it sought for the first time ever to establish the actual dollar value of Power 5 profit athletes.

In *Jenkins-Alston*, Class Counsel sought injunctive relief only.

Despite its potentially historic impact, the media largely ignored *Carter* and it quickly became a parenthetical subsumed by *House*.[89]

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[88] Class Counsel may argue that if the settlement is denied, Congress could still pass protective legislation, including antitrust immunity. Then athletes would be stripped of their legal rights and receive *no* compensation. This is a false choice. Without the settlement as leverage, Defendants' power grab is laid bare, and Congress would have to analyze it on those terms. In this scenario, even with a favorable Congress, it is likely that lawmakers will be as skeptical of blunt force protective legislation—particularly antitrust immunity—as they have been prior to the settlement. Moreover, given the undervaluation of athlete labor in the settlement, a denial affords athletes the opportunity to receive more compensation. Denying the settlement doesn't mean zero compensation for athletes. It simply preserves athletes the opportunity to fight for better outcomes without appearing to endorse Defendants' congressional playbook.

[89] Prior cases that were less ambitious—such as *White* and *O'Bannon* and *Jenkins-Alston*—received extensive media coverage when they were filed. Each was portrayed as potentially *the* case that would deliver a shock to the system of big-time college sports and move athletes closer to their ultimate goal of receiving fair pay for the value of their athletic services.

In theory, *Carter* could have yielded the highest damage value among the three settlement cases. However, based on expert testimony, it has been assigned a settlement value that is only 21% of total damages.[90]

In the settlement, the pay-for-play damages class expanded from approximately 16,000 in *Carter* (Power 5 football and men's/women's basketball only), to approximately 390,000 (all Division I athletes).[91]

Thus, *Carter's* initial focus on fair pay for the athletes whose labors underwrite the entire college sports industry was conflated with and diluted by the massive expansion of the pay-for-play class.

Importantly, there has been no substantive litigation in *Carter.* The NCAA and Power 5 have not even filed a response to Class Counsels' complaint.[92]

In questioning during the September 5, 2024, hearing on preliminary approval this Court asked the parties to explain *why* the settlement pay-for-pay class extended to all D-I athletes rather than P5 athletes only.

This line of questioning went to the heart of the origin and purpose of *Carter*, yet Class Counsel and the NCAA referred only to the expansion of claims in *House* through the second amended complaint without mentioning *Carter*.[93]

In Class Counsels' motion for attorneys' fees, Mr. Kessler offered a description of the origin and purpose of *Carter.* He suggests that *Carter* was at least in part the product of the settlement discussions to expand the claims to include pay-for-pay damages and injunctive relief in a global settlement.[94]

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[90] The total damages settlement value of *House*, *Hubbard*, and *Carter* is $2,776,000,000. *Carter's* pay-for-play claims are valued at $600,000,000, or 21%. In reaching the pay-for-play figure, we wonder whether Dr. Rascher included the scholarship costs of all Division I athletes over the five-year class term to deduct from revenues as compensation received, rather than scholarship costs for the original *Carter* damages class of Power 5 football, men's basketball, and women's basketball only. Given that Power 5 football, men's basketball, and women's basketball generate 90% of revenue, taxing them with the costs of all Division I scholarships would substantially and artificially reduce their pay-for-play damages payouts. Rascher 7/26/24 Decl., ECF No. 450, #4, at Pars. 44-46, (see specifically, Exhibit 7 p. 20)

[91] *House* ECF 450 Exhibit A to the Stipulation and Settlement Agreement

[92] In their Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards for Class Representatives, Class Counsel conflate *Carter's* lodestar costs with *House. (*see, Berman Decl. ECF No. 583-2, Exhibits 1 – 6 and Kessler Decl. ECF No. 583-3 Exhibits A, B, and C*)* Thus, it is difficult to discern exactly how much time and money Class Counsel devoted to *Carter*.

[93] House ECF No. 521 at 12 - 15

[94] "On December 7, 2023, Plaintiffs DeWayne Carter, Nya Harrison, and Sedona Prince filed *Carter v NCAA* [cite omitted], which alleged that the NCAA's rules prohibiting payments for athletic services violate the antitrust laws. During injunctive relief settlement discussions in *House*, and prior to filing of the *Carter* complaint, the parties had discussed the concept of expanding the *House* injunctive relief settlement to include the pay-for-play claims that would eventually be alleged (and were ultimately alleged in *Carter*) to globally address Defendants' compensation and benefit rules on a going-forward basis. Plaintiffs made clear that any broadening of the *House* settlement to include pay-for-play damages would require a separate, independent, discussion of damages. Plaintiffs used Dr.

Whatever the motivations for filing *Carter*, we know how the parties have used *Carter* and the massive expansion of pay for play claims class from P5 football, men's basketball, and women's basketball athletes (*Carter* complaint) to *all* D-I athletes (settlement class) to achieve their settlement goals.

This much seems clear:

1. *House explicitly did not include claims for athletic services.*

The *House* record is clear that Class Counsels' NIL-based theories of liability and damages specifically excluded any damages claim for athletic services.[95] The fact that Plaintiffs' filed a separate suit to make pay-for-play claims is the best evidence that *House* did not address pay-for-play.

This raises the fundamental question of whether there is any "pay-for-play" evidence in the record that would support a reliable valuation of the *Carter* damages claims.

2. *To obtain the broadest settlement-based antitrust immunity possible for the NCAA and Conference Defendants, "pay for play" claims—including damages— had to be in a procedural posture for settlement.*

After losing their quest for judicially created antitrust immunity in *Alston*, and with their five-year quest for statutory antitrust immunity losing steam in Congress (notably because the unregulated post-Interim Policy NIL market caused none of the harm the NCAA and conference defendants claimed it would), the NCAA and conference defendants turned to settlement-based antitrust immunity as a stop gap alternative.

Settling only *House* (NIL) and *Hubbard* (*Alston* education) which involved specific subsets of NCAA compensation limits, would not have eliminated the NCAA's greatest antitrust threat: a renewal of the original *Jenkins-Alston* injunctive relief claims to strike down *all* NCAA compensation limits and let free markets determine the value of athletes' services.

Moreover, a renewal of the *Jenkins-Alston* injunctive relief claims alone would not provide maximum protection to Defendants in a settlement scenario.

Carter's pay-for-play *damages* claims permit Defendants to benefit from releases for those claims as well.

Rascher to evaluate damages for those pay-for-play claims and to aid the pre-*Carter* settlement discussions and to prepare for the filing of the *Carter* complaint." ECF No. 583-3 at p. 6, Par. 23

[95] Order Denying NCAA Motion to Exclude Experts Opinions of Desser and Rascher. ECF 386 at 20, 21 ("Dr. Rascher's BNIL methodology assumes that the NCAA's restrictions on performance-based compensation will remain in place because Plaintiffs do not challenge them in this action.");see also, Defendants' Notice of Filing Redacted Materials, ECF No. 600 Exhibit 1, Deposition of Daniel Rascher (1/10/23), pp. 19-23 ("So sort of -- that broad set of rules coming from different places, I'm modeling as if they change the NIL-related rules but not, for instance, the rules on pay for performance as an example…")

3. The massive expansion of pay-for-play claims allow the NCAA and Class Counsel to argue that class-wide pay-for-play damages would be impossible to quantify or get certified.

In briefing during the preliminary approval process, the NCAA and Class Counsel argued that class damages for pay-for-play are difficult, if not impossible, to quantify or get certified.

They attribute this difficulty directly to the size and diversity of the expanded athletic services class across 350 D-I schools, dozens of sports, and hundreds of thousands of D-I athletes.

This argument supports the parties' claims that settlement damages for athletic services are a windfall to athletes because those claims are virtually unwinnable in litigation.

The expanded damages class for athletic services gives life to the NCAA characterization of those claims as "sprawling in nature, covering hundreds of thousands of student-athletes in a variety of different sports at over 350 member institutions in Division I," and that it would "be impossible to develop the essential prerequisite to class certification of these claims: a working economic model capable of determining whether and which student-athletes at each of these hundreds of schools would have been injured."[96]

Class Counsel similarly relies on the expanded class claims to argue "that the [pay-for-play] claims here are even more precarious than those in *Alston*, in which the injunctive-class members were limited to football and basketball players in the Power Five Conferences. The [athletic services damage class], by contrast, encompasses exponentially more athletes, *outside* the Power Five, in non-revenue generating sports."[97]

The NCAA and Class Counsel also concede that with the exception of Power 5 football, men's basketball, women's basketball, and select "outlier" conferences, schools, and sports in the pay-for-play class, almost all other sports and athletes in the expanded pay-for-play class *lose* money and therefore have little, if any, monetary value in the broader college sports marketplace. Moreover, Dr. Rascher (relying on the claims administrator's projections) estimates a settlement claims rate for these athletes of only 15%[98]

This characterization of the pay-for-play class raises several issues.

First, it is fair to assume that Class Counsel believed when it filed *Carter* (with a pay-for-play damages class limited to Power 5 scholarship athletes in football, men's basketball, and women's

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[96] Defendants' Reply ISO Motion for Preliminary Settlement Approval, ECF No. 495, p. 4 [8/16/2024])

[97] (Plaintiffs' Reply Brief ISO Motion for Preliminary Settlement Approval, ECF No. 494, pp. 13-14 [8/16/24]); Class Counsels' characterization is at odds with their portrayal of pay-for-play claims in the *Carter* complaint, which asserted that the NCAA's amateurism-based procompetitive justification was "factually bankrupt." (*Carter* ECF No. 1, p. 51, Par. 150). Moreover, in a podcast interview on December 8, 2023 (the day after *Carter* was filed), Mr. Kessler said because the NCAA could not offer *any* defensible procompetitive justifications of the pay-for-play restrictions, he expected to win *Carter* on summary judgment. (SportsWise podcast, Episode 56: *Sports Law Legend Jeffrey Kessler on the Antitrust Threats Facing the NCAA* December 8, 2023, at approx. 24:45 – 26:07)

[98] ECF No 450-4 at. Pars. 70-81 (Declaration of Danial A. Rascher)

basketball) that it would be possible, perhaps likely, to achieve class certification with a workable class damages economic model.

Otherwise, *Carter* would be a meritless suit.

Second, while the parties contend that a D-I pay-for-play damages class makes it impossible to "produce a working economic model" for class damages, that appears to be precisely what Dr. Rascher did in his July 26, 2024, expert report.

The NCAA and Defendants have accepted Dr. Rascher's damages model for athletic services payments as good enough for settlement purposes but suggest—perhaps unintentionally—it may not survive the class certification process and a *Daubert* motion in litigation.

Dr. Rascher does not say whether his athletic services analysis was prepared to reconcile a pre-negotiated damage amount within the overall settlement or whether his analysis could have been offered in *Carter* if *Carter* were actually litigated as an stand-alone suit.

Dr. Rascher does, however, concede that "[u]nlike NIL compensation, I have not previously provided reports containing analyses and estimates of damages related compensation for athletic services. I do not provide here a full damage analysis in relation to compensation for athletic services. Instead, I provide here a methodology and set of assumptions and procedures that are within the scope of economically reasonable approaches for estimating damages related to compensation for athletic services. I then apply the methodology and assumptions to calculate an estimate of potential damages."[99]

4. Carter permitted Class Counsel and the NCAA to attempt to eliminate the Fontenot pay-for-play suit.

On November 20, 2023, shortly after this Court certified the damages class in *House*, a group of athletes filed a class action antitrust suit against the NCAA and Power 5 in Colorado (*Fontenot v NCAA*)[100] making "fair pay" (pay-for-play) claims. The *Fontenot* class is comprised of Power 5 (plus Notre Dame), full scholarship athletes in football, men's basketball, and women's basketball.

Class Counsel filed *Carter* seventeen days later making claims that aligned perfectly with *Fontenot*. Class Counsels' first move was a procedural one, asking the Multidistrict Litigation Panel on January 29, 2024, to transfer *Fontenot* to the Northern District of California for "coordination and consolidation."[101]

This motion began a five-month series of procedural maneuverers by parties in both cases to have the cases combined in one court or the other. Both parties were unsuccessful. When the

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[99] *House* ECF No. 450-4 at 15, Par. 35

[100] *Fontenot v. Nat'l Collegiate Athletic Ass'n*, Civil Action 23-cv-03076-CNS-STV (D. Colo. May. 23, 2024)

[101] *Carter* ECF, No. 73; Through "consolidation," Class Counsel (with Defendants' support) would presumably ask this Court to appoint Class Counsel as counsel for the *Fontenot* plaintiffs, which would permit Class Counsel to control *Fontenot*.

Colorado court denied the NCAA's motion to transfer *Fontenot* to the Northern District of California on May 10, 2024, Class Counsel and the NCAA—who worked together to get *Fontenot* moved to this Court—had exhausted all of their procedural options.

Twenty days later, on May 20, 2024, Class Counsel and the NCAA announced the settlement and filed a Joint Stipulation and Proposed Order to Extend Case Deadlines in Light of Settlement. Judge Seeborg signed the proposed order the same day.[102]

In their settlement papers and at the September 5, 2024, preliminary approval hearing, Class Counsel and Defendants' renewed their request to stay and consolidate *Fontenot* by asking this Court to assert jurisdiction over it. This Court asked Defendants' to first take up their issues with the Colorado judge, then if they don't get what they want, this Court would dismiss the request without prejudice, allowing the parties to renew it at a later date.[103]

The parties should not be permitted to use *Carter* to (1) compromise pay-for-play damage claims without litigating or developing evidence on them, (2) expand the pay-for-play class from 16,000 athletes in the lawsuit (Power 5 profit athletes in football, men's basketball, and women's basketball) to 390,000 athletes in the settlement (all of Division I) to argue that the pay-for-play payments are a windfall to athletes because they would never achieve class certification on the settlement classes, and (3) attempt to eliminate the only other pending suit that is positioned to actually litigate and develop evidence on the true value of athletes' services.

VI. The Exclusion of Power 5 Men's Basketball Athletes from Class Representation is a Substantial Flaw in the Litigation and the Settlement

Rule 23(a)(4) requires that class representatives "fairly and adequately protect the interests of the class." That standard has not been met in the settlement cases because no Division I men's basketball player is a class representative.

Across the three suits, there are eight class representatives[104] representing six Division I sports: men's swimming and diving, women's basketball, women's soccer, women's track and field, men's lacrosse, and football (3).

As discussed below, the unique and critical role of Division I men's basketball players in the overall college sports business model, the increased reliance on men's basketball revenue under

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[102] *Carter* ECF Nos. 99, 100

[103] House ECF No. 521 at 87, 88

[104] *House/Carter* class representatives are Grant House (Arizona State swimming and diving), Sedona Prince (University of Oregon and Texas Christian University women's basketball), Tymir Oliver (University of Illinois football), DeWayne Carter (Duke University football), Nya Harrison (Stanford University women's soccer), and Nicholas Solomon (University of North Carolina men's lacrosse); see, Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards for Class Representatives, Declarations of Class Representatives, *House* ECF No. 583; *Hubbard* class representatives are Chuba Hubbard (Oklahoma State football) and Keira McCarrell (Auburn women's track and field); see, Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards for Class Representatives, Declarations of Class Representatives, *Hubbard* ECF No. 253

the settlement as compared to the theories of liability and damages models in *House*, and the unprecedented publicity of the settlement highlight the absence of men's basketball in the class representative profile.[105]

1.Division I Men's Basketball Plays a Critical and Unique Role in the Business of College Sports

Division I men's basketball plays a unique and critical role in the business of college sports because the Division I Men's Basketball Tournament—which the NCAA owns—funds the entire NCAA administrative state.

The NCAA doesn't receive a penny of big-time football money.

This fundamental reality (and inequity) in the college sports business and regulatory models is rarely discussed and poorly understood, yet it is critically important and, as discussed below, has implications in the settlement and for the future of college sports.

The Football Bowl Subdivision (FBS) football championship is owned and controlled by the College Football Playoff, LLC (CFP) which operates entirely outside NCAA control.[106]

This dysfunctional financial and regulatory framework is the product of the *Board of Regents* decision in 1984 in which powerful football interests sued under antitrust laws to end the NCAA's thirty-year monopoly over televised football.

Board of Regents is the most important legal decision in college sports history and has implications today as big-time football continues its imperial march to create the most professionalized, NFL-like product the college sports marketplace can accommodate.

Nearly every structural, regulatory, financial, and values-based change in college sports is football-driven and tied to *Board of Regents*, including (1) the massive escalation in output of sports products and the value of broadcast media contracts, (2) football-driven conference destructions and consolidations (commonly referred to as "realignments"), (3) the increasing separation of Power conference interests from the rest of college sports under the NCAA umbrella[107] (4) big-time football's rolling, hostile takeover of NCAA governance, (5) increased

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[105] We are mindful that the Court addressed this issue in the damages certification process in *House.* This Court found that Tymir Oliver, a University of Illinois football player, was an adequate representative of men's basketball interests and possessed the same interests and suffered the same injury as men's basketball players with no evidence that he had a conflict of interest. (*House* ECF No. 387, at 11, 12) However, the burden Division-I men's basketball players bear in the settlement could not be considered in the underlying litigation.

[106] The NCAA plays a minor, technical role in "certifying" the bowl games associated with the CFP. Beyond that, the NCAA has no more connection to the CFP than to the NFL playoffs.

[107] Power conference football interests have bullied the NCAA over the years to achieve increased power, control, and independence while remaining in the NCAA. The Power 5 have threatened several times to leave the NCAA altogether unless their demands were met. The most publicized threat occurred during in 2014 when the Power 5 sought independent legislative prerogatives through Autonomy legislation. The NCAA accedes to these threats out of fear that if the Power conferences leave the NCAA, they will take the Division I men's basketball tournament with them and leave the NCAA without its March Madness bonanza. The Power 4 are currently pressing for a further concentration of power under the NCAA umbrella that would allow it to have more control over NCAA post-

pressure from external regulatory threats (e.g., courts, legislatures, administrative agencies) to enhance athlete benefits and protections, (6) the NCAA and Power 5's campaign (2019 - present) for protective federal legislation in response to external regulatory pressures, (7) increased dissonance between the values of higher education and the college sports entertainment industry, and (8) perceived tensions between the interests of revenue-producing sports and athletes and non-revenue ("Olympic") sports and athletes.

As a consequence of losing its football empire, the NCAA turned to the Division I Men's Basketball Tournament for replacement revenue.

Due in large measure to aggressive marketing and branding, the Tournament has become one of the most popular and lucrative sporting events in history.

According to the NCAA's 2022-2023 Consolidated Financial Statements (CFS), broadcast rights—along with ticket sales—are worth approximately $1.2 billion.[108]

About sixty percent of NCAA revenue ($695 million) trickles back to Division I schools in the form of various funds controlled by Division I conferences and schools.[109]

The remaining forty percent ($483 million) includes expenditures for:

a. NCAA national office expenses, including lavish, excessive executive salaries, benefits, and golden parachute payments costing $89,899,314[110], and travel including private jets for select NCAA executives and companions.[111]
b. Professional services costing $123,677,962.[112]
c. NCAA national championship expenses for *every* sport in *every* Division (ninety championships total), costing $192,143,193.[113]
d. Block grants to Divisions II ($57,787,273) and III ($42,395,482) which appear to include national championship costs.[114]

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season championships—including the men's and women's basketball championships. (see, *Power 4 Proposal Seeks Control of NCAA Championships, Revenue*, *Sports Illustrated*, January 9, 2025) The Power 5 have yet to make good on their threats. Given the windfall benefits that Power 5 football receives from the NCAA and men's basketball revenue, there is little incentive for the Power 5 to disrupt this aspect of the status quo business and regulatory models.

[108] 2022-2023 Consolidated Financial Statements, Note 16 (Revenue)

[109] 2022-2023 CFS, Note 17 (Expenses by Nature)

[110] 2022-2023 CFS, Note 17 ("Compensation") Over the years, multiple former NCAA executives have received substantial payments after leaving the NCAA. For example, in 2022, former NCAA COO Donald Remy received a payout of **$2,411,813** (NCAA Form 990 for the tax year ending 8/31/2022, Schedule J Supplemental Information Part I, Line 4a). The following year, former NCAA President Mark Emmert received a golden parachute payment of **$4,281,279** (NCAA Form 990 for the tax year ending 8/31/2023, Schedule J Supplemental Information Part 1, Line 4a). For the sixteen executives listed on the NCAA's 2023 Form 990 Schedule J, the average salary was **$776,971**.

[111] NCAA 2022 and 2023 Form 990 tax returns, Schedule J Supplemental Information, Part I, Line 1a (charter travel and travel for companions) These costs are not itemized in the NCAA's overall "travel" expenses.

[112] 2022-2023 CFS, Note 17

[113] 2022-2023 CFS (Supplementary Information)

[114] 2022-2023 CFS (Supplementary Information)

e. A captive insurance company, the 1910 Collective (as of March 1, 2022) established as "alternative risk management platform." In 2022, the NCAA diverted $83,997,737 to the Collective and $98,328,214 more in 2023. The Collective had an ending balance of $83,997,737 in 2022, and $79,782,377 in 2023 (total balance of $163,780,114).[115] These funds could conceivably be used to pay settlement damages.[116]
f. Lobbying costs (the NCAA/Power 5 lobbying campaign for protective federal legislation is discussed in more detail below) that fund the NCAA Office of Government Relations, the NCAA's external professional lobbying firm, Brownstein Hyatt (the number 1 ranked lobbying form in Washington) and their "grassroots" lobbying through public relations firms.[117]

These expenditures pale in comparison to what the NCAA—through the labor of Division I men's basketball athletes—pays for litigation (attorneys' fees for both sides and settlements) in cases in which the NCAA and Power 5 conferences are joint defendants. This includes the major class action antitrust cases such as *O'Bannon*, *Alston*, *House, Hubbard*, and *Carter*.[118]

The combined costs of these cases (including damages and attorneys' fees in the settlement cases) now substantially exceed *$3 billion*.

The Power 5 have made only modest contributions to these costs over the years, yet they have played a crucial role in dictating litigation and settlement strategy.[119]

In the settlement, Division I men's basketball labor would pay for over *half-a-billion dollars* of Class Counsels' requested attorneys' fees and expenses,[120] and *all* of the NCAA's fees and

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[115] 2022 -2023 CFS, Note 15 (Risk Management)
[116] While the fund has been used to finance Director and Officer and Event Cancellation/Loss of Revenue policies, there do not appear to be limitations on its use for risk management purposes.
[117] The NCAA's grassroots lobbying costs are difficult to quantify because those lobbying efforts have become embedded in the NCAA's normal operations and public relations. At the 2024 convention (January 9-13)), the NCAA held a "Featured Session" titled "Safeguarding the Future of College Sports: Congressional Advocacy Tools for Campuses and Conferences" led by Robert Gibbs, former Press Secretary under President Obama. At the time, Gibbs was a partner with Bully Pulpit International (f/k/a Bully Pulpit Interactive Inc.). Bully Pulpit is a prominent public relations firm based in Washington D.C. that has worked for the NCAA since 2015 to shape the NCAA's public image. Since 2015, the NCAA has paid Bully Pulpit at least $40 million. At this year's convention (January 14 – 17) Baker again used his "State of the Association" speech to lobby for congressional action. This time In the context of the settlement (see, *NCAA to dole out $1.2 billion to help pay for House settlement. Its president asks for Congress to step in*, Eddie Pells, Associated Press, January 14, 2025).
[118] In the past, some of these expenses have been paid by the NCAA's liability insurance.
[119] Class Counsel Steve Berman describing the power dynamics during settlement negotiations: "**…**[i]t was also a very interesting dynamic at the really serious sessions. The conference commissioners did the negotiating. They pushed the lawyers to the side and wanted to talk one-on-one with us. So that was a pretty interesting dynamic. That doesn't happen very often where let's say I'm suing Apple, the executives are not in the room talking to me, the lawyers are. But here, the conference commissioners were very keen on trying to make us understand the issues that they faced." (SportsWise podcast, Episode 74: *The Latest on the House Settlement with Co-Counsel for the Plaintiffs, Steve Berman*, September 27, 2024, at approx. 14:00 – 15:20)
[120] These fees are based on percentages from 10% - 20% for damages (20% in *House* and *Hubbard* and 10% in *Carter*) and an "upfront" fee of $20 million. In addition, Class Counsel seeks a percentage of revenue sharing from .075" – 1.25 % per year of total payouts. Class Counsel estimate that revenue sharing fees will be worth (conservatively) an additional $250 million over the ten-year settlement term. ECF No. 583-5 (Par. 49)

expenses.[121] This includes all expert fees, travel/lodging/meals, settlement administration fees, and millions in miscellaneous expenses.

In essence, Power 5 football receives a free ride financially for all of these expenses, while the NCAA takes money from Division I men's basketball athletes, the overwhelming majority of whom are African American, and spreads it around to mostly white stakeholders across all three Divisions.[122] The result is a regressive economic spoils system that beneficiaries have come to view as an entitlement.[123]

2. Men's Basketball Labor and March Madness Revenue Funds 100% of the NIL Damages in the Settlement Which is Inconsistent with the Plaintiffs' Theories of Liability and Damage Models in House

The financial burden for NIL damages payments has shifted from the Power 5 conferences and Power 5 football revenues in *House* to men's basketball and the NCAA in the settlement.

BNIL damages, which constituted the lion's share of NIL damages in *House*, were based on a model of *conference* responsibility (and competition), through Power 5 conferences' single sport and multisport broadcast media deals.

Under the economics theories developed by Plaintiffs' expert Dr. Daniel Rascher in *House*, in a hypothetical "but for" world in which the NCAA's NIL prohibitions did not exist, *conferences* would make BNIL payments directly to athletes rather than schools, or, as in the settlement, the NCAA.

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[121] The NCAA doesn't disclose its fees and expenses in the litigation. Class Counsels' combined lodestar is $68 million. It may be fair to assume the NCAA has spent at least that much.

[122] The NCAA's relevance in the post-*Board of Regents* era has been called into question many times. The NCAA's role in spreading March Madness money around and now its ten-year long pay-out obligations give the NCAA an odd form of relevance. NCAA President Charlie Baker has conceded as much. ("Baker also said that he thinks the 10-year span of the settlement will serve as 'glue' to help bind together the larger group of Division I schools, avoiding the potential for power conferences to form a separate entity with their own rules. Keeping all of Division I together will allow the NCAA to maintain the March Madness basketball tournament that generates the overwhelming majority of money that the association distributes to its schools. 'We now have the ability to move forward with the assumption that we're all going to be one, big, maybe happy, family moving forward,' Baker said.") (see, *Baker: Antitrust settlement creates certainty for new system*, Dan Murphy, *ESPN*, June 10, 2024)

[123] When the NCAA Board of Governors Constitution Committee made its case to stakeholders, it recognized that to obtain the two-thirds supermajority necessary to change the Constitution, it needed the votes of Division II and Division III members. Robert Gates, the Chair of the Committee, said that the one "non-negotiable" item was the block grants—totaling $100 million—Divisions II and III receive each year from March Madness revenues: "…just to be clear, that one thing that's pretty obvious to me and of particular importance to Division II and III is the percentage allocation of the funding that they get from the NCAA. The reality we have to bear in mind is that we need two-thirds of the membership to vote in favor of a proposed constitution. Divisions II and III by themselves have about two-thirds of the votes…[i]f I had to pick one thing that probably is not negotiable, it would be the percentage allocations for Division II and III." (NCAA's Social Series podcast on September 10, 2021, (at 17:43 – 19:00)

During briefing on Plaintiffs' motion to certify damages, Defendants' argued that Dr. Rascher's damages model was inconsistent with Plaintiff's theories of NIL liability because only schools, not conferences, would make BNIL payments in the hypothetical "but for" world.

Citing the Plaintiffs' Consolidated Amended Complaint (CAC), this court rejected the NCAA's argument and concluded that Dr. Rascher's conference revenue and payment model satisfied the standard for class damages certification.[124]

In allocating BNIL damages for multisport contracts, Dr. Rascher relied on the framework offered by Plaintiffs' expert Ed Desser.

In assessing the value of athletes' NIL in broadcast media deals, Mr. Desser first concluded that approximately *fifty percent* of the total value of sports broadcasts "is attributable to athletes contributions (with that total value including the value of NIL, as well as their value for athletic performance)."[125]

Of that fifty percent, Mr. Desser estimated that "the *majority of the value of athletes' NIL is attributable to the athletes' athletic performance*, while a minority of that value, from *twenty to thirty percent*, is attributable to their NIL," and that "[b]ased on those estimates and his experience, Desser concluded that *ten percent* is a *conservative estimate* of the value of student-athletes' NIL in the broadcasts of Power 5 FBS football and Division I men's and women's basketball." (emphasis added)[126]

Mr. Desser also opined that the appropriate allocation among members of the Football and Men's and Women's Basketball classes for multisport contracts was 75% to football, 15% to men's basketball, and 5% to women's basketball, and 5% to all other sports, which corresponds to the value each product has in the overall college sports marketplace.[127]

In allocating BNIL damages in the settlement, Dr. Rascher's report adopts Mr. Desser's 75/15/5 framework. After discounting thirty-seven percent from total BNIL damages and before

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[124] See, *House* Order Granting Motion for Certification of Damages Classes ECF No. 387 at 28, 29 ("Dr. Rascher's BNIL methodology is consistent with Plaintiffs' theory of liability. In the operative complaint, Plaintiffs aver that the challenged rules caused them injury and damages because, "[a]bsent these nationwide restraints, *Division I conferences and schools would compete* amongst each other by allowing their athletes to take full advantage of opportunities to utilize, license, and profit from their NIL in commercial business ventures and promotional activities and *to share in the conferences' and schools' commercial benefits received from exploiting student-athletes' names, images, and likenesses*." *See* CAC ¶ 112 (emphasis added). Dr. Rascher's BNIL methodology establishes that members of the Football and Men's Basketball and Women's Basketball proposed classes would have received BNIL compensation from conferences in the absence of the challenged rules that prohibit conferences and schools from sharing the commercial benefits they receive from exploiting student-athletes' BNIL, consistent with the theory of liability alleged in the CAC.")

[125] *House* ECF No. 386 at 20, 21 (Order Denying Motion to Exclude Desser and Rascher Opinion)

[126] Because the *House* Plaintiffs explicitly did not seek damages for the value of athletic services, Desser had to separate the NIL value from the athletic performance value. Thus, it appears approximately 70% to 80% of athletes' overall value in broadcast media deals was extracted from Desser's analysis. After the importation of *Carter's* payments for athletic services claims into *House* via the second amended complaint, it is difficult to discern whether Dr. Rascher's compensation for athletic services analysis accounts for the substantial value of athletic performance in broadcast media deals. ECF No. 450-4

[127] Order Denying Motion to Exclude Desser and Rascher Opinions, ECF No. 386 at 20, 21

attorneys' fees, Dr. Rascher's total BNIL pot is $1,815,00,000. The per-sport allocations are $1,361,250,000 (75%) for football, $272,250,000 (15%) for men's basketball, and $90,750,000 for women's basketball.[128]

Yet in the transition from *House/Carter* to the settlement, except for small reductions in March Madness distributions,[129] football money and football labor contributes *nothing* for BNIL (or any other) damages.

Thus, the Power 5 conferences and football money have essentially been written out of the script in the settlement.[130]

This fundamental shift from the underlying litigation theories of financial responsibility (75% of source revenue and labor from football) to the settlement theories of financial liabilities (100% of source revenue and labor from men's basketball) highlights the fundamental unfairness of excluding Division I men's basketball players from class representation.

Moreover, in the settlement's calculations of revenues, Division I men's basketball players receive no economic credit for the windfall benefits they provide to stakeholders system-wide.

3. Some Class Representatives Have Used Their Status to Raise Issues Important to Their Interests and Affiliations

The *House* settlement may be among the most publicized class action settlements in history. From the time rumors of the settlement made their way into the public domain in late April 2024, the college sports media and commentariat have been obsessed with it. Strategic, selective leaks have shaped media and public narratives and Class Counsel and NCAA lawyers have stepped outside the traditional proscription on commenting on pending legislation.[131]

Much of the public commentary has been devoted to "selling" the settlement to stakeholders, decision-makers, and the public. The media is fascinated with the word "billions" (and it surely draws eyeballs and clicks), sensationalizing the financial aspects of the settlement while ignoring or downplaying substantial flaws in the non-economic components of the settlement.

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[128] ECF No. 450-4 at Pars. 24-29 (see specifically, Exhibit 5)

[129] Under the settlement, NCAA revenue generated from the labor of Division I men's basketball players will pay for the entire damages amount of $2.796 billion. The NCAA is directly responsible for $1.2 billion (43%). The Division I conferences will share the remaining liability of $1.56 billion (57%) through reduced March Madness distributions. Of the reduced March Madness distributions, only 40% will be "paid" by the Power 5 conferences. All payments will be spread over ten years.

[130] Class Counsel will no doubt argue that none of this matters because the settlement is the product of compromise, and it makes no difference where the money comes from. That position would be somewhat ironic in litigation and a settlement that have been framed as equity based. Moreover, the fundamental disconnect between the underlying litigation and the settlement is relevant to whether the settlement meets Rule 23 requirements.

[131] See, e.g., *The Unusually Public-Facing Push to Settle House v NCAA*, Michael McCann, *Sportico*, May 20, 2024

Several athletes (Grant House, Sedona Prince, and Nya Harrison) used their status and megaphones as class representatives to advocate for a particular players association.[132] While supportive of the settlement and Class Counsel, the class representatives also raised issues one might expect to find in an *objection* to the settlement.[133]

In a recent article,[134] Mr. House raised additional concerns regarding communications with Class Counsel and attorneys' fees.

Because of their exclusion from class representation, men's basketball players have been denied the similar opportunity influence and critique a process that purports to reshape an industry in which they play a critical and unique role.

VII. Additional Issues

We have other concerns relating to (1) athletes' due process rights in the arbitration process and the consent to jurisdiction provisions, (2) the quality of the data that will be used to determine "fair market value" of third party NIL deals and the use of data from the *House* case that is under seal, and (3) why the settlement provides releases from liability for the College Football Playoff, LLC, who is not a party to any of the underlying litigation cases and has not made any payments in the settlement.

We trust these issues will be addressed by other stakeholders who have expressed or may express concerns with the settlement.

VIII. Conclusion

We appreciate the difficult task this settlement presents to the Court and sincerely hope our contribution adds value to the Court's deliberations.

We have two closing thoughts.

First, we believe this settlement is happening *to* athletes, not *with* them.

Second, the question is not simply whether athletes will receive incremental financial gains, but whether those gains come at the expense of the freedom and leverage necessary for athletes to protect their broader rights in the years ahead.

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[132] See, e.g., *Plaintiffs' letter adds wrinkle to $2.8 billion NCAA Settlement*, Dan Murphy, *ESPN*, December 10, 2024; see also, *How is a judge supposed to create a college player's association?* Matt Brown, Extra Points, December 11, 2024

[133] ECF No. 580

[134] See, *Who is House in the House v NCAA Settlement? Meet the man behind the lawsuit that will change college sports forever*, Ross Dellinger, Yahoo! Sports, December 30, 2024

Respectfully,

Michele A. Roberts

Michele Roberts

Richard Ford

Richard Ford

Casey Floyd

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Post

Robert Griffin III
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The Soul of College Football is dying because of money. Allowing the Big 10 and SEC to get 4 automatic bids into another expanded College Football Playoff dilutes the importance of winning. 4 loss non conference champions don't belong in the CFP. The proposed changes open the door for a Monopoly of the sport. The business of College Football is trying to destroying it.

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