

# Forbes

## In California Vs. The NCAA, Root—Grudgingly—For The NCAA

September 11, 2019

Higher education financing is maddeningly complex—state subsidies to schools, federal grants to students, for-profit schools, “nonprofit” institutions, student loans, seemingly limitless ways to handle loan repayments—and in the grand scheme of things whether college athletes can get paid beyond “educational expenses” is a pretty minor thing. Of course, it isn’t that minor if you are an athlete, or even if you were one of millions of people who loved playing college sports video games, which met their demise in part due to legal battles over compensating college players. (I bought my first ever sports video game—*NBA2K17*—because it had a small mode letting me play a few tilts as my beloved Georgetown Hoyas.) All of this is why legislation likely to be enacted in California, the Fair Pay to Play Act, is making big noise, threatening to pit our largest state against arguably the country’s biggest sports power: the National Collegiate Athletic Association, or NCAA.

Who am I rooting for in this potentially monumental clash? Much though it pains me, the NCAA.

California’s legislation, which is likely to be signed by Governor Gavin Newsom (D), is intended to allow college athletes to benefit from their name, image, or likeness being used by others for profit. You may be familiar with the O’Bannon case, a lawsuit brought by former UCLA basketball star Ed O’ Bannon against the NCAA, video game maker Electronic Arts (EA), and the Collegiate Licensing Company (CLC). O’Bannon and other athletes sought compensation for the use of their likenesses, including in EA’s *NCAA College Basketball* series. EA and CLC settled with the plaintiffs, and the NCAA lost in court at first, but prevailed against non-educational compensation on appeal. The U.S. Supreme Court refused to hear the case, letting the no-compensation rule remain.

I’m no fan of the NCAA, with its slick marketing emphasizing the “student” in “student athlete” while raking in over \$1 billion, much of which goes to non-students, including coaches and president Mark Emmert. Indeed, the NCAA is basically the whole ivory tower in microcosm: a huge, profit-seeking undertaking that wants you to believe it cares about nothing but the good of others. And if I ran a college with a sports program, I would probably allow athletes to get compensated by others whenever they offered something of value, be it their likeness or labor.

Despite this, if we want a society that maximizes freedom, including the ability to voluntarily give up some autonomy, we should root for the NCAA. The NCAA does not—legally *cannot*—hold a gun to anyone’s head to join. Indeed, 250 colleges are members of the National

Association of Intercollegiate Athletics, while college football's famous bowls are independent of the NCAA. And as troubling as the NCAA can be, there are reasonable arguments for schools joining organizations that hold them to common rules, including barring outside compensation. If nothing else, curbing compensation could help to maintain some competitive balance. Top athletes looking to get some of that video game dough would have yet another reason to choose the high-profile University of Texas over Rice, or LSU over Louisiana-Lafayette.

Unlike the NCAA, California is looking to set athlete compensation policy for every college in the state, and government *does* ultimately do that at the point of a gun. Of course, California could require its public universities—Berkeley, UCLA—to adopt rules allowing outside compensation, but the Fair Pay to Play Act goes further, requiring private institutions—the University of Southern California and Stanford, among others—to do the same. Such centralized decision-making is a problem as a matter of principle—shouldn't a private school get to make its own decisions?—but it is also a practical problem: When it is not clear what the right policy is—and it is not obvious that compensation should outweigh competitive balance, or even a spirit of amateurism—it is better to let individual athletes, schools, and organizations make independent decisions. Allowing sundry arrangements to exist will reveal both what works better overall, and better for millions of unique individuals, while reducing the risk that comes when one answer, which could be the wrong one, is imposed on everyone.

There are often college matchups in which I root for both teams to lose (were that possible) because both irk me. Emotionally, that is where I am on California vs. the NCAA. But if my head picks the side to root for, it is, reluctantly, the NCAA.

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