

The Rise of American Esports-and the Fall of the NCAA

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Abstract

This paper critically examines the financial, structural, and ethical challenges facing collegiate athletics, with a particular focus on esports and Division I programs. It highlights the escalating costs and reliance on institutional subsidies that threaten the sustainability of university sports departments, as well as the shifting landscape caused by NCAA deregulation, NIL (Name, Image, Likeness) policies, and Title IX litigation. The analysis contends that top-tier collegiate athletes are, in effect, professionals and questions the NCAA's use of the "student-athlete" label to justify inequitable treatment. The discussion explores the consequences of pay-for-play models, the inadequacy of scholarships as compensation, and the ongoing struggle for fair wages and rights among athletes. Ultimately, the paper argues for a more just and transparent collegiate sports regime, calling attention to the need for reforms that address both gender equity and the professional status of student-athletes.

Keywords: Sports, NCAA, NIL, Legal, Esports, Women in Sports, Streaming, NBA, NFL

The University of Arizona recently announced that its esports program has been de-funded [1]. The esports program "can no longer continue without the additional funding and has lost its varsity status [2]." There are three categories of collegiate esports programs: Varsity, Non-Varsity, and Club [3]. Varsity esports programs are led by directors, and their success is "based on recruitment and competitive placement [4]." "40% of esports programs live under the athletics department [5]." Non-Varsity esports programs are led by directors, and their success is "based on recruitment and on-campus student engagement [6]." "60% of esports programs are housed outside of athletics [7]." Esports Clubs are led by students, and their success is "based on community development and student leadership [8]."

Esports are not the only programs struggling [9]. In fact, athletic "departments around the country are struggling to generate revenues capable of offsetting runaway expenses. Inflation, NCAA deregulation, and COVID-related loan obligations have all driven up the cost of operation in recent years [10]." "The cost to colleges and universities in student-athlete recruitment and acquisition is higher than it's ever been. Then you add

deregulation, more liberal transfer guidelines and chaos in NIL, it makes these commitments more like a series of one-year

Contracts [11]. 'Then you face the cost to retain student-athletes including developing deep NIL resources, and making massive experience investments which is another challenge entirely [12].' "College sports insiders estimate that ~75% of Division I athletic departments now rely on some form of institutional support, with some receiving tens of millions in subsidies annually [13]."

The NCAA is experiencing death by a thousand cuts. We ought to be cheering. Once the Death Star is destroyed, the New Republic can usher in a just regime. We prefer to cover up or deny our institutions' transgressions in America. If America does take action to correct wrongdoing, it is half-measures [14]. The term "student-athlete" is derogatory. The NCAA has used this term to justify their misconduct [15]. Supporters of the term student-athlete should be considered bigots.

The athletes in the top tier of Division I collegiate athletics are professionals. Denying these are professional leagues because of the athlete's age is asinine. In America, age doesn't determine whether an athlete is a professional. The United States has no

issue sending young women to compete in the Olympics [16]. Anyone opposed to Division I athletes earning salaries that accurately reflect the value of their abilities must self-reflect. What emotions are you feeling?

Old Men Yelling at Clouds

Nick Saban's comments about NIL have garnered a lot of attention. Recently, he said it's "fantastic that players get to make money now. But every single coach, in every single revenue sport, if you're paying attention, is saying the same thing. This is the only thing that any recruit is asking about now when they come on visits. And I don't believe it's pearl-clutching to wonder if maybe that's not ideal. Maybe something about the school and your development there as a human being ought to comment on your process there and your line of thinking because overwhelmingly those athletes are going to have to find a job that isn't football when they leave [17]." Given that these athletes are being asked to play professional sports without receiving a salary, no coach should be surprised that athletes want to maximize the area they can profit from. The universities should not be the only party that profits [18].

Saban isn't the only noteworthy individual upset about these professional athletes demanding fair wages. Senator Tommy Tuberville is outraged as well. Senator Tuberville said, "the last time I looked, they're not employees. These students are student-athletes... Coaches right now have a little bit of control of the football team or the basketball team or gymnastics... Problem is [if] unions get involved; they will go on strike before a championship game. They will hold hostage the people that are paying the bills [19]." Senator Tuberville's comments are absurd. Senator Tuberville's words are belittling and condescending. However, his position is understandable.

Right now, everybody in the equation wins except for the athlete [20]. Treating these professional athletes fairly is terrible for business. The NCAA and the Universities are in complete control. If these professional athletes don't toe the line, the NCAA and/or the University can crush them [21]. It's a sweet deal for the NCAA and the Universities. Senator Tuberville is right; these professional athletes are "going to kill the goose that laid the golden egg [22]."

Stay In Your Lane

A University cannot manage a professional sports team. There has been significant discussion of Title IX's impact on NIL and athlete pay. "Title IX prohibits sex discrimination at educational institutions that receive federal money. It plays an instrumental role in college sports. Among other effects, Title IX requires that athletic departments provide equitable treatment to men and women athletes [23]." The expectation is colleges "that pay football and/or men's basketball players but no other athletes [will] undoubtedly face Title IX litigation. They might also face claims under the Equal Pay Act and Title IX of the Civil Rights Act, laws that prohibit sex discrimination in compensation and employment [24]." The NCAA is scrambling to find ways to

compensate women's basketball programs [25]. The NCAA needed five years to name a partner for the NIL Registry [26]. Why should we ask these young women to wait for whatever

half-baked plan the NCAA unveils? The NCAA is not taking action to right a wrong. The NCAA recognizes that their chickens have come home to roost [27].

Thanos Warned Us

Pay-for-play is inevitable. Scholarships are no longer the be-all and end-all. "At many programs, players are receiving NIL as a way of going above the NCAA scholarship limit of 85 per team. It's a way to have a deeper roster and keep veteran players around [28]." The performance of these professional athletes is worth more than what the university bills for a semester's or an entire school year's tuition. A scholarship's actual value is that of a deal sweetener. The time when a scholarship could be used as a weapon against these professional athletes has passed [29].

The NCAA should seek an honorable death. The jig is up. The players are seeking "monetary damages for being denied three things: a share of broadcasting revenue... the opportunity for revenue that would have been possible in college sports video games and NIL opportunities prior to 2021. They also want NCAA rules changed to allow the Power Five to negotiate with players going forward for their appearance in televised game broadcasts and the removal of NIL restrictions related to direct school and conference payments [30]." The NCAA is understandably afraid. "The fundamental risk for the NCAA in permitting colleges to make direct NIL payments is the moment one of those payments is exposed as compensation to attend, or not later transfer from, a school. Such a payment wouldn't be NIL, but instead pay-for-play—a payment the NCAA has long insisted is an anathema to the student-athlete model and a threat to amateurism [31]." The NCAA's value was in its ability to restrict profit sharing.

University Athletic Directors (ADs) appear prepared to sacrifice the NCAA to save themselves. Some ADs believe that the "system is broken, and I don't know how much more we can break it... This is forcing a traditional model to look outside itself, and that's a good thing [32]." Apparently, the NCAA is the only party that cannot see the writing on the wall. Some ADs claim this has "been on our radar for quite a while now... While the terms haven't been resolved, or if they will be resolved if this doesn't go to trial, you think about the changing model of college athletics all the time... [College athletics] is going to look different in three years than it does today, but I don't think any of us have a clear vision of exactly what that is, other than knowing that times are changing. A lot of colleagues can complain about that, but at the same time, it's exciting too. It's an opportunity to be part of the new world of college athletics when it arrives [33]." The NCAA is outmanned and outgunned [34]. Professional athletes are asserting their rights. Universities have abandoned the NCAA. Now, Uncle Sam has added himself to the NCAA's dance card [35]. The Federal Trade Commission has forbidden the use of noncompete clauses [36]. The IRS is targeting NIL collectives [37]. The NCAA has mistaken NIL as its safety net.

NIL is the Harbinger of Death Ready to Form Voltron?

Conflict is essential to bring about change [38]. The public execution of the NCAA is good for the sports world. Charlotte

and Stephen Jones of the Dallas Cowboys recently reminded us that asserting your rights is good for business [39]. How much longer will the Power 4 Conferences exist? The Pac-12 was hunted until it became an endangered species [40]. The ACC is on the verge of imploding [41]. The B1G and the SEC are not devoted to the College Football Playoff (CFP) [42]. So, who has next?

In the football world. The College and professional games have increasing commonalities. On the field, Helmut communication and the 2-minute warning have arrived [43]. Regarding business transactions, players have essentially been granted free agency [44]. Furthermore, NIL opportunities allow players to delay declaring for the NFL draft [45]. Some believe the Power 4 conferences must break up with the NCAA [46]. The College football “Super League” is generating considerable attention [47]. There would be eight divisions, and the “seven permanent 10-team “Super League” divisions consist of every Power Five school plus Notre Dame, and are organized geographically: west, southwest, plains, Midwest, northeast, south and southeast. In large part, the effort appears to preserve or reunite historic rivalries, a number of which have been shattered by conference realignment [48].” Is an eighty-team “Super League” the same show with a different title? Will a committee determine which teams earn postseason berths instead of wins, losses, and tiebreakers? Hopefully, the goal was to suggest something silly to ensure consumers pay attention to detail.

Some believe that “a distinct separation of NCAA Division I college football by a minimum overall program/athletic budget needs to happen. In other words, it is not the have and have-nots. It is the have and never-will-be’s, and nothing will really change that simply because of financial efficacy. It does not make financial or competitive sense for many schools... to play in a sandbox where they cannot compete [49].” Let this be the moment when Americans stop embracing half-measures. The top tier of Division I sports are professional leagues. At best, seven to ten football teams can win a title in Division I. Perhaps there will be more parity after the league is reborn.

Take the top 30-32 teams and establish a formal professional league. Division I professional sports are the only major American sports leagues with over 40 teams. Implementing a system of promotion and relegation will create suspense and generate excitement. Embracing a system of promotion and relegation forces programs to prove they belong in the top tier and silences critics [50]. Determining who belongs in the sandbox is best done on the field, not in meeting rooms. Players can unionize once a formal professional league is created, and collective bargaining can begin. The NFLPA, NBPA, and WNBP can assist or house the newly formed unions. Finding owners for these new teams will not be difficult [51].

The universities will get their piece of the pie. Stadiums and arenas can be leased [52]. The narrative surrounding public funding for stadiums and arenas is changing. “The battle for public funding is highly competitive and the tendency historically has been for municipalities to allocate those dollars to “more visible” stadia... Tier two and three properties, and minor league organizations, particularly those in secondary

markets, have gotten overlooked. But that mentality is starting to change. Broad demand for live entertainment nationwide, and an influx of smart money into these teams... has brought on a newfound willingness amongst elected officials to allocate public dollars [53].” Elected officials’ support for funding stadium projects is not intrinsically evil. “Taxpayer support of sports isn’t inherently bad: Fair and thoughtful deals between cities and teams can result in situations where the public sees a return on their investment [54].” The universities’ logos and jerseys can be licensed [55]. Let’s do this right-no need to cut corners.

Trust The Silver Surfer

NBA Commissioner Adam Silver can be trusted with the fate of the basketball world. Silver’s handling of NBA business issues has been masterful [56]. For those wondering what March Madness would be like without the NCAA, some believe there would be little change. “The players would still play for their teams, fans would still watch, and non-fans would fill out brackets for their office pools. The difference would be found off the court. Players would be paid for their labor and the use of their name, image, and likeness on broadcasts, merchandise, and apparel... TV networks, sneaker companies, and other businesses that profit from the tournaments would have to share in the money, just like they share with the NBA and WNBA players through group licensing [57].” Silver is undoubtedly lined up, waiting for the swell. The author believes the top 30-32 Division I basketball teams should establish a formal professional league. Moreover, the author insists implementing a system of promotion and relegation will create suspense and generate excitement. Betting companies will argue that Cinderella and a large postseason tournament are essential. However, the NBA isn’t a stranger to this space [58]. The NBA is considering expanding into Europe [59]. Hopefully, the entire universe acknowledges that basketball’s future is brightest under the Surfer’s stewardship.

Are The Stars Aligning?

The streaming wars are being waged in the sports world [60]. The framework for sports media rights deals is evolving; this is the perfect time for a revolution. “The NBA is ‘seeking a new decade-long – or longer’ – media rights contracts that will ‘alter how it traditionally delivers games, with streaming becoming the principal distribution method [61].” The NBA has the framework for a deal with Prime Video [62]. The NBA’s commitment to streaming is forcing companies to adapt-or-die [63]. The NBA is head-and-shoulders above the other major American sports leagues in terms of progressive thinking and business savvy [64]. “Remember, the beauty of streaming is that the platforms have the capability to capture more about who is engaging with the content, and how they’re doing it [65].” The sports world is metamorphosing; lean in.

A Phoenix Rising from The Ashes

“Esports are growing across the Globe. Mature markets like North America and Western Europe are continuing to grow. However, over the last year, audience numbers were most affected by growth markets in the Middle East, Africa, Asia-Pacific, and Latin America [66].” Despite the NCAA’s distasteful business practices, esports have succeeded in North America. “Schools are mostly trying to make revenue through esports by increasing

enrollment. If your cost of attendance is \$35,000 or \$40,000 per student, and you only have to invest maybe \$5,000 or \$10,000 per student for the esports program, then that could be a revenue generator [67].” The demise of the NCAA is the salvation the esports world has been praying for. The NBA is active in this space [68]. The Surfer is ready to strike. The NBA’s ability to take over the space will bring suitors to compete with the Saudis [69]. Once the NFL catches up to the NBA, esports will have the momentum it needs to become an Olympic sport [70]. Madden tournaments are 1v1 [71]. The author is unsure if 11 v. 11 matches are feasible; nevertheless, 7v7 matches are. Ideally, the NFL will recognize the value of establishing a league like the NBA’s 2k League. Investing in Madden and Flag Football will assist the NFL in achieving its international ambitions. We have to do this, and we should want to let the NCAA burn [72-88].

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