Breaking the NCAA's Two-Tiered System: Attaining Full Scholarships for Equivalency Sport Athletes

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BREAKING THE NCAA’S TWO-TIERED SYSTEM: ATTAINING FULL SCHOLARSHIPS FOR EQUIVALENCY SPORT ATHLETES

by: Mason Corbett*

ABSTRACT

In June of 2021, the Supreme Court released the Alston decision, invalidating NCAA restrictions on educational-related benefits for Division I football, men’s basketball, and women’s basketball student-athletes. Alston laid the groundwork for future challenges to NCAA rules, with Justice Kavanaugh explicitly encouraging further challenges to NCAA rules in his concurring opinion. This Comment reviews NCAA rules limiting the number of scholarships below the number of scholarship roster spots for certain sports. If these rules were challenged under the Alston framework, they likely would not stand up under the antitrust review for NCAA rules established by Alston.

Furthermore, this Comment suggests that the limits on scholarships below the amount of scholarship roster spots should be removed, while the number of scholarship roster spots should remain. Additionally, no school would be forced to add more scholarships to these programs, and individual conferences could choose to impose scholarship limits if they felt it was necessary to preserve competitiveness within the conference. These changes would allow equivalency sport athletes to receive full scholarships while ameliorating some of the financial and competitive challenges resulting from this kind of change.

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I. INTRODUCTION

For decades, the National Collegiate Athletic Association (“NCAA”) has presided over college athletics with the goal of upholding fairness and integrity in the sports it oversees.\(^1\) One of the NCAA’s many functions is organizing the championship events for each sport, allowing student-athletes to compete outside their respective conferences for a national championship.\(^2\) Furthermore, the NCAA also performs numerous praise-worthy functions, many of which the NCAA does not receive proper credit for. For example, the NCAA distributes more than $600 million to Division I universities and conferences every year, including the Academic Enhancement Fund and the Student Assistance Fund.\(^3\) However, the NCAA has long abused its power in certain areas by arbitrarily concocting rules that restrain competition among universities and hurt student-athletes.\(^4\) Among these arbitrary rules are the scholarship limits for “equivalency sports.”

There are two scholarship schemes in collegiate sports. First, head-count sports are sports where each scholarship spot has a full scholarship for that scholarship athlete.\(^5\) Among head-count sports are football, men’s and women’s basketball, volleyball, women’s gymnastics, and women’s tennis.\(^6\) In NCAA Division I football specifically, there are 85 scholarships for 85 scholarship roster spots.\(^7\) On the other hand, equivalency sports are sports where student-athletes do not typically receive full scholarships for their participation in the sport.\(^8\) Examples of equivalency sports include baseball, softball, soccer, ice hockey, track and field, and golf.\(^9\) In equivalency sports, the teams possess more scholarship spots, or roster spots, than they have full scholarships.\(^10\) For example, NCAA Division I baseball teams can give out scholarships to 27 players on their roster of 35 players.\(^11\) However, these teams only have 11.7 full scholarships to divide among those 27 scholarship players.\(^12\) Consequentially, if the scholarships were to be divided evenly among these 27 scholarship players, each player on scholarship would be getting only 43% of their college education paid for. Therefore, collegiate baseball players generally must pay for most of their college education.

While baseball and ice hockey have a limit on how many players can be on scholarship, all the other equivalency sports only have a limitation on the total number of scholarships that they can give out.\(^13\) For example, softball has a total scholarship limit of 12 scholarships but no limit

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\(^3\) Division I Finances, NCAA, https://www.ncaa.org/division-i-finances [https://perma.cc/HBC8-RV2G].
\(^4\) When the NCAA set compensation restrictions for student-athletes, they did not consider or conduct any studies on how consumer demand would be affected by compensation for student-athletes. In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig. (NCAA I), 375 F. Supp. 3d 1058, 1102 (N.D. Cal. 2019).
\(^6\) Division I Manual, supra note 1, §§ 15.5.1, 15.5.2.
\(^7\) Id. § 15.5.6.1.
\(^8\) Shannon, supra note 5, at 96.
\(^9\) Division I Manual, supra note 1, § 15.5.3.
\(^10\) Shannon, supra note 5, at 96.
\(^11\) Division I Manual, supra note 1, § 15.5.4.
\(^12\) Id.
\(^13\) Division I Manual, supra note 1, §§ 15.5.4, 15.5.7, 15.5.3.1.1, 15.5.3.1.2.
on how many players can receive a scholarship.\textsuperscript{14} However, Division I softball teams typically carry around 21 players, leading to most players being on fractional scholarships.\textsuperscript{15}

The current NCAA rules on scholarship limits in equivalency sports restrict universities from providing full scholarships for all their allowed scholarship or roster spots. However, there is no limit to what these universities can spend on training facilities, stadiums, coaches, etc., for these same sports.\textsuperscript{16} The result is that equivalency sport athletes, especially at schools in the “Power Five” athletic conferences,\textsuperscript{17} play and practice in multi-million-dollar facilities but pay for the majority of their college education. Many of the coaches on these teams make hundreds of thousands or sometimes over a million dollars, while the athletes have to take on loans and figure out how to pay for their education.\textsuperscript{18} In short, these NCAA rules unreasonably restrict trade and competition for equivalency-sport athletes while serving no procompetitive purpose for the market.

This Comment recommends the following changes to the current rules. First, the NCAA’s cap on the number of scholarships available for each equivalency sport should be removed. However, the limits on the number of scholarship spots on each sport’s roster would remain the same. If the equivalency sport did not have a limit for the number of athletes that could be on scholarship, then such a scholarship spot limit would be instituted by the NCAA.\textsuperscript{19} This scholarship limit would presumably be set near the typical roster number for the sport, with a few roster spots for non-scholarship players. The scholarship spot roster limit would stay in place so schools could not have an unlimited amount of scholarship players for their sports teams. For example, in Division I baseball, there would still only be 27 scholarship players, but a school could offer up to 27 full scholarships instead of having a limit of 11.7 scholarships to split among them. If these restrictions were removed—whether by the NCAA’s own volition or through enforcement by the judiciary—it would not force each school to increase their scholarships for these sports, but rather the schools could choose to provide more scholarships if they wished. The scholarship roster spot limitations would preserve competition in equivalency sports just as they do in football or other full scholarship sports.\textsuperscript{20}

Additionally, individual conferences would be allowed to set scholarship limits below the number of scholarship spots if they needed to. The conferences could do so because individual conferences do not have monopsony control over the market, and thus their restrictions would not

\textsuperscript{14} Id. § 15.5.3.1.2.
\textsuperscript{16} NCAA I, 375 F. Supp. 3d 1058, 1086, 1068 (N.D. Cal. 2019).
\textsuperscript{17} The Power 5 conferences include the Southeastern Conference (“SEC”), the Atlantic Coast Conference (“ACC”), the Big 12 Conference, the Pac-12 Conference, and the Big Ten Conference. See generally David Kenyon, Ranking Every Power Five Conference in 2021 College Football Season, BLEACHER REP. (Nov. 23, 2021), https://bleacherreport.com/articles/2950600-ranking-every-power-five-conference-in-2021-college-football-season [perma.cc/YR26-ZHLF].
\textsuperscript{19} For example, the NCAA instituted scholarship roster spot limitations in baseball and ice hockey. See discussion supra accompanying notes 10–12.
\textsuperscript{20} See discussion supra accompanying note 7.
deprive student-athletes of other alternatives (i.e., transferring to schools in other conferences).21 Some non-Power 5 conferences may need to maintain some limits to preserve competition. In these conferences, it is conceivable that a select few of their schools may be able to afford increased scholarships while the rest of the schools in the conference could not.

Part II of this Comment discusses the evolution of the NCAA v. Alston case and the rule of reason antitrust analysis the courts have used to review NCAA rules. Part III discusses how Alston and the rule of reason analysis would apply to a challenge to the NCAA’s restrictions on equivalency-sports scholarship limitations. Part IV outlines some of the potential problems and intricacies that could be triggered by removing equivalency-sports scholarship limitations. Finally, Part V offers a brief conclusion.

II. THE RAPIDLY CHANGING COLLEGIATE SPORTS LANDSCAPE

In the past decade, and especially in the past year, the collegiate sports landscape has changed at a breakneck pace. From the conference realignment of Texas and Oklahoma being announced, to the authorization of name, image, and likeness in collegiate athletics for the first time, collegiate sports have officially entered uncharted territory.22 In the summer of 2021, the Supreme Court released its NCAA v. Alston decision, ruling that the NCAA cannot restrict education-related benefits given to Division I football and basketball student-athletes.23 However, the more important takeaway of the decision is how the Supreme Court shattered the “amateurism” status that the NCAA has long used to avoid antitrust law. Although the Alston ruling does not directly apply to the scholarship limits in equivalency sports, the principles and findings in Alston open the door for these scholarship limitation rules to be challenged. In fact, much of the same analysis from Alston can be directly applied to a challenge of equivalency sport scholarship limitations. However, to fully understand what the Alston case means for equivalency sports, we must start at the inception of the Alston case.

A. The District Court Decision

In NCAA I, the district court decision leading up to Alston, a group of former and current Division I football players and men’s and women’s basketball players sued the NCAA.24 The plaintiffs claimed that the NCAA violated the Sherman Antitrust Act by restricting the amount of compensation they could receive in exchange for their services as student-athletes.25 The NCAA defended their restrictions by claiming they were procompetitive because they helped preserve the

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21 A monopsony is when there is one buyer in a relevant market, including “when a firm has market power in employing factors of production,” such as labor. Tejvan Pettinger, Monopsony, ECON. HELP (Nov. 28, 2019), https://www.economicshelp.org/labour-markets/monopsony/ [https://perma.cc/6EJG-LGB3].


24 NCAA I, 375 F. Supp. 3d at 1061, aff’d 958 F.3d 1239 (9th Cir. 2020), aff’d sub nom. NCAA v. Alston, 141 S. Ct. 2141 (2021).

25 Id. at 1062.
demand for ‘amateur’ college athletics and because the rules help “integrate” the student-athletes into the student bodies of their respective universities, furthering their educational experiences.  

For a plaintiff to prove a claim under § 1 of the Sherman Antitrust Act, they must demonstrate three elements were present: “(1) that there was a contract, combination, or conspiracy; (2) that the agreement unreasonably restrained trade under either a per se rule of illegality or a rule of reason analysis; and (3) that the restraint affected interstate commerce.”

The district court began by finding that the first and third elements raised no genuine issue of material fact. The NCAA did not dispute that the rules they issued restricted transactions between student-athletes and universities and that these rules affected interstate commerce. Thus, the only question left was whether the agreement unreasonably restrained trade.

When addressing whether agreements unreasonably restrain trade under § 1 of the Sherman Antitrust Act, courts will use either a per se rule of illegality or a rule of reason analysis. In Alston, the NCAA also did not dispute that the rules challenged by the plaintiffs constituted agreements among competitors to fix the “prices of student-athlete compensation.” Generally, courts automatically condemn horizontal price-fixing agreements under the per se rule of illegality, meaning they are presumably an unreasonable restraint on trade.

However, as ruled in O’Bannon v. NCAA, the horizontal price-fixing conducted by the NCAA should be examined under a rule of reason analysis because there needs to be some degree of cooperation to market collegiate sports. The rule of reason analysis consists of a totality of the circumstances approach where the court considers all of the special circumstances of each challenged restraint. For a plaintiff challenging a restraint, they must first define the relevant market and then show that the defendant has enough control over that market to significantly disrupt competition. If a plaintiff successfully meets this first requirement, the burden shifts to the defendant to prove that the challenged behavior produces a procompetitive effect. If the defendant meets this standard, the burden shifts back to the plaintiff to show there are less restrictive alternatives to the challenged behavior.

In NCAA I, the plaintiffs first asserted that the relevant markets were the national Division I markets for Football Bowl Subdivision (“FBS”) football, men’s basketball, and women’s basketball. In this market, the plaintiffs proposed that they “sell” their athletic services to universities in exchange for scholarships and other forms of compensation allowed by NCAA regulations. Furthermore, the plaintiffs asserted there were no viable alternatives for the defined markets. The court accepted these arguments and found that the NCAA exercised monopsony

26 Id.
27 Id. at 1091 (citation and internal quotation marks omitted).
28 Id. at 1092.
29 Id.
30 Id.
31 Id. at 1095.
32 Id. at 1092.
33 Id.; O’Bannon v. NCAA, 802 F.3d 1049, 1069 (9th Cir. 2015) (quoting NCAA v. Board of Regents of University of Oklahoma, 104 S. Ct. 2948, 2969 (1984)).
34 NCAA I, 375 F. Supp. 3d at 1095–96 (citing Oltz v. Saint Peter’s Cmty. Hosp., 861 F.2d 1440, 1449 (9th Cir. 1988)).
35 Id. at 1096 (quoting Cnty. of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1150 (9th Cir. 2001)).
36 Id.
37 Id.
38 Id. at 1097.
39 Id.
40 Id.
power over the defined market to artificially cap the compensation offered to incoming recruits.\textsuperscript{41} Consequently, the court ruled that it was clear the NCAA rules significantly suppressed competition and fixed the prices on the “labor” of student-athletes.\textsuperscript{42} These rules harmed plaintiffs by restricting compensation that the student-athletes would have received had the rules not been in place.\textsuperscript{43} Upon these findings, the burden then switched to the NCAA to prove that the challenged restrictions produced a procompetitive effect.\textsuperscript{44}

The NCAA offered two procompetitive justifications for the challenged restraints. The first was that the “challenged rules promote amateurism, which in turn enhances consumer demand for Division I basketball and FBS football.”\textsuperscript{45} However, the court found that the restrictions did not appear to be founded on deliberations of how increased compensation for athletes would affect consumer demand.\textsuperscript{46} The testimony of Kevin Lennon, who worked for the NCAA for over thirty years, appeared to be particularly persuasive to the court.\textsuperscript{47} Lennon testified that when setting compensation restrictions for student-athletes, the NCAA never considered or conducted any study to determine how increased compensation for student-athletes would affect consumer demand.\textsuperscript{48} However, the court did recognize that some of the NCAA rules could help preserve consumer demand by helping differentiate collegiate sports from professional sports, where athletes receive unlimited cash payments for their services.\textsuperscript{49} Despite finding that some restrictions imposed by the NCAA may serve some procompetitive interests, the court found many of the restrictions, especially relating to education-related benefits, served no such purpose:

Educational benefits limited or prohibited by these rules are distinct from professional-level compensation because they have a connection to education, are paid to students, their value is inherently limited to their actual cost, and they can be provided in kind, not in cash. Defendants have offered no cogent explanation for why limits or prohibitions on these education-related benefits are necessary to preserve consumer demand. Some evidence instead suggests that the challenged limits on education-related compensation are arbitrary.\textsuperscript{50}

The second procompetitive justification the NCAA offered was that the rules “promote the integration of student-athletes into their academic communities.”\textsuperscript{51} The court disagreed with this assertion, finding that the rules had little or no impact on integrating student-athletes into their student bodies and improving their college experience.\textsuperscript{52} When discussing the differentiation between the student body and student-athletes, the court even said that “the challenged rules may create or exacerbate a wedge because they result in some schools spending money that would

\textsuperscript{41}Id.
\textsuperscript{42}Id.
\textsuperscript{43}Id. at 1098.
\textsuperscript{44}Id.
\textsuperscript{45}Id.
\textsuperscript{46}Id. at 1100.
\textsuperscript{47}Id. at 1100–01.
\textsuperscript{48}Id.
\textsuperscript{49}Id. at 1101.
\textsuperscript{50}Id. at 1102.
\textsuperscript{51}Id.
\textsuperscript{52}Id.
otherwise go to student-athlete compensation on frills, like extravagant, athletes-only facilities.”

In conclusion, the court decided that this supposed justification was insufficient to justify all the restraints imposed on student-athletes. Finally, the court examined what viable alternatives there were to the current restraints. The court agreed with the NCAA that some restrictions should stay in place to help keep the differentiation between collegiate and professional sports. However, the court did not see why education-related benefits should be limited. The court then recounted from *O’Bannon* that “[w]here a restraint ‘is patently and inexplicably stricter than is necessary to accomplish’ demonstrated procompetitive objectives, ‘an antitrust court can and should invalidate it and order it replaced with a less restrictive alternative.’” Furthermore, when considering if an alternative is viable, the “alternative must be ‘virtually as effective’ in serving the established procompetitive effect of the challenged restraints, and its implementation must be achieved ‘without significantly increased cost.’” However, when dealing with NCAA regulations on student-athlete compensation, “a court must afford the NCAA ‘ample latitude’ to superintend college athletics, and may not ‘use antitrust law to make marginal adjustments to broadly reasonable market restraints.’”

With these legal principles in mind, the court decided that there was a viable, less restrictive alternative for the regulation of student-athlete compensation. This alternative would allow the NCAA to keep restricting benefits above the cost-of-attendance and unrelated to education. The NCAA could also continue to limit cash and cash-like payments to student-athletes on top of a scholarship. However, under the court’s alternative, the NCAA could no longer “restrict inherently limited, non-cash, education-related benefits provided on top of a grant-in-aid.” The court explained that this alternative would not increase costs for the NCAA but would rather decrease them because they would no longer have to use resources on policing and enforcing regulations on education-related benefits. The court concluded by finding that the relieved restrictions would “result in increased competition among NCAA members and increased education-related compensation for student-athletes.”

**B. The Circuit Court Decision**

The NCAA appealed (and the student-athletes cross-appealed) the decision to the Ninth Circuit of Appeals. On appeal, in *NCAA II*, the circuit court affirmed the district court’s factual

53 *Id.* at 1103.
54 *Id.*
55 The court refused to disturb restrictions that furthered a distinction between collegiate and professional sports, such as those forbidding schools from paying athletes for their athletic services. *Id.* at 1103–04.
56 *Id.* at 1104.
57 *Id.* (quoting *O’Bannon* v. NCAA, 802 F.3d 1049, 1075 (9th Cir. 2015)).
58 *Id.* (quoting *O’Bannon*, 802 F.3d at 1074, 1076).
59 *Id.* (quoting *O’Bannon*, 802 F.3d at 1074–75).
60 *Id.* at 1104–05.
61 *Id.*
62 *Id.* at 1104.
63 *Id.* at 1105.
64 *Id.* at 1107.
findings and rule of reason analysis.\textsuperscript{66} Furthermore, the circuit court rejected the student-athletes’ argument on appeal that the district court’s injunction should expand to include \textit{all} NCAA compensation restrictions, not just restrictions on educational-related benefits.\textsuperscript{67} The panel explained that the district court struck the correct balance between protecting student-athletes from the NCAA’s anticompetitive rules while preserving collegiate athletics’ competitive aspects.\textsuperscript{68} Following the ruling, the NCAA appealed the circuit court’s decision to the Supreme Court.

\textbf{C. The Supreme Court Decision}

Upon this final appeal, in \textit{NCAA v. Alston}, the NCAA’s primary argument was that it should be largely exempt from antitrust laws and all its rules should remain intact.\textsuperscript{69} On the other side, the student-athletes did not renew their argument from the circuit court but rather argued to uphold the district court’s ruling enjoining the NCAA’s rules restricting education-related benefits.\textsuperscript{70} Therefore, the Supreme Court only reviewed the question of whether the district court erred in determining that the NCAA rules restricting education-related benefits violated antitrust laws.\textsuperscript{71} The Supreme Court found that the rule of reason analysis should apply to the challenged restraints, and the district court did not err in its overall determination invalidating the rules on education-related benefits.\textsuperscript{72}

The Supreme Court began its analysis by refuting the NCAA’s assertion that their actions should receive an abbreviated and deferential “quick look” review instead of a rule of reason review.\textsuperscript{73} The Court explained that although some restraints are clearly necessary in the NCAA’s industry, the challenged restraints in the case did not fall into this unmistakably necessary category.\textsuperscript{74} Next, the Supreme Court addressed the NCAA’s second argument that the Supreme Court’s \textit{Board of Regents} decision from 1984 indirectly approved of the NCAA’s compensation restrictions.\textsuperscript{75} The Court again disagreed, saying that the \textit{Board of Regents} decision stated that there must be \textit{some} horizontal restrictions of trade in the NCAA’s specific industry, but not that \textit{all} horizontal restrictions would be proper.\textsuperscript{76} The Court noted that this consideration is why the restrictions were viewed under a rule of reason analysis, rather than being viewed as illegal \textit{per se}—the standard under which horizontal price-fixing is normally reviewed.\textsuperscript{77} After dispatching these arguments, the Supreme Court moved on to review the district court’s application of the rule of reason.

To start, the Supreme Court found that the NCAA had not disputed the assertion that the challenged rules produced significant anticompetitive effects.\textsuperscript{78} Next, the Court reviewed the

\textsuperscript{66} Id. at 1243.
\textsuperscript{67} Id. at 1263.
\textsuperscript{68} Id.
\textsuperscript{69} Alston, 141 S. Ct. at 2147.
\textsuperscript{70} Id.
\textsuperscript{71} Id. at 2154.
\textsuperscript{72} Id. at 2155–2166.
\textsuperscript{73} Id. at 2155–57.
\textsuperscript{74} Id.
\textsuperscript{75} Id. at 2157–58. NCAA v. Board of Regents, 468 U.S. 85 (1984), was about the NCAA’s restriction of schools’ ability to televise college football games. \textit{Id.}
\textsuperscript{76} Id.
\textsuperscript{77} Id. at 2157.
\textsuperscript{78} Id. at 2161.
district court’s analysis of whether the NCAA had a procompetitive purpose behind its restrictions.\textsuperscript{79} The Supreme Court stated that the district court had simply found much of the evidence the NCAA offered to prove a procompetitive effect to be unpersuasive.\textsuperscript{80} The Court then quickly moved to the third step of the rule of reason. The Court agreed with the NCAA’s initial point that when attempting to promote business interests, businesses do not have to use the least restrictive means to avoid antitrust law.\textsuperscript{81} However, the Court explained that the district court’s decision was not based upon the NCAA’s failure to use the least restrictive rules but rather that the rules were, without justification, stricter than was necessary to achieve the purported benefits.\textsuperscript{82} The NCAA’s rules as constructed did not serve any procompetitive effect, and therefore their rules were more strict than was necessary.\textsuperscript{83}

Furthermore, the Supreme Court turned to the NCAA’s argument that the district court had redefined its “product” by not considering the NCAA’s notions of amateurism.\textsuperscript{84} The Court responded swiftly by explaining that a business cannot simply claim that a restraint is a feature of its product and have that reasoning justify the restraint.\textsuperscript{85}

Additionally, the NCAA argued that there were not less restrictive means that would result in the same procompetitive effects as the challenged restrictions.\textsuperscript{86} The Supreme Court began by generally agreeing with the NCAA in that courts should be hesitant to interfere with business judgments.\textsuperscript{87} However, the Court explained that the district court had adhered to this principle by only enjoining the restraints relating to education-related benefits and not disturbing any other rules.\textsuperscript{88} The district court considered that even if these restrictions were removed or lessened, it would not cause collegiate sports to lose their competitive distinction from professional sports.\textsuperscript{89}

To conclude, the Supreme Court affirmed the district court’s decision in whole, finding that there had been “an exhaustive factual record, a thoughtful legal analysis consistent with established antitrust principles, and a healthy dose of judicial humility.”\textsuperscript{90}

Justice Kavanaugh wrote a concurring opinion to express some additional and slightly more critical thoughts on the matter. He began by acknowledging that the majority decision only addressed one specific subset of the NCAA’s restrictions on compensation, i.e., education-related benefits.\textsuperscript{91} However, Justice Kavanaugh asserted that “the NCAA’s remaining compensation rules also raise serious questions under the antitrust laws.”\textsuperscript{92} Although these other rules were not addressed in the opinion, Justice Kavanaugh explained that the Court’s decision establishes that those rules would be reviewed under a rule of reason analysis going forward.\textsuperscript{93} Additionally, Justice Kavanaugh asserted that the NCAA would potentially lack a sufficient procompetitive

\textsuperscript{79} Id. at 2161–62.  
\textsuperscript{80} Id. at 2162.  
\textsuperscript{81} Id.  
\textsuperscript{82} Id.  
\textsuperscript{83} Id.  
\textsuperscript{84} Id.  
\textsuperscript{85} Id. at 2163.  
\textsuperscript{86} Id.  
\textsuperscript{87} Id. at 2163–64.  
\textsuperscript{88} Id. at 2164.  
\textsuperscript{89} Id.  
\textsuperscript{90} Id. at 2166 (Kavanaugh, J., concurring).  
\textsuperscript{91} Id.  
\textsuperscript{92} Id. at 2166–67.  
\textsuperscript{93} Id. at 2167.
justification for many of its remaining restraints on compensation. Justice Kavanaugh explained, “The NCAA couches its arguments for not paying student athletes in innocuous labels. But the labels cannot disguise the reality: The NCAA’s business model would be flatly illegal in almost any other industry in America.” Justice Kavanaugh also criticized that although student-athletes produce billions in revenue for colleges per year, that money seems to go to everyone but the student-athletes themselves. He commented that athletic directors, conference commissions, coaches, and NCAA executives earn handsome salaries, and universities build immaculate facilities and arenas. Yet the student-athletes end up with close to none of the benefits of the revenue they help produce. Furthermore, Justice Kavanaugh proposed that this problem could be solved through legislation or collective bargaining between the colleges and student-athletes. Lastly, Justice Kavanaugh ended his concurrence with a simple yet powerful statement for future student-athletes: “The NCAA is not above the law.”

D. The Framework for Change

The Alston decision lays out the framework for future challenges to NCAA rules. In his concurrence, Justice Kavanaugh explicitly encouraged future challenges to be brought against other NCAA rules that similarly limit the compensation that student-athletes can receive for their athletic services. The NCAA rules limiting the number of scholarships available below the amount of scholarship roster spots each team has harms student-athletes in equivalency sports by limiting the scholarship “compensation” they can receive for their athletic services. Therefore, even if a school is willing to fund increased or additional scholarships, the NCAA’s current rules do not allow them to do so. This rule clearly harms equivalency-sport student-athletes without providing any notable procompetitive benefits. As the Ninth Circuit in O’Bannon stated, “[T]he NCAA is not above the antitrust laws, and courts cannot and must not shy away from requiring the NCAA to play by the Sherman Act’s rules.”

III. REDEFINING EQUIVALENCY SPORTS

Traditionally, equivalency sports are less popular and have been covered less by media than other sports like football or basketball. Thus, many of the recent changes to college athletics

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94 Id.
95 Id.
96 Id. at 2168.
97 Id.
98 Id.
99 Id.
100 Id. at 2169.
101 Id. at 2167.
102 O’Bannon v. NCAA, 802 F.3d 1049, 1079 (9th Cir. 2015).
103 For example, in 2019, the three-game national championship of the College World Series was broadcasted on either ESPN or ESPN2 and had an average of 1.96 million viewers. Jon Lewis, College World Series Final Hits Four-Year High, SPORTS MEDIA WATCH, https://www.sportsmediawatch.com/2018/06/college-world-series-ratings-highest-years/ [https://perma.cc/G5UZ-DFRE]. In the same year, the College Football Playoff national championship pulled in over 26 million viewers while broadcasted across ESPN and several other ESPN networks simultaneously. Derek Volner, 2019 Alabama-Clemson College Football Playoff National Championship Is Most Watched of Their Three Head-to-Head Title Contests, ESPN PRESS ROOM (Jan. 29, 2019), https://espnpressroom.com/us/press-releases/2019/01/2019-alabama-clemson-college-football-playoff-national-championship-is-most-watched-of-their-
focus on giving rightfully deserved benefits to football and basketball student-athletes. These long-awaited changes still overlook the most basic benefit for equivalency student-athletes—scholarships. Accordingly, the time has come for conferences and universities to have the opportunity to offer full scholarships to their equivalency sport athletes.

As discussed in Part I, many equivalency sport athletes must pay the majority of the cost of their college education while they concurrently represent their university in athletic competition. Yet, almost ironically, these same athletes compete in multi-million-dollar stadiums while their coaches make hundreds of thousands, if not over a million dollars a year. Despite all the money surrounding them, equivalency sport athletes face some of the same financial struggles as many of their non-athlete classmates.

To reiterate, this Comment advocates that the numerical scholarship limits that are set below the amount of scholarship roster spots in equivalency sports be removed. If the equivalency sport did not have a scholarship spot limit, the NCAA could implement one—presumably near the typical roster number for that sport, allowing for a few non-scholarship players. This change would cause the scholarship spot limitation to be the constraint on scholarships, as is the case in head-count sports such as Division I football and basketball. Thus, schools would have the ability to offer full scholarships for each scholarship spot allowed in that particular sport. Schools would not have an unlimited number of scholarship athletes because the scholarship spot limitations would remain in place.

Furthermore, schools and conferences would not be forced to offer any more scholarships than they currently do. Conferences would be allowed to create their own scholarship limitation rules if they felt it was necessary to keep a competitive balance within their particular conference. However, the Power 5 conferences would likely be able to add all these scholarships. Many Power 5 schools spend unrestricted amounts of money on everything around these equivalency student-athletes, while the athletes themselves do not even have full scholarships. The NCAA does not regulate spending on coaches, facilities, etc., causing high-level collegiate sports programs to try to compete for recruits through the spectacular facilities and frills that come with playing for their team. Stephen Ludwig, a former member of the University of Colorado’s Board of Regents, described the building of immaculate facilities for collegiate sports teams as “a never-ending arms race to build shiny objects that appeal to 17-year-olds, so they’ll pick us instead of someone else.”

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104 Cost-of-attendance changes have allowed for universities to provide extra monetary support for student-athletes on full scholarships to pay for the incidental, out of pocket expenses that were not previously covered by scholarships, like tuition, room and board, required fees, and the cost of books. Cost of Attendance Q&A, NCAA (Sept. 3, 2015), https://www.ncaa.com/news/ncaa/article/2015-09-03/cost-attendance-qa [https://perma.cc/3BFP-WY7V].

105 See discussion supra accompanying notes 5–13.


Even if some conferences need to take smaller steps toward adding scholarships, removing the NCAA rules (which affect every conference) would lead to more competition for recruits across collegiate sports. Currently, many schools cannot pursue all the recruits they want because they do not have an adequate scholarship amount available to offer to the recruit. By increasing the number of scholarships, schools could pursue more recruits, driving up the competition for each recruit because the recruit would have more options of schools to attend.

This increased competition can also be explained from a mathematical perspective. For example, a school could have 10 full scholarships to give out, and there could be a hypothetical 60% acceptance rate of those offers. Thus, a school could offer scholarships to 16 recruits and reasonably expect 10 of those 16 to accept the offer to play at their school. However, if the school had 12 scholarships, with an acceptance rate of 60%, they could offer scholarships to 20 recruits and expect 12 to commit. Thus, despite only having two additional scholarships, they can offer scholarships to four more recruits. With more offers would come more competition for each recruit. The recruits would benefit because they could conceivably have substantially more full scholarship offers instead of having only a few partial scholarship offers.

The increased competition for recruits is already displayed in current head-count sports, such as football. As previously explained, FBS Division I football teams can have 85 scholarship players at one time. Generally, a college football recruiting class is between 20 to 30 players, largely depending on each team’s particular needs in that recruiting year. Despite football teams only bringing in 20 to 30 recruits a year and only having 85 scholarships overall, collegiate football teams will extend far more scholarship offers to recruits. For example, in the 2021 football recruiting class, Tennessee extended 479 offers, Ole Miss extended 394, and Nebraska extended 392. On average, SEC teams extended 292 offers, ACC teams extended 266, and Big Ten teams extended 239 offers. Equivalency sports obviously would not have 85 scholarship spots, but this example shows how more scholarships would conceivably allow schools to target a higher number of players than just the number of added scholarships.

Furthermore, colleges generally want their sports teams to be as competitive as possible because it maximizes the benefits brought back to the college. Thus, it could be assumed that many schools would be willing to take steps to further their sports teams’ competitiveness. Admittedly, there would be some complications from this kind of change, as will be discussed in Part IV. However, these changes would lead to increased competition for recruits and a higher level of benefits provided to student-athletes.

109 Shannon, supra note 5, at 96.
110 2022 Recruit Football Team Rankings, 247 SPORTS, https://247sports.com/Season/2022-Football/CompositeTeamRankings/ (Nov. 15, 2022, 8:24 PM) [https://perma.cc/7HDN-JR7C].
112 Id.
113 It is worth noting that this is just a hypothetical, and some coaches may not be comfortable offering more recruits than the number of scholarships they have to give out. Additionally, some of the football offer statistics could be influenced by whether a recruit has refused the offer, or a school knows that it is extremely unlikely for an already-offered recruit to choose their school.
114 The benefits of collegiate sports to universities will be further explored in Part IV. See infra discussion accompanying notes 159–69.
115 See discussion infra pp. 20–22.)
A. Comparing Alston to Equivalency Sports Scholarship Rules

The NCAA rules limiting scholarship amounts in equivalency sports below the number of scholarship spots could be changed in several different ways. The simplest resolution would be for the NCAA to simply revoke these rules. However, the NCAA has long resisted most changes to its monopsony system, typically by claiming their rules are necessary to preserve “amateurism.”

State or federal legislation could be another avenue, as state legislation is what largely helped galvanize the movement toward allowing student-athletes to make money off of their name, image, and likeness. Finally, the rules could also be invalidated through judicial process. This type of challenge has additional promise after the Supreme Court’s decision in Alston. This Comment’s viewpoint is that many of the legal principles for challenging NCAA rules established in Alston would conceivably apply to a similar challenge of the equivalency sport scholarship limitations. Further supporting this viewpoint is the basis of the Supreme Court’s decision in Alston—that the NCAA should not be able to limit education-related benefits that colleges can offer to student-athletes.

To reiterate, a plaintiff suing under § 1 of the Sherman Antitrust Act must prove that (1) a contract exists, (2) the contract unreasonably restrained trade, and (3) the restraint affected interstate commerce. In NCAA I and Alston, both the district court and the Supreme Court found no genuine issue of material fact to debate as to the first and third elements. Presumably, the NCAA would once again not challenge these elements. A contractual relationship exists when the student-athlete signs their National Letter of Intent in high school to provide athletic services at a university, and the university promises to provide a scholarship. The universities then have a contractual relationship with the NCAA, where the student-athlete is a third-party beneficiary. Furthermore, this agreement also affects interstate commerce in numerous ways, such as by teams crossing state lines to play against schools in different states. Thus, as was the case in NCAA I and Alston, the only question left would be the second element—whether the contract or agreement unreasonably restrained trade. This element is typically reviewed under either a per se rule of illegality or a rule of reason analysis. However, as Justice Kavanaugh remarked in his

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116 In the O’Bannon case, the NCAA fought in litigation for eight years against student-athletes being able to profit off their name, image, and likeness. Michael McCann, Legal Challenges Await After NCAA Shifts on Athletes’ Name, Image and Likeness Rights, SPORTS ILLUSTRATED (Apr. 29, 2020), https://www.si.com/college/2020/04/29/ncaa-name-image-likeness-changes-legal-analysis [https://perma.cc/6NBT-WEDT].


119 NCAA I, 375 F. Supp. 3d 1058, 1102 (N.D. Cal. 2019).

120 Id. at 1091 (quoting Cnty. of Tuolumne v. Sonora Cnty. Hosp., 236 F.3d 1148, 1155 (9th Cir. 2001)).

121 Id. at 1092; Alston, 141 S. Ct. at 2154, 2158.


123 Id. at 291 (citing Bloom v. NCAA, 93 P.3d 621 (Pt. App. Colo. 2004)).

124 See NCAA v. Bd. of Regents of Univ. of Okla., 104 S. Ct. 2948, 2970 (1984) (finding that the NCAA was subject to antitrust rules, and thus, implicitly finding they were engaged in interstate commerce).

125 NCAA I, 375 F. Supp. 3d at 1092; Alston, 141 S. Ct. at 2161–62.

126 NCAA I, 375 F. Supp. 3d at 1092.
concurrence, Alston lays out that future challenges to NCAA rules shall be reviewed under a rule of reason framework.\textsuperscript{127} The rule of reason approach considers a totality of the circumstances when deciding whether the challenged price-fixing conduct is justified by a pro-competitive effect.\textsuperscript{128} First, a plaintiff must define the relevant market and then prove that the defendant controls the market to a degree that they can significantly disrupt competition.\textsuperscript{129} If the plaintiff meets this first requirement, the burden then switches to the defendant to prove that the challenged restraint has a procompetitive effect.\textsuperscript{130} If the defendant shows there are procompetitive effects, the burden returns to the plaintiff to prove there are less restrictive alternatives to the current restraints.\textsuperscript{131}

In NCAA I, the district court accepted the plaintiffs’ argument that the relevant markets were the Division I sports for FBS football, men’s basketball, and women’s basketball.\textsuperscript{132} Additionally, the court accepted that there were no viable alternatives to the defined markets, and the NCAA exercised monopsony control over the markets.\textsuperscript{133} In a challenge to the NCAA’s equivalency sport scholarship limitations, the defined markets would be the Division I equivalency sports, with the NCAA exercising the same monopsony control as they do in the sports involved in NCAA I. Presumably, the reviewing court would accept the defined markets and that the NCAA asserts monopsony control over the markets, following the precedent set by NCAA I and Alston.

The only perceived challenge that could arise is if the NCAA tried to make a case that the Division I baseball market has an alternative because recruits can be drafted into professional baseball out of high school. However, referring back to NCAA I, NCAA II, and Alston, the district court and reviewing courts did not consider professional sports as alternatives to the sports involved in the cases.\textsuperscript{134} For example, men’s basketball players can be drafted into the NBA after their freshman year of college or when they are one year removed from high school.\textsuperscript{135} However, the courts did not distinguish between freshman men’s basketball players and sophomore, junior, and senior men’s basketball players who had an opportunity to enter the NBA. Realistically, only a very small percentage of collegiate athletes ever turn pro, making the professional sport an option for a relatively small number of student-athletes.\textsuperscript{136} Thus, it is unlikely a court would consider the possibility of turning pro as a viable alternative to the defined market.

B. Procompetitive Justifications

Because a plaintiff will show that the NCAA controls the market, the burden would then switch to the NCAA to provide procompetitive justifications for the challenged restraints on

\textsuperscript{127} Alston, 141 S. Ct. at 2167 (Kavanaugh, J., concurring).

\textsuperscript{128} NCAA I, 375 F. Supp. 3d at 1096.

\textsuperscript{129} Id.

\textsuperscript{130} Id.

\textsuperscript{131} Id.

\textsuperscript{132} Id. at 1097.

\textsuperscript{133} Id.

\textsuperscript{134} Id.

\textsuperscript{135} Mike Chiari, NCAA Announces CBB Rule Change to Allow Players to Return to School if Undrafted, BLEACHER REP. (Aug. 8, 2018), https://bleacherreport.com/articles/2790105-ncaa-announces-cbb-rule-change-to-allow-players-to-return-to-school-if-undrafted [https://perma.cc/XWF8-M3HL].

scholarship limitations in equivalency sports. In *NCAA* I, the NCAA first offered that their rules promoted consumer demand for the sports by preserving amateurism. However, the district court and Supreme Court found this argument largely unpersuasive because the NCAA could not show they had done any meaningful inquiry or study into the effects of how the rules would promote consumer demand. In discussing how the proposed rule changes would affect consumer demand for equivalency sports, the plaintiffs’ argument against the restraints would likely take two different shapes.

The first argument for the plaintiffs is to merely cite how the ability to offer full scholarships up to the limit of scholarship roster spots is already done in head-count sports. There is extremely high consumer demand in these head-count sports, although the student-athletes are on full scholarships rather than partial scholarships. However, the NCAA may assert that the challenged restraints promote consumer demand because the restraints make equivalency sports more competitive. The NCAA will continue by saying that many universities cannot financially afford to offer more scholarships for equivalency sports. Since equivalency sports generally do not bring in much revenue to the athletic department, this type of rule change may cause a split of ‘have and have-not’ schools, based on which universities could afford to subsidize these additional scholarships. The NCAA may argue that this split of schools could cause the competitive balance of these sports to be thrown off. Admittedly, the finances behind this rule change would be the largest complication behind this kind of proposed rule change. This Comment will further address these financial complications in Part IV. But again, the refutation to this purported procompetitive reasoning lies in the analysis of *Alston*.

In *Alston*, the plaintiffs consisted of players of three different sports—Division I FBS football, Division I men’s basketball, and Division I women’s basketball. Division I football and basketball are undoubtedly the sports that bring in the most revenue in all of collegiate sports and are the only two collegiate sports that, on average, turn a profit. In fact, Division I FBS football teams on average bring in $52,718,100 in revenue, while men’s basketball teams on average bring in $12,587,000 in revenue. However, women’s basketball brings in on average $985,300 in revenue. This is not to take away anything from the incredible athletes who play women’s

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137 *NCAA* I, 375 F. Supp. 3d at 1098.
138 Id. at 1098.
139 Id. at 1100–02; NCAA v. Alston, 141 S. Ct. 2141, 2162 (2021).
140 Shannon, *supra* note 5, at 95–96.
143 See discussion *infra* Part B.
145 Id.
basketball and other lower-revenue sports, but the economic numbers are not comparable to football and men’s basketball. Even though women’s basketball produces significantly less revenue, the Court in Alston never considered whether economics should play a part in their decision.147 Furthermore, the Court in Alston did not consider how the ability of schools to pay for increased educational-related benefits would affect the competitive balance of the sport. And many of the same conceivable procompetitive arguments of the NCAA could have applied—there could be a split of universities that could afford to take on these increased costs and schools that could not. Nevertheless, the Court in Alston did not feel these concerns were necessary to consider while evaluating the antitrust challenge to the NCAA’s rules.148 Additionally, the only financial-related commentary provided by the district court in NCAA I was when they noted how the NCAA would have fewer costs as a result of the decision because they would not have to spend resources on policing the regulations on educational-related benefits.149

A final point to refute this potential argument is that there already is an arms-race dividing universities’ sports programs into the haves and the have-nots. Many schools spend outlandish sums on facilities and stadiums for these equivalency sports. For example, the University of Florida built a $70 million baseball stadium, and the University of Oklahoma plans on breaking ground in 2022 on a $27 million softball stadium.150 The schools that can make these kinds of investments in stadiums and frills are typically able to recruit many of the best players available. With the universities above building new stadiums, the University of Florida baseball team signed the number one ranked recruiting class in 2021,151 and the University of Oklahoma softball team signed the number one overall recruit in the 2022 recruiting class.152 With this type of proposed rule change, the have and have-not system would likely still be in place, but rather the money at the larger Power 5 schools would be going towards scholarships for their players rather than only to over-the-top stadiums, facility upgrades and frills, and coaches’ salaries.

Furthermore, in NCAA I, the district court found that some of the challenged restrictions conceivably helped preserve consumer demand because they maintained a distinction between the professional and collegiate levels of the sport.153 However, the court failed to see how benefits connected to education, whose value is limited to their actual cost, and which could be provided in kind rather than in cash, would blur the line between collegiate and professional sports.154 Here, the only challenged rules are those limiting scholarships below the number of scholarship roster spots. The scholarships are directly related to education, the value of a scholarship is limited to the

148 Id.
149 NCAA I, 375 F. Supp. 3d 1058, 1105 (N.D. Cal. 2019).
153 NCAA I, 375 F. Supp. 3d at 1101.
154 Id. at 1102.
actual cost of attending the university, and it can be provided in kind rather than in cash. The reasoning *NCAA I* used to invalidate the restrictions on education-related benefits can be directly applied to this proposed challenge.

In *NCAA I*, the NCAA also tried to offer a procompetitive reasoning for their restrictions by claiming the rules helped integrate student-athletes into the student body communities of their schools.\(^{155}\) However, the court found this argument not to be persuasive,\(^{156}\) and a court would likely find it even less persuasive if equivalency sport scholarship limitations were to be challenged. First, the NCAA already allows head-count sports without an apparent wedge between head-count sport athletes and their fellow students. Furthermore, other students on campus have their schooling paid for through various types of scholarships and can fully participate in campus life. Thus, this considerably weak argument should not hold any weight if the NCAA were even to argue it.

There is a possibility that the NCAA could offer an argument not explored or considered by this Comment. However, with the similarities between this type of proposed challenge and the *NCAA I* case, this Comment purports that there may not be any new meaningful arguments the NCAA could use to defend its restrictions. Considering the *NCAA I* case was drawn out over several years and made its way to the highest court in the land, it would be reasonable to assume that the NCAA contemplated every possible justification it could use to defend its restrictions. Furthermore, the NCAA has long used the “amateurism” label to avoid antitrust law striking down its various rules and restrictions. However, this amateurism label has little effect to dissuade academic scholarships, or as *NCAA I* found, any education-related benefits, limited to their actual cost, and which could be provided in kind rather than in cash.

C. Alternative Restraints

The district court in *NCAA I* also considered whether there were viable alternatives to the current restraints.\(^{157}\) The court looked for a less restrictive alternative because they found there was an overall procompetitive argument for NCAA rules that help differentiate collegiate sports from their professional counterparts.\(^{158}\) However, the district court and Supreme Court in *Alston* found no meaningful procompetitive reason for the restraints on education-related benefits, whose value was limited to their actual cost, and which could be provided in kind rather than in cash.\(^{159}\) In essence, the *Alston* Court decided that the objective of keeping a distinction between professional and collegiate sports could be accomplished without the restrictions on education-related benefits.\(^{160}\) Thus, the same goals could still be accomplished by keeping the other restrictions on student-athlete compensation, such as those preventing student-athletes from being paid a salary by universities.\(^{161}\)

In a challenge to equivalency sport scholarship limitations, the less restrictive alternative is even simpler than in *Alston*. The NCAA could still enforce limitations upon the amount of scholarship roster spots allowed, keeping a cap on the number of total scholarship players that a

\(^{155}\) *Id.*

\(^{156}\) *Id.*

\(^{157}\) *Id.* at 1103–05.

\(^{158}\) *Id.* at 1101, 1103–04.

\(^{159}\) *Id.* at 1102.


\(^{161}\) *NCAA I*, 375 F. Supp. 3d at 1104.
team could have. Basically, the same format is already in place for all the current head-count sports. This alternative would not interfere with collegiate sports’ distinction from their professional counterparts, thus avoiding the only procompetitive justification the NCAA currently has for its restrictions.

**D. Making the Argument for Change**

In conclusion, the legal analyses of *NCAA I* and *Alston* would directly apply to a challenge to the NCAA’s current rules limiting the number of scholarships below the number of scholarship roster spots in equivalency sports. First, the restraints unfairly restrict trade in the market for recruits without any procompetitive justification. If these restraints were not in place, recruits could receive full scholarships and conceivably have offers from more schools. Second, there is no procompetitive effect produced by the restrictions. Schools have already separated themselves into the haves and have-nots, but the spending is on all the ancillary aspects of the sport rather than on scholarships for the actual athletes. Third, competitiveness could be maintained by having scholarship roster spots serve as the limits for scholarship players. Thus, schools would not have an unlimited amount of scholarship players because they were willing to spend an infinite amount of money. And removing the scholarship limitations in equivalency sports would not blur the line between collegiate and professional sports. Consequentially, the NCAA should allow universities to provide full scholarships to each scholarship player on their sports teams.

**IV. IMPLICATIONS OF BRINGING FULL SCHOLARSHIPS TO EQUIVALENCY SPORTS**

To fully understand the implications of removing NCAA scholarship limits in equivalency sports, the purposes of collegiate sport must be reviewed. Despite the massive amount of money involved in collegiate athletics profit-making is generally not a high priority for universities. In fact, only 25 Division I universities made a profit in 2019 from their sports programs. 162 Thus, the overwhelming majority of universities support their sports programs to serve functions for their universities other than simply to make a profit.

**A. The Purposes of Collegiate Athletics**

From a macro perspective, collegiate sports perform several functions for a university. One such function is to serve as an “advertisement” for the university. Former Utah State Athletic Director Scott Barnes described athletics’ effect on a university’s visibility by stating, “Athletics are the front porch of the university. It’s not the most important room in the house, but it is the most visible.” 163 Furthermore, there have been noted effects of how athletic success has led to universities gaining notoriety among potential applicants. This phenomenon has been labeled as the “Flutie Effect.” 164 The label came from 1984 when quarterback Doug Flutie led Boston College

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to a dramatic win over the University of Miami in a nationally televised football game.\textsuperscript{165} Two years after the game, Boston College had a 30\% increase in applications to the school.\textsuperscript{166}

Another example of this advertising impact was in the 2000s when Texas Christian University began to consistently land in the college football AP Top 25 rankings. Subsequently, applications to TCU increased 105\% from 2000 to 2008.\textsuperscript{167} Doug Chung from Harvard Business School conducted a study in 2013 that found that when a school goes from having a mediocre football team to a great football team, applications increase by 17.7\% per cent.\textsuperscript{168} If a school wished to achieve a similar boost in applications by other means, it would have to “decrease its tuition by 3.8\% or increase the quality of its education by recruiting higher-quality faculty who are paid 5.1\% more in the academic labor market.”\textsuperscript{169}

Admittedly, these recorded effects have largely come from the reach of college football. However, less followed sports, such as equivalency sports, can still have an advertising benefit for a university. For example, in 2016, the Coastal Carolina Chanticleers won the National Championship for Division I college baseball.\textsuperscript{170} In an interview following the national championship, Coastal Carolina Athletic Director Matt Hogue talked about the impact that winning the national championship would have on the university.\textsuperscript{171} Hogue spoke about how the championship would increase applications to the university and how it had galvanized the university’s external stakeholders, alumni, and community.\textsuperscript{172} Hogue then explained the impact that athletics can have on a university:

We have a unique ability to reach a lot of people in a very short period of time. That’s a big part of what athletics can do for an institution. If your athletes are performing well, people start getting very curious about your school, especially in today’s information age. They start spending more time on your website and on your social media channels. It entices that superior prospective student to say, “Hey, that place is happening, it’s vibrant, it has a buzz. That’s where I want to go to school.” On another level, athletic success may arouse interest in areas we never thought of. It may create a stronger perception when our grant writers go out to find money for research projects. It may open a conversation on the other side of the country just because someone happened to watch the College World Series. Athletics is a small percentage of the University, but it’s a major vehicle for awareness and communication.\textsuperscript{173}

Even though Coastal Carolina was a school from a non-Power 5 conference, they were still able to promote their university to a national audience through success in an equivalency sport.

\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{167} Id. at 680.
\textsuperscript{168} Id. at 696.
\textsuperscript{169} Id.
\textsuperscript{171} Impact: A Conversation with Athletic Director Matt Hogue, COASTAL CAROLINA U. MAG., Fall 2016 / Winter 2017, at 22.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
Although equivalency sports will likely never come close to having the advertising reach that football possesses, success in equivalency sports still can make a notable difference for their universities.

Athletics can also serve several intangible purposes for universities. Sports can become a large part of the culture of a university, help engage the surrounding community, and serve as entertainment and social events for students and alumni.\(^\text{174}\) Heightened school pride and affiliation resulting from alumni staying engaged in the school’s athletic programs can conceivably have numerous benefits, including helping graduates network and find jobs with fellow alumni. These types of benefits are hard to quantify, but most would find it hard to deny the impact that athletic success can have in strengthening an alumni’s school affiliation.

\section*{B. The Financial Headwinds to Change}

The primary conceivable challenge to bringing full scholarships to equivalency sports would be the increased costs that those scholarships would bring. Admittedly, equivalency sports are generally run at deficits, but as discussed, sports’ primary purpose for universities is not to make money. However, some equivalency sports do turn a profit. For example, the University of Arkansas’ baseball team turned an $855,055 profit in 2019.\(^\text{175}\) The total cost for a student with in-state tuition for the University of Arkansas is approximately $27,000, while the total cost for a student with out-of-state tuition would be approximately $44,000.\(^\text{176}\) Thus, to increase the number of scholarships for the baseball team from 11.7 to 27 (the number of scholarship roster spots), it would cost between $413,100 to $673,200. The amount of profit made by Arkansas’ baseball team turned an $855,055 profit in 2019.

Even if schools could only afford to add a few scholarships per each equivalency sport, that scholarship could change that student-athlete’s life. The immaculate facilities that Power 5 schools build are great for the years that the athletes are there, but they stop benefitting the athletes as soon as they exhaust their eligibility. For example, the University of Oregon has a $200 million track facility but only has 12.6 scholarships for their men’s track and field team and 18 for their women’s team.\(^\text{177}\) However, these track and field teams typically have approximately 38 athletes.\(^\text{178}\) Thus, many of the athletes representing their university and running in such a beautiful

\begin{footnotes}
\item[174] See generally Janice M. Beyer & David R. Hannah, \textit{The Cultural Significance of Athletics in U.S. Higher Education}, 14 J. SPORTS MGMT. 105 (2000) (discussing the cultural effects that athletics have on universities).
\item[176] The total cost includes the cost of tuition, fees, books, room, board, personal expenses, and transportation expenses. \textit{Cost of Attendance 2021-2022, UNIV. OF ARK.}, https://finaid.uark.edu/cost-of-attendance.php [https://perma.cc/6NSZ-ULYS].
\item[178] \textit{Men’s College Track and Field Scholarship Standards}, supra note 175; \textit{Women’s College Track and Field Scholarship Standards}, supra note 175.
\end{footnotes}
area likely still have student loans to pay off. Furthermore, as the NCAA’s website shows, only a small percentage of student-athletes ever turn professional to make a living off their respective sport.\footnote{Estimated Probability of Competing in Professional Athletics, NCAA, https://www.ncaaconline.com/about/resources/research/estimated-probability-competing-professional-athletics (Apr. 8, 2020) [https://perma.cc/2KPC-VG8Q].} Although most equivalency sport athletes will not be able to ever make a living from their sport, they should have the opportunity to maximize their return for their athletic services while in college.

C. Title IX Implications

When considering funding for collegiate athletics, and namely scholarships, Title IX of the Education Amendments Act of 1972 must be considered because it applies to all educational institutions receiving federal funds.\footnote{Title IX Frequently Asked Questions, NCAA, https://www.ncaaconline.com/sports/2014/1/27/title-ix-frequently-asked-questions.aspx [https://perma.cc/9ZVN-VSBT].} Title IX provides that, “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.”\footnote{Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681(a).} For collegiate athletics programs, Title IX has three primary impacts on collegiate athletics: (1) there must be equitable opportunities to participate in sports for males and females; (2) both male and female student-athletes must receive athletic scholarship dollars proportionate to their participation; and (3) in other benefits (such as equipment or support services), both male and female athletes should be treated equally.\footnote{Title IX Frequently Asked Questions, supra note 180.} For the purposes of this Comment, the second impact of having proportionate scholarships in relation to participation clearly comes into play. Thus, any increase in scholarships for one gender must be mirrored by a proportional rise in scholarships for a sport of the other gender.\footnote{Id.} For example, an increase for three scholarships in baseball would have to be mirrored by an increase in three scholarships for softball or another female student-athlete sport. Thus, scholarships could only be added in proportional amounts, leading to the benefits of this type of rule change being shared amongst both male and female equivalency sports teams.

D. Competitiveness Consequences

Another concern with this type of rule change could come from how it would affect the competitive environments of these respective sports. Conceivably, once the majority of Division I universities reached their maximum amount of fully funded scholarship limitations, the competitive natures of the sport would be balanced the same as other current head-count sports like football and basketball. However, in the transition period between the rule change being implemented and the eventual widespread, full funding of the additional scholarships, there could be some valid concerns about how the rule change will affect the competitiveness of the sports.

The larger, better-funded Power 5 conference schools would likely try to take full advantage of the rule change and add as many scholarships as allowed, as quickly as their funding and athletic directors would permit. Schools with additional scholarships could potentially start to
poach recruits from smaller, or less attractive schools, because they now have a full scholarship to offer the recruit instead of, for example, only 25% of a scholarship. Less attractive or “lesser” schools in the past could beat these better-funded schools out for some in-between recruits because they could offer a higher percentage scholarship than the “better” university (for example, a 50% scholarship at the lesser school versus a 25% scholarship at the better school). Another problem that could arise is if better schools started poaching high performing players at non-Power 5 schools on partial scholarships by offering them a full scholarship to transfer to the better university.

Opponents of the rule change could argue that removing scholarship limitations could lead to less parity in the sport. Having non-Power 5 schools competing for or winning national championships, like Coastal Carolina baseball in 2016, would become a relic of the past. Schools with less money could have their good players raided every year by better-funded schools that could offer the athlete a full ride to transfer to the better-funded school.

Proponents of the rule change may say that, in the end, it will lead to a higher level of competition at the top of the respective sports. With each of the top teams able to attract better talent for all 27 of their scholarship spots, there would be better teams than had ever before been assembled. Both the players and the fans would benefit from seeing higher levels of competition for the championship in the respective sport. Although some schools would be hurt by the change, in reality, that hurt would simply be caused by the better-funded schools competing for recruits at a higher level.

One way to combat the potential disparities in competitiveness is for the individual conferences to limit how many scholarships could be added per year. Perhaps conferences with a high discrepancy of funding between their member schools could implement a rule that only two scholarships could be added per sport per year to allow lower funded schools several years to raise funds. However, as discussed in Part III, there is already a split between have and have-not schools based on the amounts spent on peripheral aspects of these sports. In reality, there will always be issues between funding and competitiveness. However, if such sums of money are to be spent on these equivalency sports, they should go to scholarships for athletes before going to non-essential aspects of the sport.

V. CONCLUSION

This Comment has discussed how current NCAA scholarship limitations in equivalency sports limit the number of scholarships below the amount of scholarship roster spots allowed for each sport. This leads to most equivalency sport athletes receiving fractional scholarships, many of whom must resort to traditional means for financing their college education. At many schools, the athletic departments spend vast amounts of money on stadiums, facilities, coaches, equipment, etc., in these very same equivalency sports. This Comment takes the position that the scholarship limitations should be removed, and the money spent on these sports should be spent on student-athlete scholarships first, before any other ancillary or unnecessary expenses.

The changes recommended by this Comment are that the scholarship roster spot limitations should remain in place (or be added if the sport does not currently have one), but the restrictions on scholarship amounts should be eliminated. Thus, a university would be able

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184 Moment-by-Moment Recap from Omaha, supra note 170.
185 See discussion supra accompanying notes 13–19.
to provide fully funded scholarships for each scholarship roster spot they had for a particular sport. The schools would not be required to provide these additional scholarships, and conferences could set their own limits if they felt it was necessary to preserve competition within the conference.

This Comment also discussed how the *NCAA v. Alston* decision and the rule of reason antitrust analysis would likely invalidate the NCAA’s current scholarship limitations in equivalency sports.\(^{186}\) The relevant markets are the Division I equivalency sports, with the NCAA exercising monopsony control over those markets. Furthermore, there would not be a procompetitive justification for keeping the scholarship restrictions. Scholarships are connected to education, their value is limited to their actual cost, and they can be provided in kind rather than in cash. Thus, removing the restrictions would not lead to a blurring of the line between professional and collegiate sports. Additionally, the scholarship roster spot limitations would preserve competition in the sports by preventing schools from having an unlimited amount of scholarship players.

Finally, this Comment discussed the implications that would arise from implementing this rule change. First, universities generally do not view their athletic programs as profit-making ventures but rather as an advertisement for the university. There certainly would be financial headwinds to adding scholarships, but even small steps would change those student-athletes’ lives. Additionally, to comply with Title IX, there would have to be equivalent increases in scholarships in male and female student-athlete sports. Last, there could be some competitive issues in implementing this type of rule change. However, this competitive imbalance would be temporary, and conference-specific restrictions could help balance the competition within the conferences. Despite any challenges that may arise, at the end of the day, student-athletes should be able to receive the deserved benefit of a full scholarship.