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DOING AWAY WITH THE NCAA'S DURATION OF ELIGIBILITY RULES

*Michael S. Lewis**

Abstract

The NCAA imposes durational eligibility limits restricting a student athlete's eligibility to compete in college sports. Under NCAA rules, an athlete is granted four-seasons of competition in any single sport and no more than five-years of eligibility commencing at matriculation. These rules have come under increasing scrutiny in federal court, as the law acknowledges commercial realities. In numerous cases, federal district courts have enjoined their enforcement against Division I football players under the Sherman Act. On the eve of the Final Four, 2026, the White House weighed in, expressing support for durational limits, and arguing (without support) that imposing limits will enhance, rather than inhibit, opportunity. A fact-based examination of the student experience in higher-ed, however, demonstrates that the NCAA's durational eligibility rules do not support, and even undermine, the NCAA's stated mission: to promote participation in athletics as a vital, co-curricular student activity. This essay argues that the NCAA's durational eligibility rules should be abolished and that students should be permitted to compete as student-athletes for as long as their institutions are willing to permit them to remain students and athletes. Doing so will remove a discriminatory, illegal, and irrational ruleset and allow universities and colleges to determine which of their students are eligible to compete in college sports at all levels.

INTRODUCTION

It is time to dispense with the duration of eligibility limitations the NCAA imposes upon student-athletes in higher-education. These limitations set the lifespan of a collegiate athlete at five years from a standard matriculation. But that lifespan, a product of a bygone era, no longer makes any sense. It is

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even becoming an embarrassment. Every time we learn that a college football player has been granted leave to compete, in some cases, for years longer than other athletes, we ask why other athletes are not given equal time. We then shake our heads at what we suspect to be true: that the biggest college sports are a form of professional competition and that certain athletes are obtaining special treatment by virtue of their newly won, and remarkable, power in the market.¹ National concern is such that The White House decided to weigh in over the Final Four weekend, issuing an executive order arguing, among other things, that the NCAA's rules on eligibility need to be tightened while claiming that expanded time-horizons "reduce opportunities."²

On closer examination, though, the college football players winning their cases in our courts appear to be on the leading edge in challenging a problem to the benefit of student-athletes at all levels, in all sports. They are doing so by advancing positions consistent with what statistics demonstrate, that the NCAA durational eligibility rules are generally out of step with the modern college experience. This is true because, by and large, students do not take five years to get through college. They take longer. Sometimes far longer. Stripping them of the ability to play sports during their tenures thus prevents students from accessing the vital co-curricular activities NCAA advertises college sports to be.

The solution this essay proposes—abolition of durational eligibility rules in total—simplifies NCAA procedures, mitigates bureaucratic fighting and participant gaming by the wealthiest actors, promotes equality across divisions and sports by reducing the costs and barriers to entry, while encouraging greater, healthier, development-appropriate participation freed from the pressures of unrealistically compressed, one-size-fits-all, timeframes.

A proposal like this must set the stage for the abolitionist solution it proposes. The first part describes the NCAA Rules—its four-season, five-year durational standard—as well as the many caveats and exceptions that undermine the underlying arguments the NCAA offers in favor of retaining it. The second

¹ Eddie Pells, *What makes you a pro? At the Final Four, that question is bubbling up once again*, ASSOCIATED PRESS (Apr. 3, 2026, at 08:10 AM) ("The concept used to be so simple: Professionals played sports for money. College players did not. Now, it is not so clear, that confusion gets wrapped into virtually any conversation about the state of college sports."), <https://apnews.com/article/final-four-illinois-europeans-pro-nil-d264e595251614d7f25515e950bdc863> [https://perma.cc/8LHL-E46W].

² See Executive Order No 14400, 3 C.F.R. § ____ (Apr. 3, 2026), <https://www.whitehouse.gov/presidential-actions/2026/04/urgent-national-action-to-save-college-sports/> [https://perma.cc/228V-EMLG]; see Michael McCann & Scott Soshnick, *Wall Street Cop Drafts Trump NCAA Order Sure to Face Legal Challenges*, SPORTICO.COM (Apr. 3, 2026), <https://www.sportico.com/law/analysis/2026/donald-trump-college-sports-executive-order-details-meaning-1234889138/> [https://perma.cc/QT9B-T75K] (analyzing the executive order against the larger legal background in which it was issued).

part describes recent litigation, including federal decisions enjoining the rule from applying to football players under the Sherman Act in high profile cases. The same second part then presents facts and arguments student-athletes have yet to bring forward as further grounds for relief. Those are that the rules undermine the stated mission of the NCAA—student-athlete participation—while raising serious questions beyond antitrust law regarding whether the rules violate prohibitions against illegal gender, age, and, even, race discrimination. In the final section, I argue for abolition marshaling equality, simplicity, and the increased likelihood of parity in support of the position.

I. The Durational Eligibility Bramble Bush That is the NCAA Ruleset.

The NCAA’s durational eligibility rules are a core feature of a larger set of rules governing all college sports in the United States. The NCAA publishes its governing rules in a set of manuals the public can access online.³ Under a field titled, “Rules and Bylaws,” the NCAA’s website lists manuals for Division I, II and III competition. The Division I Manual for 2025-2026 is more than 400 pages long.⁴ The complexity of the NCAA rule structure is apparent from its first pages. Indeed, “Division I, II and III each have a separate manual that contains legislation specific to the applicable division and does not contain legislation pertaining only to one or both of the other comprised of a Constitution, Operating Bylaws, and Administrative Bylaws.”⁵ The Operating Bylaws “consist of legislation adopted by the membership to promote the principles enunciated in the constitution to achieve the Association’s purposes.”⁶

The Division I Manual also acknowledges legislative “Area[s] of Autonomy” by providing “legislative flexibility to the Athletic Coast Conference, Big Ten Conference, Big 12 Conference, and Southeastern Conference and their member institutions.”⁷ It explains that “the abovementioned conferences are granted autonomy in these areas to permit the use of resources that will otherwise advance the legitimate educational or athletics-related needs of student athletes and for legislative changes that will otherwise enhance student-athlete well-being.”⁸ The Division I Manual similarly

³ See *LSDBi*, NAT’L COLLEGIATE ATHLETIC ASS’N (last visited Apr. 6, 2026), <https://web3.ncaa.org/lstdbi/resources> [https://perma.cc/87C7-PNW3].

⁴ See Division I 2025-26 Manual, NAT’L COLLEGIATE ATHLETIC ASS’N (last visited Apr. 6, 2026), <https://web3.ncaa.org/lstdbi/reports/getReport/90008> [https://perma.cc/PU95-5DVU].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at x. The “member” institutions are defined later in the publication; see *Id.* at 6-7.

⁸ See Nat’l Collegiate Athletic Ass’n, *2023-2024 NCAA Division I Manual* at x (defining “Area of

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carves out a “Football Championship Subdivision Dominant” category of regulations and provides a series of notation conventions whose purpose is to alert the reader to discrepancies between rules governing the carve-out subdivisions of the NCAA, Division I, and everyone else.⁹

With respect to all Division I sports, the NCAA manual includes a constitutional Preamble declaring the NCAA “a voluntary, self-governing organization of four-year colleges, universities and conferences committed to the well-being and development of student athletes, to sound academic standards and the academic success of student athletes” as well as—however, now, remarkably—to “diversity, equity and inclusion.”¹⁰ It also trumpets principles such as the “Primacy of Academic Experience,” “Integrity and Sportsmanship,” “Student-Athlete Well-Being,” and “Institutional Control.”¹¹

“Athletic Eligibility” rules are located at Bylaw, Article 12,¹² following articles on “Institutional Control,” “Legislative Authority and Process,” “Ethical Conduct,” and “Conduct and Employment of Athletics Personnel,” all containing densely articulated standards related to each subject field.¹³ Two sections later, the rules cover the separate subject of “Academic Eligibility” by addressing the “student-side” of the student-athlete identity. It measures these through a series of NCAA metrics tracking classroom performance and the student’s advancement toward an undergraduate degree.¹⁴

On the “Athletic Eligibility” side of the equation, the presence of duration of competition restrictions arises, almost out of the gate, at Bylaw 12.01.2. There, the NCAA Bylaws warn that “NCAA eligibility may be lost as a result of activities *before* enrollment in college.”¹⁵ Section 12.02.3 then explains that “Intercollegiate competition is considered to have occurred when a student-athlete in either a two-year or four-year collegiate institution” represents an institution against “outside competition,” including at a scrimmage or practice, when competing in the institution’s uniform, or when a student competes “and receives expenses from the institution for the competition.”¹⁶ The same

Autonomy”).

⁹ *Id.*

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 34.

¹³ *Id.* at ii-iii, 12-30.

¹⁴ NCAA Const. 14, § 14.01.2 (“To be eligible to represent an institution in intercollegiate athletics competition, a student-athlete shall be enrolled in at least a minimum full-time program of studies, be in good academic standing and maintain progress toward a baccalaureate or equivalent degree.”) <https://web3.ncaa.org/lstdbi/reports/getReport/90008> [https://perma.cc/V56P-6FUZ].

¹⁵ See Nat’l Collegiate Athletic Ass’n, *2023-2024 NCAA Division I Manual* § 12.01.2, at 31 (defining “individual vs. student-athlete”) (emphasis added).

¹⁶ See Bylaws § 12.02.3 *Intercollegiate Competition* at 31.

subsection further includes two other subsections identifying “Exempted Events” located under another article of the manual, 16.8.1.2, as well as rules governing “participation on a collegiate institution’s” “club team...provided the institution did not sponsor the sport on the varsity intercollegiate level at the time of participation.”¹⁷ 150 pages later, Section 16.8.1.2 has a provision titled “Other Events.” These include so-called “[e]stablished regional and national championship events and qualifying competition for such events,” the Olympics, Paralympics, Pan American Games, and other enumerated competitions, and “[n]ational team training” for those.¹⁸

These triggering events frame the central rule governing the lifespan of a Division I athlete, which is current as of the summer of 2025. That lifespan commences within one year after the student-athlete’s graduation from high school in all sports except men’s ice hockey, skiing and tennis, which apply different rules for unstated reasons.¹⁹ Once it has, the NCAA imposes two major time horizons.

Bylaw 12.6 provides:

A student-athlete shall not engage in more than four seasons of intercollegiate competition in any one sport (see Bylaws 12.02.3 and 14.3.3). An institution shall not permit a student-athlete to represent it in intercollegiate competition unless the student athlete completes all seasons of participation in all sports within the time periods specified below.²⁰

Bylaw 12.6.1 then explains:

A student-athlete shall complete the student-athlete’s seasons of participation within five calendar years from the beginning of the semester or quarter in which the student-athlete first registered for a minimum full-time program

¹⁷ See Bylaws § 12.02.3.1 (defining “Exempted Events”).

¹⁸ See Bylaws § 16.8.1.2 *Other Events* at 183.

¹⁹ See Bylaws § 12.6.3.2.1 *Sports Other Than Men’s Ice Hockey, Skiing and Tennis* at 48 (describing rules governing deadlines for enrollment at 12.6.3.2.1); see also Bylaws § 12.6.3.2.2.4 *Matriculation After 20th Birthday — Tennis* (permitting matriculation after 20th birthday for tennis players under an elaborate set of conditions); Bylaws § 12.6.3.3 *Participation After 21st Birthday — Men’s Ice Hockey and Skiing* at 50 (permitting matriculation after 21st birthday for men’s ice hockey and skiing under an elaborate set of conditions).

²⁰ Bylaws § 12.6 *Seasons of Competition: Five-Year Rule* at 42.

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of studies in a collegiate institution, with time spent on an official religious mission, in the armed services or with recognized foreign aid services of the U.S. Government being excepted. For international students, service in the armed services of the student's home country is considered equivalent to such service in the United States.²¹

Bylaw 12.6.1.1 then further sets forth:

For purposes of starting the count of time under the five-year rule, a student-athlete shall be considered registered at a college institution (domestic or foreign, see Bylaw 14.02.4) when the student-athlete initially registers in a regular term (semester or quarter) of an academic year for a minimum full-time program of studies, as determined by the institution, and attends the student's first day of classes for that term (see Bylaw 12.6.2).²²

Already, these subsections indicate that the rules, which appear to draw lines along age and sex, also require a series of cross-sectional references to other rules, including those pertaining to religious, military and foreign aid service, as well as the attendance of some level of education at a foreign college institution. So, whatever attachment the NCAA might claim its programming has to the undergraduate time-horizon, the rules explicitly permit postgraduate student participation.²³ Setting aside the many exceptions, caveats, and ambiguities in the rules as written, the basic outline is as follows:

- **Commencement of Eligibility**

A student-athlete has one year after high school graduation to commence eligibility;

- **Seasons in a Single Sport Rule:**

²¹ Bylaws § 12.6.1 *Five-Year Rule* at 42.

²² *Division I 2025–26 Manual*, *supra* note 24, § 12.6.1.1, at 42.

²³ Bylaws § 14.6 *Postgraduate Student Participation* at 158 (“A student-athlete who has previously received a baccalaureate degree may participate in intercollegiate athletics provided the student...is enrolled in a graduate or professional school...”).

From that time forward, a student-athlete may compete in more than “four seasons” in the same sport from the time the student first enrolls in school.

- **Five Year Rule:**

No student-athlete may compete beyond five years tracked from the time the student first enrolls at the school (which must be no later than a year after high school graduation).

Of course, a calculation of the application of the first rule – “Seasons in a Single Sport” – requires a metric for measuring seasons. The NCAA rules state that “[a]ny competition, regardless of time, during a season of intercollegiate sport shall be counted as a season of competition in that sport.”²⁴ But there is a carveout for “two-year college prospective student-athletes” under a set of conditions.²⁵ And there are carveouts for what the Bylaws describe as “Non-championship Segment Competitions” in Field Hockey, Men’s and Women’s Soccer, Women’s Volleyball and Men’s Water Polo.²⁶

College football receives uniquely favorable treatment, from the NCAA, winning an exception that permits a football player to compete in up to four contests without using a season of eligibility.²⁷ Men’s wrestling (but not women’s) extends the exception to five dates of competition.²⁸ Then, a further, more complex exception applies to “Delayed Enrollment,” but only to those competing in sports other than Men’s Ice Hockey, Skiing and Tennis.²⁹ There is also a “delayed enrollment rule” governing students who participate in tennis after reaching the age of 20 but who have not competed in some separately stated percentage of events set forth in another Bylaw.³⁰ Finally, a series of subsections provides additional exceptions and alternative calculations for armed services, study abroad, internships, pregnancies (granting a one-year extension for female student-athletes only), and international competition.³¹

²⁴ See Nat’l Collegiate Athletic Ass’n, *2023–24 NCAA Division I Manual* § 12.6.3.1, at 45 (defining “minimum amount of competition”).

²⁵ Bylaws § 12.6.3.1.1 *Two-Year College Scrimmages* at 45-46.

²⁶ See Bylaws §§ 12.6.3.1.2, 12.6.3.1.3 *Exceptions* at 46.

²⁷ See Bylaws § 12.3.1.6 *Exception — Football* at 46.

²⁸ See Bylaws § 12.6.3.1.7 *Exception — Men’s Wrestling* at 46.

²⁹ See Bylaws § 12.6.3.2.1 *Delayed Enrollment, Sports Other Than Men’s Ice Hockey, Skiing and Tennis* at 46.

³⁰ See Bylaws § 12.6.3.2.4 *Matriculation After 20th Birthday — Tennis* at 50.

³¹ See Bylaws at 44-45.

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Bylaw 12.6.1.7 states that an “Athletics Eligibility Subcommittee, by two-thirds majority of its members present and voting, may approve waivers of the five-year rule as it deems appropriate.”³² The waiver criteria is “designed to provide a student-athlete with the opportunity to participate in four seasons of intercollegiate competition within a five-year period.”³³ The waiver criteria claims applies where “objective evidence” establishes circumstances such as:

- The institution red-shirted the student for a season;
- The student was listed on a roster and eligible to compete during the segment of the season that included an NCAA championship;
- The student was deprived of the opportunity to compete in *one other* season by virtue of circumstances outside of the student’s control;
- The student is deprived of the opportunity to participate for more than one season in his or her sport within the five-year period of eligibility for reasons that are beyond the student’s control, or the institution’s.³⁴

Refining this framework even further, the rules provide two separate sections describing “Circumstances Beyond [a student’s] Control” versus “Circumstances Within [a student’s] Control,” the first permitting consideration of a waiver, the second, foreclosing it.³⁵ The flowchart necessary to distinguish categories is cumbersome. Generally speaking, the waiver rules distinguish medical emergencies, natural disasters, and extreme financial hardship on the one hand from student choices about where to attend college, college decisions to sponsor a sport or not at the school the student has chosen, and misinformation provided by the student from whatever source.³⁶

The ruleset, as a whole, thus establish that:

1. Sports vary in terms of what constitutes a “season” with football permitting substantial competition to qualify while other sports require the barest levels;

³² See Bylaws § 12.6.1.7 *Waiver Criteria* at 44.

³³ See Bylaws § 12.6.1.7.1 *Waiver Criteria* at 45.

³⁴ See *Id.*

³⁵ See Division I 2025-26 Manual, NAT’L COLLEGIATE ATHLETIC ASS’N §§ 12.6.1.7.1.1 (*Circumstances Beyond Control*), 12.6.1.7.1.2 (*Circumstances Within Control*) at 44-45.

³⁶ *Id.*

2. A complex ruleset is required to monitor different sorts of segments of seasons for different sports to determine whether a season is used by athletes from sport-to-sport;³⁷
3. There are gendered distinctions benefiting men in some sports but there is also a grace period for maternity leave but not for paternity leave;
4. There is a waiver system that permits exceptions for some athletes, but not to others, denying relief, even, to students who are naïve, and, even, the victims of fraud perpetuated by adults working for college programs;
5. There are preferences granted for some good deeds (religious, military and foreign aid service) but not for others (voluntary care for family);
6. The waiver system requires substantial institutional support and sophistication for students to access;
7. The NCAA rules give little space to considering the status of students with learning disabilities or learning challenges that schools have decided to admit notwithstanding these disabilities.

Notably, all of this complexity occurs within only one Division of NCAA competition, Division I. An entirely separate rule set applies to Division II competition.³⁸ Division II institutions impose a “four season in any one sport” rule but demand that the student “complete their seasons of participation during the first 10 semesters or 15 quarters in which the student is enrolled in at least a minimum full-time program of studies...”³⁹ Exceptions to the rule exist at this level, too, including one for a “Transgender Female” who “uses two semesters or three quarters while completing one calendar year of testosterone suppression treatment or surgical invention.”⁴⁰ But, like its Division I counterpart, this ruleset nevertheless withholds paternity leave protections from

³⁷ See NEIL GORSUCH, *OVER RULED: THE HUMAN TOLL OF TOO MUCH LAW* 19 (2024) (Connecting the “grow of our laws at all levels” with the growth in “demand for legal services” and noting that “most Americans today cannot afford even desperately needed legal advice.”).

³⁸ See Division II 2025-26 Manual, NAT’L COLLEGIATE ATHLETIC ASS’N (last visited Apr. 6, 2026) <https://web3.ncaa.org/lstdbi/reports/getReport/90010> [<https://perma.cc/5A3N-GKJJ>]

³⁹ See Division II 2025-26 Manual, NAT’L COLLEGIATE ATHLETIC ASS’N § 14.4.3.2.3 *Transgender Female Exception*, Division II 2025-26 Manual.

⁴⁰ Division II 2025-26 Manual, NAT’L COLLEGIATE ATHLETIC ASS’N § 14.4.3.2 *Ten-Semester/15-Quarter Rule* at 141.

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the spouses of pregnant people (or people engaged in surrogacy or adoption).⁴¹ Thus, under this regime, a father who takes time away from school and sport to care for and stabilize his family by sharing the burden of child-care upon the birth of a child is given no explicit relief and may even face a negative inference that relief is prohibited. On the other hand, a transitioning male-to-female athlete is given a specific, medical carveout to achieve that medical outcome. The rules make no effort to defend this different treatment. A further set of rules applies to Division III institutions.⁴² These rules likewise include their own, sometimes punitive, conventions for calculating time counted toward eligibility and participation in NCAA competition.⁴³

II. The NCAA Duration of Eligibility Rules Reach the Courts and Garner the Attention of the White House.

A. Courts Rule for Students Acknowledging Commercial Realities.

Meanwhile, many athletes and fans, alike, have been left to scratch their heads at the high-profile stories of student-athletes still in school long after the default timeframes the rules appear to lapse for the rest. An article titled, “How Long is Too Long? College Football Tests the Limits of Eligibility” announced that “[t]he NCAA has given an extension to one player who will now have a college career longer than twice the time it takes to get an undergraduate degree.”⁴⁴ The report acknowledged that its subject, Solomon Tuliaupupu, 26, entered USC in 2018, but had his career there curtailed by injury and illness.⁴⁵ Another article on the same case explained that Tuliaupupu’s time at USC also spanned COVID-19 and the interruptions to education and competition occasioned by a pandemic, so devastating then, but now, increasingly, a matter fading in to the rearview for many.⁴⁶

⁴¹ See *Id.* at 141 (“Pregnancy Exception”).

⁴² Division III 2025-26 Manual, NAT’L COLLEGIATE ATHLETIC ASS’N (last visited Apr. 6, 2026) <https://web3.ncaa.org/lstdbi/reports/getReport/90011> [https://perma.cc/3CRD-K3C3].

⁴³ See Division III 2025-26 Manual Bylaws §§ 14.2.5.2.3-.4 at 76, NAT’L COLLEGIATE ATHLETIC ASS’N (reinjury during second half of season not considered in determining qualification for hardship), <https://web3.ncaa.org/lstdbi/reports/getReport/90011> [https://perma.cc/3CRD-K3C3].

⁴⁴ Chris Queen, *How Long is Too Long? College Football Tests the Limits of Eligibility*, PJ MEDIA (Feb. 11, 2026, 1:56 PM), <https://pjmedia.com/chris-queen/2026/02/11/college-footballs-new-normal-when-senior-means-age-not-class-n4949385> [perma.cc unavailable].

⁴⁵ *Id.*

⁴⁶ Cf. Mike McDaniel, *Montana Linebacker Earns Ninth Season of NCAA Eligibility for 2026*, SPORTS ILLUSTRATED (Feb. 11, 2026) (“Tuliaupupu still had a COVID-19 year of eligibility, which was granted to all NCAA athletes as a result of the pandemic-affected 2020 season”),

At the foundation of the framing of “How Long is Too Long” article are a series of assumptions about the college experience adopted by the reporter. The most important of these is the reporter’s implied assertion that college is a four-year experience for most students who will (and should) complete their degrees between the ages of 18 and 23.⁴⁷ The reporter is no outlier in expressing the default as he has. The NCAA pressed the same position in *Pavia v. NCAA* before the United States Court of Appeals for the Sixth Circuit.⁴⁸ According to the Sixth Circuit:

After a breakout year in 2024, Diego Pavia wanted to continue playing quarterback for Vanderbilt University during the 2025 football season. But National Collegiate Athletic Association (NCAA) eligibility rules barred him from playing. So, he sued the NCAA. After he won a preliminary injunction, the NCAA appealed.⁴⁹

The preliminary injunction the Sixth Circuit described came by way of a federal district court decision siding with Pavia.⁵⁰ That federal district court decision begins by reiterating the NCAA’s stated mission: “to provide student-athletes with the opportunity to participate in sports and compete as a vital-curricular part of their educational experience...”⁵¹ The ruling then describes the ruleset Pavia challenged: the four-season, five-year rule, before engaging in an analysis of its impact on Pavia, whose education spanned junior college time and time transferring between NCAA Division I universities.⁵²

In ruling for Pavia, the federal district court credited Pavia’s claim that

<https://www.si.com/college-football/montana-linebacker-ninth-season-ncaa-eligibility> [https://perma.cc/D7AB-47HB]; see also Shehan Jeyarajah, *What’s Next for Ole Miss QB Trinidad Chambliss After Injunction Paves the Way for Sixth Season of NCAA Eligibility*, CBS SPORTS.COM (Feb. 12, 2026 6:48 PM) (reporting that a state court enjoined the NCAA from denying quarterback a sixth year of eligibility after multiple attempts to obtain relief through NCAA channels), <https://www.cbssports.com/college-football/news/ole-miss-qb-trinidad-chambliss-injunction-sixth-season-ncaa-eligibility/> [https://perma.cc/RD8E-LYAR].

⁴⁷ Cf. Liam McKeone, *Ninth-Year Tight End Cam McCormick Scores First Miami Touchdown of 2024 Season*, SPORTS ILLUSTRATED (Aug. 31, 2024), (“That’s right. *Ninth* year of eligibility. Between a redshirt year and multiple serious injuries, McCormick extended his college career far beyond the standard four seasons.”) <https://www.si.com/college-football/ninth-year-tight-end-cam-mccormick-first-miami-touchdown-2024-season> [https://perma.cc/8S6F-7U5M].

⁴⁸ See *Pavia v. NCAA*, 154 F.4th 407 (6th Cir. 2025).

⁴⁹ *Id.* at 410.

⁵⁰ See *Pavia v. NCAA*, 760 F. Supp. 3d 527 (M.D. Tenn. 2024).

⁵¹ *Id.* at 531 (citation and internal quotation omitted).

⁵² See *Id.* at 534.

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he stood to lose \$1 million by virtue of the rules application to him, which would deem him ineligible.⁵³ In light of this, and in the post-NIL world, the federal district court further found that the rules were subject to the Sherman Act and were likely to violate the Sherman Act's prohibitions provisions they “unreasonably restrain trade in the relevant market.”⁵⁴

In response to this position, the NCAA argued that its rule enhances the “natural and standard degree progression timeline that is central to the NCAA's mission.”⁵⁵ The court found that defense pretextual, noting how “the duration of eligibility” rules “have evolved over time” thus illustrating that “strict adherence to the eligibility time-frame...does not have procompetitive benefits.”⁵⁶

Other federal district courts have considered the same questions raised in *Pavia* in recent years, with some siding with the student-athlete, and some siding with the NCAA.⁵⁷ One court siding with the student-athlete addressed another NCAA argument, that the durational limits expand opportunities. Addressing that argument, the court stated that it conflicts with the “the basic economic principle that greater competition in the labor market generally leads to better outcomes...”⁵⁸ The same court also observed that exceptions to the

⁵³ *See Id.*

⁵⁴ *See Id.* at 536-537 (citations and internal quotations omitted); *see also Id.* at 540 (“Based on the foregoing, the Court finds Plaintiff has shown a likelihood that the challenged restraints have a substantial anticompetitive effect in the labor market for college football.”).

⁵⁵ *Id.* at 541 (citation and internal quotation omitted)

⁵⁶ *See Id.* at 542.

⁵⁷ *See* *Martinson v. NCAA*, 804 F. Supp. 3d 1109, 1124, 1132-1133 (D. Nev. 2025) (finding the NCAA Five-Year Rule to be “commercial” and subject to the Sherman Act before issuing a preliminary injunction barring its application to the student-athlete); *see* *Coley v. NCAA*, 792 F. Supp. 3d 634, 644 (E.D.N.C. 2025) (“...Bylaws merely say who can play college football and for how long. On this record, the Challenged Bylaws are not commercial and therefore not subject to antitrust scrutiny.”); *Robinson v. NCAA*, 803 F. Supp. 3d 481, 496 (N.D.W.V. 2025) (ruling for student and noting that “three (3) courts have already held the Challenged Rules commercial in nature and, therefore, are subject to antitrust scrutiny.”) (citations omitted), *rev'd on other grounds* 172 F. 4th 271, 2026 WL 914055, *11-13 (4th Cir. Apr. 3, 2026); *Braham v. NCAA*, 794 F. Supp. 3d 824, 833 (D. Nev. 2025) (“In the post-*Alston* collegiate athletic world, the challenged eligibility rules are so intertwined with commercial rules and benefits that they are, in essence, ‘commercial’ in nature.”). In *Pavia*, a consortium of education related entities filed an amicus brief pressing the position that the vast majority of college athletes never earn money associated with NCAA competition. *See* Brief Amicus Curiae of American Council on Education et al. at 4-5, *Pavia v. NCAA*, 154 F.4th 407 (6th Cir. 2025) (“The vast majority student-athletes, in the vast majority of these sports, will learn little—if any—money...”); *but see* Michael McCann, *NCAA May Alter Pro Draft Eligibility. Antitrust Suits Will Follow*, SPORTICO.COM (Apr. 6, 2026) (“The proposed NCAA eligibility arrives as the association moved away from the system of amateurism, where an athlete who had turned pro in a sport was ineligible to play that same sport in college.”) <https://www.sportico.com/law/analysis/2026/ncaa-draft-rule-changes-antitrust-litigation-1234889232/> [<https://perma.cc/8R29-3N4Z>].

⁵⁸ *Martinson*, 804 F. Supp. 3d at 1130 (citing U.S. Off. of the President Council of Econ. Advisers,

rule permitted some students to “compete at advanced ages with far more physical maturity and experience than a typical undergraduate college student,” because of military service and careers in other professional sports.⁵⁹

Litigation regarding the legality of the NCAA durational eligibility rules has reached the federal appellate court level, as well. The *Pavia* case resulted in an appellate court decision that did not reach the merits of the case.⁶⁰ In *Robinson v. NCAA*, the Fourth Circuit Court of Appeals reversed the decision of a trial court to grant student athletes a preliminary injunction, acknowledging that the Sherman Act applied but concluding that the student athletes had not defined or proved the relevant market.⁶¹ Two of the district court cases the NCAA has lost are pending on appeal before the United States Court of Appeals for the Ninth Circuit.⁶² Litigation challenging the rule has also taken place in state court, including one in Florida that the NCAA has lost to a basketball player in the opening stages of litigation.⁶³

On the eve of the Final Four weekend, 2026, the White House entered the discussion with its Executive Order, announcing that “comprehensive executive action is required before college sports are lost forever [sic].”⁶⁴ It describes college sports as existing within a “chaotic state of affairs” that has “undermined competition, reduced opportunities for student-athletes, and jeopardized support for the current range of college athletics, particularly

Issue Brief, Labor Market Monopsony: Trends, Consequences, and Policy Responses (Oct. 2016)).

⁵⁹ See *Martinson*, 804 F. Supp. 3d at 1129-

⁶⁰ *Pavia*, 154 F.4th 407 at 415 (“Since the appeal is moot...Here, the NCAA caused mootness by issuing the waiver. So, we will not vacate the injunction.”).

⁶¹ *Robinson v. NCAA*, No. 3:25CV07661, 2026 WL 914055, *11-13 (4th Cir. Apr. 3, 2026); see also *Fourqrean v. NCAA*, 143 F.4th 859, 870 (7th Cir. 2025) (reversing on similar grounds); Michael McCann, *WVU Ruling Sets Stage for Supreme Court Fight over NCAA Eligibility Limits*, SPORTICO (Feb. 11, 2026) <https://www.sportico.com/law/analysis/2026/robinson-ncaa-fourth-circuit-ruling-1234889620/> (summarizing the issue and suggesting disagreement among courts positions may cause Supreme Court) [https://perma.cc/KP3P-2NRJ].

⁶² See Defendant’s Notice of Appeal, *Braham v. NCAA*, 794 F. Supp. 3d 824 (D. Nev. 2025) (No. 3:25-cv-00253-MMD-CSD); Defendant’s Notice of Appeal, *Martinson v. NCAA*, 804 F. Supp. 3d 1109 (D. Nev. 2025) (No. 2:25-cv-01376-RFB-DJA).

⁶³ See Initial Brief of Appellant, National Collegiate Athletic Association, *NCAA v. Bradley*, Circuit Case No. 2025 14323 CICI, 2026 WL 265158, *2-3 (Dist. Ct. App. Fla. Jan. 21, 2026) (“The trial court granted a mandatory temporary injunction, ordering the NCAA to grant Bradley’s waiver so that he can compete in the 2025-26 season for BCU”); see also Max Olson, *Virginia QB Morris has injunction request denied by judge*, ESPN.COM (Apr. 2, 2026, 7:39 PM) (“The 25-year-old quarterback sued the NCAA in Charlottesville Circuit Court in February in an attempt to return for one more season after his extension of eligibility waiver and appeal were denied by the NCAA earlier this year.”), https://www.espn.com/college-football/story/_/id/48381387/virginia-qb-morris-injunction-request-denied-judge [https://perma.cc/CG3V-H457].

⁶⁴ See Executive Order No. 14400 § 1, *supra* note 2.

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women's and Olympic sports."⁶⁵ As a central solution to the problem, the White House proposed to reinforce the NCAA's position: "age-based eligibility limits" it claims will "promote fairness, consistency, safety, and opportunities for student-athletics under which...participation in college athletics is permitted for no more than a five-year period..."⁶⁶ It further calls for the prioritization of "academic development, success, graduation, and long-term well-being of student athletes" while acknowledging concern over "medical-care for student-athletes" who are injured in competition" during their period of enrollment and for a reasonable period thereafter."⁶⁷

B. The Courts' Decisions Fail to Acknowledge the Foundational Weaknesses of the NCAA Durational Limits.

Absent from the decisions courts have issued for and against students, and from the Executive Order the White House issued on the topic, is any acknowledgment of the long-standing, basic statistical realities for college students in the 21st century—whether they are student athletes, or, just students. These strike at the NCAA's fundamental legal and rhetorical point: that its duration of eligibility rules "provide student-athletes with opportunities to participate in sports and compete as a vital co-curricular part of their educational experience" and that the four-season, five-year rule promotes this goal as a default matter.⁶⁸ The NCAA's position does not match what facts demonstrate about student life and has not for a long time.

Ten years ago, the National Center for Education Statistics issued an eye-opening set of statistics. Less than half of all students enrolling in college obtain their first bachelor's degree within four years of enrollment in the 2015-2016 timeframe.⁶⁹ The same study reported that about 35% of students took more than five years to obtain a bachelor's degree with more than 25% taking between more than six years, and nearly half of that number taking more than ten years.⁷⁰ When separated out by race or ethnicity, the same statistics demonstrate that fewer than a third of Black and Hispanic students graduate within four years, with between 33% and 40% of these students taking more than six years to obtain a bachelor's degree.⁷¹ The scrapping of the four-year

⁶⁵ *Id.*

⁶⁶ *Id.* § 4(b)(i).

⁶⁷ *Id.* § 4(b)(ii)(B).

⁶⁸ See *Pavia v. NCAA*, 760 F. Supp. 3d. at 531 (citation and internal quotation omitted).

⁶⁹ Fast Facts: Time to Degree, NAT'L CTR. FOR EDUC. STAT (last visited Apr. 7, 2026) ("Forty-four percent of 2015-2016 first-time bachelor's degree recipients completed their degree 48 months or less after first enrolling in post-secondary education"), <https://nces.ed.gov/fastfacts/display.asp?id=569> [https://perma.cc/26ZF-3YDY].

⁷⁰ *Id.*

⁷¹ *Id.*; see also Jalen Brown, *Black students are less likely to attain college degrees because of discrimination*

benchmark for attaining a bachelor's degree is so widely acknowledged that entities tracking college completion statistics measure collegiate success against a six and eight-year time horizon, not a four or five-year one.⁷²

These studies raise questions the NCAA rules do not answer about the connection between the NCAA's stated mission and its rules. If approximately half of all students take longer than five years to obtain a bachelor's degree, the NCAA's adoption of shorter time-horizon prevents many from competing as "vital co-curricular part of" the now-standard educational experience, which runs far longer than five-years. Still, a group of non-profit educational institutions that supported the NCAA's position in *Pavia* attacked the district court's decision to reject the NCAA's claims regarding the "natural and standard degree progression" as "baseless."⁷³ But those educators all failed to square their position with the statistics. And they also failed to distinguish sports from extracurriculars offered college students, more broadly. A member of an orchestra can play for as long as he or she is enrolled in a school, at the undergraduate or graduate level.⁷⁴ Whether a student-dramatist becomes part of a cast turns on his or her ability to win a role and not on whether he or she

and external responsibilities, study finds, CNN (Feb. 9, 2023, 7:04 AM), ("Black college students have lower six-year completion rates for any type of degree or certificate program than any other racial or ethnic group because of racial discrimination," inter alia) <https://www.cnn.com/2023/02/09/us/black-student-college-degree-completion-reaaj> [<https://perma.cc/J8HT-HD7X>].

⁷² See *Completing College, National and State Reports, With Longitudinal Data Dashboards on Six- and Eight-Year Completion Rates*, NAT'L STUDENT CLEARINGHOUSE RSCH. CTR. (2023), <https://nscresearchcenter.org/completing-college/> [<https://perma.cc/KK8B-8TCF>]; see also Ashley Mowreader, *The Indicators of Timely Completers*, INSIDE HIGHER ED (Jan. 15, 2025) ("The federal government tracks first-time degree seekers' graduation rates in terms of six- and eight-year completion, but a typical associate or bachelor's degree program can be categorized as two-year or four-year respectively"), <https://www.insidehighered.com/news/student-success/academic-life/2025/01/15/retention-tied-timely-completion-college-students> [<https://perma.cc/PPH3-232P>]; Mariah Stewart, *The Average Student Takes Six Years to Earn a Four-Year Degree, Some Schools and Organizations are Working to Change That*, INSIGHT INTO ACADEMIA (May 19, 2020) ("Traditionally, earning a bachelor's degree within a four-year timeframe was considered the norm. These days, the academic, social and financial strains of completing college have made that timeline nearly impossible for many students—with the majority of degree seekers reaching graduation after six years, according to the National Center for Education Statistics (NCES)"), <https://insightintoacademia.com/the-average-student-takes-six-years-to-earn-a-four-year-degree-some-states-schools-and-organizations-are-working-to-change-that/> [<https://perma.cc/58JG-N6ZE>].

⁷³ See Brief for Amicus Curiae of American Council on Education et al. at 18, *Pavia v. NCAA*, 154 F.4th 407 (No. 24-6153) (6th Cir. 2026).

⁷⁴ See, e.g., *Charlottesville Symphony at the University of Virginia* (last visited Apr. 7, 2026) ("The Charlottesville Symphony Orchestra at the University of Virginia is comprised of music faculty who serve as Principal Players and talented students and community members."), <https://music.virginia.edu/symphony> [<https://perma.cc/4XEE-UVZD>].

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has exceeded a five-year time frame from the moment of first enrollment.⁷⁵ Teacher's Assistants are paid through graduate school.⁷⁶ Labs are staffed with undergraduate and graduate students, alike.⁷⁷ Participation in these activities do not turn on rules requiring that colleges moves others along to ensure turnover. Instead, they turn on fit for the job or the role and the regular flow of student life choices and demands.

That NCAA rules confer opportunities to a discrete age range, both in effect and, in the case of tennis, and men's skiing and ice hockey, explicitly, raises the possibility that the NCAA could face claims of discrimination in employment based on age under various state laws prohibiting the practice.⁷⁸ That the NCAA rules grant certain duration eligibility advantages to male hockey players and skiers, but not to female competitors in the same sports, or in any sport, also raises viable claims of gender discrimination.⁷⁹ That NCAA rules extend eligibility for maternity leave but not paternity leave gives suggests still more exposure to claims of unlawful discrimination.⁸⁰ But, apart from their

⁷⁵ See, e.g., *Tisch Pro/Online: Online @ New York City*, NYU TISCH (“Get applicable skills in storytelling in ways that are fitting for you. Complete the fully online Master of Arts [in] Media Producing in 15 months or take short-term non-credit courses online...”), <https://tisch.nyu.edu/cinema-studies#> [<https://perma.cc/2VQU-3DFZ>]; see also *Special Programs*, NYU TISCH (last visited Apr. 6, 2026), <https://tisch.nyu.edu/cinema-studies#> [<https://perma.cc/6K63-XQVX>].

⁷⁶ See Andrew F. Boccio, *Student Assistants and the NLRB: A Call for Notice-and-Comment Rulemaking*, 48 SETON HALL L. REV. 193, 195–96 (2017) (describing the role of teaching assistants and stating that “universities rely on these students to perform critical functions”) (footnote omitted); see CHARLES T. CLOTFELTER, *BIG-TIME COLLEGE SPORTS IN AMERICAN UNIVERSITIES* 3-4 (2d ed. 2019) (describing the staffing of the University of Texas Center for Nano- and Molecular Science and Technology program).

⁷⁷ See Nicholas Fram and T. Ward Frampton, *A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Sports*, 60 BUFF. L. REV. 1003, 1028 (2012) (drawing analogies between student-athletes and student laboratory technicians).

⁷⁸ *Compare Age Discrimination*, U.S. EQUAL OPPORTUNITY COMM'N (“The Age Discrimination in Employment Act (ADEA) forbids age discrimination against people who are age 40 or older... some states have laws that protect younger workers from discrimination”), (last visited Apr. 2, 2026) <https://www.eeoc.gov/age-discrimination> [<https://perma.cc/F2VL-7GZH>]; *with* N.H. RSA 354-A:6 (“The opportunity to obtain employment without discrimination because of age...is hereby recognized and declared to be a civil right.”); see Executive Order No. 14400 note 2 (defending regime imposing “age-based eligibility limits”).

⁷⁹ See *Sex-Based Discrimination*, U.S. EQUAL OPPORTUNITY COMM'N (“Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex....The law forbids discrimination when it comes to any aspect of employment....”), (last visited Apr. 2, 2026) <https://www.eeoc.gov/sex-based-discrimination> [<https://perma.cc/F9X5-TDVD>]; see generally, Michael H. LeRoy, *NCAA Women Athletes and NIL Pay Disparities: Are they Students Under Title IX, Employees Under Title VII, or Both?*, 93 U. CIN. L. REV. 979, 1019-1025 (2025) (describing the potential application of Title IX and Title VII to women athletes asserting discrimination).

⁸⁰ See *Fact Sheet: Pregnancy Discrimination*, U.S. EQUAL OPPORTUNITY COMM'N (describing federally mandated leave policies under the Family Medical Leave Act (FMLA) of 1993), last

potential illegality, these rules undermine the NCAA's stated commitment to DEI, a commitment further weakened by what statistics demonstrate about the disparate durational experiences of Black and Hispanic student-athletes. Indeed, the rules advantage rich and privileged students with the resources to game the rules. Strategically minded student-athletes (or their parents) have identified the disconnect between the NCAA standard and peak performance. Some have opted 1) to delay the completion of middle school 2) to delay the completion of high school, 3) to delay the application of the NCAA's duration of eligibility rules to them 4) to ensure a better fit between their maturation levels and NCAA performance.⁸¹

Some, quite correctly, do so in recognition that they will reach their peak capacities as athletes later than what the 18- 22- year-old window allows. An analysis of the average age of Olympic athletes competing in the 2020 games 27-years old for male athletes and 26-years-old for female athletes, across all sports.⁸² One authority has maintained that endurance sports athletes (distance running, triathlons) peak in their late 20s to early 30s; power and speed athletes (track springs, swimming, gymnastics) in their early to mid-20s, team sports athletes (soccer, hockey, basketball, football, baseball) in their mid-20s to early-30s.⁸³ This evidence cuts against the NCAA Rules in numerous ways,

visited Apr. 6, 2026) <https://www.eeoc.gov/laws/guidance/fact-sheet-pregnancy-discrimination> [https://perma.cc/2QVB-4F4B]; see also Emma Follansbee, *Changing Tides in Parental Leave Policies: Maintaining a Lawful Policy in Light of Recent EEOC Scrutiny*, THE NAT'L L. REV. (Jan. 4, 2019) ("Meanwhile, the Equal Employment Opportunity Commission (EEOC) is paying increased attention to how these policies may violate discrimination laws by providing unequal benefits along gender lines."), <https://natlawreview.com/article/changing-tides-parental-leave-policies-maintaining-lawful-policy-light-recent-eeoc> [https://perma.cc/H4CF-K7AH].

⁸¹ See *How to Reclassify Your Student-Athlete the Right Way*, ATHLETES FIRST ACAD. A1A ("Today, many student-athletes choose to repeat 8th grade in order to reclassify for high school sports...buying the student that extra year of growth and development without losing a year of high school sports participation."), (last visited Apr. 1, 2026) <https://a1aprep.com/how-to-reclassify-your-student-athlete-the-right-way/> [https://perma.cc/C5D5-YRVX]; *Reclassifying in Youth Sports: What Leagues, Coaches and Parents Need to Know*, NAT'L SPORTS ID (reclassifying—changing a student-athlete's expected graduation year—has become one of the most widely discussed and misunderstood trends in youth sports."), (last visited Apr. 1, 2026) <https://www.nationalsportsid.com/reclassifying-in-youth-sports-what-leagues-coaches-and-parents-need-to-know/> [https://perma.cc/L7SL-LBFN]; *Challenging and Eliminating Delayed Enrollments*, CTR. FOR THE SUPPORT OF STUDENT ATHLETES (observing that some men's hockey players are permitted to play as 22 year or 23 year old freshmen with either three or four years of eligibility because of how "Junior Hockey" operates), (last visited Apr. 1, 2026) <https://www.student-athletes.org/ncaa-delayed-enrollment> [https://perma.cc/HB7H-5Q82].

⁸² See Amber Sayer, *Peak Athletic Age: When Athletes Peak by Sport*, MARATHON HANDBOOK (Mar. 18, 2026), <https://marathonhandbook.com/peak-athleticism/> [https://perma.cc/96KP-XYEJ].

⁸³ Brian Cole, *At What Age Do Athletes Achieve Peak Performance*, SPORTS MED. WEEKLY BLOG (Nov. 12, 2024), <https://sportsmedicineweekly.com/dr-brian-cole/at-what-age-do-athletes->

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undermining age-based claims on their own terms by failing to account for strategic end-runs, in all likelihood rewarding wealthier athletes or well-funded student-support networks that encourage end-runs, while, on the other hand, failing to become current regarding age and peak performance for many athletes who will complete their athletic careers in college.

The NCAA has not addressed these dynamics head-on even while it has raised the specter of the perpetual athlete as a threat to its goals of participation in litigation.⁸⁴ According to one source, “if taken to its logical conclusion” eliminating duration eligibility rules “would permit student athletes to compete in” as many as “18 seasons of intercollegiate competition.”⁸⁵ However, that argument is untethered to any realistic assessment of the capacity of the student-athlete to remain competitive for decades while also continuing a course of study that advances the student-side of the student-athlete identity.

III. The Abolitionist Position

Imagine, that, instead of living under the NCAA's current complicated rule system, we lived in a world in which the NCAA abolished its duration eligibility rules. A student-athlete who would have reaped the benefits of this new world is Sydney Herrington. She had been a star high school athlete who was recruited by a top college program, Northeastern, to play women's ice hockey. Injuries, COVID-19, and a desire to play in college for a team that was a better fit motivated her to transfer to Dartmouth where she became the captain of the women's hockey team.⁸⁶ At the end of her NCAA eligibility, she had one semester remaining in her education and was being courted by the Dartmouth rowing coach.⁸⁷ An ambitious student, Sydney wanted to make

[achieve-peak-performance/](https://perma.cc/ZK3N-8MQJ) [https://perma.cc/ZK3N-8MQJ]: see also James Witts, *At what age does athleticism peak in different sports?*, LIVESCIENCE.COM (July 31, 2024) (confirming that endurance athletes reach their peak in mid to late 20s and early 30s), <https://www.livescience.com/health/exercise/at-what-age-does-athleticism-peak-in-different-sports> [https://perma.cc/6Z6L-RUP3].

⁸⁴ See Michael McCann, *NCAA Warns of College Athletes Playing 18 Seasons in Pavia Case*, SPORTICO.COM (Feb. 11, 2026), <https://www.sportico.com/law/analysis/2026/diego-pavia-18-seasons-ncaa-litigation-1234884328/> [https://perma.cc/PNM7-43XB]; see also Executive Order No. 14400, *supra* note 2.

⁸⁵ McCann, *supra* note 86.

⁸⁶ See Justin Lafleur, *Herrington Is Living the Dream at Dartmouth*, DARTMOUTH SPORTS.COM (“I wanted a better hockey experience, but I didn’t want to sacrifice academics for that . . . I knew the Ivy League was going to be a step up and Dartmouth has a special meaning when you’re from here, because we grew up coming to the games.”) (Feb. 17, 2023, 9:03 AM), <https://dartmouthsports.com/news/2023/2/17/womens-ice-hockey-herrington-is-living-a-dream-at-dartmouth> [https://perma.cc/MKA8-R3HR].

⁸⁷ *Id.* (“Transferring after year three was unique and somewhat atypical, but the COVID-19 pandemic leading to an extra year of eligibility from the NCAA led her to think about, and

the most of her experiences.⁸⁸ Her coaches hailed her presence, even at the later stages of her time at Dartmouth, and even as a transfer student, as overwhelmingly positive.⁸⁹ She hired me to be her lawyer and we tried to obtain a waiver from the NCAA. We gathered documents, pressed our claims, made our arguments, but the clock continued to tick, and, weeks after the opportunity arose, she came to the conclusion that we were too deep into the season to make a continued effort worth it.

In an alternative world without the NCAA duration of eligibility rules, Sydney would not have had to hire me as her attorney to make sense of them, determine the myriad arguments arising from them including those claiming that they are discriminatory in a challengeable manner under state and federal law, before mounting a multi-stage effort to convince an athletic department, a conference, and the NCAA, to allow her to take advantage of the “opportunities to participate in sports and compete as a vital co-curricular part of [her] educational experience.” In this alternative world, she would not have had to abandon her position as time passed navigating this bureaucracy, while the NCAA, or courts, granted orders permitting footballers or male hockey players to play into their mid-to-late 20s under a different, advantageous ruleset, achieving success while represented by attorneys able to litigate with enormous financial backing unique to the NCAA’s two major sports.⁹⁰

Instead, much like an actor, or musician, or ballet dancer, or painter, or lab worker, Sydney would have presented herself as an available teammate to a coach who was willing to train her up in a new sport that she might carry forward through the rest of her life—a healthy one at that—in the final few months of her stay at Dartmouth.⁹¹ And, yes, if she decided to continue her studies at a graduate school, she could even try her hand at making a team at that stage of

ultimately decide, to make the move.”).

⁸⁸ *Id.* (In discussing her major in “history modified by psychology” she explained “Dartmouth allows you to explore your interests . . . You can also create your own major, which is really nice. I remember when I initially tried to do this major, I talked it out with my advisors and wrote this supportive essay about it. I really am interested in both areas, interested in how people think and how they make decisions and how these decisions affect the course of history.’ Herrington convinced her advisors.”).

⁸⁹ *Id.* (According to her coach: “For her to find herself in a leadership role in year two is certainly noteworthy, but not all that surprising to me. Syd has grown into an influential member of our team in a short period of time, on and off the ice.’ . . . Herrington is a backbone to her teammates, much like she and her siblings are to each other.”).

⁹⁰ See CHARLES T. CLOTFELTER, *BIG-TIME COLLEGE SPORTS* 65-67 (2019) (describing the emergence of men’s college football and men’s college basketball as sports drawing revenues far exceeding those of other college sports).

⁹¹ See JOHN LEBAR AND ALLEN PAUL, *COLLEGE SPORTS ON THE BRINK OF DISASTER* 102 (2022) (“A good coach nurtures indispensable values for well-rounded growth. He or she teaches that selfless effort for the good of the whole is a prerequisite for winning; that progress and improvement only come through hard and frequent practice. . .”).

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her studies, as well, at another institution. Having done so, she would use the expanded opportunities the abolitionist position represents to stay in shape longer, compete longer, including through a stage in life that maximizes her performance level, and remain as much a part of campus life as she had been in college.⁹²

The purpose of this counter-factual is to demonstrate the benefits of charting the better and cleaner approach the abolitionist position represents. They are:

1. Removing, as a barrier to competition, a complex ruleset that is difficult to understand, and that draws unsupportable distinctions among students and sports, raising serious questions about unequal treatment, including on grounds that discriminate on the basis of age, gender, and, in effect, race, as well as on anti-trust grounds;
2. Removing the difficulty and expense of determining eligibility questions, hurdles that increase the expense of the entire student-athlete experience, add to a large bureaucracy charged with enforcing them, advantaging athletes who can pay to take the bureaucracy on and win in the process;
3. Bringing the ruleset in-line with statistical realities regarding the length of time students pursue education post-high school, with the added benefit, even, of removing time pressures connected to injury-rehabilitation, all while supporting and not limiting the NCAA's mission of providing "student-athletes with opportunities to participate in sports and compete as a vital-co-curricular part of their educational experience",⁹³ while
4. Extending opportunities to students whose unique trajectory may not fit within the five-year clock—athletes seeking to match their

⁹² See Katy Hebebrand, *Health Benefits of Tennis: Learn to love tennis and serve every muscle in your body*, WEBMD "When you maintain an active lifestyle, you improve your overall health while building strong muscles and bones...Tennis is an activity that works out your entire body...If you play tennis for health benefits, you can add years to your life..." (July 23, 2021), <https://www.webmd.com/fitness-exercise/features/tennis-workout> [<https://perma.cc/F6GD-MGAZ>].

⁹³ See LEBAR AND PAUL, *supra* note 93 at 531 (citation and internal quotation omitted); see also Luis Torres et al., *Correlation Between Post-Injury Mental Health Symptoms and Rehabilitation Adherence in Collegiate Athletes*, SPORT J. (2025) (connecting heightened depression and anxiety among student-athletes with the pressure to recover from injury while still eligible to compete), <https://thesportjournal.org/article/correlation-between-post-injury-mental-health-symptoms-and-rehabilitation-adherence-in-collegiate-athletes/> [[perma: https://perma.cc/8SF2-KXNJ](https://perma.cc/8SF2-KXNJ)].

performance with the peak years of their capacities and those who mature later; and,

5. Permitting talent to infuse the college ranks with potential benefits to parity in competition.

In regard to the last point, one might consider, once again, the bogeyman counterargument that has emerged in cases, including the *Pavia* case. I will call this the “18th Year Quarterback Position.” It could also be called the “35-year-old Point Guard Dilemma,” or even, the “Michael Phelps Problem.” Now, we can even call it the “White House Position” because the President of the United States has adopted it as the framework for entering the fray with an Executive Order.⁹⁴

The position raises the following claim: The current ruleset serves the participatory values of the NCAA by moving student-athletes through the system to make room for the next set of participants. Without it, a quarterback who is not good enough to play in the NFL will remain as a quarterback for 10 years, preventing some recruit from taking his place for close to two-decades. The point guard who cannot compete in the WNBA will not be permitted to play in college for half of her life, preventing the next point guard from playing in college during that period. And the next-Michael Phelps (as if there could ever be one) will not be allowed to stay at the University of Michigan forever, preventing the program from giving a shot to others to swim the 200 butterfly and the 400 IM for the Wolverines.

Place to the side the problem of assuming that athletes a) can, would, or could extend their careers as long as these problems suggest, and b) that programs would choose them rather than other competitors, the NCAA-position, so configured, ignores the potential, positive impacts the dynamic could create. Imagine, for instance, that Alabama has retained an 18th Year Quarterback and that its decision to do so blocks an 18 or 19-year-old from playing for Alabama. If that player is of high-quality, he will have to go to a school that has won fewer national championships. The result: a player who would have gone to Alabama and played there will have to express his talent on behalf of another school. Thus, an Alabama-quality player will be pitted against Alabama creating the possibility of greater parity across schools where Alabama would be the only beneficiary of the Alabama-quality player under the current regime. By the same token, if Paige Bueckers or Caitlin Clark were permitted to stay at UConn or Iowa, star players who might have gone to those schools but

⁹⁴ See Executive Order No. 14400 *supra* note 2 (“age-based eligibility limits promote fairness...and opportunities for student athletes under which . . . participation in college athletics is permitted for no more than a five-year period...”).

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for their presence would go to others and face-off against Paige and Caitlin in ever-more dynamic standoffs. Not much changes when considering the Olympic sports, either. Swimmers would have to beat Michael Phelps swimming for Arizona State or Florida or Stanford, energizing those programs in the process.

Writ large, the abolitionist counterfactual would result in a diffusion of talent throughout the college ranks, as when my client, Sydney Herrington, left one top college program, Northeastern, to play for Dartmouth, a lesser program, raising, by all accounts, the quality of Dartmouth women's hockey. Rather than demonstrating harm to the NCAA and NCAA competition, Sydney's story demonstrates what one federal district court explained when striking down the rules under the Sherman Act: "that greater competition in a labor market generally leads to better outcomes for workers."⁹⁵ In this author's view, the NCAA and the White House oppose that position to the detriment of students like Sydney, who have not competed in college for professional gain.

As if to accentuate the point, we need only look to the University of Michigan Men's Basketball team and its success in 2026.⁹⁶ The squad won the NCAA Division I Men's championship this spring. Its starting five had transferred to Michigan after first matriculating at other schools.⁹⁷ The center, Aday Mara, "couldn't get on the court at UCLA, sticking around for two seasons in the hope that Mick Cronin would see his value," he didn't, and so Mara transferred to Michigan.⁹⁸ "Yaxel Lendeborg," the team's star forward, "was pulling pallets in a warehouse in high school, a lost kid who spent more time playing video games than studying."⁹⁹ His circuitous trajectory matured through junior college, a smaller Division I school, and finally, to Michigan, when he was ready for it.¹⁰⁰ Elliot Cadeau, the Final Four's Most Outstanding Player, was a disaster as a freshman at the University of North Carolina. The University of Michigan was more supportive and a better fit, and he blossomed there when he transferred.¹⁰¹

Thus, in a world where college basketball has become a haven for "one and done" players, Michigan suited up an experienced squad of players that

⁹⁵ See *Martinson v. NCAA*, 804 F. Supp. 3d 1109, 1130 (D. Nev. 2025).

⁹⁶ Dana O'Neil, *The Michigan Wolverines won a title by mastering college basketball's new world. It might change the sport*, CNN (Apr. 7, 2026), <https://www.cnn.com/2026/04/07/sport/michigan-national-championship> [<https://perma.cc/KAU8-NKFW>].

⁹⁷ See *Id.* ("Delivered by a team full of transfers, Michigan's championship will undoubtedly become a referendum on the state of modern-day college basketball.").

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* ("he turned into a freshman who couldn't buy an outside shot and a point guard who turned the ball over nearly as much as he passed it.").

found their way to the right university and beat the rest.¹⁰² The team’s story demonstrates the benefits for students of removing constraints and expanding time-horizons as to maximizing opportunity in the vital co-curricular activity of college sports.¹⁰³

But what about the claim that this will all continue to weaken any plausible connection between the student and the athlete? If the NCAA and the White House continue to ground their arguments in a desire to preserve the “student” feature of college sports, as has been true of their past appeals, there is an easier solution to their stated concern.¹⁰⁴ They should leave the question of student status to colleges and universities while retaining minimum academic eligibility requirements.¹⁰⁵ Durational eligibility limits in a world where students can and do study for quite a long time do not provide a credible fix.

IV. Conclusion

That said, the NCAA’s traditionalist arguments about amateurism and the “student-athlete” experience, now embraced by the white house, are hard to take seriously.¹⁰⁶ a ruleset that limits a student’s ability to participate in athletics as a vital co-curricular activity, where other activities do not carry the same limitations, further undermines these claims. This article proposes a bold, though obvious, response that has the merit of simplicity. It takes the NCAA’s mission statement seriously in doing so, while updating the application of the mission to facts about the student experience. If the NCAA seeks to maximize opportunities for students to compete in the vital co-curricular activity it

¹⁰² O’Neil, *supra* note 98 (“At an average of 2.12 years of playing experience, Michigan is the 46th oldest team in college basketball.”).

¹⁰³ More mature students might also be less susceptible to the negative side of expanded sports gaming. *See, e.g.*, DANNY FUNT, EVERYBODY LOSES: THE TUMULTUOUS RISE OF AMERICAN SPORTS GAMBLING 2-3 (2026) (describing hate communications directed at college athlete who covered spread in last seconds of a college basketball game). The NCAA once took this view, preventing freshman who might be “one-and-done” in today’s game from competing. *See NCAA grants freshmen eligibility in football, basketball*, HISTORY.COM (“The consensus for decades was that freshmen were not ready to compete at the varsity level, especially in football.”) (Sept. 20, 2021), <https://www.history.com/this-day-in-history/January-8/ncaa-freshmen-eligibility> [<https://perma.cc/C7TG-NKT8>]

¹⁰⁴ *See* Nicholas Fram and T. Ward Frampton, *A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Sports*, 60 BUFF. L. REV. 1003, 1015 (“The term ‘student-athlete’ was designed not only to ‘conjure the nobility of amateurism, and the precedence of scholarship over athletic endeavor,’ but to obfuscate the nature of the legal relationship at the heart of a growing enterprise.”) (footnote omitted).

¹⁰⁵ *See Id.* (“The term ‘student-athlete’ was designed not only to ‘conjure the nobility of amateurism, and the precedence of scholarship over athletic endeavor,’ but to obfuscate the nature of the legal relationship at the heart of a growing enterprise.”) (footnote omitted).

¹⁰⁶ *See Id.* at 1016–17 (quoting circular claims made by NCAA president in support of his defense of amateurism while the NCAA grew to a multi-billion-dollar industry).

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regulates, it should remove the general restrictions on durational eligibility that, in fact, limit opportunities for students in manner that courts have found to violate federal law, and continue to be subject to legal challenge under an expanding array of theories in the months and years to come.