

House of Cards

How Antitrust Litigation Dismantled the NCAA's Foundational Myths

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In December 2005, Reggie Bush—the star University of Southern California (USC) running back and soon-to-be top pick in the National Football League draft—stepped onto a New York stage in a custom pinstripe suit to accept the Heisman Trophy. Five years later, the Heisman Trust made him give it back.

The issue wasn't Bush's performance. It was the suit. He hadn't paid for it. What's more, a National Collegiate Athletic Association (NCAA) investigation uncovered a broader web of "improper benefits" lavished on Bush and his family. His accolades were stripped, but the millions he generated for USC—through ticket sales, TV contracts, and merchandise—stayed with USC.

Bush's case wasn't an outlier. It revealed a deeper flaw: The NCAA's amateurism model was not a moral principle. It was a legal and economic structure, increasingly vulnerable to antitrust challenge. Since then, courts have continued to chip away at the foundation the NCAA spent a century fortifying, until the house of cards finally began to fall.

Building the Myth: Byers and the Birth of NCAA Control

The NCAA began in 1906 as a reform effort to stem the rising death toll in college football. At first, it set only limited rules—banning dangerous mass-formation plays like the "flying wedge" and instituting a neutral zone to separate players at the snap.

Off the field, universities largely regulated themselves, and often poorly.

By the 1920s, player "inducements" had become rampant. Washington & Jefferson, a small Pennsylvania college, used booster donations to fund a \$50,000 payroll for its 1922 Rose Bowl-winning team. Yale, not to be outdone, secured a \$100,000 slush fund to lure recruits. After decades of hand-wringing, the NCAA attempted reform through the 1948 "Sanity Codes," limiting compensation to tuition scholarships, but faced swift rebellion. Within two years, the codes were repealed, and the NCAA returned to being a bystander.

In 1951, Walter Byers became the NCAA's first executive director at the age of just 29. Brick by brick, he built the organization into a powerhouse. His first move was to seize control of television rights. Using the NCAA's "Television Committee," Byers argued that uncontrolled broadcasts would sap in-person game attendance. Universities, anxious to retain revenue from gate receipts, willingly handed over TV rights to the NCAA. With exclusive control over television secured, the NCAA negotiated a *Game of the Week* deal with NBC, funneling revenue from these broadcasts directly into its own coffers.

Byers's next move was subtler but no less consequential: gaining enforcement authority. In the 1940s and 1950s, the University of Kentucky dominated men's basketball. In 1951, Kentucky was the defending national champion and had won three of the last

four titles. Its coach, Adolph Rupp, towered over college basketball's midcentury era. But Rupp's stature did not save the Wildcats from the fallout of a betting scandal. Two former Kentucky players, Ralph Beard and Alex Groza (both all-Americans on the 1948 championship team), were arrested for point-shaving during the 1949 season. Public outrage ensued.

Seeing an opportunity, Byers impaneled an NCAA investigation. The panel recommended a year-long suspension for the University of Kentucky from not just basketball but all intercollegiate competition. Byers convinced Kentucky's athletic director to accept the suspension, citing the need to restore public confidence in college athletics. It set a precedent: The NCAA now had the power to sanction noncompliant members.

Finally, Byers expanded the NCAA's reach by pushing to shield it and its member universities from liability. In 1955, for example, after Fort Lewis A&M football player Ray Dennison died from a skull fracture during a game, the NCAA helped the school defeat a workers' compensation claim. At the NCAA's insistence, Fort Lewis argued that Dennison was a "student athlete"—not an employee—and, as such, not entitled to workers' compensation. In the following years, courts adopted the characterization uncritically and the "student athlete" label became a key marker in the NCAA's mission. Despite this, Byers later admitted in his memoir that the "student athlete" label was never about honor; it was about avoiding legal liability. The myth solidified, and courts largely went along.

Warning Shots: *Board of Regents* and the NCAA's Miscalculation

Although the NCAA's power seemed entrenched, it faced its first serious antitrust challenge in 1984. That such a challenge took decades to arise is surprising given that the NCAA is, in effect and practice, a horizontal cartel among competitor universities—an arrangement the Sherman Act often condemns as anticompetitive. In *Board of Regents v. NCAA*, Oklahoma and Georgia challenged the NCAA's television restrictions. With a thorough and nuanced analysis, the Supreme Court ultimately ruled the NCAA violated the Sherman Act.

But the NCAA misread the decision. Justice Stevens, writing for the majority, praised the NCAA's role in preserving amateurism—albeit in dicta. The NCAA seized on this language as a stamp of approval, doubling down on its foundational myths.

Meanwhile, market forces surged. Much as the breakup of Standard Oil expanded rather than shrank the energy sector, decentralizing college football broadcasts spurred explosive growth. With more games available nationwide, fan interest soared. College football TV contracts ballooned from \$60 million before *Board of Regents* to over \$1 billion today—a classic indicator that the pre-1984 TV market had been deeply restrained. Meanwhile, March Madness revenue rose sharply from a conveniently timed



\$48-million CBS deal, offsetting the losses the NCAA suffered because it could no longer negotiate (and profit from) the national football TV contracts.

Propped up by courts and flush with cash, the NCAA appeared to have dodged destabilizing blows. But cracks had begun to show.

Cracks Become Collapse: *O'Bannon*, *Alston*, and *House*

After *Board of Regents*, plaintiffs kept hammering. In *Agnew v. NCAA*, several injured football players who lost scholarships challenged as anticompetitive the NCAA's restrictions on the number and length of scholarships. Although the Seventh Circuit sidestepped the case on technical grounds, it acknowledged that all NCAA rules, and not just "economic" rules like TV contracts, were subject to antitrust scrutiny—a critical shift.

The real breach came with *O'Bannon v. NCAA*. Ed O'Bannon, a former UCLA basketball star, discovered his likeness being used—without compensation—in EA Sports' *NCAA Basketball* video game. He sued, arguing that the NCAA's control of athletes' name, image, and likeness (NIL) rights was an illegal restraint. The court agreed, finding the NCAA's restrictions unlawful. The Ninth Circuit upheld the decision, albeit limiting relief to education-related benefits. Still, the amateurism model had fractured.

If *O'Bannon* split the foundation, *Alston v. NCAA* broke it. Shawne Alston and others challenged the NCAA's cap on player

Illustration by The Brave Union

benefits beyond scholarships. Again, the players won. The NCAA appealed to the Supreme Court, citing *Board of Regents* and requesting a broad antitrust exemption. The Court unanimously rejected the NCAA's request. Justice Gorsuch, writing for the majority, noted that only narrow questions were before the Court. But the unmistakable implication was that broader challenges could succeed. Justice Kavanaugh, in a blistering concurrence, went further: "[T]he NCAA's business model would be flatly illegal in almost any other industry in America."

After *Alston*, public perception shifted. Paying players was no longer seen as seedy corruption; it was framed as fair compensation. In *House v. NCAA*, athletes sought not just NIL rights but revenue sharing from licensing and media contracts. Facing devastating liability, the NCAA settled pretrial, agreeing to pay nearly \$2.8 billion and to permit direct player compensation for the first time in history. The house of cards had not merely cracked—it had collapsed.

The NCAA's unraveling was not just the result of better lawyering by plaintiffs. It reflected a tone-deaf legal strategy by the NCAA. In *Board of Regents*, the Supreme Court was willing to accept, if only in dicta, the NCAA's claim that amateurism preserved a unique product. The NCAA overread this aside to conclude that its model was essentially preapproved by the Supreme Court.

But the interim brought not only changes to the Court's anti-trust deference but also scandal after scandal involving the NCAA as a regulator. By the time of *Alston*, courts no longer saw the NCAA as the "guardian of tradition"—they saw it as an outlier, clinging to outdated myths in a legal landscape that demanded free markets and fair competition.

Aftershocks: NIL Chaos and the New Frontier

After *Alston*, the NCAA rushed to adopt interim NIL policies, allowing athletes to profit from endorsements, social media, and personal brands. Within months, athletes signed with national brands, launched apparel lines, and monetized their fame.

As the NCAA's legal defenses crumbled, it turned to politics in a last-ditch effort to preserve its model. In the late 2010s and early 2020s, the NCAA poured millions into lobbying Congress for a federal law that would preempt the growing patchwork of state laws granting college athletes NIL rights. NCAA officials warned, sometimes disingenuously, that without federal intervention, chaos would ensue.

Yet, even as the NCAA sounded the alarm, states like California, Florida, and Texas moved forward with their own athlete compensation laws, undermining the NCAA's position. To date, Congress has proved reluctant to act. Lawmakers, sensitive to shifting public opinion and wary of appearing anti-athlete, refused to offer the NCAA the broad protections it sought. That may be changing, at least in part. Single-party control, along with the

NCAA succumbing to the reality that the clock on athlete compensation cannot be turned back, has renewed hopes of federal intervention. But at least for now, that hope is more aspirational than substantiated. Ultimately, the failure of the NCAA's anti-trust exemption lobbying campaign confirmed what the courts had already exposed: The amateurism myth could no longer be sustained by tradition, public relations, or politics.

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The NIL marketplace remains chaotic. Rules vary by state, school, and sport, but the direction toward market-driven athlete compensation is clear. Some fear it will create a professionalized pay-for-play system. Others argue it simply recognizes the reality that college athletes, like any other economic actors, deserve to profit from their talents.

Conclusion: The Collapse of a House Built on Myth

In hindsight, the NCAA's control was always more brittle than it appeared. It rested on fragile cultural assumptions about education, fairness, and sports that no longer hold. As courts pulled away card after card, the structure began to fall. Of course, the NCAA still exists. So do college sports. But the days of unpaid labor cloaked in the language of amateurism are gone.

Stepping back, it's clear that this is not just an NCAA story. It's a story about how law interacts with tradition, how litigation reshapes markets, and how even the most entrenched institutions must eventually confront economic reality. The future will be messy. But it will be governed by new rules grounded in law, not nostalgia. ■

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