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## Amateurism Interplay between Olympic Excellence and NCAA Eligibility

**Amateurism Interplay Between Olympic Excellence and NCAA Eligibility**

**Tyler Dumler\***

\*Tyler M. Dumler, J.D., University of Kansas School of Law, 2013. My sincerest appreciation goes out to Phillip E. DeLaTorre, University of Kansas School of Law, for the wealth of feedback, critique, and advice he provided during the drafting this article. I would also like to thank the University of Denver Sports & Entertainment Law Journal staff and editorial board for all of their hard work and assistance in revising this work.

## I. INTRODUCTION

Student-athletes are amateurs in an intercollegiate sport, and their participation should be primarily motivated by education and the physical, mental and social benefits. Student participation in intercollegiate athletics is an avocation and student-athletes should be protected from exploitation by professional and commercial enterprises.<sup>1</sup>

The National Collegiate Athletic Association (NCAA) goes to great lengths to protect the amateur status of collegiate athletics. The true motivation behind the NCAA's adherence to amateurism has often been questioned and criticized.<sup>2</sup> However, the demarcation between collegiate athletics and professional sports remains.<sup>3</sup> For some elite athletes, this demarcation can pose serious risks to NCAA eligibility. This article aims to address the NCAA's diverging perspectives regarding how Olympic activities and NCAA activities impact amateurism and examine the implications such a divergence in treatment by the NCAA has on current and prospective student-athletes.

Qualifying to compete in an Olympic capacity is undoubtedly an unparalleled and exciting opportunity. For many athletes, the Olympics represent a chance to enshrine themselves in history within a sport that may only be displayed before a global audience once every four years. However, this opportunity is wrought with obstacles that may interfere with another important aspect of these athletes' lives: the possibility of participating in collegiate athletics. The age demographic of many top athletes in their respective fields of Olympic competition often overlaps with the general age of NCAA student-athletes. For example, at the London 2012

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<sup>1</sup> NCAA, 2012-13 Division I Manual art. 2.9 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>

<sup>2</sup> See, e.g., Virginia A. Fitt, *The NCAA's Lost Cause and the Legal Ease of Redefining Amateurism*, 59 DUKE L.J. 555 (2009); David Warta, *Personal Foul: Unnecessary Restriction of Endorsement and Recruitment Opportunities for NCAA Student-Athletes*, 39 TULSA L. REV. 419 (2003).

<sup>3</sup> See NCAA, 2012-13 Division I Manual art. 12 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

Olympic Games, over fifty-five percent of the medalists were below the age of twenty-six.<sup>4</sup>

While there are many Olympic athletes who qualify as current and prospective student-athletes, David Boudia,<sup>5</sup> Diamond Dixon,<sup>6</sup> and Missy Franklin<sup>7</sup> will serve as useful illustrations for the purposes of this article. These athletes competed in the London 2012 Olympic Games and represent the full spectrum of graduating, returning, and prospective NCAA student-athletes.

NCAA dilemmas created by Olympic involvement are certainly not going away any time soon. Olympic Games, be it Summer or Winter, occur every two-years and are continuing to feature prominent young athletes, especially in aquatic, track and field, and gymnastic competitions.<sup>8</sup> Because issues presented by the Olympic involvement of current and prospective student-athletes show no signs of disappearing in the near future, this area of regulation deserves attention.

The overarching concerns that will be discussed in in this paper include stipends in the form of free merchandise from national team sponsors, United States Olympic Committee (USOC) results-based compensation via the Operation Gold Grant, endorsement opportunities, family travel expenditures, and a remaining catch-all category of perks that will simply be referred to as other incentives and covered expenditures. Each of these issues will be dealt with in turn.

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<sup>4</sup> *London 2012: The Games in Numbers*, BBC.COM, <http://www.bbc.co.uk/sport/olympics/2012/games-so-far>, tbl. Age demographics (last updated Aug. 13, 2012).

<sup>5</sup> *David Boudia*, USADIVING, available at [www.usadiving.org/bios/david-boudia/](http://www.usadiving.org/bios/david-boudia/).

<sup>6</sup> *Women's Track and Field*, KANSAS JAYHAWKS, <http://www.kuathletics.com/index.aspx> (follow "Sports" dropdown menu, then follow "Track & Field" hyperlink, then follow "Roster (W)" hyperlink, then follow "Diamond Dixon" hyperlink).

<sup>7</sup> *National Team Bios*, USASWIMMING, [www.usaswimming.org](http://www.usaswimming.org) (follow "National Team" drop down menu; then follow "National Team Roster" hyperlink; then follow "Franklin, Missy" hyperlink).

<sup>8</sup> See Jaye L. Atkinson, *Age Matters in Sport Communication*, 13 ELECTRONIC J. OF COMM. 3-4 (2009), available at <http://www.cios.org/EJCPUBLIC/019/2/019341.html>; *Olympic Anthropometry*, TOP END SPORTS, <http://www.topendsports.com/events/summer/science/anthropometry.htm>, tbl. Breakdown per Sport (last modified Dec. 18, 2013) [albeit track & field can be classified as "younger" to a lesser degree].

## II. DISCUSSION

### A. *Merchandise Stipends*

It should come as no surprise that U.S. Olympic athletes are privy to certain merchandise perks as part of being members of the Olympic squad. These nonmonetary benefits may include uniforms, apparel, equipment, clothing, phone services, and other similar items. The NCAA bylaws appear to resolve this issue in a rather direct manner, providing that such nonmonetary benefits and awards are permitted without consequence to amateur status so long as “it can be demonstrated that the same benefit is available to all members of that nation’s Olympic team or the specific sport Olympic team in question.”<sup>9</sup> In addition, commemorative items are also permitted under the NCAA bylaws and do not impact the amateur status of student-athletes.<sup>10</sup>

Before glossing over merchandise perks as a non-issue, a point of comparison should be drawn with similar allowances of merchandise retention in a traditional NCAA context. While the NCAA permits prospective student-athletes to retain all merchandise perks provided in the Olympic context, so long as the benefits are received by the entire team, prospective student-athletes at an NCAA certified basketball event are not permitted such leniency.<sup>11</sup> At these events, including summer basketball camps, retention of any athletics equipment or apparel provided for his or her use at the event, other than a T-shirt, without paying the normal retail value of the merchandise, can lead to serious interference with the potential student-athlete’s

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<sup>9</sup> NCAA, 2012-2013 Division I Manual art. 12.1.2.1.4.3.2 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>10</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.4.15 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>11</sup> See NCAA, 2012-13 Division I Manual art. 13.18-.19 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

amateur status.<sup>12</sup> Why does this divergence in standards exist? This is one example of seemingly arbitrary line-drawing by the NCAA regarding preferential treatment for Olympic involvement.

An argument could be made that the exemption for Olympic sponsorship equipment is justified because it resembles merchandise related to a specific, championship-level event while 'basketball camp' equipment is merely a perk of training exercises. Perhaps this argument, that the grand nature of the Olympics justifies a distinction from ordinary NCAA events, could successfully illustrate the Olympics as a crowning achievement that should be recognized as such. However, this distinction seems invalid when compared with the exemption for Olympic training equipment. Many expenses, including equipment and apparel, that are related to Olympic *training and development* are allowed without jeopardizing the athlete's eligibility for intercollegiate athletics, with the caveat that the expenses are paid for by the USOC.<sup>13</sup> The equipment and apparel acquired during Olympic training and development are similarly perks of training exercises, so the preceding attempt to justify the NCAA's differential treatment falls flat. This parallel, or lack thereof, between regulation of Olympic and NCAA basketball camp merchandise perks illustrates a clear divergence from standard practices with regard to Olympic competition with minimal explanation by the NCAA.<sup>14</sup>

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<sup>12</sup> NCAA, 2012-13 Division I Manual art. 13.18(c), 13.19(c) (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>13</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.4.9 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>14</sup> See NCAA, 2012-13 Division I Manual art. 13.18-.19, 12.1.2.4.9 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

*B. Operation Gold Grant*

Success under the Olympic spotlight earns U.S. athletes more than pride and a sense of accomplishment. It also earns athletes stipends under the Operation Gold Grant.<sup>15</sup> Operation Gold Grants reward athletic success at the Olympic Games and qualifying events.<sup>16</sup> Placement in the top eight in a qualifying event will earn an athlete a stipend.<sup>17</sup> Medaling at the Olympics will earn an athlete a stipend of \$10,000 for bronze, \$15,000 for silver, and \$25,000 for gold.<sup>18</sup> Current and prospective student-athletes are permitted to accept Operation Gold Grant funds under the NCAA bylaws.<sup>19</sup>

At first glance, this allowance seems at odds with NCAA bylaw §12.2.3.2.5, permitting current and prospective student-athletes to participate in Olympic competition for compensation so long as “the student athlete does not accept prize money or any other compensation (other than actual and necessary expenses).”<sup>20</sup> This restriction, however, refers to compensation provided by “the governing body” while other sections of the bylaws referring to the Operation Gold Grant specify the USOC as the compensating party.<sup>21</sup> This distinction illustrates the NCAA’s allowance of established compensation principles provided by the USOC, while prizes and compensation by “the governing body” retain the effect of destroying an individual’s

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<sup>15</sup> *Operation Gold Grants*, USA TRACK & FIELD, <http://www.usatf.org/groups/Elite/supportPrograms/OperationGoldGrants.asp>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.1.4.1.2, 12.1.2.1.4.3.3, 12.1.2.1.5.1 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>20</sup> NCAA, 2012-13 Division I Manual art. 12.2.3.2.5 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>21</sup> Thus, student-athletes are granted a special allowance when compensation is provided by the USOC rather than the IOC or host of the particular Olympic competition.



amateur status.<sup>22</sup> While Operation Gold Grants are allowed under NCAA bylaws, this exemption still creates an unexplained preferential treatment by the NCAA favoring Olympic participation over other forms of non-NCAA activities by current and prospective student-athletes. For example, “the NCAA allows Olympic athletes to be compensated during their collegiate careers, but international basketball players cannot be compensated before their collegiate careers commence.”<sup>23</sup>

However, it is important to note that Operation Gold Grant funds, explicitly permitted under NCAA bylaws,<sup>24</sup> are still not allowed to go directly to current or prospective student-athletes who wish to retain their amateur status. Instead, this USOC funding is permitted to be used only for the current or prospective student-athlete’s educational expenses.<sup>25</sup> NCAA bylaws note that Operation Gold Grant funds may not even limit the amount of financial aid a student-athlete may receive, suggesting a potential excess that may serve to advantage the student-athletes.<sup>26</sup> This suggestion, however, is quickly negated by NCAA bylaw §15.2.6.4, establishing more specific principles on how Operation Gold Grant funds may be used without jeopardizing amateurism and their impact on limiting financial aid.<sup>27</sup>

Additionally, this financial-aid-limitation quality of Operation Gold Grant funds raises an interesting scenario for the rare athlete who earns a multitude of medals at an Olympic competition. Take Michael Phelps at the 2008 Beijing Games, as an example, when he won

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<sup>22</sup> “[T]he governing body” used in this context seems to represent the International Olympic Committee (IOC) or host of the competition.

<sup>23</sup> Mike Salerno, *Traveling Violation: A Legal Analysis of the Restrictions on the International Mobility of Athletes*, N.Y. INT’L L. REV. 1, 33 (2012).

<sup>24</sup> See NCAA, 2012-13 Division I Manual art. 12.1.2.1.4.1.2, 12.1.2.1.4.3.3, 12.1.2.1.5.1 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>25</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.1.3.2.1 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>26</sup> NCAA, 2012-13 Division I Manual art. 15.1.2(e) (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>27</sup> NCAA, 2012-13 Division I Manual art. 15.2.6.4 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf> (thus prohibiting a windfall for student-athletes already receiving a full-ride scholarship and requiring such funds to be considered a “counter” as per 15.5).

eight gold medals at the age of nineteen.<sup>28</sup> For the purposes of this article, imagine a scenario in which this nineteen-year-old Phelps also desired to retain an amateur status and forewent endorsement opportunities in order to continue collegiate athletic involvement. In this hypothetical, Phelps would have accumulated \$200,000 in Operation Gold Grant funds from the 2008 Summer Games alone.<sup>29</sup> This amount substantially exceeds the average four year full scholarship of approximately \$60,000.<sup>30</sup> This serves as a minimal to non-existent dilemma regarding the Operation Gold Grant stipends presumably covering the full educational expenses incurred by the hypothetical Phelps.<sup>31</sup> Additionally, such stipends *appear* to free up scholarship funds that would otherwise have been spent on Phelps and can now serve to benefit an alternative student-athlete and the university with additional scholarship funds. However, this is not the case. Under NCAA bylaws, the USOC funds distributed to the student-athlete for educational expenses must still be “counted” against the institution’s financial aid limit in that particular sport.<sup>32</sup> The vexing question that remains is, “what happens to the excess Operation Gold Grant funds after educational expenses have been covered and Phelps has completed college?”

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<sup>28</sup> *Olympic Moments: Michael Phelps’ Historic Eight Golds at Beijing 2008*, BBB SPORT, <http://www.bbc.co.uk/sport/0/olympics/17658866> (last updated Aug. 31, 2012, 22:59 GMT).

<sup>29</sup> Eight gold medals, generating a stipend of \$25,000 each, accumulate to \$200,000. For simplicity, this article will forego the discussion of possible tax exemption of such funds due to the educational nature of their pending use. The contemplation of whether this limited control over the funds alters the taxable income status of Operation Gold Grant funds is best saved for another discussion.

<sup>30</sup> David Warta, *Personal Foul: Unnecessary Restrictions of Endorsement and Employment Opportunities for NCAA Student-Athletes*, 39 TULSA L. REV. 419, 425 (2003) (citing Caleb Langston, U. of Wyo., Dept. of Commun. & Journalism, *Colleges Debate Whether to Compensate Athletes*, <http://uwadmnweb.uwyo.edu/cmjr/WILTSE/4100/Story3/caleb.htm> (accessed Sept. 7, 2003) (noting value of full athletic scholarship for out-of-state resident at the University of Wyoming)).

<sup>31</sup> NCAA, 2012-13 Division I Manual art. 15.2.6.4 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>32</sup> NCAA, 2012-13 Division I Manual art. 15.5.1(b) (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

Are the funds held in a trust fund, serving an educational fund capacity during Phelps's student-athlete tenure before converting into a typical compensation fund after graduation? This solution has been suggested as an alternative to the existing system.<sup>33</sup> This avenue, however, is not a viable alternative, because the trust fund would essentially amount to an anticipatory contract. Much like the other prong of the amateurism principle, the no-agent rule, accepting a promise of future pay (even after college) amounts to a violation of the amateurism principles.<sup>34</sup> The counterargument could be made, of course, that the Andrew Oliver decision by a trial court in Ohio invalidating the NCAA's no-agent rule has major implications on this front.<sup>35</sup> If this ruling were to gain traction, the erosion of the no-agent rule would, in turn, eliminate the anticipatory contract regulations. The consequence could be an allowance of anticipatory compensation agreements as a mirror image of the altered no-agent rule. This article is reluctant to suggest this will happen, and it definitely will not happen without adamant protest on behalf of the NCAA. In application, the allowance of anticipatory arrangements would potentially eliminate amateurism from college athletics.<sup>36</sup>

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<sup>33</sup> Laura Freedman, *Pay or Play? The Jeremy Bloom Decision and NCAA Amateurism Rules*, FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 673, 708 (2003) (citing Vladimir P. Belo, *The Shirts off Their Backs: Colleges Getting Away with Violating the Right of Publicity*, 19 HASTINGS COMM. & ENT. L.J. 133, 154 (1996)).

<sup>34</sup> See Virginia A. Fitt, *The NCAA's Lost Cause and the Legal Ease of Redefining Amateurism*, 59 DUKE L.J. 555, 563-64 (2009).

<sup>35</sup> See *id.* at 557 (invalidating the no-agent rule in a case where Oliver was stripped of his amateur status for post-season baseball eligibility at Oklahoma State for retaining an agent-attorney as a high school senior to assist him in a complex financial arrangement). See also, Aaron Fitt, *Baseball's Agent Quagmire: Oliver Case Dredges up Agent-NCAA Questions*, BASEBALL AM., Sept. 8-21, 2008, at 8; *Oliver v. NCAA*, No. 2008-CV-0762, slip op. (Ohio Ct. Com. Pl., Feb. 12, 2009).

<sup>36</sup> Student-athletes would be able to form anticipatory contracts for compensation, and the only remaining pseudo-amateurism that NCAA athletics would retain is the brief stint *during* actual NCAA involvement, during which time the student-athlete would be forced to sit on their money until deciding to conclude their college career. This approach would incentivize student-athletes to focus on compensation opportunities and marketing their name/likeness during their college years, thus further undermining the fleeting notion of amateurism in intercollegiate athletics. See also NCAA, 2012-13 Division I Manual art. 12.1.2(b) (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf) (prohibiting individuals from retaining their amateur status if they accept a promise of future payment, even if such pay is to be received following completion of intercollegiate athletics participation).

So, how does the current system operate? The existing system is relatively unclear at this time on what happens to Operation Gold Grant funds that exceed educational expenses.<sup>37</sup> This is likely due to no known examples of student-athletes being faced with such a dilemma.<sup>38</sup> With the continuing steady increase of college educational expenses, especially at institutions with major athletics programs where these elite student-athletes would be likely to attend, it is probable that this issue may never be faced in the future. However, if such a rare situation were to present itself, then the excess funds would likely be returned to the USOC or contributed to an NCAA fund.<sup>39</sup> The excess funds would presumably be prohibited from being distributed to the student-athlete upon graduation lest the funds be regarded as anticipatory compensation as described in the preceding paragraph.

### C. *Endorsement Opportunities*

Endorsement offers typically provide the most promising avenue for financial gain in the context of Olympic competition. These same opportunities also present the greatest threat to an individual's amateur status. It is almost impossible to discuss endorsements and NCAA amateurism, especially when dealing with Olympic sports, without at least making reference to Jeremy Bloom.<sup>40</sup> Jeremy Bloom was a world-class freestyle moguls skier and an NCAA

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<sup>37</sup> Dino Bell, Director of Eligibility at the University of Kansas Athletics Compliance office, and Warren K. Zola, contributing editor to the *Sports Law Blog*, were likewise uncertain about what becomes of such excess Operation Gold Grant funds upon graduation. Zola shares this article's reservations about the student-athlete ever recovering/receiving the funds and likewise presumes the remaining excess funds will return/remain with the USOC. An identical query was directed at Sariyu Suggs, U.S.A. Track & Field High Performance Programs Manager, but no immediate response has been received at the time of this article's submission.

<sup>38</sup> The author was unable to discover any such occurrences and the University of Hawaii NCAA Compliance office was similarly unfamiliar with any such instances.

<sup>39</sup> Although directing the excess Operation Gold Grant funds to an NCAA fund (scholarship, academic enhancement, disability relief, etc.) does not appear to run afoul of NCAA bylaws, there is a lack of incentive for the USOC to voluntarily turn the funds over to this sort of NCAA fund. The USOC, in all likelihood, would retain the funds for its own future use (future Operation Gold Grants or funds similar to those of the NCAA).

<sup>40</sup> For a more detailed overview of Jeremy Bloom's circumstances, See Laura Freedman, Note, *Pay or Play? The Jeremy Bloom Decision and NCAA Amateurism Rules*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 673 (2003) (discussing *Bloom v. Nat'l Collegiate Athletics Ass'n*, No. 02-CV-1249 (20th Dist. Ct. Colo. Aug. 15, 2002));

Division I football player.<sup>41</sup> After competing for the U.S. Olympic Team in the 2002 Winter Games and earning the U.S. National and World Cup championship titles in mogul skiing, Bloom received multiple modeling and entertainment offers.<sup>42</sup> NCAA bylaws do not permit student-athletes to endorse any commercial product, even during time outside of the student-athlete's playing season.<sup>43</sup> As a consequence, Bloom was forced to abandon these lucrative endorsement offers, which he relied on to fund his skiing season, in order to remain eligible to play football on scholarship at the University of Colorado.<sup>44</sup>

This rule creates unfair, inexact parallels based on the particular sports in which the student-athlete happens to excel. For example, customary salary compensation for a professional baseball player is allowed under NCAA bylaws and does not eliminate the student-athlete's amateur status in a different sport.<sup>45</sup> However, athletes who compete professionally in a sport that is largely compensated through endorsement income and appearance fees, like that of Jeremy Bloom and most other Olympians, are not permitted to enjoy the same financial benefits as an athlete who happens to partake in a salary-based professional sport.<sup>46</sup>

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Christopher A. Callanan, *Advice for the Next Jeremy Bloom: An elite Athlete's Guide to NCAA Amateurism Regulations*, 56 CASE W. RES. L. REV. 687, 687 (2006).

<sup>41</sup> Christopher A. Callanan, *Advice for the Next Jeremy Bloom: An elite Athlete's Guide to NCAA Amateurism Regulations*, 56 CASE W. RES. L. REV. 687, 687 (2006).

<sup>42</sup> Laura Freedman, Note, *Pay or Play? The Jeremy Bloom Decision and NCAA Amateurism Rules*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 673, 674 (2003).

<sup>43</sup> NCAA, 2012-13 Division I Manual art. 12.5.3 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>44</sup> Freedman, *supra* note 33, at 680.

<sup>45</sup> NCAA, 2012-13 Division I Manual art. 12.1.3 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf> (allowing student-athletes to retain an amateur status if participating professionally in a different sport); see also David Warta, *Personal Foul: Unnecessary Restriction of Endorsement and Employment Opportunities for NCAA Student-Athletes*, 39 TULSA L. REV. 419, 439 (2003).

<sup>46</sup> David Warta, Comment, *Personal Foul: Unnecessary Restriction of Endorsement and Employment Opportunities for NCAA Student-Athletes*, 39 TULSA L. REV. 419, 440 (2003).

Out of the Olympic athletes mentioned at the beginning of this article, the most similar resemblance of a commercial endorsement like Jeremy Bloom's is David Boudia<sup>47</sup> and his involvement in a Visa commercial narrated by Morgan Freeman.<sup>48</sup> This would have been a clear violation of NCAA bylaw §12.5.1.3(d) if Boudia had returned to Purdue for the 2012-2013 season.<sup>49</sup> David Boudia's name, likeness, and appearance in the advertisement were all to endorse and support Visa, a commercial product. Fortunately for Boudia, and certainly by no means a coincidence, he had already completed his tenure as a student-athlete for Purdue and no longer faced the arduous NCAA amateurism restrictions on such endorsement activity.<sup>50</sup>

Imagine, instead, a hypothetical scenario where Olympic sprinter Diamond Dixon fills a role similar to David Boudia's Visa endeavor. Unlike Boudia, Dixon had reached only the halfway point in her collegiate tenure.<sup>51</sup> Would a commercial endorsement such as this destroy Dixon's amateur status and lead to her disqualification from NCAA competition? The answer still might be no, even though Visa would be using Dixon's name, likeness, and appearance to endorse and support a commercial product.<sup>52</sup> Current and prospective student-athletes are permitted to receive payment for the display of their athletic skills in a commercial advertisement, so long as they do not keep the money and instead pass it on to the USOC or

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<sup>47</sup> Boudia is a world-class diver, excelling in 10-meter events, that attended college at Purdue. Information regarding his diving accolades can be found at <http://www.usadiving.org/divers/david-boudia/> and <http://www.teamusa.org/Athletes/BO/David-Boudia>.

<sup>48</sup> Visa, *Visa Olympics London 2012: David Boudia Team Visa Athlete Commercial: A Very High Dive*, YOUTUBE (Jun. 29, 2012), available at <http://www.youtube.com/watch?v=cQBNmpFH8I> (featuring David Boudia simulating a dive off the Burj Khalifa, the tallest building in the world).

<sup>49</sup> NCAA, 2012-13 Division I Manual art. 12.5.1.3 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf> (prohibiting student-athletes from endorsing commercial products).

<sup>50</sup> See *David Boudia*, PURDUE MEN'S SWIMMING & DIVING, [http://www.purduesports.com/sports/m-swim/mtt/boudia\\_david00.html](http://www.purduesports.com/sports/m-swim/mtt/boudia_david00.html) (referencing Boudia's decision to forego his senior year of eligibility and go pro in 2011).

<sup>51</sup> *Diamond Dixon*, USA T&F, <http://www.usatf.org/Athlete-Bios/Diamond-Dixon.aspx> (listing Dixon's graduation date as 2014).

<sup>52</sup> NCAA, 2012-13 Division I Manual art. 12.5.1.2 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

applicable national governing body.<sup>53</sup> While this exception appears to have been created as a way for the USCO and national governing bodies to use student-athletes in self-promotional materials, the plain language of the bylaw does nothing to prevent similar usage of student-athletes by commercial enterprises like this hypothetical Dixon/Visa relationship.<sup>54</sup> As long as the commercial advertisement has been approved, the USOC and national governing body are seemingly allowed to reap the benefits of student-athlete commercial endorsements.

The next step could be to dismiss this possibility as something that will never happen, because it eliminates the financial incentive of commercial endorsements for current and prospective student-athletes. However, establishing a recognizable and marketable name for yourself, even when you are not able to immediately collect the direct compensation, can lead to future lucrative endorsement opportunities upon completion of your collegiate tenure. Thus, this exception could arguably be exploited by student-athletes in a way that benefits the USOC and national governing body in the short term and the student-athlete in the long term. Meanwhile, similar compensation leniency is not extended by the NCAA bylaws to student-athletes beyond those involved in Olympic competition.

Furthermore, out of the Olympic athletes mentioned earlier, Missy Franklin presents an illustration of the challenges an elite *prospective* student-athlete must face in the endorsement realm. Missy Franklin represents a class of prospective student-athletes with a more-than-adequate skillset to perform at an elite level in the NCAA. However, NCAA amateurism bylaws related to endorsement deals force prospective student-athletes, like Franklin, to decide whether

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<sup>53</sup> See *id.*

<sup>54</sup> Thus, in theory, current and prospective student-athletes could perhaps endorse these types of commercial products so long as they do not keep the money.

they wish to retain an amateur status or accept an array of lucrative endorsements.<sup>55</sup> This decision requires a consideration of the true value of competing and being involved in collegiate athletics. Individuals serving as the face of their respective Olympic sport will likely accumulate an amount of wealth vastly exceeding the amount of scholarship funds they would receive from an NCAA institution.<sup>56</sup> This money could both easily pay for a college education and be used freely as the athlete desires, so *the value of a college education* is not truly the relevant issue. Instead, each prospective student-athlete must decide how much the ability to compete at an intercollegiate level is worth to them, irrespective of the value of the college education. Endorsement opportunities for these elite athletes are fleeting offers, operating in a small window where age, skillset, and international limelight all align to make the commercial endorsement lucrative.<sup>57</sup> In turn, prospective student-athletes are forced to decide the future of their competition status in an abrupt manner during a limited timeframe.<sup>58</sup> Individuals who are still minors are expected to expertly contemplate the value of competing in an intercollegiate capacity.

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<sup>55</sup> See e.g. Christopher A. Callanan, *Advice for the Next Jeremy Bloom: An elite Athlete's Guide to NCAA Amateurism Regulations*, 56 CASE W. RES. L. REV. 687, 687-88 (2006); NCAA, 2012-13 Division I Manual art. 12.01.3, 12.1.2 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>56</sup> Warta, *supra* note 30, at 425 (noting the average approximate value of a four-year full scholarship in 2003 to only be \$60,000). Meanwhile, estimates of the amount of money Franklin would have generated by accepting endorsements in lieu of maintaining NCAA eligibility range in the millions of dollars. *Missy Franklin: Amateur Rockstar*, SPORTS ON EARTH, <http://www.sportsonearth.com/article/42033238/>; *Missy Franklin Prefers Friends, School to Money*, USATODAY, <http://usatoday30.usatoday.com/sports/olympics/london/swimming/story/2012/09/14/missy-franklin-prefers-friends-school-to-money/57782292/1>.

<sup>57</sup> See e.g., *Missy Franklin and the Cost of being an Amateur*, DAILY MESSENGER, <http://www.mpnnow.com/x2095086551/Missy-Franklin-and-the-cost-of-being-an-amateur> (noting the fact that these sorts of endorsement offers exist only in very limited windows of time).

<sup>58</sup> On account of these endorsement offers being extended in very short windows and the potential risks on the prospective student-athlete's amateur status accepting such endorsements may have.



D. *Travel Expenditures*

Perhaps the most profound divergence in the NCAA's treatment between NCAA athletics and Olympic participation pertains to allowance of travel expenditures for friends and relatives of the athlete. Commercial companies, other than professional sports organizations, are allowed to cover all actual and necessary expenses for a student-athlete's relatives to attend the Olympic Games in which the student-athlete will participate.<sup>59</sup> It is worth noting that these bylaws specify "commercial companies" and do not limit such funding to being provided by the USOC or national governing bodies.<sup>60</sup> Meanwhile, NCAA restriction of similar travel expenses in the typical intercollegiate context is rife with prohibitions and stingy limitations.<sup>61</sup>

NCAA bylaws permit "an outside organization (other than a professional sports organization) to provide actual and necessary expenses for . . ." travel expenses of prospective student-athletes and his or her relatives to an awards ceremony.<sup>62</sup> On its face, this NCAA permission of "outside organizations" to pay for the travel expenses of a prospective student-athlete and his or her relatives to an awards ceremony seems generous. Institutions are even allowed to pay automobile transportation expenses for a prospective student-athlete's campus visit, which includes friends and relatives accompanying the prospect.<sup>63</sup> Slush funds, however, cannot be used to pay for transportation or entertainment of a prospective student-athlete.<sup>64</sup> These slush funds consist of pooled resources for recruiting purposes by two or more people.<sup>65</sup>

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<sup>59</sup> NCAA, 2012-2013 Division I Manual art. 12.1.2.4.9, 16.6.1.4 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>60</sup> *See id.*

<sup>61</sup> *See e.g.* NCAA, 2012-13 Division I Manual art. 13.4.4, 13.18, 16.6.1 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>62</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.1.4.1.1 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>63</sup> NCAA, 2012-13 Division I Manual art. 13.5.2.2, 13.5.2.2.1 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>64</sup> NCAA, 2012-13 Division I Manual art. 13.4.4 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf>.

<sup>65</sup> NCAA, 2012-13 Division I Manual art. 13.14.4.1 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

The “use of a company funds” constitutes the use of pooled resources.<sup>66</sup> Ergo, transportation expenses of prospective student-athletes may not be covered by commercial companies the same way as they may in the context of Olympic competition, illustrating yet another arbitrary favoritism in the NCAA bylaws for student-athletes involved in Olympic competition.

While the previous example deals with prospective student-athletes and the attempts by institutions to encourage these individuals to attend their universities, a more pertinent comparison between commercial companies paying expenses for student-athletes and relatives to attend the Olympic Games and typical NCAA treatment may be found in the restrictions dealing with covering expenditures of family travel to typical intercollegiate competitions. There is an inexact parallel between these two sets of travel expenditures, and the regulatory distinctions seem arbitrary.<sup>67</sup> Institutions are serving roles very similar to the USOC in respect to the relationships with student-athletes. Still, unless there is a life-threatening injury,<sup>68</sup> institutions are generally not permitted to pay for the travel expenses of family members to intercollegiate competitions.<sup>69</sup> Additionally, an institution may not even reimburse a student-athlete for expenses incurred while driving to a competition site if he or she is accompanied by friends or family members.<sup>70</sup>

Admittedly, most regular season intercollegiate competitions are not as momentous of occasions as the Olympic Games. However, some intercollegiate competitions can still arguably rise to this level. Perhaps the best correlation to draw between the excitement, intensity, skillset,

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<sup>66</sup> NCAA, 2012-13 Division I Manual art. 13.14.4.2 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>67</sup> See e.g., NCAA, 2012-13 Division I Manual art. 12.1.2.4.9, 13.4.4, 13.18, 16.6.1, 16.8.2.4 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>68</sup> NCAA, 2012-13 Division I Manual art. 16.6.1.3 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>69</sup> NCAA, 2012-13 Division I Manual art. 16.6.1 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>70</sup> NCAA, 2012-13 Division I Manual art. 16.8.2.4 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

and media coverage would be a BCS postseason Division I college football bowl game.<sup>71</sup> Even in these rare instances, which most college football players will never experience, expenses for relatives of the student-athletes are highly restricted. For example, travel expenses to a postseason football game or NCAA championship in other sports are allowed to be provided by *the institution* for only the student-athlete's *spouse and children*.<sup>72</sup> This exception still excludes expenditures for parents, guardians, siblings, and other direct relatives of the student-athlete and continues the prohibition of commercial companies from financing the travel. Institutions are able to reserve lodging to post-season events for immediate family members of the student-athlete at a discounted rate, but the institution cannot cover any portion of the cost of lodging *or* reserving/securing the lodging.<sup>73</sup> This exclusion basically limits the benefit to be conferred by institutions to piggybacking deals off of discounts offered to the university by the lodging entity, since the discount is not a conference of a benefit from the institute itself under the plain language of the statute. The end result is a more extensively regulated competition of relatively similar excitement and rarity (in terms of opportunity to be involved) as an Olympic competition with minimal explanation of reasoning on the part of the NCAA.

Another example of such a difference in treatment by the NCAA is similar to the merchandise perks discussed earlier. Transportation expenses for student-athletes, coaches, and relatives are not allowed to be covered in the context of summer basketball camp<sup>74</sup> while such

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<sup>71</sup> See e.g. *The BCS Title Game is Bigger than the Super Bowl*, FORBES, available at <http://www.forbes.com/sites/mikeozanian/2011/01/10/the-bcs-title-game-is-bigger-than-the-super-bowl/>; Michael Humes, "BCS Megacast" Coverage of National Championship Takes Over ESPN Platforms, ESPN MEDIA ZONE, <http://espnmediazone.com/us/press-releases/2013/12/bcs-megacast-coverage-of-national-championship-takes-over-espn-platforms/>.

<sup>72</sup> NCAA, 2012-13 Division I Manual art. 16.6.1.1 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf) (emphasis added).

<sup>73</sup> NCAA, 2012-13 Division I Manual art. 16.6.1.2 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>74</sup> NCAA, 2012-13 Division I Manual art. 13.18 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

expenses and more are permitted to be covered by the USOC in the context of training for the Olympics.<sup>75</sup>

*E. Other Incentives and Covered Expenditures*

Training expenses related to Olympic preparation and competition also receive preferential treatment compared to those incurred during NCAA preparation.<sup>76</sup> The USOC or an appropriate governing body is permitted to cover expenses for developmental training, coaching, facility usage, equipment, apparel, supplies, comprehensive health insurance, travel, room and board without consequence.<sup>77</sup> While the NCAA similarly allows the institutional provision of medical insurance,<sup>78</sup> additional limitations are placed on outside consultants;<sup>79</sup> student-athlete facility usage;<sup>80</sup> transportation, equipment, and apparel;<sup>81</sup> and year-round practicing.<sup>82</sup>

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<sup>75</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.4.9 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>76</sup> *See id.*

<sup>77</sup> NCAA, 2012-13 Division I Manual art. 12.1.2.4.9 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>78</sup> NCAA, 2012-13 Division I Manual art. 16.4.1(a) (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>79</sup> *See* NCAA, 2012-13 Division I Manual §11.7.1.1.1.4 (2012), *available at* [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf). This bylaw, prohibiting outside consultants from interacting with student-athletes without being counted against applicable coaching limits, can be used to draw a comparison with individual trainers and coaches that are necessary for Olympic training. These outside consultants can be paid by the USOC under NCAA bylaw §12.1.2.4.9, but such coaches/trainers fulfilling identical roles outside of Olympic preparation are not allowed (if paid for by an institution) unless they are considered part of the program's coaching staff.

<sup>80</sup> *See* NCAA, 2012-13 Division I Manual art. 11.7.1.1.1.4 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf> (prohibiting outside consultants from interacting with student-athletes without being counted against applicable coaching limits, can be used to draw a comparison with individual trainers and coaches that are necessary for Olympic training. These outside consultants can be paid by the USOC under NCAA art. 12.1.2.4.9, but such coaches/trainers fulfilling identical roles outside of Olympic preparation are not allowed (if paid for by an institution) unless they are considered part of the program's coaching staff).

<sup>81</sup> *See* NCAA, 2012-13 Division I Manual art. 13.15.1.6.1 (2012), *available at* <http://www.ncaapublications.com/productdownloads/D113.pdf> (prohibiting donation of athletic equipment to high schools of prospective student-athletes); NCAA, *supra* note 12, art. 13.18(b), (c) (prohibiting transportation expenses related to summer basketball camp for student-athletes, coaches, and relatives, & prohibiting prospective student-athletes from retaining equipment or apparel provided at summer basketball camp).

Media activities are a large part of the Olympics. The buzz surrounding Olympic Games gives rise to an insatiable desire for media outlets to book as many Olympic athletes for interviews and appearances as they possibly can during the Olympics and as part of the post-Olympics process.<sup>83</sup> This media craze undoubtedly presents the opportunity for inducements and perks that can run afoul of NCAA regulations for current and potential student-athletes. In these instances, current and prospective student-athletes are permitted to participate in media activities related to their athletic skill and notoriety and receive actual and necessary expenses from the media service related to such an appearance.<sup>84</sup> Institutions are allowed to pay for these actual and necessary expenses *only if* the appearance is in connection with a conference-sponsored media activity or is during the playing season and results in no missed class-time.<sup>85</sup>

Olympic success also earns athletes a medal in addition to the Operation Gold Grant stipend. Gold, silver, and bronze medals possess intrinsic value for their contextual significance as well as an inherent value for their composition of valuable elements.<sup>86</sup> This type of valuable, non-monetary Olympic award is permitted without jeopardizing an athlete's amateur status.<sup>87</sup>

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<sup>82</sup> See e.g., NCAA, 2012-13 Division I Manual art. 17.15.2 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf> (prohibiting an institutions from commencing practice sessions in rowing prior to a certain date).

<sup>83</sup> See e.g., Tim McGhee, *The Rise and Rise of Athlete Brand Endorsements*, 1.1 JOURNAL OF BRAND STRATEGY 79, 81 (Jun. 2012); Kelly Whiteside, *Olympic Athletes Stay in Spotlight after London*, USATODAY, <http://usatoday30.usatoday.com/sports/olympics/story/2012/09/11/olympic-athletes-stay-in-spotlight-after-london/57751470/1>.

<sup>84</sup> NCAA, 2012-13 Division I Manual art. 12.5.3 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>85</sup> NCAA, 2012-13 Division I Manual art. 16.9.1(b) (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

<sup>86</sup> See e.g., *How Much are Olympic Medals Actually Worth?*, DEADSPIN, <http://deadspin.com/5930095/how-much-are-olympic-medals-actually-worth>.

<sup>87</sup> NCAA, 2012-13 Division I Manual art. 16.1.1.3.2 (2012), available at [www.ncaapublications.com/productdownloads/D113.pdf](http://www.ncaapublications.com/productdownloads/D113.pdf).

### III. CONCLUSION

As this article illustrates, there are clearly differences in the NCAA's treatment of NCAA events compared with Olympic participation vis-à-vis the impact such involvement has on the amateur status of current and prospective student-athletes. The existence of a divergence, however, does not qualify as a justification of such differential treatment. Upon review of the inexact parallels between the NCAA's treatment of NCAA athletics and Olympic participation, there does not seem to be a justification for such a divergence. While parallels exist between the activities taking place in both Olympic and non-Olympic settings (i.e. professional basketball in Europe, summer basketball camp, BCS Bowl Games, etc.), these activities are not extended equal treatment by the NCAA. Explicit reasoning for the NCAA's divergence in treatment is lacking in the NCAA bylaws. While there are some arguments that can be made on the NCAA's behalf, the entire divergence in treatment by the NCAA regarding preferential treatment for Olympic involvement remains arbitrary. An advocate for the existing policies might try to justify the NCAA's distinction between NCAA activities and Olympic activities by illustrating the uniquely grand essence of the Olympics or claiming the promotion of a national identity by fostering Olympic involvement by student-athletes, but in reality these arguments are merely excuses aimed to mask the capricious divergence in treatment by the NCAA.

Perhaps the difference in treatments by the NCAA is the result of a voluntary retreat by the NCAA's amateurism restrictions regarding Olympic participation in order to avoid casting the public's glare on the more restrictive nature of general NCAA regulations. Society, and the media outlets catering to such masses, will be more familiar with Olympic competitions and the implications such activities may have on NCAA amateurism status than the day-to-day dealings of a typical NCAA student-athlete. Olympic athletes are the elite performers in their respective

fields. NCAA rules prohibiting elite performers like Missy Franklin from participating in intercollegiate athletics are more likely to draw the ire of the public. By avoiding this kind of attention with more lenient NCAA restrictions on Olympic involvement, the NCAA is able to sidestep the public spotlight and continue enforcing more stringent regulations throughout the year during ordinary NCAA activities. This misdirection, however, is not a long-term solution for the NCAA.

In order to resolve this arbitrary distinction, the NCAA could relax its bylaws governing NCAA activities to reflect those currently governing the Olympic involvement of current and prospective student-athletes. The obvious push-back will be the NCAA's argument that, if the difference in treatment between NCAA athletics and Olympic participation is going to be eliminated, the rules that should prevail are those currently governing ordinary NCAA activities. Thus, the NCAA would likely push for an elimination of the current leniencies extended to Olympic participation.

The long-term impact of aligning NCAA bylaws to parallel treatment in these two contexts should be beneficial, regardless of whether this alignment shifts towards the lenient side of current NCAA treatment of Olympic participation or conversely towards the stringent side of current NCAA treatment of ordinary NCAA athletics. If the bylaws are relaxed, then the treatment will more accurately reflect the existing nature of NCAA athletics. Modern amateurism should reflect the profit motive of the student-athlete and recognize the corporate nature of NCAA athletics as they exist in reality, rather than cling to the strict regulations that have been used to protect amateurism which is no longer an accurate portrayal of NCAA athletics.<sup>88</sup> If the bylaws are adjusted to align in a more restrictive manner, then the NCAA's

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<sup>88</sup> See Fitt, *supra* note 34, at 555.

treatment of amateurism will be pushed in front of the public and primed for a potential challenge by student-athletes that may threaten the NCAA's adherence to amateurism in general.