

# A Field of [Employment] Dreams: Advocating for the Treatment of Student-Athletes as Employees in Iowa

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*ABSTRACT: For decades, student-athletes faced limited financial aid in scholarships, the denial of name, image, and likeness opportunities, and the refusal to treat student-athletes as employees. With the NCAA recently allowing name, image, and likeness compensation following significant pressure from state legislatures and the recent Johnson v. NCAA case that could upend amateurism in college athletics pending, now is the time for universities and the NCAA to recognize and compensate student-athletes as employees. State legislatures should mandate that public universities classify student-athletes as employees, as they meet the definition of an employee under three statutory tests. The Iowa Legislature should initiate this push because the state currently has national attention for its aggressive prosecution of numerous sports betting scandals. Iowa should utilize such attention, however, by exerting caution when mandating student-athlete pay to avoid perpetuating inequities among collegiate sports. Paying a minimum wage of fifteen dollars an hour for in-season work to all student-athletes would require universities to recognize the control and financial benefit they obtain from student-athletes while also providing a sustainable compensation model for athletic departments. Not only is paying student-athletes a minimum wage financially possible for public universities in Iowa, but it would also allow universities subject to Title IX restrictions to treat student-athletes equitably, as name, image, and likeness compensation would allow additional financial benefits for popular student-athletes.*

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## INTRODUCTION

The National Collegiate Athletic Association (“NCAA”) has a long history of denying student-athletes rights and privileges. From coining the term “student-athlete”<sup>1</sup> to unwillingly allowing name, image, and likeness (“NIL”) rights only when state legislative bodies finally stepped in,<sup>2</sup> both the NCAA and universities are reluctant to give student-athletes autonomy beyond basic rights already mandated by law. Although incremental gains in financial compensation for student-athletes have been slow, student-athletes have progressed from scholarships covering minimal room and board expenses to the full cost of attendance. As the push for student-athletes to gain status as employees progresses through the courts, additional arguments have arisen over whether student-athletes should be considered joint employers of the NCAA and their respective universities.<sup>3</sup> With a memorandum from the general counsel of the National Labor Relations Board (“NLRB”) advocating for the joint-employment status of players at academic institutions,<sup>4</sup> and two statutory tests that help determine employment status, student-athletes seem poised to gain employment status in the near future.

Iowa should pave the way in modeling how universities should compensate student-athletes as employees—like California passing the Fair Pay to Play Act in 2019,<sup>5</sup> which prompted other states and ultimately the NCAA to allow NIL compensation. As Iowa is in the national spotlight due to its aggressive approach in prosecuting student-athletes who engage in sports betting,<sup>6</sup> Iowa should

1. Matthew Strauser & Noah C. Chauvin, Note, *Student-Athlete Employee Speech*, 19 VA. SPORTS & ENT. L.J. 171, 192 (2020) (“NCAA lawyers concocted the term ‘student-athlete’ during the 1950s in an effort to avoid paying the widow of a deceased college football player worker’s compensation benefits.”).

2. Michael McCann, *What’s Next After California Signs Game Changer Fair Pay to Play Act into Law?*, SPORTS ILLUSTRATED (Sept. 30, 2019), <https://www.si.com/college/2019/09/30/fair-pay-to-play-act-law-ncaa-california-pac-12> [<https://perma.cc/9YDQ-2HFP>].

3. See *Johnson v. NCAA*, 556 F. Supp. 3d 491, 512 (E.D. Pa. 2021); *Johnson v. NCAA*, 108 F.4th 163, 167 (3d Cir. 2024) (holding the NCAA did not provide enough evidence to grant the motion to dismiss).

4. JENNIFER A. ABRUZZO, NLRB, MEMORANDUM GC 21-08, STATUTORY RIGHTS OF PLAYERS AT ACADEMIC INSTITUTIONS (STUDENT-ATHLETES) UNDER THE NATIONAL LABOR RELATIONS ACT 9 n.34 (2021).

5. McCann, *supra* note 2.

6. See *infra* Section I.C.

utilize that attention to advocate for fair compensation of student-athletes. The state should stress that it values the economic impact student-athletes contribute to its respective universities and the state at large.

Focusing on public universities in Iowa, particularly the University of Iowa, this Note argues that student-athletes should be paid a minimum wage as they are employees of their universities and the NCAA. However, the Iowa Legislature should be careful when implementing such legislation to avoid exacerbating equity issues amongst sports. The Iowa Legislature should pass a law that mandates compensation for all student-athletes at public universities in a uniform, limited amount of fifteen dollars per hour for twenty hours a week for in-season<sup>7</sup> work across all sports. Such legislation would allow athletic departments to continue operating as nonprofit organizations while maintaining the ability to fund nonrevenue-generating sports. The new NIL landscape will allow compensation of popular student-athletes at their fair market value, with financial benefits above what individual universities could pay. The combination of compensating student-athletes as employees and NIL opportunities balances the competing goals of increasing financial compensation for student-athletes and promoting an equitable environment within NCAA athletics, ultimately providing the best result for student-athletes.

#### I. THE STATE OF STUDENT-ATHLETE COMPENSATION AND STUDENT-ATHLETE RELATIONSHIPS TO THE NCAA

The NCAA has changed significantly over time, from prohibiting universities from securing television deals that broadcast their games,<sup>8</sup> to recently allowing student-athletes to profit from their name, image, and likeness.<sup>9</sup> Student-athletes consistently lobbied universities and the NCAA in court to try and gain employment status.<sup>10</sup> Although there have been incremental gains in student-athletes' compensation over the years, the NCAA always faces the question as to what is next in terms of student-athletes' rights and compensation. Pending cases and a sympathetic NLRB indicate that student-athletes are poised to gain employee status.

##### A. CASES THROUGHOUT THE YEARS SHOW INCREMENTAL IMPROVEMENTS IN STUDENT-ATHLETE COMPENSATION

Student-athletes challenged their status as employees as early as the mid-1900s, but courts consistently agreed that student-athletes should not be

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7. NCAA Bylaw 17.1.7.1 limits "countable athletically related activities" to a "maximum of four hours per day and [twenty] hours per week." NCAA, DIVISION I 2023-24 MANUAL § 17.1.7.1, at 227 (2023) [hereinafter NCAA DIVISION I MANUAL], <https://www.ncaapublications.com/productdownloads/D124.pdf> [<https://perma.cc/YD4V-HCLJ>]. Therefore, when determining wages for student-athletes, it is reasonable to assume a student-athlete will work twenty hours a week.

8. See *NCAA v. Bd. of Regents*, 468 U.S. 85, 120 (1984).

9. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/V799-GCFV>].

10. See *infra* Section I.A.

considered employees. Recently, however, courts have become more sympathetic to student-athletes and incrementally increased their rights and compensation. Now, student-athletes are closer than ever to gaining employment status. In *Johnson v. NCAA*, the NCAA's motion for summary judgment was denied in a case directly questioning the employment status of student-athletes.<sup>11</sup>

### 1. Historical Court Denial of Student-Athletes as Employees

As early as 1963, courts were asked whether student-athletes were employees of the university.<sup>12</sup> In *Van Horn v. Industrial Accident Commission*, a football player received fifty dollars every academic quarter and seventy-five dollars for rent money each football season. The California Court of Appeals ruled that not "every student who receives an 'athletic scholarship' and plays on the school athletic team is an employee of the school."<sup>13</sup> The court also raised but did not answer the question of who the student-athlete's employer would be if a student-athlete was in fact considered an employee.<sup>14</sup>

Twenty years later, a similar case arose in the same court when student-athletes argued the state, athletic conference, and coach at a university should be responsible for student-athletes' liabilities under the doctrine of respondeat superior.<sup>15</sup> The plaintiff in *Townsend v. California* argued the NCAA is a "big business" that receives a substantial amount of revenue off student-athletes, and therefore student-athletes should be considered its employees.<sup>16</sup> However, the California Tort Claims Act exempts public entities from liability for an injury of their employees as a matter of public policy, and therefore respondeat superior did not apply.<sup>17</sup> Additionally, the California State Legislature had previously added a subdivision to its labor code that excluded any student-athlete from falling under the definition of an employee, establishing that student-athletes were clearly not employees at this time.<sup>18</sup> Student-athletes

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11. See *infra* Section I.A.3.

12. *Van Horn v. Indus. Accident Comm'n*, 33 Cal. Rptr. 169, 172-73 (Ct. App. 1963) (holding student-athletes should be considered employees for the purpose of the Workmen's Compensation Act).

13. *Id.* at 175 (providing that students who have not consented to employment status cannot have such status thrust upon them).

14. *Id.* (explaining how a school's alumni association could possibly be the employer as such an organization raises money for athletic scholarships). The General Counsel of the NLRB, Jennifer Abruzzo, stated she would "consider pursuing a joint employer theory of liability" under which both the NCAA and universities would be employers of student-athletes as both exert significant control over the lives of student-athletes. See also ABRUZZO, *supra* note 4, at 9 n.34.

15. *Townsend v. State*, 237 Cal. Rptr. 146, 146 (Ct. App. 1987).

16. *Id.* "[T]he liability of the State and its supervisory employees is governed primarily by the California Tort Claims Act." *Id.* at 147. Therefore, under California Government Code section 815.2, the university "is liable for injury proximately caused by an act or omission of an employee of the public entity with the scope of his employment." *Id.*

17. *Id.* at 149 ("[E]xposing those institutions to vicarious liability for torts committed in athletic competition would create a severe financial drain on the State's precious educational resources.").

18. *Id.* The California legislature added section 3352(k) excluding

[a]ny student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives

tried to argue their status as employees again in 2002 when suing under the Fair Employment and Housing Authority Act (“FEHA”).<sup>19</sup> However, the court again used the subdivision of the labor code that “excludes a student[-]athlete receiving an athletic scholarship from the term ‘employee.’”<sup>20</sup>

Outside of California, courts across the country faced similar cases.<sup>21</sup> Other jurisdictions similarly held that student-athletes are not employees of either their universities or the NCAA. For example, *Berger v. NCAA* was a prominent case before the U.S. Court of Appeals for the Seventh Circuit that granted a motion to dismiss in favor of the NCAA, denying student-athletes at private universities the right to a minimum wage under the Fair Labor Standards Act (“FLSA”).<sup>22</sup> Again, the court did not deny that student-athletes spend a significant amount of time on their sport for their university but claimed student-athletes do so “without any real expectation of earning an income.”<sup>23</sup> The court reasoned that the U.S. Department of Labor did not intend for student-athletes to be employees as NCAA sports are more comparable to extracurricular activities than to work-study programs as the student-athletes argued.<sup>24</sup>

Similarly, *Livers v. NCAA* was one of the first instances in which a court examined student-athletes under the joint-employer doctrine, holding student-athletes were not joint employees of their universities and the NCAA.<sup>25</sup> The student-athletes claimed NCAA bylaws and university policies significantly impacted their experience as students due to the time commitment required for their sports, and therefore they were employees of both the NCAA and their university.<sup>26</sup> For instance, twenty-five to thirty-six percent of student-athletes stated they could not major in their preferred choice because of their sport, and about forty-five percent were “less than positive” that they would be able to keep up with classes during their sport’s season.<sup>27</sup> Additionally, the NCAA restricts the number of Countable Athletically Related Activities (“CARA”)

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no remuneration for such participation other than use of athletic equipment, uniform, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto

from being an employee. *Id.* (quoting CAL. LAB. CODE § 3352 (West 2018)).

19. Shephard v. Loyola Marymount Univ., 125 Cal. Rptr. 2d 829, 830 (Ct. App. 2002).

20. *Id.* at 832.

21. See, e.g., *Coleman v. W. Mich. Univ.*, 336 N.W.2d 224, 228 (Mich. Ct. App. 1983) (“Upon reviewing the record and the relevant law, we conclude that the WCAB did not err in finding that our plaintiff was not an ‘employee’ of defendant within the meaning of the act.”); *Rensing v. Ind. State Univ. Bd. of Trs.*, 444 N.E.2d 1170, 1173 (Ind. 1983) (“An athlete receiving financial aid is still first and foremost a student.”); *State Comp. Ins. Fund v. Indus. Comm’n*, 314 P.2d 288, 290 (Colo. 1957) (en banc) (“No definition of ‘arising out of and in the course of the employment’ to be found in this jurisdiction can be stretched to cover the instant case.”).

22. See *Berger v. NCAA*, 843 F.3d 285, 294 (7th Cir. 2016).

23. *Id.* at 293.

24. *Id.*

25. *Livers v. NCAA*, No. 17-cv-4271, 2018 WL 2291027, at \*12 (E.D. Pa. May 17, 2018).

26. *Id.* at \*2.

27. *Id.*

hours that student-athletes can engage in each week.<sup>28</sup> Although the maximum number of CARA hours cannot exceed four hours per day or twenty hours per week, student-athletes report spending more than thirty to forty hours a week on their sport.<sup>29</sup> Despite the significant control over student-athletes and time spent on athletics, the court ultimately held that student-athletes were more similar to extracurricular-activity participants than employees.<sup>30</sup>

The 2019 *Dawson v. NCAA* case that held student-athletes are not employees of the NCAA or their university's conference.<sup>31</sup> Attacking from a different angle, a University of Southern California football player claimed the NCAA and Pac-12, rather than the university, were his employer under state and federal law.<sup>32</sup> Dawson alleged the NCAA and Pac-12 acted as joint employers because they "prescrib[ed] the terms and conditions under which student-athletes perform services."<sup>33</sup> The court, however, ruled in favor of the Pac-12 and NCAA.<sup>34</sup> The court stated that the NCAA and Pac-12 did not compensate the student-athletes because scholarship compensation comes from the university.<sup>35</sup> The court acknowledged that NCAA bylaws do regulate college athletics; however, neither the NCAA nor the Pac-12 have the power to hire and fire student-athletes analogous to an employment relationship.<sup>36</sup> Overall, the *Dawson* court held that California's state labor code and the FLSA did not favor treating student-athletes as employees.<sup>37</sup>

## 2. More Recent Incremental Increases in Scholarship Compensation

Alongside advocating for employee status, student-athletes consistently argue for the expansion of compensation within their athletic scholarships.<sup>38</sup>

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28. *Id.* at \*5 (citing a 2015 NCAA Growth, Aspirations, and Learning of Students study that compared the time commitment of student-athletes and students participating in work study programs); NCAA DIVISION I MANUAL, *supra* note 7, § 17.1.7.1, at 227 (2023).

29. *Livers*, 2018 WL 2291027, at \*4. One big reason student-athletes regularly go over the CARA cap is because all competition-day activities "count as three hours regardless of the actual duration of these activities." Decision and Direction of Election, Trs. Dartmouth Coll., No. 01-RC-325633, at 5 (N.L.R.B. Feb. 5, 2024).

30. *Livers*, 2018 WL 2291027, at \*9.

31. *Dawson v. NCAA*, 932 F.3d 905, 908 (9th Cir. 2019).

32. *Id.* at 907. The question of whether a student-athlete's respective university is their employer was not examined by the court. *See generally id.*

33. *Id.* at 908.

34. *Id.*

35. *Id.* The court did not address the question of whether Dawson's scholarship should be considered compensation. *Id.* at 909.

36. *Id.* at 910; *see also id.* at 908 ("NCAA [B]ylaw 12.1.4 provides that financial aid is 'not considered to be pay or the promise of pay for athletics skill.' Bylaw 12.1.2 further prohibits any payment to a student-athlete for athletic services.").

37. *Id.* at 913-14.

38. *See NCAA v. Alston*, 594 U.S. 69, 82 (2021) (discussing the district court's finding that the "NCAA's compensation limits 'produce significant anticompetitive effects'" in the student-athletes' antitrust suit against the NCAA to advocate for fairer compensation); *NCAA v. Bd. of Regents*, 468 U.S. 85, 94-95 (1984) (detailing the student-athletes' attempted negotiation with the NCAA for a voice in the plan to televise college football games); *O'Bannon v. NCAA*, 802 F.3d

In 1956, universities, for the first time, were allowed to pay for “room, board, books, fees, and ‘cash for incidental expenses such as laundry.’”<sup>39</sup> Allowing payment for certain living expenses relieved student-athletes of a significant portion of their remaining collegiate expenses. Such action eased the financial strain on student-athletes and paved the way for future student-athletes to gain additional rights. Almost twenty years later, in 1974, professional athletes paid in one sport gained the right to compete as amateurs within the NCAA in different sports.<sup>40</sup> Talented athletes in multiple sports could now make money as a professional in one sport while receiving compensation in the form of a college athletic scholarship in another sport, doubling multisport athletes’ opportunities for compensation.

Additionally, in 1984, the U.S. Supreme Court struck down the NCAA’s television plan that limited the number of games a single college could televise as a violation of section 1 of the Sherman Antitrust Act.<sup>41</sup> The NCAA’s position that live ticket sales must be protected by limiting the compensation universities receive for broadcasting their games was “not [] arguably tailored to serve [the NCAA’s] interest.”<sup>42</sup> Allowing universities to earn additional television revenue was impactful, as today television revenue makes up a significant portion of most universities’ budgets and allows for increased expenditures on student-athletes.<sup>43</sup> Although all of these court rulings were beneficial in expanding student-athlete compensation, student-athletes were still restricted from receiving fair market value compensation for their services.

Prior to 2015, NCAA member schools were prohibited from paying for student-athletes’ living expenses, meals, or other benefits that otherwise make up what is known today as the cost of attendance.<sup>44</sup> In the monumental case *O’Bannon v. NCAA*, the NCAA argued limiting compensation for student-athletes was “necessary to preserve the amateur tradition and identity of college sports.”<sup>45</sup> The U.S. Court of Appeals for the Ninth Circuit, however, held that NCAA member schools awarding scholarships up to the full cost of attendance was a “substantially less restrictive” model of compensation that would not

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1049, 1074–75 (9th Cir. 2015) (agreeing with student-athletes that they should be able to receive full-tuition scholarships for participation in college sports).

39. *Alston*, 594 U.S. at 79 (quoting *In re NCAA Athletic Grant-In-Aid Cap Antitr. Litig.*, 375 F. Supp. 3d 1058, 1063 (N.D. Cal. 2019)).

40. *Id.*

41. *Bd. of Regents*, 468 U.S. at 88, 91–95.

42. *Id.* at 119.

43. Scott Hodge, *The Big Business of Tax-Free College Sports*, TAX FOUND. (Aug. 21, 2023), <https://taxfoundation.org/blog/college-sports-tax-free-revenue> [https://perma.cc/728K-AZVT] (“The NCAA’s 990 tax return shows that it generated \$939 million in TV rights in 2021, [seventy-seven] percent of the conference’s \$1.2 billion in total revenues.”).

44. Cost of attendance is a broader term than tuition. Cost of attendance includes tuition along with numerous other costs including fees, housing costs, meal plans, textbooks, etc. Overall, scholarships that cover the cost of attendance rather than only tuition allow individuals to save out-of-pocket costs on numerous living expenses.

45. *O’Bannon v. NCAA*, 802 F.3d 1049, 1058 (9th Cir. 2015) (quoting *O’Bannon v. NCAA*, 7 F. Supp. 3d 955, 999 (N.D. Cal. 2014)).



negatively impact the amateurism of collegiate athletics.<sup>46</sup> Although student-athletes won in terms of getting their cost of attendance paid for in scholarships, the court denied a claim asking for student-athletes to be paid \$5,000 in cash compensation per year.<sup>47</sup> However, in his concurrence, Chief Judge Thomas disagreed with the denial of the cash compensation and instead thought the \$5,000 payments per year held in trust was justified as the district court found “deferred compensation would not significantly reduce consumer demand for college sports.”<sup>48</sup> Chief Judge Thomas’s concurrence left the door open for future student-athletes to demand payment for their services.<sup>49</sup>

Six years later, the Supreme Court decided *NCAA v. Alston* in a similar manner on an appeal by the NCAA seeking immunity from antitrust laws.<sup>50</sup> The Court acknowledged the complex financial relationship between collegiate sports and money while also stating student-athlete compensation has continuously expanded.<sup>51</sup> The Court recognized what student-athletes had claimed for years: The NCAA and universities disproportionately profit and benefit at the expense of student-athletes.<sup>52</sup> Overall, *Alston* expanded the rights and privileges of student-athletes by permitting universities to pay for education-related benefits like computers or tutoring.<sup>53</sup>

Although *Alston* specifically examined education-related compensation rules by the NCAA, Justice Kavanaugh wrote a concurrence that opened the door for much broader arguments regarding the legality of the remaining NCAA compensation rules under antitrust law.<sup>54</sup> Justice Kavanaugh noted that the NCAA recognizes its (1) control over the college athletics market; (2) restrictive compensation bylaws requiring below-market-rate compensation of student-athletes; and (3) power over student-athletes who lack the ability to negotiate compensation with the NCAA.<sup>55</sup> However, the NCAA still argued restrictive compensation bylaws are “procompetitive because those rules help define the product of college sports.”<sup>56</sup> Justice Kavanaugh found “that argument

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46. *Id.* at 1074–75.

47. *Id.* at 1078–79 (“The difference between offering student-athletes education-related compensation and offering them cash sums untethered to educational expenses is not minor; it is a quantum leap. Once that line is crossed, we see no basis for returning to a rule of amateurism and no defined stopping point.” (footnote omitted)).

48. *Id.* at 1083 (Thomas, C.J., concurring in part and dissenting in part). Chief Justice Thomas argued that plaintiffs should not have to show alternative methods of compensation that are “virtually as effective” to preserve amateurism as amateurism in an ever-changing concept. *Id.*

49. *See, e.g.,* *Johnson v. NCAA*, 556 F. Supp. 3d 491, 512 (E.D. Pa. 2021) (arguing student-athletes are employees of their universities), *aff’d in part, vacated in part, remanded*, 108 F.4th 163 (3d Cir. 2024).

50. *NCAA v. Alston*, 594 U.S. 69, 73–74 (2021).

51. *Id.* at 74–77.

52. *Id.* at 80 (comparing how the NCAA president “earns nearly \$4 million per year” and “college athletic directors average more than \$1 million annually”).

53. *Id.* at 107 (acknowledging that while amateurism is important in college sports, it is not the job of “appellate judges . . . to resolve it”).

54. *See id.* at 107–10 (Kavanaugh, J., concurring).

55. *Id.* at 109.

56. *Id.*

. . . circular and unpersuasive.”<sup>57</sup> Student-athletes earn their universities billions of dollars in revenue that benefit just about everyone except for the student-athletes.<sup>58</sup> The NCAA should not be allowed to simply label amateurism as the defining feature of collegiate athletics because “labels cannot disguise the reality: The NCAA’s business model would be flatly illegal in almost any other industry in America.”<sup>59</sup> The tradition of collegiate athletics alone is an insufficient justification for not fairly compensating student-athletes.<sup>60</sup> “The NCAA is not above the law.”<sup>61</sup> Justice Kavanaugh’s concurrence inspired more legal challenges to the NCAA’s compensation of athletes and laid the groundwork for future arguments advocating for fair compensation of student-athletes.<sup>62</sup>

### 3. *Johnson* Pushes Employment Status Argument Forward

Because courts have consistently held that student-athletes are not employees, the sports world was shocked in 2021 when the NCAA’s motion to dismiss was denied in a case in which student-athletes argued they were employees of their universities and the NCAA.<sup>63</sup> In *Johnson v. NCAA*, student-athletes brought a suit against their universities alleging they should be paid for their athletic activities.<sup>64</sup> The NCAA filed a motion to dismiss, arguing the NCAA bylaws prohibited student-athletes from getting paid and schools from offering payment for their athletic services.<sup>65</sup> In a monumental ruling, the court held that student-athletes could plausibly be considered employees of the universities they attend.<sup>66</sup> The court reasoned that universities exert significant control over student-athletes and “amateurism” was not an excuse to treat student-athletes as nonemployees.<sup>67</sup>

In July 2024, the Third Circuit affirmed the district court’s denial of the motion to dismiss but held that the lower court applied the wrong test when determining whether student-athletes are employees under the FLSA.<sup>68</sup> The Third Circuit remanded the case to determine whether student-athletes may

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57. *Id.*

58. *Id.* at 110.

59. *Id.* at 109.

60. *Id.* at 111–12.

61. *Id.*

62. Sean Gregory, *Why the NCAA Should Be Terrified of Supreme Court Justice Kavanaugh’s Concurrence*, TIME (June 21, 2021, 6:24 PM), <https://time.com/6074583/ncaa-supreme-court-ruling> [<https://perma.cc/AT6F-VC3U>].

63. *Johnson v. NCAA*, 556 F. Supp. 3d 491, 495 (E.D. Pa. 2021), *aff’d in part, vacated in part, remanded*, 108 F.4th 163 (3d Cir. 2024).

64. *Id.*

65. *Id.* at 496 (“The NCAA’s [b]ylaws prohibit schools from offering wages and prohibit student athletes from accepting wages.”).

66. *Id.* at 512.

67. *Id.* at 501 (“[C]olleges may decline to pay student athletes because the defining feature of college sports . . . is that the student athletes are not paid . . . is circular and unpersuasive.” (quoting *NCAA v. Alston*, 594 U.S. 69, 109 (2021) (Kavanaugh, J., concurring))).

68. *Johnson*, 108 F.4th at 167.

be employees under the “economic realities analysis grounded in common-law agency principles.”<sup>69</sup> The court held that:

[C]ollege athletes may be employees under the FLSA when they (a) perform services for another party, (b) “necessarily and primarily for the [other party’s] benefit,” (c) under that party’s control or right of control, and (d) in return for “express” or “implied” compensation or “in-kind benefits.” If so, the athlete in question may plainly fall within the meaning of “employee” as defined in 29 U.S.C. § 203(e)(1). Ultimately, the touchstone remains whether the cumulative circumstances of the relationship between the athlete and college or NCAA reveal an economic reality that is that of an employee-employer.<sup>70</sup>

The court recognized that receiving “in-kind benefits” is a broad term—including things “like food, clothing, shelter, and other benefits as compensation”—that may support a finding that athletes perform athletic services “in return for ‘express’ or ‘implied’ compensation.”<sup>71</sup>

Both the National Labor Relations Act (“NLRA”) and FLSA define “employee” and “employer” broadly, and the tradition of amateurism is not a shield to claims that student-athletes are employees.<sup>72</sup> The Third Circuit thought the term “student-athlete”—implying that college players are amateurs rather than employees—was “[l]ike ‘band-aid’ or ‘laundromat,’ . . . [and] is essentially a brand name that has become synonymous with its product.”<sup>73</sup> But it does not define players’ legal status.<sup>74</sup> Accordingly, the economic realities test should be used to “distinguish[] college athletes who ‘play’ their sports for predominately recreational or noncommercial reasons from those whose play crosses the legal line into work protected by the FLSA.”<sup>75</sup> With future litigation on the horizon and a sympathetic NLRB,<sup>76</sup> *Johnson* instills hope that student-athletes may achieve their goal of obtaining employee status.<sup>77</sup>

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69. *Id.*

70. *Id.* at 180 (footnote omitted) (citations omitted).

71. *Id.* at 177.

72. *Id.* at 181.

73. *Id.* at 171.

74. *Id.*

75. *Id.* at 182.

76. *See infra* Section I.B.2.i.

77. Nicole Auerbach & Mike Vorkunov, *Understanding Johnson v. NCAA, The Next Case That Could Upend the College Sports Model*, ATHLETIC (Aug. 12, 2022), <https://theathletic.com/3497617/2022/08/12/johnson-v-ncaa-college-athletes-employees> (on file with the *Iowa Law Review*). The *Johnson* case has the potential to create broad implications, with a chance of a circuit split leading to the Supreme Court, which “appears rather hostile toward the NCAA’s position,” ultimately deciding the fate of the NCAA. *Id.* The status quo prohibiting student-athletes as employees is in danger of a significant change. *See id.*

*B. REGULATORY BODIES ARE EXPANDING STUDENT-ATHLETE COMPENSATION*

Although student-athletes made incremental gains in compensation in the courtroom, policy changes outside the courts substantially benefited student-athletes. As of July 2021, student-athletes across the country gained the monumental right to profit from their name, image, and likeness. Additionally, the NLRB General Counsel Jennifer Abruzzo issued a memorandum advocating for the treatment of student-athletes as employees.<sup>78</sup> Ms. Abruzzo argues that student-athletes meet the definition of an employee under two commonly used tests to determine employment status.<sup>79</sup> Whether a state uses the right to control test, which focuses on the amount of power and autonomy one has over their work,<sup>80</sup> or the economic realities test, where an expansive analysis considers whether an individual is economically dependent on their alleged employer,<sup>81</sup> both tests lean towards the treatment of student-athletes as employees.

1. Updated NCAA Bylaws Allow Student-Athletes to Profit from Their Name, Image, and Likeness

The most important financial gain for student-athletes in recent years is the ability to profit from their name, image, and likeness. California's Fair Pay to Play Act in 2019 was the first state law that precluded the NCAA, conferences, and universities from banning NIL compensation.<sup>82</sup> Soon after, similar bills were introduced in states across the country, including Florida, Washington, Illinois, and Iowa.<sup>83</sup> Today, thirty-two states have passed NIL laws.<sup>84</sup> As California pushed other states to consider adopting their own NIL legislation, differing laws emerged in different states creating confusion and uncertainty about what NIL compensation was allowed.

Pressured by impending state laws that would prohibit the NCAA's ban on NIL compensation for student-athletes, the NCAA announced a significant departure from its long-standing position by stating that starting July 2021, student-athletes could engage in opportunities to profit from their NIL.<sup>85</sup> The interim policy provided limited guidance that left many student-athletes and

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78. See ABRUZZO, *supra* note 4, at 1.

79. *Id.*

80. See IOWA ADMIN. CODE r. 871-23.19 (2024); Bieluczyk v. Crown Petrol. Corp., 58 A.2d 380, 383 (Conn. 1948).

81. See *Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, WAGE & HOUR DIV., U.S. DEP'T OF LAB. (Mar. 2024), <https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship> [<https://perma.cc/SJ5N-MRVT>].

82. CAL. EDUC. CODE § 67456(a) (West 2021); see *Your Guide to Federal and State Laws on Name, Image and Likeness Rules for NCAA Athletes*, SAUL EWING LLP, <https://www.saul.com/nil-legislation-tracker> [<https://perma.cc/KJQ9-WSB5>].

83. Zach Barnett, *How Many States Are Working on Pay-for-Play Laws?*, FOOTBALL SCOOP (Mar. 6, 2020), <https://footballcoop.com/news/how-many-states-are-working-on-pay-for-play-laws> (on file with the *Iowa Law Review*).

84. *Your Guide to Federal and State Laws on Name, Image and Likeness Rules for NCAA Athletes*, *supra* note 82.

85. Hosick, *supra* note 9.

universities unsure of what was allowed.<sup>86</sup> The NCAA claimed the interim NIL policy was temporary until federal legislation was passed or the NCAA adopted new rules.<sup>87</sup> With a big change in how student-athletes could be compensated but little guidance on the new rule, the NCAA turned into the wild west.<sup>88</sup> Student-athletes began to enter the transfer portal<sup>89</sup> at record rates as university collectives induced student-athletes to come to their schools through lucrative NIL offers.<sup>90</sup> Although some student-athletes used the transfer portal as a way for a new beginning, “for some of the top talent in the country, the portal has become the NCAA’s equivalent to free agency.”<sup>91</sup> There is real concern that the NIL model of compensation within NCAA athletics is unsustainable.<sup>92</sup>

It was not until October 2022, over a year after NIL compensation was allowed, that the NCAA issued additional guidance on the NIL interim policy.<sup>93</sup> This guidance was the first time the NCAA specifically addressed that institutions cannot be involved with NIL activities regarding current student-athletes.<sup>94</sup>

86. *Id.* (providing guidance that left most of NIL regulations and guidance up to each individual state in which a university was located). Additionally, the NCAA guidance was announced one day prior to taking effect, increasing questions surrounding what activities were allowed versus prohibited. See Joseph Salvador, *NCAA Approves Interim NIL Policy, Change Will Take Effect Thursday*, SPORTS ILLUSTRATED (June 30, 2021), <https://www.si.com/college/2021/06/30/nil-interim-policy-approved-starting-thursday> [<https://perma.cc/JQ36-V9X5>].

87. Hosick, *supra* note 9. Until the NCAA gets “Congress to adopt federal legislation to support student-athletes[,]’ . . . schools and conferences may choose to adopt their own additional policies.” *Id.*

88. Mark Wogenrich, *Penn State’s James Franklin Calls NIL ‘the Wild, Wild West’*, PENN ST. NITTANY LIONS ON SI (Dec. 26, 2022, 12:37 AM), <https://www.si.com/college/pennstate/football/penn-state-football-james-franklin-nil-wild-wild-west> [<https://perma.cc/CB7F-C28G>]. Penn State’s football coach stated that, in terms of NIL, “[t]here’s just really no guardrails, not a whole lot of guidance, not a whole lot of governance. And it’s concerning.” *Id.*

89. The transfer portal is a database that “manage[s] the transfer process from start to finish.” Tom Schad, *NCAA Transfer Portal, Explained: What It Actually Is and How It Works in College Football*, USA TODAY (Nov. 29, 2023, 11:55 AM), <https://www.usatoday.com/story/sports/ncaaf/2022/12/15/ncaa-college-football-transfer-portal-explained/10889658002> [<https://perma.cc/NNK3-M777>]. Prior to such system, coaches often used word of mouth to determine which athletes at different universities wanted to transfer. *Id.*

90. Jake Fischer, *‘It’s the Wild, Wild West’: NIL Turning College Hoops Business Upside Down*, BLEACHER REP. (Mar. 25, 2022), <https://bleacherreport.com/articles/10030809-its-the-wild-wild-west-nil-turning-college-hoops-business-upside-down> [<https://perma.cc/398T-ZP2N>]. In 2021, over 1,700 basketball players entered the transfer portal, whereas in 2020, only 1,013 players entered the transfer portal. *Id.*

91. Pete Nakos, *Transfer Portal, NIL on Collision Course: ‘I’m Expecting Total Chaos’*, ON3: NIL (Nov. 17, 2022), <https://www.on3.com/nil/news/transfer-portal-nil-college-football-collision-course-ncaa-collectives> [<https://perma.cc/J6LM-GF62>].

92. Tim Tucker, *‘The Wild West’: College Sports’ NIL Era Brings Upheaval*, ATLANTA J.-CONST. (Mar. 18, 2022), <https://www.ajc.com/sports/georgia-bulldogs/the-wild-west-college-sports-nil-era-brings-upheaval/YORTVG5VAZCMPBLMVK42QMA63E> [<https://perma.cc/GEW5-6M63>] (raising questions as to whether “people funneling money to athletes is a sustainable model” long term).

93. NCAA, NCAA DIV. I: INSTITUTIONAL INVOLVEMENT IN A STUDENT-ATHLETE’S NAME, IMAGE AND LIKENESS ACTIVITIES 1 (2022), [https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL\\_InstitutionalInvolvementNILActivities.pdf](https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL_InstitutionalInvolvementNILActivities.pdf) [<https://perma.cc/986U-R5JP>].

94. *Id.* at 2 (“The guidance is effective immediately. For violations that occurred prior to the publication date of this document, the Board of Directors directed the NCAA enforcement

Although the NCAA's guidance still states that it is subject to state laws or executive actions, it provides a chart of permissible and impermissible activities that institutions can engage in to support student-athletes in their NIL activities.<sup>95</sup> With clearer guidance and increased consistency across the country, the NCAA hopes to mitigate the chaos surrounding NIL. The NCAA dug its heels in for years, refusing to allow NIL compensation, but eventually, social pressures from student-athletes and state legislatures influenced the NCAA to update its policy and allow NIL compensation.

Furthermore, on May 23, 2024, the NCAA and the Power Five conferences agreed to share revenue with student-athletes.<sup>96</sup> Universities will be allowed to "share up to roughly \$20 million per year with its athletes," and "[t]he NCAA will pay more than \$2.7 billion in damages over [ten] years to past and current athletes."<sup>97</sup> Although the settlement must be approved by a judge, overall the settlement demonstrates the continual push for student-athletes to gain compensation.<sup>98</sup> Further discussion regarding revenue-sharing amongst schools and student-athletes is beyond the scope of this Note. Going forward, student-athletes hope additional societal influences or state legislatures will again push the NCAA to evolve, this time regarding the employment status of student-athletes.

## 2. The Definition of an Employee Is Understood by Labor Regulators to Include Student-Athletes

Although significant case history denies student-athletes the status of employees, the NLRB's General Counsel is pushing to expand student-athlete compensation through an employment model.<sup>99</sup> Additionally, the NLRB's common-law and statutory tests for whether an individual is an employee indicate that student-athletes are employees.

### *i. The NLRB's General Counsel Supports Treating Student-Athletes as Employees*

The General Counsel of the NLRB, Jennifer Abruzzo, recently published a memo encouraging student-athletes to bring claims against their universities,

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staff to review the facts of individual cases but to pursue only those actions that clearly are contrary to the published interim policy, including the most severe violations of institutional involvement or pay for play.").

95. *Id.* at 3. The NCAA's additional guidance provided, among other things, that institutions are allowed to hold education sessions regarding NIL, provide contact information to student-athletes regarding NIL entities, or promote a student-athlete's NIL activities on the institution's own platform. *Id.* However, impermissible activities by institutions include but are not limited to, communicating a student-athlete's request for compensation with an NIL entity, proactively helping a student-athlete develop NIL activity, or providing service or equipment to support NIL activities. *Id.*

96. Dan Murphy & Pete Thamel, *NCAA, Power 5 Agree to Deal That Will Let Schools Pay Players*, ESPN (May 23, 2024, 7:34 PM), [https://www.espn.com/college-sports/story/\\_/id/40206364/ncaa-power-conferences-agree-allow-schools-pay-players](https://www.espn.com/college-sports/story/_/id/40206364/ncaa-power-conferences-agree-allow-schools-pay-players) [<https://perma.cc/EW8W-36XM>].

97. *Id.*

98. *Id.*

99. ABRUZZO, *supra* note 4, at 1.

stating that she thought student-athletes should have employment status.<sup>100</sup> Ms. Abruzzo explained that while the NLRB did not exercise jurisdiction in the *Northwestern University* case where scholarship football student-athletes sued over the right to gain collective action, the Board also did not make a ruling precluding “the finding that scholarship football players at private colleges and universities [] are employees under the Act.”<sup>101</sup> Ms. Abruzzo believes student-athletes are employees under the NLRA’s policies and statutory language.<sup>102</sup> The NLRA defines an employee broadly with “only a few enumerated exceptions.”<sup>103</sup> Ms. Abruzzo argues the basic idea behind an employee is met when a player performs a service for their university and the NCAA in return for relinquishing control and expecting compensation.<sup>104</sup> She said that she “w[ould] consider pursuing a joint employer theory of liability” or “charges against an athletic conference or association even if some member schools are state institutions.”<sup>105</sup> Although Ms. Abruzzo focused her argument on private universities,<sup>106</sup> she left the door open for student-athletes to challenge the employment status at hundreds of state universities across the country.

*ii. Two Tests Define an Employee*

Scholars in the sports law field also argue that student-athletes meet the definition of an employee under both the common law right to control test and economic realities test.<sup>107</sup> The right to control test examines whether an individual has discretion in how he or she performs the work.<sup>108</sup> The court asks questions such as “[w]ho has the right to direct what shall be done and when and how it shall be done? Who has the right to the general control?”<sup>109</sup> While courts require an employer to exert more than limited control over an employee’s work,<sup>110</sup> an individual who “is subject to the will of the other in

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100. *See id.* at 9 n.34.

101. *Id.* at 2.

102. *Id.*

103. *Id.*

104. *Id.* at 3. In the *Northwestern* case before the NLRB, the agency found football players earned their university and the NCAA profits over tens of millions of dollars; football players were compensated in excess of \$76,000 per year in the form of their scholarship and stipend, and the players were subject to significant control by the NCAA and their university in terms of hours of practice, minimum grade point average, or scholarship eligibility. *Id.*

105. *Id.* at 9 n.34 (“Therefore, [the NLRB General Counsel] will consider pursuing charges against an athletic conference or association even if some member schools are state institutions.”).

106. Ms. Abruzzo’s argument focused on private universities because the *Northwestern University* case from 2015 was a private university claim.

107. Jamie Nicole Johnson, Note, *Removing the Cloak of Amateurism: Employing College Athletes and Creating Optional Education*, 2015 U. ILL. L. REV. 959, 974-79.

108. *See* IOWA ADMIN. CODE r. 871-23.19 (2024); *Bieluczyk v. Crown Petrol. Corp.*, 58 A.2d 380, 383 (Conn. 1948) (detailing a scenario in which the services rendered by an employee were controlled by the defendant).

109. *Francis v. Franklin Cafeteria*, 195 A. 198, 200 (Conn. 1937) (quoting *Thompson v. Twiss*, 97 A. 328, 330 (Conn. 1916)).

110. *Id.* at 201 (holding an employee was an independent contractor and not an employee because any directions given by the business did not constitute supervision or control).

the mode and manner in which the service is to be done” is considered an employee.<sup>111</sup> No one factor is dispositive, as a court must consider, among other factors, the extent of control an “employer” exerts over the work details; whether the worker “is engaged in a distinct occupation or business; . . . the length of time for which the person is employed; [and] the method of payment.”<sup>112</sup>

Iowa uses a version of the right to control test, found in Iowa Administrative Code rule 871-23.19.<sup>113</sup> In Iowa, it is not necessary for employers to “actually direct or control the manner in which services are performed” but rather, it is sufficient that the employer is capable of doing so.<sup>114</sup> Additional characteristics listed in the Iowa Code that indicate employment status include “furnishing of tools, equipment, material and a place to work to the individual who performs the services.”<sup>115</sup> Because the NCAA, athletic conferences, and individual institutions each have their own set of regulations that student-athletes are subject to, student-athletes argue that they are employees as they do not have autonomy over the services they provide.<sup>116</sup> Additionally, universities often provide student-athletes the equipment and workspace necessary to play their sport.<sup>117</sup>

The economic realities test takes a more expansive view of the definition of “employ.”<sup>118</sup> The U.S. Code defines “employ” to mean “to suffer or permit to work,”<sup>119</sup> and therefore considers most workers “employees” under the FLSA.<sup>120</sup> Unlike other tests, courts focus on the economic dependence of the alleged employees.<sup>121</sup> Although no set of factors is dispositive in determining whether an individual is an employee versus an independent contractor, the economic realities test looks at:

“(1) the degree of control exercised by the alleged employer; (2) the extent of the relative investments of the worker and the alleged employer; (3) the degree to which the worker’s opportunity for profit or loss is determined by the alleged employer; (4) the skill and

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111. *Bieluczyk*, 58 A.2d at 383 (finding an injury arose in the course of an employment relationship because the defendant was authorized to do limited acts and was acting within his scope of employment).

112. *Atlanta Opera, Inc.*, 372 N.L.R.B. 95, slip op. at 2 (June 13, 2023).

113. IOWA ADMIN. CODE r. 871-23.19 (2024).

114. *Id.* at r. 871-23.19(1).

115. *Id.*

116. See discussion *infra* Section III.A (discussing how the NCAA and universities significantly control the lives of student-athletes, from what time they practice to what they may major in).

117. Athletes, such as those at the University of Iowa, receive new sports uniforms and practice equipment yearly. See, e.g., David Fletcher, *Gear Day – Christmas in August!*, ATHLETICADEMIX (Aug. 3, 2022), <https://athleticademix.com/gear-day-christmas-in-august> [<https://perma.cc/T4D2-VRXQ>].

118. See *Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, *supra* note 81.

119. 29 U.S.C. § 203(g) (2018).

120. RICK J. NORMAN, LOUISIANA PRACTICE SERIES: LOUISIANA EMPLOYMENT LAW § 1:16, Westlaw (database updated Dec. 2023).

121. *Johnson*, *supra* note 107, at 978.



initiative required in performing the job; and (5) the permanency of the relationship.”<sup>122</sup>

Student-athletes depend on their universities and the NCAA to provide compensation for them through scholarships and cover the costs of their work (i.e., gear, travel, meals, etc.).<sup>123</sup> Athletic scholarships allow numerous student-athletes to attend college in situations that would be financially impossible otherwise.<sup>124</sup> And the scholarships “comes with a host of conditions that must be met in order for the athlete to retain its renewal,” making the student-athlete dependent on the university’s requirements to receive the financial compensation.<sup>125</sup> As case law progresses, courts, such as the Third Circuit, recommend the use of the economic realities test when determining whether student-athletes are employees.<sup>126</sup>

C. *ATHLETICS IN IOWA ARE IMPORTANT TO THE STATE’S ECONOMY AND THEREFORE SHOULD BE IMPORTANT TO THE IOWA STATE LEGISLATURE*

Similar to how state legislatures pushed for NIL rights for student-athletes, state legislatures should require public universities in their state to proactively give student-athletes employee status and compensation. Recently, sports betting scandals spread across college athletics.<sup>127</sup> Numerous athletes were found illegally betting on college sporting events and, at times, even games that they participated in.<sup>128</sup> Iowa is leading the nation in charging student-athletes with sports betting violations, generating negative attention for Iowa’s major college institutions.<sup>129</sup>

122. *Parrish v. Premier Directional Drilling, L.P.*, 917 F.3d 369, 379 (5th Cir. 2019) (quoting *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 343 (5th Cir. 2008)); see 29 U.S.C. § 203(d) (defining employer as “any person acting directly or indirectly in the interest of an employer in relation to an employee”).

123. See discussion *infra* Section III.A.

124. See Nate Delesline III, *What Is an Athletic Scholarship?*, AFFORDABLE COLLS. (Apr. 12, 2023), <https://www.affordablecollegesonline.org/college-resource-center/how-do-athletic-scholarship-s-work> [<https://perma.cc/KYB7-3DLY>].

125. See Jason Belzer, *Leveling the Playing Field: Student Athletes or Employee Athletes?*, FORBES (Sept. 11, 2013, 10:50 AM), <https://www.forbes.com/sites/jasonbelzer/2013/09/09/leveling-the-playing-field-student-athletes-or-employee-athletes> (on file with the *Iowa Law Review*).

126. See *supra* Section I.A.3 (discussing how the Third Circuit in *Johnson* remanded the case because it held that the economic realities test should be used).

127. Scott Dochterman, *How a Gambling Sting Ensnared 2 Dozen Athletes and Raised Questions for the NCAA*, ATHLETIC (Apr. 24, 2024), <https://www.nytimes.com/athletic/5436872/2024/04/24/noah-shannon-iowa-gambling-case-ncaa-questions> (on file with the *Iowa Law Review*).

128. Trish Mehaffey, *Former Hawkeye Receiver Pleads Guilty to Underage Gambling*, GAZETTE (Sept. 15, 2023, 5:30 PM), <https://www.thegazette.com/crime-courts/former-hawkeye-receiver-pleads-guilty-to-underage-gambling> [<https://perma.cc/EA2S-CKVY>] (“Bruce made [eleven] wagers on six games he participated in during the 2021 season and eight wagers in five games that he appeared in during the 2022 season . . .”).

129. Eric Olson, *4 More Iowa Athletes Plead Guilty to Underage Gambling. Cases Go on for Six Athletes with ISU Ties*, ASSOCIATED PRESS (Sept. 18, 2023, 5:06 PM), <https://apnews.com/article/iowa-sports-wagering-hawkeyes-cyclones-dc789365fa46dea091e2278b524fbb5> [<https://perma.cc/XL9R-P3QZ>]. Four University of Iowa football players recently entered plea deals regarding criminal

Iowa's Racing and Gaming Commission rigorously examines wagering activities and has charged numerous student-athletes across the state with tampering of records.<sup>130</sup> These student-athletes face criminal charges and may have to forfeit any remaining eligibility they have,<sup>131</sup> ultimately impacting their respective teams.<sup>132</sup> Although sports betting amongst college athletes is not a new concept nor out of the ordinary,<sup>133</sup> Iowa has taken an aggressive approach in prosecuting these student-athletes, ultimately leading to suspensions, disappointed fans, and negative media attention.<sup>134</sup> With athletics across the state of Iowa gaining national attention because of these gambling scandals, the Iowa Legislature should use that attention to lead the charge for adequate student-athlete compensation. As California's Fair Pay to Play Act pushed the NCAA to update its NIL policies, Iowa should pass novel legislation that will encourage other states to adopt similar laws and influence the NCAA. Switching the dialogue in the state from gambling violations to promoting the value student-athletes provide by treating them as employees would show that Iowa prioritizes the well-being of its student-athletes.

Additionally, athletics and sports, in general, are an important part of Iowa's economy and have a long history of growth across the state.<sup>135</sup> Track meets were held in Iowa as early as the 1890s, and the first state championship for wrestling was held in Ames in 1921.<sup>136</sup> Iowa is representative of states across

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charges of illegal sports wagering. *Id.* Similarly, nine Iowa State athletes were charged with illegal sports wagering in the fall of 2023. *Id.*

130. *No Evidence Found that Betting Integrity Manipulated by Iowa and Iowa St. Athletes Tied to Gambling*, CBS NEWS (Aug. 4, 2023, 6:29 AM), <https://www.cbsnews.com/minnesota/news/no-evidence-found-that-game-results-were-manipulated-by-iowa-and-iowa-st-athletes-tied-to-gambling-4> [<https://perma.cc/gjXX-K9ES>] ("The seven athletes are suspected of combing for more than 5,000 wagers totaling more than \$100,000 that were placed between January 2021 through May 2023.")

131. *Id.* For example, Noah Shannon was in his sixth season at Iowa and was suspended for a year, ending his collegiate career for betting on another Hawkeye team. *See* Blake Baumgartner, *Noah Shannon's Appeal to NCAA Denied, Ending Iowa Career*, ESPN (Sept. 12, 2023, 3:54 PM), [https://www.espn.com/college-football/story/\\_/id/38387768/noah-shannon-appeal-ncaa-denied-ending-iowa-career](https://www.espn.com/college-football/story/_/id/38387768/noah-shannon-appeal-ncaa-denied-ending-iowa-career) [<https://perma.cc/TQ9D-AL7A>].

132. Iowa State lost their projected starting quarterback, Hunter Dekkers, causing the team to pivot and revamp their offense around a different quarterback. *See* Althea Cole, *Sports Betting Scandal a Letdown for College Fans in Iowa*, GAZETTE (Mar. 1, 2024, 1:22 PM), <https://www.thegazette.com/staff-columnists/sports-betting-scandal-a-letdown-for-college-fans-in-iowa> [<https://perma.cc/8AAR-JBV8>].

133. In a 2004 study, 23.5% of male student-athletes reported betting on sports within the past year, and 10% of those individuals have bet on sports within the past month. Jeffrey L. Derevensky & Tom Paskus, *Mind, Body and Sport: Gambling Among Student-Athletes*, NCAA, <https://www.ncaa.org/sports/2014/11/5/mind-body-and-sport-gambling-among-student-athletes.aspx> [<https://perma.cc/67P5-PE33>].

134. Cole, *supra* note 132.

135. *How Do Sports Reflect Culture?*, ST. HIST. SOC'Y IOWA, <https://history.iowa.gov/history/education/educator-resources/primary-source-sets/sports-culture> [<https://perma.cc/N9GV-JBFR>].

136. *Id.*; Matt Kelley, *Book Tells History of Iowa High School State Wrestling Tournament*, RADIOIOWA (Dec. 26, 2011), <https://www.radioiowa.com/2011/12/26/book-tells-history-of-iowa-high-school-state-wrestling-tournament> [<https://perma.cc/5P6R-CXAZ>].

the country as sports generate a significant boost to the state's economy.<sup>137</sup> For instance, based on sporting events booked by April of 2023, the Greater Des Moines area alone was projected to earn over sixty-seven million dollars.<sup>138</sup> New sports complexes are being built across the state with the hopes of increasing the positive economic impact that sports have on the state of Iowa's economy.<sup>139</sup>

Collegiate sports across Iowa also benefit their respective college towns and surrounding cities.<sup>140</sup> For example, Iowa City sees about \$14.5 million in economic impact every home game.<sup>141</sup> This value is comparable with Iowa's rivals across the Big Ten as Madison, Wisconsin gains about \$16 million per home game while Lincoln, Nebraska receives about \$12 million per home game.<sup>142</sup> With the sports betting scandal putting Iowa in the national media and the economic importance of sports to the state's economy, the Iowa Legislature should use that national attention to lead the push for the appropriate employment status and compensation of student-athletes.

## II. INADEQUACIES AND INEQUITIES UNDER THE CURRENT COMPENSATION REGIME

It is troubling that student-athletes provide services to the NCAA and their universities effectively as employees but are not compensated as such. Although the status of student-athletes as employees is nearing success—as demonstrated in recent court cases and changes made by regulatory bodies,<sup>143</sup> similar to student-athletes gaining NIL compensation rights—the NCAA will be reluctant to take any action until state legislatures persuade them to treat student-athletes as employees.

However, the solution of state legislatures requiring that student-athletes be treated as employees could cause additional problems, such as unequal treatment. The practicalities that come alongside universities paying student-athletes as employees cause fundamental financial and interpersonal issues. Universities, including Iowa's public institutions, will struggle to pay student-athletes their market value as employees and/or will have to cut small,

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137. Michael Crumb, *Coming Attractions: Sports Playing a Big Role in Central Iowa Economic Development*, BUS. REC. (Apr. 28, 2023, 6:00 AM), <https://www.businessrecord.com/coming-attractions-sports-playing-a-big-role-in-central-iowa-economic-development> [<https://perma.cc/NR5C-2GC9>].

138. *Id.*

139. *Id.* For example, RecPlex was built by MidAmerican Energy Company in West Des Moines. *Id.* RecPlex provided more than "\$12.4 million in economic impact" in 2022, including benefits for nearby restaurants and hotels. *Id.* Additionally, RecPlex "employs eight-full time [sic] staff and about [eighty] part-time employees." *Id.*

140. Andrew Brandt, *Football's Economic Impact on College Towns, College Players and the NFL*, SPORTS ILLUSTRATED (Aug. 18, 2020), <https://www.si.com/nfl/2020/08/18/economic-fallout-nfl-impact-of-college-football-season-cancellations> [<https://perma.cc/S4GE-RBL4>].

141. *Id.* With six or seven home games a season, Iowa City sees between \$87 million and \$101 million funneled into the community every year due only to football. *Id.*

142. *Id.*

143. *See supra* Section I.B.2.

nonrevenue-generating sports to adequately pay the student-athletes in more profitable sports.

A. *COMBINATION OF MONETARY INCENTIVES AND FINANCIAL DISPARITY BETWEEN SPORTS PROMOTES INEQUITY IN CONTRAST WITH THE NCAA MISSION*

Most public university athletic departments operate as stand-alone organizations, meaning they are privately funded and self-sufficient.<sup>144</sup> Additionally, because college athletic departments are typically structured as nonprofit organizations, universities are incentivized to equalize their revenue and expenses.<sup>145</sup> The NCAA and universities argue that because athletic departments typically do not earn a profit, it is financially impossible to pay college athletes as employees.<sup>146</sup> However, student-athletes point to “bloated spending” rather than rising costs to explain athletic departments’ struggles to earn a profit.<sup>147</sup> Changes to athletic department budgets must occur if institutions are going to compensate student-athletes while complying with the NCAA’s

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144. See Will Hobson & Steven Rich, *Playing in the Red: Big-Time College Athletic Departments Are Taking in More Money Than Ever—and Spending It Just as Fast. These 28 Schools Operated at a Loss in 2014*, WASH. POST (Nov. 23, 2015), <https://www.washingtonpost.com/sf/sports/wp/2015/11/23/running-up-the-bills> (on file with the *Iowa Law Review*) (stating that athletic directors are rarely prevented “from outspending their earnings”); Chloe Peterson, *UI President Barbara Wilson Says Iowa Athletics Will Pay Full \$4.2 Million in Racial Discrimination Lawsuit*, DAILY IOWAN (Mar. 9, 2023), <https://dailyiowan.com/2023/03/09/university-of-iowa-president-barbara-wilson-says-iowa-athletics-will-pay-full-4-2-million-settlement-amount-in-racial-discrimination-lawsuit> [<https://perma.cc/R47P-ZT5E>] (“Iowa Athletics is self-sustaining and does not receive taxpayer support or funding from students’ tuition.”).

145. Kevin Blue, *Rising Expenses in College Athletics and the Non-Profit Paradox*, ATHLETICDIRECTORU, <https://athleticdirector.com/articles/kevin-blue-rising-expenses-in-college-athletics-and-the-non-profit-paradox> [<https://perma.cc/A863-SgQR>]. College athletic departments are a unique type of nonprofit as they compete against one another “in a zero-sum game” where one athletic department wins at the expense of another losing. *Id.* Additionally, unlike typical nonprofit organizations, revenue has grown at a significantly higher rate (sixty-seven percent higher) in the past decade than other nonprofit sectors. *Id.*

146. *Id.* (“When revenue increases dramatically, increases in spending quickly follow.”).

147. *Id.* Indiana University is a prime example of a university that is able to earn a profit by avoiding lavish spending. See Hobson & Rich, *supra* note 144. Fred Glass, the Indiana athletic director, stated, “We don’t spend more than we take in.” *Id.* In comparison, Auburn struggles to break even due to large increases and carelessness in spending. See Bennett Durando, *Auburn Athletics Operates at First Deficit in 7 Years, a \$9.7 Million Loss in 2021*, MONTGOMERY ADVERTISER (Jan. 25, 2022, 2:29 PM), <https://www.montgomeryadvertiser.com/story/sports/college/auburn/2022/01/25/auburn-athletics-operates-financial-loss-first-time-7-years/9209701002> [<https://perma.cc/8DEN-X66P>]. *But see* Tom Green, *Auburn Athletics Reports Record Revenue, \$22.9 Million Profit in 2022*, AL.COM (Feb. 7, 2023, 12:22 PM), <https://www.al.com/auburn/2023/02/auburn-athletics-reports-record-revenue-229-million-profit-in-2022.html> [<https://perma.cc/9V9Q-KP6R>] (reporting Auburn’s recent “major financial bounce[]back” following increased ticket sales and cost-saving measures). For example, Auburn has paid \$26.2 million in buyouts to fired coaches since 2009, averaging “\$2.4 million in severance per year, which also ranks second nationally.” Brandon Marcello, *Auburn Ranks 2nd Nationally in Buyout Payments in Last 15 Years*, AUBURN UNDERCOVER (Apr. 1, 2020, 3:04 AM), <https://247sports.com/college/auburn/article/auburn-ranks-2nd-nationally-in-football-basketball-coaches-buyout-payments-in-last-15-years-145596540> (on file with the *Iowa Law Review*).

mission of providing “a fair, safe, equitable, and sportsmanlike” environment.<sup>148</sup> Right now, athletic departments claim that by “balancing the budget,” they do not have the funds necessary to compensate student-athletes as employees without cutting sports.<sup>149</sup>

#### 1. Discrepancies Identified in Economic Analysis of Public University Athletic Departments in Iowa

Although the 2023 University of Iowa Athletic Department budget submitted to the Board of Regents shows projected net revenue of almost \$129 million, detailed line items of the budget highlight large inequities of income and expenditures between genders and sports.<sup>150</sup> Unsurprisingly, football produces the most sport-specific revenue as it is projected to bring in \$22.8 million in 2023.<sup>151</sup> Aside from football, about four million dollars in income can be attributed to men’s sports, whereas women’s sports earn the university between \$390,000 and \$430,000 in a year.<sup>152</sup> With football factored in, men’s sports produce over sixty-two times more revenue than women’s sports at Iowa and about ten times more revenue if football is not taken into account.<sup>153</sup> These revenue statistics are disproportionate to the expenses produced by each gender’s sports programs; the total expenses of men’s athletics is only a little over twice as much as women’s sports.<sup>154</sup> With women’s athletics using more resources than they provide to an athletic department,<sup>155</sup> some question whether nonrevenue-generating athletes, particularly female student-athletes, deserve equal pay.

The trend of matching revenue to expenses and male sports earning more in revenue than women’s sports is not specific to the University of Iowa.<sup>156</sup> For example, at Iowa State University (“ISU”), both the proposed net revenue and proposed expenses in the athletic department for 2023 were a little over \$106 million each.<sup>157</sup> And like the University of Iowa, which is projected to get over

148. Joseph Esses, *Secrets of the Coaching Carousel: Whose House Is This?*, AM. BAR ASS’N (Apr. 28, 2023), [https://www.americanbar.org/groups/entertainment\\_sports/publications/entertainment-sports-lawyer/esl-39-01-spring-23/secrets-the-coaching-carousel-whose-house-this](https://www.americanbar.org/groups/entertainment_sports/publications/entertainment-sports-lawyer/esl-39-01-spring-23/secrets-the-coaching-carousel-whose-house-this) (on file with the *Iowa Law Review*).

149. Blue, *supra* note 145. Without systematic changes, universities will continue to aggressively expand their expenses to keep up with competitive challenges.

150. See BD. OF REGENTS, STATE OF IOWA, FY 2023 BUDGET – UNIVERSITIES, SPECIAL SCHOOLS, AND BOARD OFFICE 26 (2022), [https://www.iowaregents.edu/media/cms/0722\\_ITEM\\_7\\_Budgets\\_CC0C852DC4C05.pdf](https://www.iowaregents.edu/media/cms/0722_ITEM_7_Budgets_CC0C852DC4C05.pdf) [<https://perma.cc/5LKG-UVZM>].

151. *Id.*

152. *Id.* The revenue earned by women’s sports at Iowa is likely to increase following the successful 2024 Iowa women’s basketball season and the success of Caitlin Clark.

153. *Id.*

154. See *id.* Men’s sports are predicted to produce \$52,235,465 in expenses in 2023 whereas women’s sports are predicted to produce \$23,838,628 in total expenses. *Id.*

155. *Id.* at 43.

156. *Id.* at 35.

157. *Id.*

fifty-seven million dollars from the Big Ten in 2023,<sup>158</sup> the major revenue earning sources for ISU are conference and NCAA revenue along with foundation support and football ticket sales.<sup>159</sup>

Similarly, the athletic department at the University of Northern Iowa (“UNI”) is projected to earn and spend about \$14.6 million.<sup>160</sup> Football at the university earns a little over one million each year, while all women’s sports combined earn \$127,000.<sup>161</sup> Again, men’s sports at UNI only generate about one and half times more expenses than women’s sport despite being responsible for the lion’s share of the revenue.<sup>162</sup>

Overall, major public universities across Iowa demonstrate the trend seen across the nation: Athletic departments operate at a net zero-sum, leaving them without extra funds to pay the salaries of student-athletes as employees.<sup>163</sup> The reality of college athletics is that college athletes in a few revenue-generating sports fund all others, particularly female sports.<sup>164</sup>

## 2. NCAA Mission Promotes Equity, Unlike Unequal Payments to Student-Athletes

The purpose of the NCAA is foremost to foster student-athletes’ educational experience, not earn a profit or provide a professional model of athletics.<sup>165</sup> The NCAA aims to provide fair and equitable competition that allows athletics to be integrated into the educational experience of a student-athlete.<sup>166</sup> However, college athletics has grown exponentially, particularly in certain sports like football and basketball.<sup>167</sup> Because most sports rely on funding from profitable

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158. *Id.* at 26.

159. *Id.* at 35.

160. *Id.* at 43.

161. *Id.*

162. *Id.*

163. Blue, *supra* note 145.

164. BD. OF REGENTS, *supra* note 150, at 43. Iowa women’s basketball was the only female sport at the University of Iowa to earn a profit, resulting in a majority of the remaining women’s sports to be funded by primarily male sports like football. *Compare id.* (proposing \$400,000 of revenue on about \$1.2 million of operating expenses for women’s basketball), with John Steppe, *Iowa Women’s Basketball Sees 125 Percent Jump in Revenue, per NCAA Filing*, GAZETTE (Jan. 31, 2024, 9:11 AM), <https://www.thegazette.com/iowa-hawkeyes/iowa-womens-basketball-sees-125-percent-jump-in-revenue-per-ncaa-filing> (on file with the *Iowa Law Review*) (reporting actual ticket sales of \$1.4 million, about \$200,000 over predicted expenses).

165. Blue, *supra* note 145. Additionally, NIL has led to positive educational outcomes by encouraging student-athletes to stay in school longer because they are getting compensated. Joseph Zucker, *Iowa’s Caitlin Clark Ranked in NCAA Top 10 NIL Value Ahead of Championship vs. LSU*, BLEACHER REP. (Apr. 2, 2023), <https://bleacherreport.com/articles/10070948-iowas-caitlin-clark-ranked-in-ncaaw-top-10-nil-value-ahead-of-championship-vs-lsu> [<https://perma.cc/H64Z-Z2XF>] (“Per Her Hoop Stats, a rookie-scale contract would pay Clark a total of \$338,056 over four seasons. Even when factoring in her off-court earnings, a fifth year at Iowa might be far more lucrative than suiting up for a WNBA team.”).

166. Esses, *supra* note 148.

167. Chris Korman, *Do Not Listen to Athletic Directors Who Say Paying Players Means They’ll Have to Cut Sports*, USA TODAY SPORTS: FOR THE WIN (Nov. 19, 2021, 12:45 PM), <https://ftw.usatoday.com/2021/11/college-sports-reform-student-athletes-employees-lead-1-cut-sports> [<https://perma>

sports,<sup>168</sup> ninety of one hundred Football Bowl Subdivision (“FBS”) athletic directors surveyed “fear that allowing athletes to be classified as employees would ‘impact funding of nonrevenue sports.’”<sup>169</sup> With the push for the payment of student-athletes, universities need to make room in their budget to not only fund and maintain all of their current sports, but also compensate all student-athletes equitably. As athletic departments usually do not operate with significant profits,<sup>170</sup> athletic departments may turn to cutting unprofitable sports to afford compensating other student-athletes as employees.

Female sports, in particular, are largely nonrevenue-generating sports that contribute significantly less to other sources of income a university receives, such as athletic conference income, media contracts, and foundation support.<sup>171</sup> Although some female athletes have greatly benefited from being allowed to profit from their NIL, men’s sports dominate the NIL arena overall with collectives often supporting just a few, predominately male sports.<sup>172</sup> Additionally, all public universities are subject to Title IX restrictions that require equal opportunities and benefits for both female and male athletic programs.<sup>173</sup> Therefore, if universities attempt to cut sports to pay wages to

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.cc/9GYB-LNB8]. The growth in college athletics can be characterized as both positive and negative as universities can hire more support staff for student-athletes but also most of that extra revenue is spent on frivolous things to make sure the athletic department does not earn a profit to maintain its nonprofit status. *See id.*; Cynthia Hu, *Non-Revenue Sports Should Not Be Scapegoats for Budget Cuts*, JOHNS HOPKINS NEWS-LETTER (Oct. 22, 2020), <https://www.jhnewsletter.com/article/2020/10/non-revenue-sports-should-not-be-scapegoats-for-budget-cuts> [<https://perma.cc/LB54-ZJ55>] (finding the 2017–2018 basketball season earned the NCAA \$1 billion, seventy percent of which came from March Madness).

168. *See* discussion *supra* Section II.A.1.

169. Korman, *supra* note 167.

170. Blue, *supra* note 145 (explaining how athletic departments are incentivized to spend all of their profit to gain a competitive advantage).

171. *See* BD. OF REGENTS, *supra* note 150, at 26, 35, 43 (indicating that for the University of Iowa, ISU, and UNI’s 2023 budgets, female sports contributed significantly more to the expenses of an athletic department than to the revenue).

172. *See* Carrie N. Baker & Andy Zimbalist, *The Latest Title IX Battleground: Publicity Rights in College Sports*, MS. MAG. (Jan. 19, 2023), <https://msmagazine.com/2023/01/19/name-image-likeness-brand-sponsor-title-ix-women-college-sports> [<https://perma.cc/L8T6-E2QE>]. Collectives bring in their own issues with Title IX concerns as often they only fund one or two sports. For example, 133 football and men’s basketball players were paid \$500 a month to promote United Wholesale Mortgage, while the same offer was only extended to twenty-nine female student-athletes. *Id.* Similarly, until September 2023, the Swarm Collective that pays University of Iowa student-athletes only provided opportunities for compensation to football, men’s basketball, and women’s basketball. *See* Tom Kakert, *A Full Embrace of the Iowa Swarm Collective Is Needed*, HAWKEYE BEACON (Dec. 28, 2022), <https://iowa.rivals.com/news/a-full-embrace-of-the-iowa-swarm-collective-is-needed> [<https://perma.cc/5TQT-26TH>].

173. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 (“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 . . . .”); OFF. FOR C.R., U.S. DEP’T OF EDUC., TITLE IX AND ATHLETIC OPPORTUNITIES IN COLLEGES AND UNIVERSITIES 1 (2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-higher-ed-athletic-resource-202302.pdf> [<https://perma.cc/RQ2S-UEQL>]. Institutions have three options under which they can comply with Title IX. *Id.* at 9–12. The first is substantial proportionality which “looks to whether the percentage of women and men

student-athletes, they need to be cautious to stay in compliance with Title IX. Women's sports have come a long way—from only 15,000 female student-athletes in collegiate sports in the mid-1960s to double that number when Title IX was enacted in 1972 (and 226,212 today).<sup>174</sup> Although significant gains have been made in the subsequent fifty years, universities still struggle with Title IX compliance and would further struggle if they chose to eliminate female sports to save money for compensating players in revenue-generating programs.<sup>175</sup>

Even if athletic departments cut male and female sports equally to create a profit with which they could pay student-athletes, Olympic sports would be disproportionately harmed due to their nonrevenue nature.<sup>176</sup> The Intercollegiate Coach Association Coalition, an organization of Olympic sport associations, said that eliminating college sports “hurts the feeder system for American Olympic teams, destroys the motivation of youth athletes and . . . actually can cost schools millions in tuition dollars.”<sup>177</sup> The U.S. Olympic model differs from other countries in that sports are often tied to a school.<sup>178</sup>

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participants on athletic teams are about the same as—or ‘substantially proportionate’ to—the percentage of women and men enrolled full-time as undergraduates.” *Id.* at 9. The second option looks to see if a school “has a history and continuing (*i.e., present*) practice of expanding its athletic program to respond to the interests and abilities of women” or men, whichever is underrepresented. *Id.* at 11. Finally, the third option looks to see if there is an “unmet interest in a particular sport,” whether there is enough talent to sustain team, and if other schools close in proximity are competing in that sport. *Id.* at 11–13.

174. Brian L. Porto, *Unfinished Business: The Continuing Struggle for Equal Opportunity in College Sports on the Eve of Title IX's Fiftieth Anniversary*, 32 MARQ. SPORTS L. REV. 259, 260 (2021) (noting additionally that, in the five years after Title IX was enacted, universities saw the number of female student-athletes again double to about 63,000); Corbin McGuire, *A Look at Trends for Women in College Sports*, NCAA (Mar. 1, 2023, 10:22 AM), <https://www.ncaa.org/news/2023/3/1/media-center-a-look-at-trends-for-women-in-college-sports> [<https://perma.cc/Y26N-M37S>].

175. See McGuire, *supra* note 174. During the 2021–2022 NCAA women's championship sports season, 226,212 female student-athletes competed for universities across the country. *Id.* This number is a sixteen percent increase from a decade prior. *Id.* Additionally, there has been a thirty percent increase in female athletic directors across all three divisions in the last decade, and forty-three percent of the new head coaches added in the last ten years have been female. *Id.*; see also Mark Kaufman, Vickie Nauman, Ron Kaminski, Dave Carpenter & Matt Purdy, *Opinion: What We've Learned About the University of Iowa While Resisting Sport Cuts Shows Us Change Is Needed at the Top*, DES MOINES REG. (Apr. 4, 2021, 6:01 AM), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2021/04/04/university-iowa-hawkeyes-athletic-department-needs-change-top/6889802002> [<https://perma.cc/JYL7-722X>] (“[D]iscrimination lawsuits have cost UI to date over \$8.8 million in settlements, with two additional lawsuits currently in the court system. All that does not include legal fees.”).

176. Korman, *supra* note 167 (quoting Tom McMillen, a former basketball player and congressman: “[If nonprofitable sports are cut,] our U.S. Olympic effort will be damaged as the majority of U.S. Olympians were sourced from our colleges and universities”); Hu, *supra* note 167 (“The success of the United States at international sports competitions relies on college programs to help high school students develop into elite athletes.”).

177. Ross Dellenger & Pat Forde, *A Collegiate Model in Crisis: The Crippling Impact of Schools Cutting Sports*, SPORTS ILLUSTRATED (June 11, 2020), <https://www.si.com/college/2020/06/11/college-sports-program-cuts-ncaa-olympics> [<https://perma.cc/NJ8T-LN9K>].

178. Emily Giambalvo, *Colleges Dropping Nonrevenue Sports Jeopardizes the U.S. Olympic Model*, WASH. POST (July 25, 2020, 7:34 AM), <https://www.washingtonpost.com/sports/2020/07/25/colleges-dropping-non-revenue-sports-jeopardizes-us-olympic-model> (on file with the *Iowa Law Review*).



For instance, in 2016, about 150 schools were represented and about eighty percent of the athletes competed at the college level.<sup>179</sup> Olympic sports are often not the center of attention or earning the most profit for an athletic department, leading to Olympic sports often being the first sports on the chopping block.<sup>180</sup> Although cutting Olympic sports teams may save athletic departments money, it leads to the unintentional consequence of negatively impacting the United States's overall success in worldwide athletic competitions.

Additionally, the recent COVID-19 pandemic severely impacted athletic departments with significantly less income across the country.<sup>181</sup> Athletic ticket sales plummeted,<sup>182</sup> and universities were forced to cut numerous sports.<sup>183</sup> Specifically, the University of Iowa cut four varsity sports—men's and women's swimming, men's tennis, and men's gymnastics.<sup>184</sup> Although recovery is going

179. *Id.* For example, twenty-nine athletes at the 2016 Olympics “had ties to Stanford [and] combined to win 27 medals for the United States.” *Id.*

180. *Id.* Dozens of universities cut Olympic sports following COVID-19. Notably, Stanford, a Power Five university well-known for success in nonrevenue sports, cut eleven programs in 2020. *Id.*

181. Greta Anderson, *Pandemic Hits College Sports*, INSIDE HIGHER ED (Apr. 23, 2020), <https://www.insidehighered.com/news/2020/04/24/financial-crisis-related-coronavirus-hits-athletic-departments> [<https://perma.cc/E59Z-4U48>]. The NCAA cut \$375 million in revenue distribution to Division I institutions due to uncertainty regarding the 2020 football season and cancellation of March Madness. *Id.* Additionally, in a LEAD1 Association survey of one hundred athletic directors representing the FBS, less than half stated they had sufficient financial reserves to deal with a crisis like the pandemic. *Id.* (citing LEAD1 ASS'N, STATE OF ATHLETICS IN THE FACE OF CORONAVIRUS 18, <https://lead1association.com/wp-content/uploads/2020/04/LEAD1-TW-COVID-19-Impact-eBook-FINAL.pdf> [<https://perma.cc/UNH8-8P3A>]).

182. Eben Novy-Williams, Lev Akabas, Emily Caron & Daniel Libit, *Covid's Impact on College Sports Emerges from New Financial Data*, SPORTICO (Jan. 21, 2022, 12:01 AM), <https://www.sportico.com/leagues/college-sports/2022/college-sports-data-covids-1234658809> [<https://perma.cc/ND34-7H8A>] (stating that the University of Nebraska's football ticket sales dropped ninety-nine percent because of the pandemic and the Big Ten's no spectator policy).

183. *Tracker: College Sports Programs Cut During Covid-19 Pandemic*, BUS. COLL. SPORTS (July 14, 2021), <https://businessofcollegesports.com/tracker-college-sports-programs-cut-during-covid-19-pandemic> [<https://perma.cc/98TH-SAL7>]. Division I universities cut a total of seventy-seven sports. *See id.* This statistic does not include the thirty-six Division I sports that were subsequently reinstated by universities after they were cut. Men's tennis, by far and away, was the most popular sport to cut, with fifteen universities eliminating the sport. *Id.* Additionally, five universities cut baseball and men's swimming and diving, and four universities cut men's indoor track and field and women's swimming and diving, among many others. *Id.*

184. Chad Leistikow, *University of Iowa Cuts Four Sports in Wake of COVID-19 Pandemic, Loss of Fall Football*, HAWK CENT. (Aug. 21, 2020, 1:54 PM), <https://www.hawkcentral.com/story/sports/college/columnists/chad-leistikow/2020/08/21/iowa-cut-4-sports-coronavirus-swimming-gymnastics-tennis-gary-barta-bruce-harrelld/3409666001> [<https://perma.cc/VUT6-GYRA>]. Factors considered in determining which sports were cut included “historical competitive success; impact on Title IX compliance; the ‘investment required to achieve competitive excellence;’ and expense savings.” *Id.* The University of Iowa subsequently reinstated women's swimming and diving after athletes sued the University, alleging it was in violation of Title IX. A U.S. district court judge found the “[p]laintiffs have demonstrated a fair chance that the University of Iowa does not presently provide its female student with intercollegiate athletic opportunities in substantial proportion to their enrollment . . . .” Vanessa Miller, *University of Iowa to Reinstate Women's Swimming and Diving, but Not Men's Sports That Were Also Cut*, GAZETTE (Feb. 16, 2021, 1:02 PM), <https://www.thegazette.com/iowa-hawkeyes/university-of-iowa-to-reinstate-womens-swimming-and-diving-but-not-mens-sports-that-were-also-cut> [<https://perma.cc/6PP6-3RXT>].

well and universities are at or close to pre-pandemic revenues,<sup>185</sup> the NCAA and institutions cling to the position uncertain economic events further show why they do not have sufficient funds to pay student-athletes as employees.<sup>186</sup> Ultimately, cutting sports should not be a solution to the issue of compensating student-athletes as employees. It contradicts the NCAA's overall goal of providing a positive atmosphere for all student-athletes, regardless of a sport's profitability.

*B. PAYING FAIR MARKET VALUE IS UNSUSTAINABLE  
FOR ATHLETIC DEPARTMENTS*

The current structure of numerous athletic departments, including those in Iowa, prioritizes spending every penny to gain a competitive advantage rather than compensate student-athletes at their fair market value.<sup>187</sup> If universities were to pay fair market value for their student-athletes, universities would struggle to maintain an athletic department. Paying a few prominent student-athletes would take up significant portions of an athletic department's budget.

The University of Iowa's own Caitlin Clark is one of the NCAA's biggest stars, earning more than \$1 million in endorsement deals prior to signing an endorsement deal with Nike in 2022.<sup>188</sup> Since her breakout 2023 and 2024 seasons, Clark's combined NIL deals are worth over \$3.1 million, and her sponsorship opportunities continue to grow as she starts her WNBA career.<sup>189</sup> In addition to her highly coveted Nike endorsement deal, Clark also has sponsorship agreements with Gatorade, Hy-Vee, H&R Block, Bose, Buick, and many more.<sup>190</sup> Other Hawkeye athletes who have benefited from NIL deals include Spencer Lee, Cade McNamara, and Cooper DeJean.<sup>191</sup> Again, Iowa is

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185. Amanda Christovich, *NCAA Returns to Pre-Pandemic Revenue Levels*, FRONT OFF. SPORTS (Feb. 2, 2022, 4:11 PM), <https://frontofficesports.com/ncaa-reports-1-155b-in-revenue-returning-to-pre-pandemic-levels> [<https://perma.cc/N3XY-Y54B>] (stating that, during the fiscal year 2021, the NCAA earned \$1.16 billion in revenue, whereas in the fiscal year 2019, the NCAA earned \$1.118 billion).

186. Blue, *supra* note 145 (discussing how universities increase their spending to match any increases in revenue).

187. *Id.* (finding that schools are under financial pressure to find "every possible competitive advantage" to keep up with other universities).

188. Myron Medcalf, *The Top 25 Most Valuable College Basketball Players (Pre-NIL) Since 2000*, ESPN (Dec. 28, 2022, 9:00 AM), [https://www.espn.com/mens-college-basketball/story/\\_/id/35305231/the-top-25-most-valuable-college-basketball-players-pre-nil-2000](https://www.espn.com/mens-college-basketball/story/_/id/35305231/the-top-25-most-valuable-college-basketball-players-pre-nil-2000) [<https://perma.cc/DB24-7MLF>].

189. Dan Treacy, *Caitlin Clark's NIL Deals, Explained: How Much Money Iowa Star Makes from Nike, Other Sponsors in 2024*, SPORTING NEWS (Mar. 30, 2024), <https://www.sportingnews.com/us/ncaa-basketball/news/caitlin-clark-nil-deals-money-iowa-nike-sponsors-2024/e58534cad3b2960663a36cb> [<https://perma.cc/H8HX-SJA5>].

190. *Id.*; David Suggs, *Caitlin Clark NIL Deals: How Iowa Star Developed Lucrative Partnerships, from Nike to Goldman Sachs*, SPORTING NEWS (Apr. 2, 2023), <https://www.sportingnews.com/us/ncaa-basketball/news/caitlin-clark-nil-deals-iowa-nike/xcueusluamjk66vqfbmsxnr2> [<https://perma.cc/WL6F-7HNU>]. Additionally, Caitlin Clark has reported NIL deals with The Vinyl Studio in Des Moines, Shoot-A-Way, and Goldman Sachs. *Id.*

191. *Top Iowa NIL Players*, ON3: NIL (Sept. 26, 2023, 12:00 AM), <https://www.on3.com/nil/rankings/player/nil-100/?team-key=8296> [<https://perma.cc/NN5U-SQLY>] (ranking Cooper DeJean as the second most popular Hawkeye athlete with a \$503,000 NIL valuation and Cade McNamara third with a \$138,000 NIL valuation). Additionally, Iowa State student-athletes including Rocco

not alone in having student-athletes worth significant amounts of money. Shedeur Sanders at the University of Colorado is worth about \$4.8 million, Olivia Dunne at Louisiana State University about \$3.9 million, and Arch Manning at the University of Texas \$3.1 million.<sup>192</sup>

If the employment status of student-athletes means universities now must compensate student-athletes at their fair market value, the payment of a few student-athletes at most institutions would significantly dent athletic department budgets that are set up to fund all sports.<sup>193</sup> Paying Caitlin Clark, Cade McNamara, and Cooper DeJean their fair market value would incentivize the University of Iowa even further to cut non-profitable sports to retain these few profit-generating student-athletes.<sup>194</sup>

Additionally, the competitive disparity between schools that can pay student-athletes their fair market value versus schools that do not have enough financial resources to do so would further widen when allowing schools to compensate student-athletes.<sup>195</sup> The ability of universities to pay student-athletes greatly varies, as “Division I athletic budgets range anywhere from \$5 million to \$250 million annually.”<sup>196</sup> NCAA president Charlie Baker acknowledged that “[t]he growing financial gap between the highest resourced colleges and universities and other schools in Division I has created a new series of challenges.”<sup>197</sup> Only the top universities have the ability to pay student-athletes fair market value, which would be detrimental to NCAA competition as top student-athletes would be further concentrated at the richest schools.<sup>198</sup> Such concentration would lead to further inequity in sports because concentrating star student-athletes in only the few schools that can pay their fair market value would disregard the NCAA’s mission of a fair and equitable environment.<sup>199</sup>

### III. REFORMING STUDENT-ATHLETE COMPENSATION AND EMPLOYMENT STATUS

The Iowa Legislature should pass legislation mandating that public universities in the state treat and compensate student-athletes as employees

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Becht, Myles Purchase, and Jayden Higgins are rated the highest in NIL valuation on On3NIL’s valuations system. *Top Iowa State NIL Players*, ON3: NIL (Aug. 9, 2024, 12:00 AM), <https://www.on3.com/nil/rankings/player/nil-100/?team-key=8288> [https://perma.cc/5Q3T-DSQN].

192. *On3 NIL 100*, ON3: NIL (July 22, 2024, 12:00 AM), <https://www.on3.com/nil/rankings/player/nil-100> [https://perma.cc/2R6M-72R4].

193. See discussion *infra* Section II.A.1.

194. See *supra* notes 188–92 and accompanying text.

195. See Gage Jackson & Dan Grossman, *NCAA Proposes New Division in Which Top Schools Can Pay Athletes*, SCRIPPS NEWS (July 24, 2024, 10:46 AM), <https://scrippsnews.com/stories/ncaa-proposes-new-division-in-which-top-schools-can-pay-athletes> [https://perma.cc/PL4F-3BYJ].

196. *Id.*

197. *Id.*

198. In December 2023, NCAA president Charlie Baker proposed a solution to complications furthered by NIL opportunities that included creating a new tier of Division I athletics where universities paid into a trust fund that directly paid student-athletes. See *id.* The specifics of the proposed plan are beyond the scope of this Note.

199. *Id.*

due to their control over the “essential characteristics” of the student-athletes’ work.<sup>200</sup> However, such legislation should make public universities provide only an in-season minimum wage rather than fair market value compensation. Without limiting employment compensation, athletic departments would depart from the NCAA’s mission of providing a fair and equitable environment for student-athletes.<sup>201</sup> To comply with possible future federal minimum wage legislation, the Iowa Legislature should pass a bill mandating public universities pay student-athletes fifteen dollars an hour for in-season work to honor both the employer–employee relationship between the institutions and their student-athletes while upholding the NCAA’s mission of creating an equitable environment.

A. *TREAT STUDENT-ATHLETES AS EMPLOYEES UNDER THE LEGAL TESTS*

Student-athletes should already be legally considered employees. Iowa uses the common-law right to control test and should consider student-athletes employees under such test. The right to control test looks at “whether the employer has [the] right to control” rather than if the employer is actually exerting control over an employee.<sup>202</sup> If a student-athlete is receiving academic credit at the university, coaches can control student-athletes year round.<sup>203</sup> Coaches exert an enormous amount of control over student-athletes with heavy influence over, for example, student-athletes’ use of social media or nutrition.<sup>204</sup> Additionally, student-athletes report up to fifty to sixty hours per week required to be dedicated to their sport, which is more than most full-time university employees.<sup>205</sup> Student-athletes’ schedules are dictated by their coaches, sports administrators, and universities; therefore, student-athletes are controlled by them as employees.<sup>206</sup>

Additionally, the label “student-athlete” may be considered a sham and contradiction, as universities and coaches often direct student-athletes to focus on athletics before education.<sup>207</sup> Although the NCAA claims that college athletics

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200. *Hayes v. Morse*, 474 F.2d 1265, 1266 (8th Cir. 1973) (“The essential characteristics of master and servant [or employment] relation is the retention by the employer of the right to *direct* and *control* the manner in which the work shall be performed.”); *see* discussion *supra* Section I.A.3.

201. *Blue*, *supra* note 145 (“Our purpose is to govern competition in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is paramount.”).

202. *Johnson*, *supra* note 107, at 983 (“In determining whether a worker is an employee under the control test, courts look to the Restatement (Second) of Agency’s ‘master-servant analysis.’”).

203. *Id.* at 984 (explaining how coaches can exercise control over student-athletes as soon as the summer before freshman year starts for the purpose of allowing universities and the NCAA to “extract value from them at the outset”).

204. *Id.* at 984–85 (detailing how players on the Oregon State University women’s basketball team were forced to follow a Weight Watchers diet).

205. *Id.* at 984.

206. *See This Study Proves Just How Much Time College Athletes Spend on Their Sport*, NCSA COLL. RECRUITING, <https://www.ncsasports.org/blog/study-time-demands-d1-studentathletes-excessive> [<https://perma.cc/5UMB-R7EH>].

207. *Johnson*, *supra* note 107, at 987.

is recreational, in reality, it is a large money-making business.<sup>208</sup> Coaches and athletic administrators care more about keeping student-athletes eligible than ensuring positive educational outcomes like a strong GPA or graduation rate.<sup>209</sup> For example, a trend that is becoming popular across teams is academic clustering, which is defined as “when [twenty-five percent] or more of the members of one team share a single academic major.”<sup>210</sup> This practice is premised around the idea that student-athletes should be grouped into less challenging majors as it will be easier for them to remain eligible.<sup>211</sup> However, academic clustering leads to student-athletes being forced into majors they do not want as their career path and clearly prioritizes athletic success over academic desires.<sup>212</sup> Universities determining the majors of student-athletes further indicates their significant control over student-athletes.

Other jurisdictions use the economic realities test to determine student-athletes’ employment classification. That test looks at the “totality of the circumstances,” the “financial reality accompanying the work” and on “whether the individual is *economically dependent* on the business to which he renders service. . . .”<sup>213</sup> Previous courts have erred when not finding an employment relationship existed under this test, as scholarship convincingly argues that student-athletes depend on payment from their schools for living expenses and receive “compensation” in various forms.<sup>214</sup> When examining the totality of circumstances of the relationship between student-athletes, their universities, and the NCAA, courts should be persuaded that student-athletes are employees. Student-athletes may be “fired” or cut from their teams and subsequently lose their scholarship for poor performance.<sup>215</sup> Additionally, universities and the NCAA financially benefit from the work of student-athletes, and often an individual’s work as an athlete comes before their responsibilities as a student.<sup>216</sup>

Ultimately, no matter the test used to determine employment status, an employer–employee relationship is established between student-athletes and universities. The totality of the circumstances indicates significant control and economic dependency between student-athletes and universities. Such employment status should be acknowledged by universities paying student-athletes a fair wage.

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208. *Id.*

209. *Id.* at 987–89 (providing examples of how numerous Oklahoma State Football players were “functionally illiterate” and the University of North Carolina had phantom courses, which over 1,500 student-athletes took, that never met and only assigned a single paper).

210. *Id.* at 990.

211. *Id.*

212. *Id.*

213. Geoffrey J. Rosenthal, Note, *College Play and the FLSA: Why Student-Athletes Should Be Classified As “Employees” Under the Fair Labor Standards Act*, 35 HOFSTRA LAB. & EMP. L.J. 133, 140–41 (2017).

214. Johnson, *supra* note 107, at 1004.

215. *Id.* at 993 (“When athletes do not participate in athletic events, the scholarship will not be renewed. This is the reality.” (footnote omitted)).

216. *Id.* at 991 (“[S]tudent-athletes are not incentivized to excel academically because what really matters is the student-athlete’s athletic performance, not academic performance.”).

B. *PAY ALL STUDENT-ATHLETES AT PUBLIC UNIVERSITIES FIFTEEN DOLLARS AN HOUR FOR IN-SEASON WORK*

Although universities claim to have insufficient funds to pay student-athletes, an “athletics department *could* rearrange its budget” if it prioritized such.<sup>217</sup> However, spending rises with increases in revenue as the universities that earn the most money establish “the benchmark for competitive investments.”<sup>218</sup> Right now, the pressure to win is dominating any pressure to fairly compensate student-athletes as employees of universities. The Iowa Legislature needs to step in and mandate that student-athletes are paid fifteen dollars an hour for in-season work to ensure that universities recognize the value of and prioritize the fair economic treatment of student-athletes.<sup>219</sup>

1. Athletic Departments at Major Universities Are Capable of Paying Student-Athletes

A simple crunching of numbers demonstrates the University of Iowa could pay student-athletes a minimum wage of fifteen dollars an hour for their time during the season, which would recognize the employer–employee relationship that exists and acknowledge the value student-athletes provide the institution. The University of Iowa has about 650 student-athletes.<sup>220</sup> If every student-athlete was paid fifteen dollars an hour for twenty hours<sup>221</sup> a week during their sport’s declared playing season,<sup>222</sup> it would cost the university between about \$2.5 million and \$4.5 million per year.<sup>223</sup> As the entire athletic department

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217. Blue, *supra* note 145 (“In other words, Iowa, Stanford, and Minnesota could internally rearrange \$120M+ budgets and fund their teams more modestly as revenue recovers, but they would unreasonably be choosing to competitively disadvantage themselves by doing so.”).

218. *Id.* Despite FBS annual revenue increasing over 150% since 2005, only 41% of Power Five athletic departments have a reserve fund. *Id.*

219. *Id.* Right now, the zero-sum nature of college athletics reinforces the idea that athletic departments should spend every dollar they have. *See id.* However, athletic departments should be wiser about what they spend their money on.

220. *Iowa Hawkeye Athletics*, HAWKEYE SPORTS, <https://hawkeyesports.com/about-ui-athletics> [<https://perma.cc/6ZGX-XPST>].

221. NCAA Bylaw 17.1.7.1 limits countable athletically related activities to a maximum of four hours a day and twenty hours a week. *See* NCAA DIVISION I MANUAL, *supra* note 7, at 214. Therefore, when determining wages for student-athletes, it is reasonable to assume a student-athlete will work twenty-hours a week (though as discussed in Section I.A.1, student-athletes are often expected to exceed the twenty hours per week maximum).

222. *Id.* at 217 (“The playing (practice and competition) season for a particular sport is the period of time between the date of an institution’s first officially recognized practice session and the date of the institution’s last practice session or date of competition, whichever occurs later. An institution is permitted to conduct officially recognized practice and competition each academic year only during the playing season as regulated for each sport in accordance with the provisions of this bylaw.”).

223. \$2.5 million per year was calculated by using a twelve-week season for sports such as soccer, while \$4.5 million dollars was calculated assuming a twenty-four-week season for sports that are considered in season half the year. Both numbers assumed the student-athletes would be paid fifteen dollars per hour, for twenty hours a week, for a predetermined number of weeks set by the institution as in-season, and all 650 student-athletes at the University of Iowa would be paid an equal fifteen dollars per hour.

budget is almost \$130 million per year,<sup>224</sup> the University of Iowa's athletic department would have to either cut spending or raise revenue (without proportionally raising expenses) by 2% to 3.5% to pay all student-athletes a minimum wage for their time in season.<sup>225</sup> Although coming up with a few million dollars is by no means easy, football itself spends around \$36.2 million annually.<sup>226</sup> Each sport is capable of finding areas to cut expenses, as a total payment of four million to all student-athletes seems insignificant in comparison to the expenses of a single sport like football.<sup>227</sup>

The University of Iowa's financial statements are similar to other state institutions. According to UNI's and ISU's sports' rosters, both universities have about 400 to 420 student-athletes.<sup>228</sup> Using the same fifteen dollars an hour wage, UNI and ISU would pay between one and a half million dollars to about three million dollars per year in student-athlete wages.<sup>229</sup> Although UNI has a significantly smaller total athletic budget,<sup>230</sup> both universities could also find areas to cut expenses to pay student-athletes.

Public universities with prevalent sports teams in Iowa are generally representative of the financial abilities of other large public universities across the nation to pay student-athletes.<sup>231</sup> For instance, the Southeastern Conference ("SEC") is a Power Five conference in which numerous teams earn far more revenue than the University of Iowa.<sup>232</sup> For example, for total revenue in 2022, the University of Alabama earned almost \$215 million, LSU about \$200 million,

224. See BD. OF REGENTS, *supra* note 150, at 26.

225. The total cost the Iowa Athletic Department would incur (between \$2.5 million and \$4.5 million) divided by the total athletic department's budget of around \$130 million equals about 2% to 3.5%.

226. See BD. OF REGENTS, *supra* note 150, at 26. Additionally, in 2023, men's basketball is projected to spend over \$8.5 million, women's basketball almost \$6 million, men's wrestling \$2,678,641, women's volleyball \$2,321,279, other men's sports \$4,622,006, and notably other women's sports \$15,610,788. *Id.*

227. See *supra* Section II.A.1.

228. See, e.g., 2024 *Football Roster*, IOWA ST. UNIV., <https://cyclones.com/sports/football/roster> [<https://perma.cc/6K92-RPL2>] (cataloguing yearly ISU football rosters—the total number of athletes is based on a hand-count of each roster available on the same site); 2024 *Football Roster*, UNIV. N. IOWA, <https://unipanthers.com/sports/football/roster> [<https://perma.cc/DU6M-MX Y4>] (cataloguing yearly UNI football rosters; Total athletes also determined through a hand count of each roster).

229. \$1.5 million per year was calculated using a twelve-week season for sports such as soccer, while \$3 million was calculated assuming a twenty-four-week season for sports that are considered in-season half the year. Both numbers assumed the student-athletes would be paid fifteen dollars per hour, for twenty hours a week, for a predetermined number of weeks set by the institution as in-season, and all 400 to 420 student-athletes at ISU or UNI would be paid an equal fifteen dollars per hour.

230. See BD. OF REGENTS, *supra* note 150, at 4. UNI's projected athletic revenue for 2023 is \$14,686,520 compared to ISU's roughly \$106 million.

231. The differences between Division I universities and Power Five conferences are beyond the scope of this Note as Iowa legislation should focus on application to public universities in Iowa.

232. See Michael Casagrande, *Alabama Athletics Hits Revenue Record, Outpaces SEC Peers*, AL.COM (Feb. 2, 2023, 5:18 PM), <https://www.al.com/alabamafootball/2023/02/alabama-athletics-hits-revenue-record-outpaces-sec-peers.html> [<https://perma.cc/UM6R-KPFA>].

and Arkansas over \$150 million (comparing to Iowa's slightly lower than \$130 million).<sup>233</sup> Many of these universities already earn a profit, which should be used in part to compensate the student-athletes who help the universities earn the profit.<sup>234</sup> Even the University of Houston, one of the smallest Power Five universities, is expected to spend over \$56 million on collegiate athletics in 2023 and could find the funds to pay student-athletes.<sup>235</sup>

## 2. Reduce Overspending in Athletic Departments to Generate Additional Income

Additionally, legislation that mandates paying student-athletes would decrease athletic departments' incentive to frivolously spend money, leaving the athletic departments with surplus profits to pay student-athletes.<sup>236</sup> Athletic departments' "bloated" spending habits can and should be curbed in favor of prioritizing that institutions adequately compensate student-athletes for the value they provide the institution.<sup>237</sup> At times, the Iowa Athletic Department—and others across the country—are financially irresponsible.<sup>238</sup> For instance, Iowa men's basketball spends the most money on recruiting of any sport at the university, spending \$616,281 in the fiscal year 2022.<sup>239</sup> This figure is up almost \$400,000 from the prior two years, and chief financial officer Greg Davis points to "the costs and number of charter flights for recruiting" as the reason for the significant increase in spending.<sup>240</sup> While student-athletes are contributing thousands of hours of work to their universities, institutions are lavishly spending money on private planes. Cutting back on such spending is one example of how a university can rearrange its budget to save money to pay student-athletes a minimum wage.

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233. *Id.*

234. *See id.* The University of Alabama profited \$18,443,446 in 2022, while LSU and Arkansas earned \$6,538,893 and \$8,194,714 respectively. *Id.*

235. UNIV. OF HOUS., BUDGET FOR THE FISCAL YEAR 2022–2023, at 210 (2022), <https://uh.edu/office-of-finance/budget-office/operating-budget/fy2023-budget-book-uh.pdf> [<https://perma.cc/DSSH-7RV7>].

236. Blue, *supra* note 145 (describing how athletic departments are incentivized to spend every penny to gain a competitive advantage rather than build up money reserves).

237. *Id.*

238. Kaufman et al., *supra* note 175 ("The lack of reserves, a bloated staff, spending on lavish offices, and the hundreds of millions of dollars of debt have created a malfunctioning cost structure.").

239. Kennington Lloyd Smith III, *University of Iowa Athletics' 2022 Financial Statement Shows First Surplus Since 2019*, HAWK CENT. (Jan. 27, 2023, 12:41 PM), <https://www.hawkcentral.com/story/sports/college/iowa/football/2023/01/27/2022-financial-report-university-of-iowa-athletics-trending-back-to-normal/69843738007> [<https://perma.cc/WV29-8ZWT>] (describing a recruiting cost as "input transportation, lodging and meals for prospective student-athletes and institutional personnel on official and unofficial visits, telephone call charges, postage and such. Include value of use of institution's own vehicles or airplanes as well as in-kind value of loaned or contributed transportation"). In fiscal year 2022, the University of Iowa's football team spent the second most of any sport on recruiting at \$577,589, followed by women's basketball's \$157,786, men's and women's track and field and cross country's \$98,790, and wrestling's \$90,011. *Id.*

240. *Id.*



Additionally, excessive coaches' salaries are another example of the lavish spending athletic departments often engage in.<sup>241</sup> In thirty-one states, a college football coach is the highest-paid state employee.<sup>242</sup> For example, in 2022, Kirk Ferentz was the highest-paid state employee in Iowa at \$6,898,710.<sup>243</sup> Additionally, multiple other head coaches at collegiate programs within Iowa are in the top twenty for the state's highest-paid public employees, all earning over a million dollars a year—including Fran McCaffery, Matt Campbell, and, formerly, Lisa Bluder.<sup>244</sup> In contrast, the median annual salary in Iowa is \$54,107 for men and \$50,235 for women.<sup>245</sup> With multiple coaches earning millions from their public universities and the yearly expense of paying student-athletes fifteen dollars an hour costing a university in Iowa between \$1.5 to \$4.5 million a year,<sup>246</sup> a decrease in coaching salaries is another area where institutions could cut expenses.<sup>247</sup>

The University of Iowa's high spending on recruiting and coaching is a trend seen across the country. For the 2022 season, head Alabama football coach Nick Saban earned \$11.7 million.<sup>248</sup> Although Mr. Saban is the highest-paid college football coach, he is not alone in being the state's highest-paid employee. Forty-three states have a head coach of any division I sports program as the highest-paid state official.<sup>249</sup> Additionally, ten college coaches earn over

241. Kate McGee, *Texas A&M to Spend More than \$75 Million to Fire Football Coach Jimbo Fisher*, TEX. TRIB. (Nov. 12, 2023, 6:00 PM), <https://www.texastribune.org/2023/11/12/jimbo-fisher-buyout> [<https://perma.cc/DF5B-9VV2>] (describing how Texas A&M fired their head football coach, which cost the athletic department over \$75 million to buy out his contract simply because the athletic director felt the “program [was] stuck in neutral”).

242. David Keech, *College Coaches Dominate Highest-Paid State Employees List*, ONFOCUS (Aug. 4, 2023), <https://www.onfocus.news/college-coaches-dominate-highest-paid-state-employees-list> [<https://perma.cc/3CBX-GMAJ>]. The top thirty-seven state employees across all states are college coaches. *Id.* Additionally, the average salary of these top ten state employees is \$9.8 million a year, significantly more than the average salary of \$74,738. *Id.*

243. *State Employee Salary Book*, IOWA LEGIS., <https://www.legis.iowa.gov/publications/fiscal/salaryBook?fy=-1&aid=-1&name=Ferentz> [<https://perma.cc/6PYQ-E72Y>].

244. Erin Jordan, *Iowa College Coaches Still Highest-Paid State Employees, Despite Shorter Seasons*, GAZETTE (Nov. 5, 2020, 5:20 PM), <https://www.thegazette.com/government-politics/iowa-college-coaches-still-highest-paid-state-employees-despite-shorter-seasons> [<https://perma.cc/ANL7-VSTM>]. The University of Iowa's men's basketball head coach Fran McCaffery earns around \$2.5 million a year, ISU's former men's basketball head coach Steve Prohm earned \$2.375 million, ISU head football coach Matt Campbell earns around \$2.35 million, and University of Iowa's former women's basketball head coach Lisa Bluder earned about \$1.1 million a year. *Id.*

245. *Id.*

246. See *supra* notes 223, 229 and accompanying text.

247. While impractical, paying Kirk Ferentz around \$2 million rather than \$6 million a year would create the \$4 million surplus the university would need to save to pay their student-athletes a minimum wage.

248. Michael Calabrese, *It Pays to Be the Head Coach: Highest Paid State Employees in the US*, OLBG (Feb. 19, 6:43 PM), <https://www.olbg.com/us/blogs/it-pays-be-head-coach-highest-paid-state-employees-us> [<https://perma.cc/gZ5L-T8CB>].

249. *Id.* The seven states in which a head coach was not the highest paid state official are Alaska, Maine, Montana, New Hampshire, New York, North Dakota, and South Dakota. *Id.*

\$8.6 million, indicating that coaching salaries are an obvious place to trim costs not only in Iowa but across the country.<sup>250</sup>

Recruiting expenditures across the country have also skyrocketed in the past few years. Twenty universities spent over \$1.24 million on recruiting in 2022, with Georgia leading the way at \$4.51 million as its “recruiting budget has nearly doubled in just five years.”<sup>251</sup> The competition to attract the best competitors has gotten fiercer with time. Programs try to entice recruits to commit with outlandish official visits, which often include benefits ranging “from steakhouse dinners to black car service to a luxury hotel.”<sup>252</sup> As the number of official visits a recruit can take increases, and as coaches start to utilize private charter flights when recruiting more frequently, the NCAA needs to put a stop to lavish recruiting expenditures while focusing more on the equitable compensation of student-athletes they currently have.

*C. THE COMBINATION OF EMPLOYMENT STATUS AND NIL COMPENSATION  
FURTHERS DUAL GOALS OF JUST COMPENSATION AND EQUITABLE TREATMENT*

Finally, an equal minimum wage payment for student-athletes aligns with the NCAA’s and universities’ desire to provide an equitable environment. The decision to pay a student-athlete millions of dollars while paying others nothing is one that should be made by outside boosters and third parties, not public universities. Rather than universities differentiating the value of student-athletes, third-party compensation allows popular student-athletes to earn their fair market value through sponsorship opportunities. Public institutions are subject to greater restrictions as a public entity and, therefore, should leave fair market compensation to third parties.

1. NIL Deals Allow Student-Athletes to Earn Fair Market Value

The few years NIL has existed within NCAA athletics shows third parties and outside businesses do not hesitate to pay large amounts to popular student-athletes they feel will benefit their brand.<sup>253</sup> Popular student-athletes like Caitlin Clark or Bronny James have already earned millions of dollars in NIL deals.<sup>254</sup> Therefore, mandating institutions pay a minimum wage rather than the fair market value of each student-athlete allows for public universities to maintain equity and integrity within their athletic department, while simultaneously allowing student-athletes to earn their fair market value from other sources.

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250. *Id.*

251. *Top 20 Spenders for Recruiting by Power Five College Football Programs*, ON3 (Apr. 6, 2023), <https://www.on3.com/news/top-20-college-football-recruiting-spending-2022-power-5-georgia-clemson-texas-am-tennessee-oklahoma> [https://perma.cc/64J9-R5XC].

252. Timothy Rapp, *Clemson Football’s Luxurious Recruiting Visits Detailed in the Athletic Report*, BLEACHER REP. (May 7, 2020), <https://bleacherreport.com/articles/2890660-clemson-footballs-luxurious-recruiting-visits-detailed-in-the-athletic-report> [https://perma.cc/H29G-7AXM].

253. *See supra* text accompanying notes 188–94.

254. *See supra* text accompanying notes 188–94.

## 2. “Equitable” Environment Promoted by NCAA and Universities

As recipients of federal funds, public universities have a legal and ethical duty to comply with Title IX and further the NCAA’s mission of providing “a fair, safe, equitable, and sportsmanlike” environment.<sup>255</sup> Universities across the country also have their own mission statements that reflect similar values. The University of Iowa’s athletic slogan is “Win. Graduate. Do It Right.” It demonstrates the desire to not only succeed competitively but also provide a high-level education in a respectful, ethical environment.<sup>256</sup> The athletic department states that doing it right “is the foundation of [its] department.”<sup>257</sup>

To “Do It Right,” the University of Iowa lists eight core values in its five-year strategic plan: excellence, integrity, teamwork, creativity, tradition, leadership, fiscal responsibility, and diversity, equity, and inclusion.<sup>258</sup> Of note, the desire to maintain integrity and fiscal responsibility relates to the compensation of student-athletes. To maintain integrity within the athletic department, the university not only needs to “adhere to NCAA rules,” but it also needs to be accountable to itself and society.<sup>259</sup> It would not be “right” to compensate some student-athletes millions of dollars while leaving other student-athletes without compensation when the amount of time dedicated to sports is supposed to be relatively consistent across student-athletes.<sup>260</sup> Instead, it is right for the difference in popularity between student-athletes to be compensated by NIL deals in the free market, rather than by universities who need to provide for all student-athletes.

Additionally, paying student-athletes an equal minimum wage aligns with the University of Iowa’s desire to maintain fiscal responsibility. As the University of Iowa can afford to pay student-athletes,<sup>261</sup> a minimum wage of fifteen dollars an hour is not an exuberant amount that will lead to disarray within the athletic department. If the athletic department reorganizes its budget to cut lavish spending,<sup>262</sup> it will exemplify fiscal responsibility when student-athletes are paid as employees.

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255. Esses, *supra* note 148.

256. HAWKEYE LEADERSHIP TEAM, UNIV. OF IOWA ATHLETICS, WIN. GRADUATE. DO IT RIGHT. 2020–25 STRATEGIC PLAN 7 (2020), [https://storage.googleapis.com/hawkeyesports-com/2020/04/5db02473-20iaathleticsstrategicplan\\_01\\_30\\_single1.pdf](https://storage.googleapis.com/hawkeyesports-com/2020/04/5db02473-20iaathleticsstrategicplan_01_30_single1.pdf) [<https://perma.cc/7ZEA-3XBZ>]. The University of Iowa defines the “Win” prong as “develop[ing] championship-caliber programs with the expectation of conference and national-level success.” *Id.* “Graduate” means “[t]o successfully complete a meaningful degree and be prepared to excel professionally and as a community leader.” *Id.* Finally, “Do It Right” is defined as “liv[ing] with integrity, having a principled moral compass, and showing respect, humility, and gratitude for others.” *Id.*

257. *Id.* at 7.

258. *Id.* at 9.

259. *Id.*

260. NCAA DIVISION I MANUAL, *supra* note 7, at 218 (“A student-athlete’s participation in countable athletically related activities (see Bylaw 17.02.1) shall be limited to a maximum of four hours per day and [twenty] hours per week.”).

261. See discussion *supra* Section III.B.1.

262. See discussion *supra* Section III.B.2.

Universities across the nation express similar goals of wanting to provide the opportunity to compete at the highest level while maintaining an inclusive and equitable atmosphere. For example, like Iowa's "Win. Graduate. Do It Right." slogan, Georgia values the "three I's" of innovation, inclusion, and integrity.<sup>263</sup> Georgia's athletic department wants to not only "be the nation's premier intercollegiate athletics program," but also ensure "student-athletes [] achieve their highest academic, athletic, and personal ambitions."<sup>264</sup> As athletic departments almost unanimously have missions that express the desire to provide a positive atmosphere for all student-athletes, they should back up such statements by treating and paying all student-athletes a minimum wage as employees.

D. *COMPENSATING STUDENT-ATHLETES AS EMPLOYEES BENEFITS IOWA*

Iowa has and should continue to be a trailblazer in challenging the status quo when rules or regulations become outdated.<sup>265</sup> Iowa has shown that it is capable of making groundbreaking changes—such as becoming just the third state to legalize gay marriage and the first state to allow a woman to practice law by admitting her to the Iowa Bar.<sup>266</sup> Now is the time for the Iowa Legislature to mandate the treatment of student-athletes as employees with the state at the forefront of collegiate athletic national news because of the state's aggressive approach to prosecuting student-athletes engaged in sports gambling.<sup>267</sup> The Iowa Legislature should bring much-needed positive attention to the state by improving and protecting the well-being of its student-athletes. The legislature has the support of the public, as almost seventy percent of Americans support universities directly compensating their athletes.<sup>268</sup> Additionally, athletics bring in a significant chunk of Iowa's revenue and play an important role in Iowa's economy.<sup>269</sup> The state would economically benefit from paying student-athletes because universities would be able to differentiate themselves from others and draw in top recruiting talent that would engage fans across the state.<sup>270</sup> Therefore, Iowa should set the precedent that paying student-athletes

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263. *Vision, Mission, Values*, UNIV. GA. ATHLETICS, <https://georgiadogs.com/sports/2023/2/3/vision-mission-values> [<https://perma.cc/UQ4F-BUWG>].

264. *Id.*

265. *Iowa Supreme Court Legalizes Gay Marriage*, NBC NEWS (Apr. 3, 2009, 7:48 AM), <https://www.nbcnews.com/id/wbna30027685> [<https://perma.cc/M9W6-32ED>]; see *Law School History and Milestones*, IOWA COLL. L. (May 2017), <https://law.uiowa.edu/about/law-school-history-and-milestones> [<https://perma.cc/3L4J-RF9A>].

266. *Law School History and Milestones*, *supra* note 265.

267. See *supra* Section I.C (discussing the Iowa Racing and Gaming Commission's aggressive approach in prosecuting student-athletes that engaged in sports gambling in Iowa).

268. Nicole Kraft, *Why the Public Strongly Supports Paying College Athletes*, FORBES (Aug. 21, 2023, 11:00 AM), <https://www.forbes.com/sites/nicolekraft/2023/08/21/why-the-public-strongly-supports-paying-college-athletes> [<https://perma.cc/8PYE-9GN6>].

269. See *supra* Section I.C.

270. Ross Dellenger, *Big Money Donors Have Stepped Out of the Shadows to Create 'Chaotic' NIL Market*, SPORTS ILLUSTRATED (May 2, 2022), <https://www.si.com/college/2022/05/02/nil-nam-e-image-likeness-experts-divided-over-boosters-laws-recruiting> [<https://perma.cc/8YME-X6JZ>].

is not only the right thing to do for the betterment of student-athletes but is also beneficial to a state's overall economy.

#### CONCLUSION

The Iowa Legislature should advocate for the treatment of student-athletes as employees and encourage other states and the NCAA to do the same. The recognition of employee status reflects the reality of the situation in which student-athletes' essential characteristics of service are dictated by their university or the NCAA. Mandates on compensation, however, should be cautious to allow athletic departments to stay afloat financially while maintaining equitable treatment of student-athletes in both profitable and nonprofitable sports. A minimum wage of fifteen dollars an hour for all student-athletes for in-season work is fiscally possible for public universities in Iowa and aligns with the state institution and NCAA core values of providing the best atmosphere for all collegiate athletes. Like the numerous state legislatures that pushed for student-athletes to profit from their NIL, the time is now for the Iowa Legislature to motivate the NCAA to mandate the uniform treatment of student-athletes as employees.

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(discussing how if one school offers \$100,000 to a recruit while another university the recruit originally liked only offered \$10,000, the recruit will go to the school offering more money). For example, Caitlin Clark has engaged Iowans and fans across the country, helping sell out season tickets in record time in stadiums across the Big Ten. See Isabel Gonzalez, *Iowa Women's Basketball Sells Out Season Tickets for the First Time Ahead of Caitlin Clark's Senior Campaign*, CBS SPORTS (Aug. 14, 2023, 6:30 PM), <https://www.cbssports.com/womens-college-basketball/news/iowa-women-s-basketball-sells-out-season-tickets-for-the-first-time-ahead-of-caitlin-clarks-senior-campaign> [<https://perma.cc/SM7F-XWVG>].