

## **Collective Bargaining Provides a Promising Road Forward for College Football**

The payment of college football players has become the norm since 2021. While this shift can be beneficial when managed responsibly, NCAA football was never designed to operate without enforceable regulations. Yet, the judiciary has effectively ensured that the NCAA cannot enforce its eligibility rules. The NCAA either loses a legal battle over such rules or preemptively makes them more lenient in anticipation of costly litigation.

Legal arguments surrounding modern college football frequently overlook a critical point: the long-term health of the sport is being undermined, and fans are becoming increasingly frustrated.

### **THE PROBLEM:**

On December 18, 2024, a federal judge for the Middle District of Tennessee granted a preliminary injunction filed by Diego Pavia, the starting quarterback for Vanderbilt University, against the NCAA. Pavia challenged NCAA Bylaw 12.02.6, which would have counted his time playing football in junior college against his eligibility to compete in NCAA games. Under this bylaw, Pavia would have been barred from competing in the 2025 football season. However, thanks to his antitrust-based challenge, the Commodores anticipate the return of one of their team captains.

Pavia quickly took to X, praising his legal team's success: "My lawyers are legit!! Ryan and Sal I appreciate yall!"

Pavia has plenty of reasons to celebrate. So do other junior college transfers. On December 23, the NCAA, seeking to mitigate future legal challenges, granted a waiver of Bylaw 12.02.6 for all athletes during the 2025–26 athletic seasons while appealing the December 18 decision. However, given recent trends in legal challenges against the NCAA, Pavia's outcome was hardly surprising. Pavia's case exemplifies the judiciary's persistent tendency to undermine the NCAA's authority to regulate player eligibility.

Without diminishing Ryan and Sal's efforts, it seems that any NCAA action regarding eligibility is consistently deemed an antitrust violation. Gone are the days when the NCAA enjoyed Supreme Court-endorsed "ample latitude" to preserve amateurism—a tradition that inherently involved regulating eligibility.<sup>1</sup> The mood of the judiciary now mirrors that of a confrontational Justice Kavanaugh, who is all too willing to strike NCAA regulations down with federal antitrust law as his weapon of choice.<sup>2</sup> Even seemingly reasonable rules now feel vulnerable to legal attack.

A younger version of myself never imagined defending the NCAA, but the organization is enduring death by a thousand paper cuts—each assailing paper bearing a court order or judicial

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<sup>1</sup> NCAA v. Board of Regents, 468 U.S. 85, 96 (1984).

<sup>2</sup> See NCAA v. Alston, 141 S. Ct. 2141, 2166–69 (2021) (Kavanaugh, J., concurring).

opinion. Dedicated college football fans are calling for stability in their beloved sport, and they want it soon.

The era of name, image, and likeness (NIL) deals and student-athlete compensation has rendered college football unrecognizable from its traditional framework. While plenty of fans agree that it was unfair for past athletes to receive no compensation aside from scholarships and similar benefits, especially when their performances generated billions in revenue for the NCAA, there are unsustainable problems in the sport's new quasi-free market system.

The most glaring issue with modern college football is the perceived mercenary use of the transfer portal. To avoid potential litigation, the NCAA loosened its transfer portal rules in 2024, granting athletes the ability transfer multiple times throughout their careers with immediate eligibility at each school. What was once a resource primarily used by non-starting athletes seeking more playing time at smaller programs has now become a tool for high-level programs to bid on talented “rent-a-players.” These players often stay at a program for one year and move to the highest bidding program the following year (this type of performance-based payment, referred to as “pay-for-play,” was forbidden within the NCAA's initial NIL policies, but this rule, of course, fell apart under antitrust litigation<sup>3</sup>).

Take defensive lineman Bear Alexander, for instance. He began his collegiate career at Georgia as a four-star recruit in 2022—during which time he had the Georgia “G” tattooed on his bicep—transferred to Southern California in 2023, and by 2024 was photographed wearing a Penn State uniform during a recruiting visit. Then, he committed to Oregon on December 20, 2024. The average fan finds this carousel insufferable. Fans want to believe, whether it be true or not, that athletes share their deep-rooted love for their schools and that commitments signify something meaningful. They remember the days when talented freshmen developed behind veteran starters, trusting that those players would stay loyal to the program throughout their collegiate careers. Now, the transfer portal fuels wariness: fans fear that without sufficient funding from their school's affiliated NIL collective, top players will jump ship. In no other major American sport do fans reasonably wonder if their best players might leave each year, and this trend in college football undermines its appeal.

While a free-market bidding system is undoubtedly an athlete's preferable system, there are frameworks that could still give athletes substantial paychecks while ensuring they spend more than the minimum amount of time possible at a particular school, balancing the interests of the athlete and the fan (*e.g.*, reinstating transfer limitations and probationary periods). However, the NCAA is currently powerless to implement such systems.

Exacerbating the issue of the transfer portal, there is currently no salary cap that programs must abide by in paying their athletes. Schools with deep-pocketed benefactors—like Oregon, propelled by former Nike CEO Phil Knight's financial backing to the top seed of the 2024 College Football Playoffs—have a significant advantage over programs with more modest resources. Although a free-market system arguably redistributes talent and fosters parity, as few programs can consistently afford every top recruit, it remains frustrating for fans. Watching star

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<sup>3</sup> See *Tennessee v. NCAA*, 715 F. Supp. 3d 1048 (E.D. Tenn. 2024).

players hop from team to team each year erodes the sense of loyalty and stability that was once enjoyed in college football.

The NCAA should be especially concerned by their inability to regulate eligibility when looking at the state of the NBA in 2024. While college football benefits from a more loyal fan base—bolstered by students who live directly on campus and alumni who maintain a deep connection to their schools—fan frustration can still erode support over time. The NBA serves as a cautionary tale: according to *Sports Media Watch*, “Through [December 14, 2024], viewership was down 19% from [the same time in 2023] across ABC, ESPN, and TNT, and down 25% with NBA TV included.”<sup>4</sup>

The causes of declining interest may be numerous, but several overlap with the frustrations faced by college football fans, including dissatisfaction with streaming platforms, changes in play style, and resentment towards player attitudes. While the NCAA retains control over certain factors, such as avoiding subscription-based streaming of games, the judiciary has tied its hands in addressing the most significant issue: the transfer portal. Fan frustration has not yet translated into decreased television ratings or game attendance; however, the NCAA should be concerned about the potential consequences of its continued inability to regulate the transfer carousel.

## **THE SOLUTION**

A sizable faction of college football fans would prefer a return to the NCAA’s previous system, where payments to athletes for recruitment purposes were strictly prohibited. But unless Congress steps in to grant the NCAA antitrust immunity, such a system is unlikely to return. The NIL-driven, pay-for-play model has progressed too far to reverse course without sweeping federal legislation guiding the courts. It seems unlikely that college football of all things will obtain the bipartisan support of Congress to enact such measures. Fans must come to terms with a new reality: amateurism is dead. Pay-for-play is here to stay.

Given this reality, a more realistic solution to address college football’s instabilities lies with a proposed modification to the class action settlement in the Northern District of California’s *House v. NCAA* antitrust case. Without diving too deeply into the settlement’s details, which received preliminary approval on October 7, 2024, Division I schools will soon be able to directly pay athletes using a \$22 million salary cap. This cap will apply across all sports at a school, meaning funds allocated for basketball players could limit the amount available for football players. Notably, however, three plaintiffs submitted a letter to the judge of the *House* case on December 2, 2024, seeking a modification to the settlement that would implement collective bargaining through an independent players’ association for college athletes.

Collective bargaining is perhaps the only realistic solution for ensuring the long-term stability of college football. Requiring schools—not collectives—to directly pay players and operate under a salary cap represents a significant step toward curbing the kind of talent poaching seen in the

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<sup>4</sup> Jon Lewis, *Where Does the NBA Stand in Their Ratings*, SPORTS MEDIA WATCH (Dec. 17, 2024), <https://www.sportsmediawatch.com/2024/12/nba-ratings-decline-examining-early-season-viewership/>.

aforementioned “Phil Knight” scenario, where wealthier programs with deep-pocketed NIL collectives dominate (assuming at least a significant proportion of schools are challenged to keep their budgets under this cap). However, this salary cap devised in the initial *House* settlement terms is, after all, still an artificial restraint on competition and vulnerable to subsequent antitrust litigation by those who opt out of the class.

The significance of collective bargaining and its promise of stability lies in the notion that, when terms are collectively bargained for, they are no longer considered to be antitrust violations. This would mean that the NCAA could address the transfer portal through legally legitimate means, confident that they would no longer be exposed to a barrage of antitrust lawsuits filed by athletes. Collective bargaining could lead to regulations like required multi-year commitments to programs or a reinstatement of the NCAA’s eligibility probations for transfers, restoring some semblance of order. Frankly, the fans do not care how these problems are fixed so long as solutions are implemented soon. Collective bargaining is a promising road forward, which, if not implemented through *House*, should be promptly implemented through another mechanism.

Ironically, the most promising way to fix the modern issues of college football, which once staunchly required absolute amateurism, is to more closely mimic the NFL’s professional model.