

# NEGATION

We negate **Resolved: NCAA student athletes ought to be recognized under the fair labor standards act.**

## Contention 1: Athletics isn't a reliable source of income

### School revenue differences make paying NCAA athletes infeasible

Cork **Gaines**, Business Insider, "The difference in how much money schools make off of college sports is jarring, and it is the biggest obstacle to paying athletes", 14 Oct. 2016, <http://www.businessinsider.com/ncaa-schools-college-sports-revenue-2016-10>

We recently took a look at the schools that make the most money off of college athletics, with **Texas A&M** topping the list with **\$192.6 million in revenue, according to data collected from USA Today and the U.S. Department of Education.**

While it is no secret that there is a lot of money being made from college sports, that money is not even close to being evenly distributed. The 231 NCAA Division I schools with data available generated a total of \$9.15 billion in revenue during the 2015 fiscal year. But while there are 24 schools that make more than \$100 million, most make much less. **Of the 231 schools, 76% make less than \$50 million in athletics revenue. If we take it a step further, nearly half of the Division I schools (44%) make less than \$20 million, or more than \$160 million less than Texas A&M and the University of Texas. Ultimately, this is the biggest obstacle to paying athletes.** If schools are going to pay some athletes, they will have to pay all athletes. It is one thing to ask a school making \$150 million off of sports to pay the rowing team and the volleyball team. It is something else to ask a school making a fraction of that.

### Most NCAA athletes don't go on to compete in pro sports

NCAA, "Estimated probability of competing in professional athletics | NCAA.org - The Official Site of the NCAA", 12 Mar. 2017, <http://www.ncaa.org/about/resources/research/estimated-probability-competing-professional-athletics>

**More than 480,000 compete as NCAA athletes, and just a select few within each sport move on to compete at the professional or Olympic level.** The table presents of how many NCAA athletes move on to professional careers in sports like basketball, football, baseball and ice hockey. **Professional opportunities are extremely limited and the likelihood of a high school or even college athlete becoming a professional athlete is very low. In contrast, the likelihood of an NCAA athlete earning a college degree is significantly greater; graduation success rates are 86% in Division I, 71% in Division II and 87% in Division III.**

## Contention 2: Court Decisions

There is an extremely old legal precedent that college athletes should not be paid

**National Law Review 2017**, 11-6-17, Repeat after me: College Athletes are not employees under FLSA,  
<https://www.natlawreview.com/article/repeat-after-me-college-athletes-are-not-school-employees-under-flsa2>

“Close some doors today. Not because of pride, incapacity or arrogance, but simply because they lead you nowhere.” This quote (attributed to Brazilian author Paulo Coelho) comes to mind with last month’s filing of yet another lawsuit, *Livers v. NCAA*, by a college athlete who alleges that playing a college sport is work such that he or she qualifies as an employee of the school, and is thus entitled to wages, under the Fair Labor Standards Act (FLSA). In two prior cases, **Berger v. NCAA and Dawson v. NCAA, similar FLSA claims brought by student athletes were dismissed by federal district courts in Indiana and California, respectively.** In *Berger*, the U.S. Court of Appeals for the Seventh Circuit affirmed the dismissal. Apparently undeterred by these unfavorable results, the plaintiff in *Livers* and his counsel (who also represented the plaintiffs in *Berger*) seem to believe that the third time will be the charm. **They have brought this new FLSA collective action in a Pennsylvania federal court against 20 different Pennsylvania schools and the NCAA (as a joint employer); once again the claim is that the student athlete is an employee under the FLSA and is entitled to wages for the time spent participating in a college sport.** There is more folly than charm here, and the case seems a classic example of argumentum ad nauseum. As debate has raged over big-money college sports and whether participating student athletes should in some way share in the profits, various avenues of potential legal recourse have surfaced, with significant focus given to antitrust and labor law. At first blush, labor and employment law seems like the right legal vehicle to deliver compensation to student athletes. And why shouldn’t student athletes be paid? They spend a significant amount of time practicing and playing sports, which in turn generates significant revenues for their school, particularly in basketball and football. **Ultimately, however, the sports-as-work analogy just does not translate for college athletes in the labor and employment law context.** Recent efforts to cast student athletes as workers or employees accelerated with the Northwestern University football team’s well-reported attempt to unionize under federal labor law and thereby force the school to negotiate with them over the terms and conditions of their “work” as college football players. With the regional director of the National Labor Relations Board concluding that the Northwestern players were in fact employees of the school under the National Labor Relations Act (although the Board ultimately would not formally adopt that determination), it did not take long for student athletes to try to stretch the employee argument to other employment-related laws like the FLSA. Indeed, **the Berger case — brought by two former track athletes from the University of Pennsylvania — was quickly born but ultimately died.** Also as reported here, **the plaintiff in Dawson then tried to distinguish his FLSA case from Berger by bringing claims only on behalf of student athletes who participated in the revenue-generating sports of basketball and football.** This distinction proved meaningless. Now, the plaintiff in *Livers* offers up yet another distinction by bringing **his FLSA claims only on behalf of scholarship athletes who are required to play their respective sport, and excluding walk-on athletes who do not play under the same compulsion that comes with a scholarship.** These attempts to concoct FLSA claims based on the type of student athlete at issue are fruitless. As the *Berger* and *Dawson* courts soundly reasoned, student athlete play is not work and the extracurricular endeavors of student athletes do not render them employees under the FLSA. **Even the U.S. Department of Labor – the federal agency charged with the enforcing the FLSA – agrees, as its field operations handbook expressly states that students do not become employees of their school based solely on their participation in interscholastic sports.** For these reasons, the plaintiff in *Livers*, like the plaintiffs in *Berger* and *Dawson* before him, will likely fail. It is time for student athletes to close the FLSA door.

## Contention 3) Paying College Athletes Will Spell the Death of College Athletics

### Few Division one schools have self sustaining athletics programs

Matt **Krupnick** [CNN] Would Your Tuition Bills Go Up If College Athletes Got Paid?, 27 November 20**14**,  
<http://time.com/money/3605591/college-athletes-sports-costs-students/>

**Only a handful of NCAA Division I schools have self-sustaining athletics programs—just 20 of the nearly 130 schools in the top-flight Football Bowl Subdivision**, for example—so **most universities subsidize those departments**, even in a pre-Kessler, pre-O’Bannon world. At **public institutions in particular**, part of that subsidy is **drawn from student fees**. According to the Knight Commission, **growth in athletics funding at Division I schools outpaced academic spending from 2005 to 2012. Students at some schools pay \$1,000 in athletics fees alone.**

### Increased costs of athletic programs could be passed on to non-athlete students

Matt **Krupnick** [CNN] Would Your Tuition Bills Go Up If College Athletes Got Paid?, 27 November 20**14**,  
<http://time.com/money/3605591/college-athletes-sports-costs-students/>

**Changes to how student-athletes are paid could lead some schools**, stuck with nowhere else to turn, **to raise other students’ fees. Universities and colleges [would]** could also **scale back** their **athletics programs to cut costs**. That “would be the rational approach,” Kirwan said. “But when it comes to college athletics, rationality doesn’t often prevail,” he said. “There are so many societal pressures.”

### Tuition spent on athletics programs would likely increase if direct pay to athletes were implemented

Jeffrey **Dorfman** [Forbes] Pay College Athletes? They’re Already Paid Up To \$125,000 Per Year, 29 August 20**13**,  
<https://www.forbes.com/sites/jeffreydorfman/2013/08/29/pay-college-athletes-theyre-already-paid-up-to-125000year/#45399ee62b82>

**Only two or three sports typically make money**: football, men’s basketball, and women’s basketball. **The remaining sports bring in little to no revenue while still costing the colleges money.** Because of this, **most athletic departments lose money. In fact, according to a USA Today story last month, only 23 out of 228 Division I athletic programs managed to run a surplus in 2012.** The number of such departments fluctuates by year, but it is generally in that neighborhood or fewer. Every university running a surplus is in a BCS automatic-qualifying conference. Every Division I college not in a non-major conference (and quite a few who are in a major conference) loses money on their athletics program as it stands now. **Adding direct pay will put financial pressure on schools to drop non-revenue sports. Given that the colleges that lose money on athletics (and some who do not) subsidize their programs with money from regular student tuition, increasing pay to student athletes could mean tuition increases at many colleges.**

## Paying athletes would increase costs to tuition paying students and parents as well as some state governments

Eric **Rozenman** [The Washington Times] Negotiating pay for athletes would raise costs for their less-buff classmates, 5 May 20**14**, <https://www.washingtontimes.com/news/2014/may/5/negotiating-pay-for-athletes-would-raise-costs-for/>

At the college level, only a small minority of athletic departments do not require subsidies from general school revenue. That is, all other in the minor leagues. If the athletes' focus is professional sports, they should be training tuition-paying students and their parents and, at public universities, state governments must help erase the deficit. There is no reason to expand the burden-shifting by paying college athletes.

## NCAA Values

NCAA, "NCAA Core Values | NCAA.org - The Official Site of the NCAA", <http://www.ncaa.org/about/ncaa-core-values>

The Association - through its member institutions, conferences and national office staff - shares a belief in and commitment to: The collegiate model of athletics in which students participate as an avocation, balancing their academic, social and athletics experiences. The highest levels of integrity and sportsmanship. The pursuit of excellence in both academics and athletics. The supporting role that intercollegiate athletics plays in the higher education mission and in enhancing the sense of community and strengthening the identity of member institutions. An inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds. Respect for institutional autonomy and philosophical differences. Presidential leadership of intercollegiate athletics at the campus, conference and national levels.

## Paying athletes wastes revenue through taxes

John R. Thelin , Money, "Here's Why We Shouldn't Pay College Athletes | Money", 1 Mar. 2016, <http://time.com/money/4241077/why-we-shouldnt-pay-college-athletes/>

A full athletic scholarship (a "grant-in-aid") at an NCAA Division I university is about \$65,000 if you enroll at a college with high tuition. This includes such private colleges as Stanford, Duke, Northwestern, University of Southern California, Syracuse, and Vanderbilt. The scholarship is \$45,000 for tuition and \$20,000 for room, board and books. At state universities, the scholarship would be lower if you were an "in state" student—because tuition would be about \$13,000. But if Michigan coach Jim Harbaugh recruits nationwide and wants a high school player from California or Texas, the University of Michigan out-of-state tuition bumps up to about the same as that charged by the private colleges. That's the old model. In the new era, a coach could offer a recruit a salary instead of a scholarship. Does a \$100,000 salary give the student-athlete a better deal than the \$65,000 scholarship? The \$100,000 salary is impressive. A future Heisman Trophy winner might command more, but \$100,000 is not bad for an 18-year-old high school recruit. But since it's a salary, not a scholarship, it is subject to federal and state income taxes. Tuition and college expenses would not be deductible because the income level surpasses the IRS eligibility limit. So, a student-athlete paid a salary would owe \$23,800 in federal income tax and \$6,700 in state taxes, a total of \$30,500. In cities that levy an employee payroll tax, the salaried student's taxes go up about \$2,400 per year. Income taxes then are \$32,900. And, as an employee, the

player would have to pay at least \$2,000 in other taxes, such as Social Security, for a total of \$34,900. This leaves the college player with \$65,100. Since college bills come to \$65,000, the player has \$100 left. By comparison, how bad was the scholarship model? According to the federal tax code, the \$45,000 tuition award is deductible, but room and board are not. The student-athlete will be able to deduct book expenses and qualify for a tax credit under the American Opportunity Tax Credit (AOTC), reducing his tax. The bottom line is that the student-athlete gets a \$200 refund in federal taxes and pays \$820 in state taxes, for a total tax bill of \$620. There's no local payroll tax because he was not an employee. This means \$64,380 of the \$65,000 scholarship can go toward paying academic expenses of \$65,000.