



Online Blog

Fall 2020

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ONLINE NOTE

COMPENSATION FOR THE PLAYERS: AN ANALYSIS OF THE COMPENSATION OF AN NCAA ATHLETE

*Michael Angelo Bongiovanni**

I. INTRODUCTION

Over the past ten years, a controversial issue has emerged in the world of University athletics: are student-athletes fairly compensated for their dedication to the field? The professional success of the coaches, executives, and universities is directly linked to the profitability of the student athlete, which makes the retention of their top athletic recruits in every upcoming offseason essential. Despite the student athletes' ability to draw fans in, thus heavily influencing the potential profits made, many have been left blind to these profits.

In 2018, the University of Texas brought in over \$219 million from sports revenue, with the following top-ten highest earners also bringing in over \$150 million.² Much of this revenue came from selling the jerseys of their 18- to 22-year-old student athletes. Despite the high profitability, the student athletes did not directly yield any of this revenue. Indeed, if these student athletes receive compensation for their name, image, and likeness, they are subject to punishment by the National Collegiate Athletic Association (NCAA) and may face expulsion from their respective universities, as well as ineligibility to play for any NCAA team.³ California SB-206, which was recently passed unanimously and approved on September 30, 2019, aims to remedy this grievance.⁴ This bill allows the athletes of the NCAA to receive compensation based on their name, image, and likeness without affecting their eligibility for a scholarship.⁵ This bill provides the opportunity for student athletes to simultaneously compete and make a living to provide for

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² Steve Berkowitz, *Texas Athletics Program Reports More than \$219 Million in Revenue during 2018 Fiscal Year*, USA Today, (January 16, 2019), <https://www.usatoday.com/story/sports/2019/01/15/texas-athletics-program-had-over-219-million-revenue-2018/2586818002/>.

³ *Summary of NCAA Eligibility Regulations – NCAA Division I*, National Collegiate Athletic Association, (2019), https://ncaaorg.s3.amazonaws.com/compliance/d1/2019-20D1Comp_SummaryofNCAAREgulations.pdf.

⁴ *Collegiate Athletics: Student Athlete Compensation and Representation*, S. 206, Senate of California (2019).

⁵ *Id.*

their families, many of whom wouldn't have been able to afford college without their athletic scholarship.

Furthermore, this bill will benefit the sports community as a whole by preventing the recurring issue of "one-and-done" players. These "one-and-done" players play for their college teams for one year, and then have the choice to enter the professional draft in order to earn an income -- thus, having to choose between an income or an education. Now, student athletes have the choice to spend all four years in college while also receiving compensation for their abilities and hard work on the field or court. This bill has given athletes the recognition and compensation they deserve for putting their bodies on the line, every day, and making millions for their universities. Hopefully, this bill will insight change in the sports community as a whole.

II. HISTORY

Since its formation in 1906, the NCAA has tried to create a regulated playing field for all collegiate athletics.⁶ The NCAA has been incredibly successful, and currently oversees 347 Division I colleges, and universities nationwide, as well as hundreds of Division II and III schools.⁷ Every year 107,000 fans gather at every home game for the Michigan Wolverines. Fans travel to Ann Arbor, from all over the country, to watch one of their events.⁸ It is unlikely that the founders of the NCAA could have possibly foreseen the scale to which they grew, over 100 years. In 1906, the idea that players would not be compensated likely made sense, with scholarships seen as an equal trade off. They had no concept of the scale to which they would grow, and the earning potential these college athletes would one day have. However, it is clear that times have changed. Indeed, it has taken the league over one hundred years, since its inception, to reflect these changes.

III. RELATED CASE

One of many lawsuits regarding this issue, that eventually shaped SB-206, was *O'Bannon v. NCAA*.⁹ This case dealt with the highly regarded basketball player for the University of California – Los Angeles, Ed O'Bannon.¹⁰ He was displeased with his image and persona being used in the Electronic Arts

⁶ *National Collegiate Athletic Association*, Encyclopedia Britannica Inc., (2016), <https://www.britannica.com/topic/National-Collegiate-Athletic-Association>.

⁷ *Id.*

⁸ *University of Michigan Stadium: Ann Arbor*, Destination Ann Arbor, <https://www.ann Arbor.org/university-of-michigan/michigan-stadium/>.

⁹ *O'Bannon v. National Collegiate Athletic Association*, 802 F. 3d 1049, (9th Cir., 2015).

¹⁰ *Id.*

NCAA video game.¹¹ O'Bannon saw himself in this video game and was perplexed, and questioned how his appearance, image, jersey number, and abilities were used for their profit without his consent.¹² The NCAA made various arguments in this case, asserting that the rule was "necessary to preserve the amateur tradition and identity of college sports."¹³ Essentially, the NCAA was trying to frame profiting off of others, without sharing the profits with them, as a traditional and ethical way to run a nationwide organization.¹⁴ Additionally, the NCAA's stance implies that these dedicated, and extraordinary athletes should be considered amateurs within their profession, and therefore compensation would be unnecessary.¹⁵

In June of 2014, after a 14-day trial, the court held that the NCAA was, in fact, violating the United States Antitrust Laws.¹⁶ The Antitrust Laws, including the Sherman Law, state that "every contract, combination, or conspiracy in restraint of trade," and any "monopolization attempted monopolization, or conspiracy or combination to monopolize," as well as the FTC Act banning "unfair methods of competition" and "unfair or deceptive acts or practices."¹⁷ The NCAA attempted to appeal but one year later the U.S. Court of Appeals affirmed that the organization was indeed violating student athletes' rights.¹⁸ This decision also permitted members of the NCAA the ability to provide up to \$5,000 per school year in compensation to the players as an incentive for them to join their program, along with the opportunity to give scholarships that amounted to the full price of attendance to the school.¹⁹ This money would only be distributed by being placed in trust funds that are accessible after the athlete departs from the school.²⁰

IV. ANALYSIS

O'Bannon v. NCAA may have been a step forward for student athletes demanding pay, however, it falls short of the desired goal.²¹ The implementation of SB-206, which allows college athletes to receive compensation based on their name, likeness, image, and more, may be closer

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *O'Bannon v. National Collegiate Athletic Association, op. cit.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *The Antitrust Laws*, Federal Trade Commission, www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

¹⁸ *O'Bannon v. National Collegiate Athletic Association, op. cit.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *O'Bannon v. National Collegiate Athletic Association, op. cit.*

to the desired endgame by allowing these athletes to get the rights and privileges they deserve when it comes to compensation.²² The decision in *O'Bannon v. NCAA* has multiple flaws, especially the idea that \$5,000 annually is just compensation.²³ According to a study by Drexel University, 86% of collegiate athletes live below the federal poverty line, even though the average value of a Division I football or basketball player can range anywhere from \$120,000 to over \$265,000.²⁴ These students usually only receive full-ride scholarships. Although providing the opportunity for education is valuable, scholarships do not help athletes coming from poverty who are trying to help feed their family back home.

Consider the University of Texas, which brings in over \$219 million in sports revenue, but only provides 85 full-ride scholarships for students.²⁵ The University only allocates a maximum total of \$425,000 annually to full-ride scholarships and student expenses if they provide \$5,000 to every single full-ride athlete. This accounts for less than 0.2% of their revenue going back to their players in the form of compensation. The level of compensation can, and should, be exponentially larger, in order to afford these students the ability to move out of their impoverished lifestyles, and personally profit off of their exceptional abilities. Not to mention the encouraging effect this compensation will have in terms of keeping athletes in their collegiate teams for all four years -- thus benefiting their teams as well as themselves.

V. CONCLUSION

SB-206 is a groundbreaking bill that allows the athletes of the National Collegiate Athletic Association to receive compensation based on their name, image, and likeness without harming their chances for a scholarship.²⁶ Cases like *O'Bannon v. NCAA* paved the way for this Bill to be passed. *O'Bannon's* case allowed for athletes to receive full-ride scholarships and some, limited, monetary compensation, which was a step in the right direction.²⁷ This bill goes as far as to give student athletes the opportunity they deserve by allowing them to directly profit off of their commitment and dedication to athletics, as well as their talents.²⁸

²² *Collegiate Athletics: Student Athlete Compensation and Representation*, *op. cit.*

²³ *O'Bannon v. National Collegiate Athletic Association*, *op. cit.*

²⁴ Ellen Staurowsky, *Study College Athletes Worth Six Figures Live Below Federal Poverty Line*, Drexel Now, (Sep. 13, 2011), <https://drexel.edu/now/archive/2011/September/Study-College-Athletes-Worth-Six-Figures-Live-Below-Federal-Poverty-Line/>.

²⁵ Steve Berkowitz, *op. cit.*

²⁶ *Collegiate Athletics: Student Athlete Compensation and Representation*, *op. cit.*

²⁷ *O'Bannon v. National Collegiate Athletic Association*, *op. cit.*

²⁸ *Collegiate Athletics: Student Athlete Compensation and Representation*, *op. cit.*