MISSION IMPOSSIBLE: PROTECTING OUR RICH HISTORY WHILE FIGHTING FOR BOWL GAME ELIGIBILITY

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I. INTRODUCTION

> "All schools are not created equal. So how you going to hold every school to the same standard, if every school don't have the means to live up to those standards?"
>
> — Troyce Manassa, Former Guard, Savannah State University[1]

Troyce may be one of the most vocal opponents of the National Collegiate Athletic Association's (NCAA) system for calculating postseason eligibility, which has a potentially discriminatory effect on student-athletes at Historically Black Colleges and Universities (HBCUs). His teammate, and fellow plaintiff, Austin Dasent, provided more context to the issues within the NCAA's system:

> The NCAA knew that the [Academic Performance Program (APP)] would negatively affect [b]lack student-athletes at HBCUs. You can't keep moving the goal posts and call it reform when, at the end of the day, [b]lack student-athletes at HBCUs are not given the same tools and opportunities to succeed even before we hit the fields and courts.[2]

Congress enacted Title III of the Higher Education Act of 1965, creating a means to serve the educational needs of [b]lack Americans.[3] There was a recognized need to ensure proper education for African American students due to institutions employing quotas to limit admission to black students, thus creating HBCUs.[4] What started out as a small solution to an issue morphed into institutions with a rapidly evolving, unique mission, which is far beyond what Congress initially imagined. President George Bush described this mission as follows: "At a time when many schools barred their doors to black Americans, these colleges offered the best, and often the only, opportunity for higher education."[5]

For many HBCUs, this means ensuring the enrollment of low-income, first-generation, and at-risk students, which effectively gives these schools lower graduation success rates, lower progress rates, and

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1. Derek Major, *HBCU Athletes File Racial Discrimination Lawsuit Against NCAA*, BLACK ENTERPRISE (Dec. 11, 2020), https://www.blackenterprise.com/hbcu-athletes-file-racial-discrimination-lawsuit-against-ncaa/.

2. *Judge Allows HBCU Class-action Suit vs. NCAA to Move Forward*, HBCU GAMEDAY (Sept. 16, 2021), https://hbcugameday.com/2021/09/16/judge-allows-hbcu-class-action-suit-vs-ncaa-to-move-forward/.

3. U.S. DEP'T OF EDUC., OFF. for CIV. RTS., *Historically Black Colleges and Universities and Higher Education Desegregation* (1991).

4. *See* Leslie M. Harris, *The Long, Ugly History of Racism at American Universities*, THE NEW REPUBLIC (Mar. 26, 2015), https://newrepublic.com/article/121382/forgotten-racist-past-american-universities.

5. U.S. DEP'T OF EDUC., *supra* note 3.

lower retention rates.[6] For decades, these institutions have attempted to give students a proper education while creating athletic programs that are elite enough to compete against big name schools.[7] Once student-athletes are academically eligible, institutions have a chance to dip into some of the most coveted types of money available.[8] According to an article in U.S. News & World Report, "[q]ualification is more important than winning the game in itself, from a financial standpoint."[9]

This article contends that the current version of the Academic Progress System is ineffective in ensuring that HBCUs are able to further their mission of providing higher education to black Americans while producing athletes. While acknowledging the grace that the NCAA has given HBCUs to show academic improvement, this article suggests two revisions to the APP. First, the NCAA must eliminate the use of standardized testing to determine first-year athletic eligibility. Second, the APR system should base postseason eligibility solely on a percentage of the team making timely progress towards their degree.

Section III examines how the APR system is drastically skewed to disadvantage HBCUs and essentially bans schools from the postseason competition, which results in inevitable consequences to not only student-athletes but also the overall institution. Section IV suggests two revisions to APP policy in order to solve the issues discussed in Section III. Section V discusses a future with the application of the proposed revision to the APP policy, a current case pending in the United States District Court for the Southern District of Indiana Indianapolis Division, and the potential for a class-action suit against the NCAA.

II. BACKGROUND

Division I HBCUs must meet benchmarks set by the APP (Academic Performance Program) to be postseason bowl-game eligible.[10] Failure to satisfy these requirements do not only affect current postseason eligibility, but also places the team on a three-year "monitoring

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6. Tom Goldman, *Challenging The NCAA: HBCUs Say No More Discrimination In Academic Rules*, NPR (Dec. 10, 2020, 4:10 PM), https://www.npr.org/2020/12/10/944982415/challenging-the-ncaa-hbcus-say-no-more-discrimination-in-academic-rules.

7. Large athletic programs such as the ones at Ole Miss, Alabama, University of Florida, Penn State. *See* Pat Forde, *Desirability Ratings: Measuring Each Power 5 School's Conference Value*, SPORTS ILLUSTRATED (July 14, 2022), https://www.si.com/college/2022/07/14/power-5-desirability-rankings-sec-big-ten-acc.

8. *See College Football Playoff Revenue Distribution*, COLL. FOOTBALL PLAYOFF, https://collegefootballplayoff.com/sports/2017/9/20/revenue-distribution.aspx (last visited Nov. 7, 2021).

9. Andrew Soergel, *The Money Behind the Bowl Games*, U.S. NEWS & WORLD REP. (Dec. 23, 2014), https://www.usnews.com/news/blogs/data-mine/2014/12/23/the-money-behind-the-college-football-playoff-bowl-games.

10. *See* NCAA, 2020-2021 NCAA DIVISION I MANUAL, BYLAW 14.8.1.2. (rev. ed 2021), https://web3.ncaa.org/lsdbi/search/bylawView?id=8787 (last visited Dec. 13, 2023).

period."[11] The APP is a system created in 2004 by the NCAA, which requires teams to hit specific benchmarks.[12] The system rewards academic performance, looking at schools' academic retention, graduation, player ineligibility, and transfers.[13]

A. Standardized Testing

When taking the academic standards for initial eligibility at face value, they seem like ordinary requirements. Students must graduate from high school, complete core courses, earn a minimum grade-point average (GPA), and have a qualifying SAT or ACT score.[14] In addition to the standards to be eligible for Division I play, student-athletes must have a high enough GPA to compensate for a low SAT score or vice versa.[15]

For most students, these standards seem insignificant. However, we must acknowledge the racial disparities that exist within standardized testing. In 1930, the creator of the SAT stated that he regretted inventing the test because the scores do not measure innate ability but serve as "[a] composite including schooling, family background, familiarity with English and everything else, relevant or irrelevant."[16]

Many critics applaud the NCAA for distancing themselves from using a predetermined SAT score of 820 for eligibility, but only after three decades of protest.[17] Notable college basketball coaches protested using SAT scores to determine initial eligibility for more than three decades.[18] Coaches John Chaney and John Thompson Jr. were two of the most vocal opposers to standardized testing, arguing that the system unfairly discriminates against black athletes.[19] At one point, Coach

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11. *See* NCAA, *supra* note 10 at Article 14.8.1.1.3.

12. *See* Schuyler A. Corbin, Writing Competition Submission, *NCAA Academic Performance Program Harms Historically Black Colleges & Universities' Athletics*, SPORTS L. ASS'N, March 2022, https://www.sportslaw.org/docs/NCAA_Academic_Performance_Program_Harms_HBCU_Athletics.pdf.

13. NCAA, *NCAA Division I Academic Progress Rate (APR) Public Use Dataset Codebook*, (2006), https://ncaaorg.s3.amazonaws.com/research/academics/2020RES_APR2019Codebook.pdf.

14. *Academic Standards for Initial-Eligibility*, NCAA, https://www.ncaa.org/student-athletes/future/academic-standards-initial-eligibility (last visited Dec. 2, 2021).

15. *See id*.

16. Sidney Fussell, *The Problem With the SAT's Idea of Objectivity*, THE ATLANTIC (May 18, 2019), https://www.theatlantic.com/technology/archive/2019/05/college-board-sat-adversity-score/589681/.

17. *See* Susan H. Greenberg, *NCAA Task Force Recommends Ending SAT/ACT Requirement,* INSIDE HIGHER ED. (Oct. 18, 2021), https://www.insidehighered.com/quicktakes/2021/10/18/ncaa-task-force-recommends-ending-satact-requirement.

18. *See e.g.,* Brian Lewis, *Prop 48 Still Angers Chaney*, N.Y. POST (Mar. 12, 1999), https://nypost.com/1999/03/12/prop-48-still-angers-chaney/; *Thompson Plans to Boycott Game in NCAA Protest*, L.A. TIMES (Jan. 14, 1989, 12:00 AM), https://www.latimes.com/archives/la-xpm-1989-01-14-sp-247-story.html.

19. *Thompson Plans to Boycott Game*, *supra* note 18.

Thompson boycotted NCAA basketball games, simply walking out after team introductions before the game began.[20] Coach Thompson's boycott may have been worth it because in 1997, some players took the NCAA to court.[21]

In March 1999, a federal court finally heard a case that determined the fate of using predetermined scores.[22] Judge Ronald Buckwalter confirmed that the NCAA's use of standardized testing for freshman eligibility was a federal civil rights law violation.[23] Using the NCAA's statistics, Judge Buckwalter said that this standard disproportionately affected black athletes.[24]

The idea that standardized testing has a disproportionate effect on black kids from lower socioeconomic backgrounds is not a new phenomenon.[25] Beyond greater access to test preparation, students from families who have earned degrees in higher education benefit from linguistic and cultural practices learned in the home that are indirectly measured on the test.[26] It is naive to assume that all humans process logical reasoning the same when linguistic competencies differ based on different upbringings.[27] It is impossible to take a student from an impoverished area of New York City or a rural area like Appalachia, West Virginia, and compare them to a well-traveled student from Arlington, Virginia. Any standardized testing will reflect this difference in logical reasoning.

B. Impact on the NCAA

When courts shut down the NCAA's predetermined score scheme, the NCAA "recentered" its scoring system. Switching to a sliding scale method of eligibility gives latitude to students with high GPAs but low standardized testing scores.[28] While seemingly insignificant, incoming student-athletes eligibility directly impacts the overall team.

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20. *Thompson Plans to Boycott Game*, *supra* note 18.

21. Lewis, *supra* at 18; *See NCAA Accused Of Discrimination In Lawsuit*, THE SEATTLE TIMES (Jan. 8, 1997), https://archive.seattletimes.com/archive/?date=19970108&slug=2517631.

22. *See* Dave Fairbank & David Teel, *Praise, Criticism for SAT Ruling,* DAILY PRESS (Mar. 10, 1999), https://www.dailypress.com/news/dp-xpm-19990310-1999-03-10-9903121550-story.html.

23. *Id.*

24. *See id.*

25. *See* Ezekiel J. Dixon-Román, *Standardized tests like SAT and ACT favor students with family wealth*, THE PHILADELPHIA INQUIRER (Oct. 29, 2019), https://www.inquirer.com/opinion/commentary/sat-act-standardized-tests-equity-socioeconomic-status-wealth-20191029.html (stating "[s]ince the mid-1970s, the US has experienced increasing inequality in family wealth holdings," especially when accounting for race, and has contributed to performance disparities on standardized tests.).

26. *Id.*

27. *See id.*

28. *NCAA Sliding Scale*, NEXT COLL. STUDENT ATHLETE, https://www.ncsasports.org/ncaa-eligibility-center/ncaa-sliding-scale (last visited Mar. 10, 2023).

Teams are awarded a maximum of two points each year for each student-athlete who meets academic eligibility standards and remains with the institution.[29] One point is awarded for eligibility by meeting all NCAA requirements (e.g., progress towards degree, GPA, and credit hours).[30] The second point is awarded if the student-athlete returns to the institution the following semester.[31] Even as the NCAA considers waiving the regular season record of .500 or better to be bowl eligible due to unprecedented times, institutions will still need to meet the minimum APR score of 930.[32]

Accordingly, a team's Academic Progress Rate (APR) is the total points earned by the team during the eligible school year, divided by the total points possible.[33]

The APR system did exactly what the NCAA intended to do, forcing schools into valuing academics, and effectively making sure athletic programs realized they needed to ensure the majority of student-athletes were eligible to play. This encourages institutions with the means, often wealthy, predominantly white institutions, to *guarantee* that sports programs are eligible for postseason play. For 18 years, the University of North Carolina at Chapel Hill created no-show, phantom courses to keep "unmotivated and underprepared players" eligible for play.[34] In another instance, a tutor at the University of Missouri, pressured by athletic administrators, completed online courses and classwork for players to ensure that student-athletes received passing grades.[35]

Beyond the concept of amateurism, maintaining academic eligibility via the APR system is the most important aspect of college sports.[36] In May 2020, the NCAA reformed the APR system and extended

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29. *Academic Progress Rate*, LSU COMPLIANCE, http://www.compliance.lsu.edu/academic-progress-rate-1 (last visited Feb. 19, 2023). It should be noted that on February 2, 2023, the NCAA's Division I committee voted to resume the Academic Performance Programs operations and postseason bowl game penalties, beginning in the 2024-2025 academic year. *See Academic Performance Program penalties to return for 2024-25,* NCAA (February 10, 2023), https://www.ncaa.org/news/2023/2/10/media-center-academic-performance-program-penalties-to-return-for-2024-25.aspx.

30. *Academic Progress Rate*, *supra* note 29.

31. *Id.*

32. Michelle Hosick, *D1 Board adopts improvements in academic standards and student-athlete support*, NCAA (Oct. 27, 2011), https://www.ncaa.org/about/resources/media-center/news/di-board-adopts-improvements-academic-standards-and-student-athlete-support.

33. *Id*.

34. Jack Stripling, *Widespread Nature of Chapel Hill's Academic Fraud Is Laid Bare* (Oct. 23, 2014), CHRON. OF HIGHER EDUC., https://www.chronicle.com/article/widespread-nature-of-chapel-hills-academic-fraud-is-laid-bare/.

35. Doug Lederman, *NCAA Punishes Missouri in Blatant Academic Fraud Case*, INSIDE HIGHER ED (Feb. 1, 2019), https://www.insidehighered.com/news/2019/02/01/ncaa-punishes-missouri-blatant-case-academic-fraud.

36. *See* Joshua Senne, *A Review of the NCAA's Business Model, Amateurism, and Paying the Players*, THE SPORT J. (Dec. 22, 2016), https://thesportjournal.org/article/a-review-of-the-ncaas-business-model-amateurism-and-paying- the-players/.

grace to existing policies to ensure that under-resourced teams avoided penalties as long as they showed academic improvement.[37] Unfortunately, this is not enough. The history of HBCUs and the NCAA's stance on academic progress will continue to clash.

III. NO MONEY, MORE PROBLEMS

Academics are the most important factor in college sports.[38] The NCAA has gone as far as to say: "[i]t's our commitment – and our responsibility – to give young people opportunities to learn, play and succeed."[39] To achieve this goal, they set standards to ensure that incoming student-athletes will be prepared for the academic rigors of college and track degree progress.[40] History shows that the academic requirement is used to distinguish collegiate sports teams from professional teams.[41] This illusion of academic support plays a huge role in maintaining the NCAA brand.[42]

The primary goal of the APR system is to "hold institutions accountable for the academic progress" while rewarding superior academic performance and enforcing penalties for teams who do not achieve high academic benchmarks.[43] Schools with high academic prestige or significant wealth will consistently recruit top-tier athletes who benefit from well-funded academic support.[44] In 2010, among

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37. *See* Michelle Brutlag Hosick. *D1 Committee on Academics adjusts Academic Performance Program policies*, NCAA (May 13, 2020, 12:04 PM), https://www.ncaa.org/about/resources/media-center/news/di-committee-academics-adjusts-academic-performance-program-policies.

38. *See* Senne, *supra* note 36.

39. *Academics*, NCAA, https://www.ncaa.org/about/academics (last visited Dec. 13, 2023).

40. *Id.*

41. *See* Senne, *supra* note 36; *see also* Erik Cliburn, *The Equity Debate in College Sports Goes Beyond Financial Compensation*, INSIGHT INTO DIVERSITY (May 17, 2021), https://www.insightintodiversity.com/the-equity-debate-in-college-sports-goes-beyond-financial-compensation/ (arguing that the NCAA owes a duty to prepare players for life after sports and "the NCAA and universities must reinforce that academic performance is far more important than athletic performance for the vast majority of players").

42. Cliburn, *supra* note 41 (noting that college athletics have the appearance of providing a "much-needed path to college degrees" for underserved communities and many first-generation student athletes "come to campus with the expectation that coaches and support staff would take care of them; in return, a degree . . . .").

43. Ronald J. Rychlak, *The NCAA: It's Necessary, But It's Not the FBI*, 5 MISS. SPORTS L. REVIEW, 83, 91 (2015).

44. *See, e.g.,* Hunter Sharf, *25 Top Colleges That Dominate Academically And Athletically*, FORBES (Aug. 2, 2017 9:41 AM), https://www.forbes.com/sites/huntersharf/2017/08/02/25-top-colleges-that-dominate-academically-and-athletically (observing that schools with high academic prestige and significant wealth are top athletic performers); *see also* Andre Remillard, *College Athletics Recruitment: A Deeper Analysis*, ST. JOHN FISHER UNIV. SPORTS MGMT. DEP'T. (2014), at 11 (observing that "institutional factors" such as "institutional commitment in providing academic support to student athletes" play a significant role in athlete recruitment).

Football Bowl Subdivision (FBS) institutions, the median academic spending on education per athlete was nearly $92,000.[45]

The lengths that colleges will go to ensure there is a state-of-the-art facility to provide academic advising, tutoring, and study facilities is clear. For example, at least six schools have athlete-only academic support centers, including the Student-Athlete Enhancement Center at Marist College to the FedEx Student-Athlete Academic Support Center at the University of Mississippi.[46] Some of these centers go one step further, advertising that the office actively monitors academic progress and NCAA eligibility of each student-athlete.[47]

We cannot ignore the timing between the popularity of these facilities and the 2003 implementation of the APR system.[48] The stakes are high for institutions. If teams fail to meet minimum academic standards, they stand to lose scholarships, practice time, and eligibility, which can impact the institution beyond merely athletics. On January 10, 2011, Cam Newton led Auburn to a victory over the Oregon Ducks and in the proceeding Fall, Auburn saw a sixteen percent increase in applications.[49] Oregon had a ten percent increase in applications[50], demonstrating that winning does not always matter.[51] In 2017, Clemson surveyed admitted students on how influential the 2016 national football title win was in their decision to apply.[52] Thirty percent indicated that Clemson's athletic success was moderately, very, or extremely influential in their decision to apply.[53] Studies have shown that athletics directly relates to applications received, and collegiate football impacts the institution's admissions process.[54] Cleverly

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45. Donna M. Desrochers, *Academic Spending Versus Athletic Spending: Who Wins?*, at 2, DELTA COST PROJECT AT AM. INSTS. FOR RSCH. (Jan. 2013), https://www.air.org/sites/default/files/2021-06/Academic-Spending-vs-Athletic-Spending.pdf.

46. *See Center for Student-Athlete Enhancement (CSAE) Mission Statement,* MARIST COLL., https://www.marist.edu/student-life/athletics/student-athlete-enhancement (last visited Nov. 8, 2021); *FedEx Student-Athlete Academic Support Center,* OLEMISS ATHLETICS, https://olemisssports.com/sports/2018/7/20/facilities-ole-facilities-academic-support-center-html.aspx (last visited Mar. 26, 2023).

47. *See, e.g.*, *Center for Student-Athlete Enhancement*, *supra* note 46.

48. *Compare Division I Academic Progress Rate* (APR), NCAA (Nov. 20, 2013), https://www.ncaa.org/sports/2013/11/20/division-i-academic-progress-rate-apr.aspx *with Center for Student-Athlete Enhancement*, *supra* note 46, *and FedEx Student-Athlete Academic Support Center*, *supra* note 46 (stating that the University of Mississippi announced a gift to build the academic support center for athletes less than three years after the NCAA implemented APR).

49. *See* Emily Giambalvo & Brittany R. Mayes, *Does sports glory create a spike in college applications? It's not a slam dunk.,* THE WASH. POST (Dec. 6, 2018), https://www.washingtonpost.com/graphics/2018/sports/ncaa-applicants/.

50. *Id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See* Austin F. Eggers, Peter A. Groothuis & Parker T. Redding, *The Flutie Effect: The Influence of College Football Upsets and National Championships on the Quantity and Quality of Students at a* University, 16 INT'L J. SPORTS FIN. 59, 60 (2021).

nicknamed "football chicken soup," the more a football team wins, the more comfortable students are to stick around and graduate.[55]

The admissions boom is not the only positive aspect of successful athletic programs. The postseason men's basketball tournament features sixty-eight teams, which will all play for an estimated $220 million that the NCAA encourages each conference to split equally among its members.[56] While there is no easy formula, for each game that a team plays, it makes money for the entire conference; whether that school wins the tournament game or not does not affect if the conference receives money.[57] However, the more teams from each conference that participate in March Madness, the more units that conference receives, which contributes to its overall payout.[58] For example, the West Coast Conference stands to receive at least a $5.4 million payday solely based on Gonzaga's successes.[59] In 2022, each unit was valued at $337,141.[60] For participating, each team gets a unit, and each time a team participates and wins, they earn a unit, with the ability to earn up to five units.[61]

The Knight Commission has recommended that athletic programs share athletic revenues with the general university, specifically in hopes that programs contribute to overall university academics.[62] Data collected from the Knight Commission shows that well-performing athletic programs typically give around 30%-50% towards university academics.[63] Division I FBS programs that perform well, like the University of Alabama, can provide 32% of their athletic revenue, or $20,535,441, to support university academics.[64]

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55. Kristi Dosh, *First Person | Kristi Dosh*, ATLANTA J.-CONST. (Aug. 16, 2013), https://www.ajc.com/sports/college-football/first-person-kristi-dosh/JdYGRESGUhoJ8zLWBUt4yN/.

56. Will Hobson, *Fund and games*, THE WASH. POST (Mar. 18, 2014), https://www.washingtonpost.com/graphics/sports/ncaa-money/.

57. *See* Noah McGee, *How Much Money Does a School Make Based on How Far They Go in March Madness?*, THE ACTIVE TIMES (Feb. 5, 2020), https://www.theactivetimes.com/featured/how-much-money-schools-make-tournament.

58. Jo Craven McGinty, *March Madness Is a Moneymaker. Most Schools Still Operate in Red.*, WALL ST. J. (Mar. 12, 2019), https://www.wsj.com/articles/march-madness-is-a-moneymaker-most-schools-still-operate-in-red-11615545002.

59. Emily Caron, *March Madness Daily: How Much is an NCAA Tournament Win Worth?*, SPORTICO (Mar. 19, 2021, 10:30 AM), https://www.sportico.com/leagues/college-sports/2021/march-madness-ncaa-tournament-win-value-units-1234625231/.

60. *Id.*

61. Caron, *supra* note 59.

62. *See Knight Commission Releases New Report in its Transforming The D-I Model Series*, KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS (Sept. 15, 2021), https://knightcommission.org/2021/09/knight-commission-releases-new-report-in-its-transforming-the-d-i-model-series/.

63. *See C.A.R.E. Model Data: Example 1 of the Financial Responsibility Principle in Connecting Athletics Revenues with the Educational Model of College Sports*, KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS, https://www.knightcommission.org/wp-content/uploads/2021/09/CAREModelData.pdf (last visited Nov. 9, 2021).

64. *Id.* at 2.

There is a large disparity between HBCUs and other institutions when analyzing the amounts that HBCUs can spend per athlete; these HBCU athletes also often come from disenfranchised backgrounds, making them ineligible for play in postseason games upon their admission to these universities.[65] In 1983, the NCAA introduced Proposition 48, which allowed incoming student-athletes to have a high school GPA of 2.0 with a partial qualifier for students who did not meet the SAT/ACT score requirement.[66] Student-athletes who could not satisfy the standardized test score would still receive an athletic scholarship for one year.[67] After that, however, they become academically ineligible and lose one year of athletic participation.[68] The NCAA had good intentions, seeking to ensure that players were not just enrolling in courses "primarily designed to safeguard their eligibility with little or no concern for their progress towards graduation."[69]

In 1988, the NCAA conducted a study to determine whether Proposition 48 was effective. Unfortunately, the data revealed that black student-athletes were more likely to be ineligible.[70] To remedy this, the NCAA introduced Proposition 42, setting academic standards for *all* students.[71] It became clear that this would not fix the disproportionate effect, and the NCAA continued to reform and create new Propositions until 1998, upon the Committee's introduction of Proposition 16.[72]

Since 1998, the NCAA has implemented stricter reforms, including introducing the APR in 2004.[73] However, the NCAA began sanctioning teams for academic ineligibility with these changes.[74] This has created severe repercussions, primarily for minority-serving institutions, like HBCUs.[75] Since 2010, 45% of the teams banned from competing in

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65. Derrick Z. Jackson, *HBCUs unfairly penalized by NCAA academic and graduation standards*, THE UNDEFEATED (Sept. 13, 2016), (comparing an average spending of $21,500 to $33,500 per football player at five HBCUs banned from postseason play to the average spending of $383,000 and $321,000 per football player at University of Texas at Austin and University of California, Berkeley, respectively).

66. Kevin R. Cole, *Proposition 48 and Proposition 42 in the NCAA: A Social Constructionist Case Study*, SCHOLARWORKS AT WMU, Dec. 1995, at 2, 3, https://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=4381&context=masters_theses.

67. *Id.*

68. *See id.*

69. Michael J. Mondello & Amy M. Abernethy, An Historical Overview of Student-Athlete Academic Eligibility and the Future Implications of Cureton v. NCAA, 7 JEFFREY S. MOORAD SPORTS L.J. 127, 131(2000).

70. *See* Todd A. Petr & John J. McArdle, Academic Research and Reform: A History of the Empirical Basis for NCAA Academic Policy, 5 J. INTERCOLLEGIATE SPORT 27, 29–32 (2012).

71. Cole, *supra* note 66 at 54.

72. *See* Phillip Blackman, The NCAA's Academic Performance Program: Academic Reform or Academic Racism?, 15(2) UCLA ENT. L. REV. 226, 231–33 (2008).

73. *Academic Progress Rate Timeline*, NCAA, https://www.ncaa.org/about/resources/research/academic-progress-rate-timeline (last visited Mar. 10, 2023).

74. *See id.*

75. *See* Monique Ositelu, *The NCAA's APR Eliminates HBCUs from March Madness,* NEW AM. (Mar. 12, 2019), https://www.newamerica.org/education-policy/edcentral/hbcu-march-madness/.

March Madness, due to low APR scores, have been HBCU teams.[76] This significant percentage of banned HBCUs does not end with March Madness. During the 2017-2018 school year, HBCUs were fifteen of the seventeen teams penalized and banned from postseason games.[77] In 2016, there were twenty-two HBCUs that received postseason bans.[78]

According to the NCAA, "athletic programs with the biggest budgets" tend to positively impact student-athletes' academic performances in addition to their athletic success.[79] Myles Brand, the past president of the NCAA, states that "schools with low financial support struggle with academic performance schools with low-support basis struggle with academic performance."[80] He specifically points out that several HBCUs have a low-support basis, all of whom struggle with poor classroom performance.[81]

Because the APR system fails to properly measure the true academic progress of student-athletes, many question why the NCAA continues to enforce it. The APR system has been less than beneficial to collegiate sports, leaving many wondering why the NCAA continues to enforce these standards rather than adopting more effective standards.[82] To remedy this system, the NCAA must be willing to examine this policy and create metrics that will promote academic progress while being conscious of racial disparities and an institution's resources while being conscious of race and institution resources. Understanding the purpose of the APR system and how the NCAA determines academic eligibility are the keys to understanding the issues the system causes.

"The APR . . . holds institutions accountable for the academic progress of their student-athletes through a team-based metric that accounts for the eligibility and retention of each student-athlete for each academic term."[83] Sanctions for APR failures include loss of scholarship, reduction of practice time, and if poor performance continues, then postseason ban.[84]

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76. *See* Ositelu, *supra* note 75 (explaining that seventy-five percent of the sixty percent of minority serving institutions banned from competing in March Madness represent HBCU teams).

77. *Derrick Jackson*, *NCAA ban of 15 HBCU teams from postseason play is polite racism*, ANDSCAPE (May 31, 2017), https://andscape.com/features/ncaa-ban-15-hbcu-teams-postseason-play-is-polite-racism/.

78. *See id.*

79. Michael Marot, *BCS schools do well in class too*, THE COM. APPEAL (May 3, 2007), https://www.pressreader.com/usa/the-commercial-appeal/20070503/282703337657876.

80. *Id*.

81. *See id.*

82. *See* B. David Ridpath, *NCAA's APR Release Should Be Looked At With A Very Skeptical Eye*, FORBES (May 10, 2017) https://www.forbes.com/sites/bdavidridpath/2017/05/10/ncaas-apr-release-should-be-looked-at-with-a-very-skeptical-eye/?sh=694eb94661af.

83. *Academic Progress Rate Explained,* NCAA, https://www.ncaa.org/sports/2015/5/19/academic-progress-rate-explained.aspx (last visited Feb. 11, 2023).

84. *See id.*

The APR only factors in an athlete's eligibility and progress made toward their degree. Their major or other resources, such as faculty, academic advisors, and available facilities, are not considered. [85] Institutions receive two points for retaining athletes who are eligible to compete until graduation.[86] If a player transfers but maintains academic eligibility, they receive one point.[87] Programs must avoid players who become ineligible or who transfer.[88]

Academic eligibility is calculated by the NCAA using a combination of factors, including standardized testing scores, high school coursework, GPA, and the NCAA Core Courses.[89] Standardized testing scores, high school coursework, and GPA are combined to make the NCAA Core Courses. There is no dispute that some college athletes are doing well academically despite the system being seriously skewed towards low-profit institutions.[90] However, studies show that the benefit of tailored academic services was essential to college success.[91] Institutions have specifically begun to build multi-million-dollar academic success buildings for athletes.[92] Tennessee Tech's new athletic facility has an estimated cost of $15 million, with goals larger than academia; the university's head football coach thinks it will provide a "[w]onderful opportunity to attract top talent."[93] Technology and accommodations lead to a winning football team by increasing students' athletic potential, and a winning football program improves recruiting by garnering greater interest from prospective students.[94]

Most HBCU programs' yearly athletic budgets are less than the total cost of Tennessee Tech's new athletic academic building.[95] The U.S. Department of Education's Equity in Athletics Disclosure Act reports that Mississippi Valley State's entire athletic budget is about $3.6

85. Ridpath, *supra* note 82.

86. *See id.*

87. *Id.*

88. *See id.*

89. *See Play Division I Sports*, NCAA, https://www.ncaa.org/sports/2014/10/24/play-division-i-sports.aspx.

90. *See* Ridpath, *supra* note 82.

91. *See* B. David Ridpath et al., *Factors that Influence the Academic Performance of NCAA Division I Athletes*, THE SMART J., Fall 2007 at 59, 70.

92. *See* Brad Wolverton, *Rise in Fancy Academic Centers for Athletes Raises Questions of Fairness*, CHRON. HIGHER EDUC. (Sept. 5, 2008), https://www.chronicle.com/article/rise-in-fancy-academic-centers-for-athletes-raises-questions-of-fairness/.

93. TTU Communications and Marketing, *Tech announces new construction, upgrades to football facilities,* TENN. TECH GOLDEN EAGLES (NOV. 11, 2021), https://www.ttusports.com/general/2021-22/releases/20211111jsq90t.

94. *See id.*

95. *Compare* Al-Tony Gilmore, *HBCUs: At the Financial and Competitive Crossroads of College* Sports, J. BLACKS HIGHER EDUC. (Feb. 3, 2022), https://www.jbhe.com/2022/02/hbcus-at-the-financial-competitive-crossroads-of-college-sports/, *with see* TENN. TECH GOLDEN EAGLES, *supra* note 93 and accompanying text.

million.[96] Some would argue that if an institution does not have the budget to build an expensive facility, the team's on-field performance may suffer.[97]

Postseason eligibility can provide advantages that extend far beyond the athletic department. Most individual sports do not make enough to turn a profit for the university, but the publicity and enrollment benefits of these teams overshadow their ability to make money.[98]

Institutions thrive on the exposure that their athletic programs bring. When the University of Michigan played its rival school, Ohio State University, during the 2021 regular season, spectators packed out the Ohio Stadium with approximately 111,156 attendees.[99] For this game, the lowest-priced seat was around $225.[100] Due to broadcasting rights obtained in a 2.64 billion, six-year contract, the Michigan versus Ohio (Big Ten) game will be shown on ESPN, Fox, and CBS.[101] Thanks to a $173.8 million contract signed in 2016, Michigan will be decked out in apparel from Nike.[102] A win from either team will prove to be more than valuable to their school's finances.[103]

A well-performing athletic program draws in elite athletes and non-athlete students alike. In the American Freshman National Norms 2012 survey, researchers found that while students looked at affordability and job prospects, approximately 40% of students chose colleges that act as meccas of social experience.[104] Students want a good

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96. U.S. DEPT. EDUC., EQUITY IN ATHLETICS DATA ANALYSIS: MISSISSIPPI VALLEY STATE UNIVERSITY, https://ope.ed.gov/athletics/#/institution/details (last visited Feb. 11, 2023).

97. *See* Eli Boettger, *An Analysis Of College Football Return on Investment*, ATHLETICDIRECTORU, https://athleticdirectoru.com/articles/analysis-of-college-football-return-on-investment/ (last visited Mar. 10, 2023) (demonstrating a correlation between budget and on-field performance).

98. *See* Linda Emma, *The Importance of College Athletic Programs to Universities*, SEATTLEPI, https://education.seattlepi.com/importance-college-athletic-programs-universities-1749.html (last visited Nov. 15, 2021).

99. *See* Isaiah Hole, *More people watched Michigan football beat Ohio State than any other game this season***,** WOLVERINESWIRE (Dec. 1, 2021 6:31 PM), https://wolverineswire.usatoday.com/2021/12/01/michigan-football-vs-ohio-state-ratings-most-watched-college-football-game/.

100. Tim Bielik, *Ohio State football at Michigan tickets: How to get them and how much they cost*, CLEVELAND, https://www.cleveland.com/osu/2021/11/ohio-state-football-at-michigan-tickets-how-to-get-them-and-how-much-they-cost.html (updated on Nov. 23, 2021 3:17 PM). For the 2022 rematch game, the ticket prices, on average, were even higher. *See* Colin Gay, *Want to attend the Ohio State, Michigan game? Here's how much resale tickets are going for*, THE COLUMBUS DISPATCH (Nov. 15, 2022 1:36 PM), https://www.dispatch.com/story/sports/college/football/2022/11/15/ohio-state-vs-michigan-tickets-2022-price-on-stubhub-ticketmaster/69650797007/.

101. *Chris Murphy*, MADNESS, INC.: HOW EVERYONE IS GETTING RICH OFF COLLEGE – EXCEPT THE PLAYERS 11 (U.S. Sen. For Conn.), https://www.murphy.senate.gov/imo/media/doc/NCAA%20Report_FINAL.pdf (last visited Nov. 15, 2021).

102. *Id*. at 12.

103. Giambalvo & Mayes, *supra* note 49.

104. John H. Pryor, et al., *The American Freshman: National Norms Fall 2012*, COOP. INSTI'L RSCH. PROGRAM AT THE HIGHER EDUC. RSCH. INST. AT UCLA, at 41, https://www.heri.ucla.edu/monographs/TheAmericanFreshman2012.pdf (last visited Feb. 19, 2023).

education; however, they crave the widely sought-after college experience.

This phenomenon, acknowledged by both marketing experts and deans, is called the "Flutie Effect," providing a name for the impact that a successful athletic program has on an institution's admission numbers.[105] "The primary form of mass media advertising by academic institutions in the United States is, arguably, through their athletic programs," says Harvard Business School's Marketing Professor Doug J. Chung.[106] As institutions begin to achieve athletic success, they become increasingly academically selective.[107]

HBCU athletic programs, such as Norfolk State University and North Carolina Agricultural and Technical and State University (NCAT), are also benefitting from the Flutie effect after achieving notable sports victories.[108] After winning multiple national championships in track and field and sending athletes to both the Olympic trials as well as the Olympics, NCAT's economics professor, Cephas B. Naanwaab, estimated the value of that exposure to be between $200 million and $600 million.[109] It should be noted that Norfolk State University's men's track and field team received a one-year post season ban in 2013-2014 as a result of low APR scores.[110] As a result, the school was rewarded an academic grant which helped the track team regain postseason eligibility the next year.[111]

The most pressing issue with the APR policy stems from the NCAA's failure to remedy the discrepancies between HBCUs and predominantly white institutions (PWIs).[112] This failure is incredibly alarming as the NCAA continuously fails to apply an equivalent sanction to institutions, like the University of North Carolina at Chapel Hill, who conspired to deceive the system.[113]

This essay proposes a two-part solution to remedy the negative implications caused by the APR system in its 10-year lifespan. The first

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105. *See* Sean Silverthorne, *The Flutie Effect: How Athletic Success Boosts College Application*, FORBES (Apr. 29, 2013, 9:48 AM), https://www.forbes.com/sites/hbsworkingknowledge/2013/04/29/the-flutie-effect-how-athletic-success-boosts-college-applications/?sh=2889f4c06e96/.

106. *Id.*

107. *Id.*

108. *See* David Squires, *HBCUs ring up nearly a billion dollars in exposure through success in sports*, ANDSCAPE (Sept. 15, 2021), https://andscape.com/features/hbcu-ring-up-nearly-a-billion-dollars-in-exposure-through-their-success-in-sports/.

109. *Id.*

110. *Norfolk State University Men's Track and Field Team*, NCAA, https://www.ncaa.org/about/norfolk-state-university-men-s-track-and-field-team (last visited Feb. 19, 2023).

111. *Id.*

112. *See* Corbin, *supra* note 12, at 1, 2, 8.

113. *See* Marc Tracy, *N.C.A.A.: North Carolina Will Not Be Punished for Academic Scandal*, N.Y. TIMES (Oct. 13, 2017), https://www.nytimes.com/2017/10/13/sports/unc-north-carolina-ncaa.html.

part proposes a fix to the eligibility system, and the second proposes a system that would equalize the APR system between HBCUs and PWIs.

IV. THE FIX

A. Discontinue the Process of Using Standardized Testing to Determine Eligibility

Division I schools use a sliding scale method to determine eligibility.[114] This system balances the student's standardized test score with their GPA.[115] If a student has a low GPA, they must have a higher test score to be eligible.[116] If the student has a higher GPA, a lower test score is permitted.[117] Division II schools utilize the same sliding scale method; however, they use different sliding scale metrics.[118]

The sliding scale method presents an issue for most HBCUs due to their founding missions.[119] Schools that were founded primarily to provide access to students historically denied access to other institutions will be left out. For example, my alma mater, Howard University, has maintained that the University has a long-standing commitment to disadvantaged students.[120] Yet, even after passing legislation to allow black students to attend existing public and private institutions, students were unwelcome.[121]

Technically, now not all predominantly black institutions (PBIs) are HBCUs, and those founded after 1964 are legislatively known as PBIs.[122] The Higher Education Act of 2008's criteria for PBIs are as follows: "at least 40% African-American students, minimum of 1,000 undergraduates, have at least 50% low-income or first-generation degree seeking undergraduate students, and have a low per full-time undergraduate student expenditure in comparison with other institutions offering similar instruction."[123] These criteria directly reflect the money that HBCUs can operate on as well as their core

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114. *See NCAA Sliding Scale | GPA and SAT/ACT Requirements*, NCSA COLLEGE RECRUITING (2022), https://www.ncsasports.org/ncaa-eligibility-center/ncaa-sliding-scale (last visited Mar 25, 2023).

115. *See id*.

116. *See id*.

117. *Id*.

118. *See id.*

119. *See* Goldman, *supra* note 6.

120. *See History*, HOWARD UNIVERSITY, https://www2.howard.edu/about/history (last visited Nov. 15, 2021).

121. *History of HBCUs*, T. MARSHALL COLL. FUND, https://www.tmcf.org/history-of-hbcus/ (last visited Nov. 15, 2021).

122. *Id.*

123. *Id.*

attendee group: students who are black, and/or first-generation, and/or low income.[124]

It's not far-fetched to say that first-generation and/or low-income students do not have the same resources to prepare for mandatory college entrance exams as other students do. The same idea can be applied to students who are well aware that they need to be elite high-school athletes to make it to college. Historically, the entire college application process has served as a barrier for disadvantaged students and acted as a limitation to higher education. The math section of the SAT is scored out of 800, and the mean of all test takers is 511.[125] The average score of black students is 428, and this scoring fails to take into account the impact of the economic gap between black students and other students.[126] Studies have shown that standardized testing scores are good proxies to determine the amount of money students' families can put into test preparation.[127] A figure released by the College Board shows that students whose families make less than $60,000 a year have an average score almost forty points lower than students whose families make $100,000 or more a year.[128] If these scores serve as a barrier to well-performing, low-income, and/or first-generation students, then an across-the-board application would show that this applies to students who may be average or less than average students, low-income and/or first-generation.

The NCAA has recently put together a task force to respond to the issues of race and equity that are tied to Proposition 48.[129] This task force proposed to remove standardized testing after performing six months of research with the National Association for College Admission Counseling, the College Board, and ACT testing agencies.[130] In 1995, the U.S. Department of Education found that Proposition 48's standardized testing denies eligibility to more than one-third of low-income students, despite their academic successes.[131] For many students living in inner-cities without proper guidance or knowledge that there is more to college sports than knowing the game, standardized testing is a hindrance.[132]

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124. *See History of HBCUs*, *supra* note 121.

125. Richard V. Reeves & Dimitrios Halikias, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility*, BROOKINGS (Feb. 1, 2017), https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-inequality-and-hinder-upward-mobility/.

126. *Id.*

127. Andre Perry, *Students Need More Than an SAT Adversity Score, They Need a Boost in Wealth*, BROOKINGS (May 17, 2019), https://www.brookings.edu/blog/the-avenue/2019/05/17/students-need-more-than-an-sat-adversity-score-they-need-a-boost-in-wealth/.

128. *Id.*

129. Chloe Clark, *NCAA's Task Force Proposal to Remove Standardized Testing*, USC ANNENBERG MEDIA (Nov. 3, 2021, 7:43 PM), https://www.uscannenbergmedia.com/2021/11/03/ncaas-task-force-proposal-to-remove-standardized-testing/.

130. *Id.*

131. *Id.*

132. *Id.*

Critics and the NCAA will argue that the removal of the eligibility will impact "amateurism" and "eliminate the focus the NCAA has on academics," however, the argument can easily be made that recent lawsuits and changes to name, image and likeness policies will show that the NCAA never cared about academics.[133] Furthermore, as standardized testing becomes an outdated concept in college admissions, it seems moot to continue to require it. The March 2020 SAT exam was canceled, then the April administration of the test was also canceled.[134] The SAT did not begin to administer tests again until early November 2020.[135] This did not stop students from applying and being admitted to institutions. Colleges shifted their focus to genuinely examining the student, not just viewing them as a number. More than six hundred schools from Ivies, liberal arts colleges, and HBCUs switched to test-optional.[136] While those numbers are specifically attributed to the pandemic, even before COVID, more than a thousand schools had decided to be test-optional.[137]

Institutions were becoming increasingly aware of the socioeconomic disparities that came along with high standardized testing scores, which limited their ability to have diverse pools of students.[138] There is some merit to these tests that cannot be overlooked, which includes the prediction of matriculation, however, it can be equally said that proper access to resources and guidance gives students the ability to succeed academically.[139]

The elimination of standardized test scores is not only a socially conscious change towards evaluating eligibility but a huge step forward towards ensuring HBCU teams are able to attain an APR score high enough to become postseason eligible.

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133. *See generally* Adam Liptak & Alan Blinder, *Supreme Court Backs Payments to Student-Athletes in N.C.A.A. Case*, THE N.Y. TIMES (June 21, 2021) https://www.nytimes.com/2021/06/21/us/supreme-court-ncaa-student-athletes.html.

134. *See* Abigail Johnson Hess, *The SATs have been cancelled through May because of coronavirus*, CNBC (Mar. 10, 2020) https://www.cnbc.com/2020/03/17/sats-tests-canceled-through-may-because-of-coronavirus.html.

135. Amber Dance, *Has the Pandemic Put an End to the SAT and ACT?*, SMITHSONIAN MAG. (July 15, 2021), https://www.smithsonianmag.com/innovation/has-pandemic-put-end-to-sat-act-180978167/.

136. *Id.*

137. *Id.*

138. *See generally id*. (describing how often high standardized testing scores fail to take into account analytical and social skills which cannot be gauged solely by standardized testing leading to less diverse student pools).

139. *See generally* Eric Stull, *The NCAA Did Not Remove Standards for Athletes for College Admissions*, STACK (Jan. 26, 2022), https://www.stack.com/a/the-ncaa-did-not-remove-standards-for-athletes-for-college-admissions/; Lisa Flook, *Four Ways Schools Can Support the Whole Child*, GREATER GOOD MAG. (Apr. 23, 2019), https://greatergood.berkeley.edu/article/item/four_ways_schools_can_support_the_whole_child.

B. Base Postseason Eligibility on a Percentage of the Team Making Timely Progress Towards Their Degree

At Bemidji State University, for example, a continuing student is considered "eligible" if they successfully satisfy the following requirements: the minimum GPA their institution requires for graduation, full-time enrollment, minimum semester and yearly credit hour achievement, and a percentage of degree completion benchmarks.[140]

The NCAA's eligibility policies are interesting when compared to traditional, institutional expectations of students. Essentially, the policy shows that there is little to no interest in academic achievement, just the end goal of graduation.[141] If an institution's graduation requirement is a 2.0, then the student-athlete is only required to meet 90% of the required GPA by the end of junior year, 95% by the completion of sophomore year, and meet the GPA requirement entering their final year.[142] This places the NCAA's GPA requirements at approximately 1.8, 1.9, and 2.0.[143]

There is a similar percentage formula for progress towards degree program completion. At the conclusion of the student-athlete's sophomore year, the student is expected to have completed 40% of the student's degree program, completed 60% by the conclusion of junior year, and completed 80% by the conclusion of their fourth year.[144]

However, this computation is highly controversial and can easily be manipulated by institutions that have the means to game the system. For nearly two decades, professors, coaches, and administrators all participated or overlooked an academic fraud scheme that was taking place at one of the nation's preeminent public institutions.[145] Two faculty members worked to create a "shadow curriculum that awarded students, many of them athletes, with high grades for classes that required no attendance and minimal work."[146] There was no actual course instruction; however, when the minimal work was graded,

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140. *DI NCAA Progress Towards Degree 101: The Basics*, BEMIDJI STATE UNIV. COMPLIANCE, https://www.bemidjistate.edu/services/advising-success-center/wp-content/uploads/sites/62/2019/10/DI-Progress-Towards-Degree-Tip-Sheet.pdf (last visited Nov. 16, 2021).

141. Brenda L. Vogel et al., *Student-Athletes vs. Athlete-Students*, THE SPORT J. (Feb. 21, 2019) https://thesportjournal.org/article/student-athletes-vs-athlete-students-the-academic-success-campus-involvement-and-future-goals-of-division-i-student-athletes-who-were-university-bound-compared-to-those-who-would-not-have-attended/.

142. NCAA, 2020-2021 NCAA DIVISION I MANUAL, BYLAW 14.4.3.3. (rev. ed 2021), https://web3.ncaa.org/lsdbi/bylaw?ruleId=3972&refDate=20180907 (last visited Mar. 2, 2023).

143. *See id.*

144. *Id.*

145. *See* Jake New, *Two Decades of 'Paper Classes'*, INSIDE HIGHER ED (Oct. 23, 2014), https://www.insidehighered.com/news/2014/10/23/report-finds-academic-fraud-u-north-carolina-lasted-nearly-20-years.

146. *See* Stripling, *supra* note 34.

students received As and high Bs with no regard to the quality of work submitted.[147]

One professor alleges that students at other universities and colleges receive high grades from courses like this and are shuffled through premier institutions, with coaches and administrators working behind the scenes to ensure players remain eligible by any means necessary.[148] How can you blame them? Dealing with the looming possibility of sanctions, suspensions and other threats by the NCAA, academic fraud seems like the best way to keep players on a graduation track.[149]

From 2016-2022, the NCAA opened twenty-six major infraction cases involving academic fraud, including powerhouses such as the University of North Carolina Chapel Hill, the University of Notre Dame, and the University of Oregon.[150] It is fair to say that the number of infractions being investigated may be far lower than the actual number of infractions.[151]

While the purpose of this paper is not to commend schools that are committing academic dishonesty, it's impossible to ignore why institutions feel like they have no options but to cheat the system. This system that the NCAA established seemingly encourages athletic departments to cheat as there is an incentive to ensure that student-athletes are eligible—the more eligible players on the team, the higher its APR, giving teams postseason eligibility.[152] As we have seen in Section III, the incentives of an institution participating in postseason activities provide immeasurable benefits.[153] The stakes are too high for coaches and administration not to intervene.

Failure to appropriately sanction and/or investigate all institutions is a common shortcoming for the NCAA.[154] When

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147. *See* Stripling, *supra* note 34

148. *See* Allen L. Sack, *Fighting Academic Fraud*, INSIDE HIGHER ED (Nov. 25, 2014), https://www.insidehighered.com/views/2014/11/25/steps-combat-academic-fraud-and-help-college-athletes-be-real-students-essay.

149. *See id.*; *see also Infractions Process*, NCAA, https://www.ncaa.org/sports/2016/4/19/membership-division-i-infractions-process.aspx (last visited Oct. 15, 2023) (explaining the process and potential penalties for violating NCAA rules).

150. *See Legislative Services Database (LSDBi)*, NCAA, https://web3.ncaa.org/lsdbi/search?types=major&q=%22academic+fraud%22 (last visited Mar. 7, 2023) (NCAA database that allows searches for reports of current and past investigations opened by the NCCA).

151. *See* Mike Kline, *College Football: NCAA Probe of UNC Is Just the Tip of the Iceberg*, BLEACHER REP. (Aug. 27, 2010), https://bleacherreport.com/articles/444420-collegefootball-ncaa-probe-of-unc-is-just-the-tip-of-the-iceberg; *see also* Stephen A. Miller, *The NCAA Needs to Let Someone Else Enforce Its Rules*, THE ATL. (Oct. 23, 2012), https://www.theatlantic.com/entertainment/archive/2012/10/the-ncaa-needs-to-let-someone-else-enforce-its-rules/264012/.

152. *See Academic Progress Rate Explained*, NCAA, (May 19, 2021) https://www.ncaa.org/sports/2015/5/19/academic-progress-rate-explained.aspx.

153. *See* Desrochers, *supra* note 45.

154. *See, e.g,* Pat Forde, *Memphis Skates in NCAA Probe Despite Obstructing the Investigation*, SPORTS ILLUSTRATED (Sept. 27, 2022), (showing the failure of the NCAA to properly investigate and punish Memphis basketball); Pat Forde, *Feckless NCAA Misses Latest Enforcement Opportunity by*

institutions are not scoring high enough to reach postseason eligibility, they are excluded.[155] Also, when student tutors complete academic work for student-athletes due to pressure from colleagues, institutions receive short-term probations and postseason bans.[156]

The NCAA consistently takes a hands-off approach and defers to the institution when academic fraud occurs at the university level, when "regular" students, not just athletes, also receive benefits.[157] In these instances, the NCAA allows the university to deal with this behavior internally, with no intervention.[158] While some critics think this is how the NCAA should behave in this situation, there is a large grey area.[159] However, a question remains, when the NCAA does not get involved, how will teams who were unfairly benefited by this fraud proceed? Based on the findings from the University of North Carolina-Chapel Hill case, teams will proceed as usual.[160]

The NCAA needs to encourage a shift from a poisonous mentality perpetuated by harsh eligibility standards. Rather than the progress of the entire team being looked at, this system puts being an athlete before being a student. There is undue pressure on student-athletes to be perfect, and it places athletic administrators in a position where they must circumvent failure at all costs.

While academic dishonesty is a terrible occurrence, some HBCUs do not have the breadth of resources to compete with their own academic fraud schemes. For example, Prairie View A&M (PVAMU), an HBCU in Texas, brought in $17.85 million in athletic revenue in 2017.[161] Whereas that same year, the University of Alabama's athletic

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Letting Auburn Off Easy, SPORT ILLUSTRATED (Dec. 10, 2021), https://www.si.com/college/2021/12/10/auburn-bruce-pearl-fbi-ncaa-sanctions-chuck-person (showing failure to properly investigate and punish Auburn); Tracy, *supra* note 113 (showing failure to properly punish UNC).

155. *See e.g.,* Michelle Hosick, *Division I teams face penalties, loss of postseason due to low APRs*, NCAA (May 19, 2020 1:00 PM), https://www.ncaa.org/news/2020/5/19/division-i-teams-face-penalties-loss-of-postseason-due-to-low-aprs.aspx.

156. *See e.g., Major Infractions Case,* NCAA; LSDBI (Nov. 16, 2021), https://web3.ncaa.org/lsdbi/search/miCaseView?id=100130 (stating a tutor violated NCAA ethical conduct rules, which resulted in a three-year probation and postseason ban for the baseball, softball, and football programs).

157. *See* Matt Norlander, *Report: NCAA could change penalties for academic cheating*, CBS SPORTS (Apr. 16, 2014), https://www.cbssports.com/college-basketball/news/report-ncaa-could-change-penalties-for-academic-cheating/.

158. *See id*.

159. *See id*.; *see also* Jeremy Bauer-Wolf, *Keeping the Status Quo*, INSIDE HIGHER ED (Sept. 5, 2019), https://www.insidehighered.com/news/2019/09/05/ncaa-does-not-move-forward-new-academic-reform-rules ("The NCAA said it could not definitively prove the 'shadow' courses in the department of African and Afro-American studies had been set up *solely to boost the grade point averages of athletes* and keep them eligible to play.") (emphasis added).

160. Tracy, *supra* note 113 (stating the University is responsible for punishing the team, but Universities tend to allow these violations go unpunished or only lightly punish teams).

161. Steven J. Gaither, *Ballin' On A Budget: How HBCUs make and spend their money on athletics*, HBCU GAMEDAY (July 2, 2018), https://hbcugameday.com/2018/07/02/ballin-on-a-budget-how-hbcus-make-and-spend-their-money-on-athletics/.

department generated $174 million in revenue.[162] PVAMU's athletic revenue is nearly ninety percent less than Alabama's. That approximately $156 million per year is the difference between academic advisors and resources to ensure student-athletes are well-rounded.

To go one step further, by penalizing institutions that do not have the resources to create systems, like academic success facilities, the NCAA effectively bars low-funded institutions from postseason competition.[163] However, as backward as it seems, this system rewards financially stable schools with more money! By not banning the University of North Carolina at Chapel Hill from postseason play after academic dishonesty, the NCAA allowed the powerhouse a continuing spot in March Madness and other NCAA postseason competitions.[164]

If the NCAA is truly concerned and dedicated to student-athletes' "well-being and lifelong success,"[165] then it needs to recognize that success looks different when the available resources are lacking. There needs to be a realization that every single HBCU's endowment combined is "less than a tenth of Harvard's."[166]

A switch to using a system that solely evaluates the entire team's progress towards graduation takes into consideration a university's ability to progressively guide students towards their goal of graduation rather than ensuring that every individual student-athlete is always on track. This system recognizes the ebbs and flows of life. HBCUs' mission fosters a more nurturing atmosphere in academia.[167] It recognizes that students from low-income and/or first-generation homes may be at an academic disadvantage as compared to their peers, which will change their graduation trajectory.[168]

V. CHANGE IS IN THE AIR

The NCAA is aware of issues that plague HBCUs and has attempted to fix them, by giving much-needed assistance.[169] After voting to raise academic standards in 2011, the NCAA opted to give HBCUs an extra

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162. Jemele Hill, *It's Time for Black Athletes to Leave White Colleges*, THE ATLANTIC, Oct. 2019, https://www.theatlantic.com/magazine/archive/2019/10/black-athletes-should-leave-white-colleges/.

163. *See* Isabelle Khurshudyan, *Does NCAA unfairly punish sports programs at historically black schools?,* THE WASH. POST (July 7, 2015), https://www.washingtonpost.com/sports/colleges/hbcus-struggle-with-apr-standards-but-some-say-ncaa-measure-fails-them/.

164. *See* Tracy, *supra* note 113.

165. *Frequently Asked Questions About the NCAA*, NCAA, https://www.ncaa.org/about/frequently-asked-questions-about-ncaa (last visited Nov. 8, 2021).

166. *Hill*, *supra* note 162.

167. *See id.*

168. *See* Jessica Bryant, *HBCUs Close Socioeconomic Gaps. Here's How.*, BEST COLL., (Dec. 2, 2021).

169. *See* Allie Grasgreen, *Uphill Battle for HBCU Athletes,* INSIDE HIGHER ED (June 17, 2013), https://www.insidehighered.com/news/2013/06/17/hbcus-get-some-help-still-struggle-meet-ncaa-academic-standards.

year to comply.[170] Along with the extra time, the NCAA also dedicated approximately $6 million over time to help the institutions meet the new standards.[171] The extra time for adjustment ended after the 2016-2017 athletic year, and, while there was an improvement, HBCUs still continue to struggle to keep up with better-resourced institutions.[172]

Money only goes so far; "[t]he reality is, the response comes back on the kids, and so the kids have to make the effort to come to school and do what they have to do," claims Bart Byrd, the former associate athletics director for student-athlete services at Baylor University.[173] Byrd emphasized that "more tutors, more computers and nicer study halls are desirable and indeed helpful, [but] the biggest difference-maker is encouragement from the people who set the tone of a program."[174] However, Baylor University, a member of the "Big 12 Conference," has thirteen staff members responsible for "student-athlete excellence."[175] Howard University has two full-time head coaches, two assistant coaches, and one program strategist.[176] It should be noted that even though Howard is an HBCU, it is not considered a limited-resource university by the NCAA.[177] This means that Howard is held to the same standard as other Division I schools.[178]

The $6 million in financial support to HBCUs and limited-resource institutions was "certainly not adequate," according to Walt Harrison, University of Hartford president and chair on the NCAA Committee on Academic Performance.[179] The money arrived too late and did not fundamentally change the fact that the APR system and HBCU missions clash.[180] After conference television deals, bowl games, and tournament appearances, the SEC and ACC paid each school in its conference an average of $20.9 million.[181]

Roderick McDavis, a past NCAA academic committee chairman and the then-president of Ohio University, suggested that HBCUs take a closer look at the types of students they are admitting for athletic purposes.[182] "If you're going to be in the NCAA and you're going to

170. *See* Grasgreen, *supra* note 169.

171. *Id*.

172. *See* Goldman, *supra* note 6.

173. Grasgreen, *supra* note 169.

174. *Id*.

175. *See Staff Directory,* BAYLOR UNIVERSITY (Dec. 4, 2021), https://baylorbears.com/staff-directory.

176. *See Staff Directory*, HOWARD UNIVERSITY ATHLETICS (Dec. 4, 2021), https://hubison.com/staff-directory.

177. *See* Khurshudyan, *supra* note 163.

178. *Id*.

179. Grasgreen, *supra* note 169.

180. *See* Khurshudyan, *supra* note 163 ("The NCAA also gave limited-resource institutions — defined as Division I schools in the bottom 15 percent in funding, expenditures and federal grant aid — an extended transition to meet the minimum standard score.").

181. *Id*.

182. *Id.*

participate in intercollegiate athletics, you have to meet the 930 standard."[183] While this is an interesting and unrealistic take on how to deal with the APR issue, this suggestion by McDavis could be unconstitutional due to the uneven application of using extra precaution and a different standard than admissions for athletics for PWIs.[184]

However, the NCAA overall did not share the same viewpoint as McDavis or Byrd, because in 2021, the association created an eight-point plan to advance racial equity.[185] After reviewing the initial-eligibility requirements, an NCAA task force recommended the removal of standardized testing scores from initial-eligibility standards for high school students preparing to play Division I or II sports.[186] The NCAA considered these recommendations during its February 2022 meeting, and the proposals to change the eligibility requirements advanced to a vote. During the NCAA Convention in January 2023, NCAA Divisions I and II adopted these changes and removed test scores from NCAA initial-eligibility requirements.[187]

Unfortunately, the NCAA did not come up with this idea at the conception of the APR system as HBCU student-athletes are no longer quietly dealing with the repercussions of the APR system on their collegiate careers.[188] As a result, on December 10, 2020, three HBCU students — Troyce Manassa, Austin Dasent, and J'TA Freeman — filed a complaint in the United States District Court for the Southern District of Indiana, Indianapolis Division, for themselves and other similarly situated student-athletes.[189]

The plaintiffs allege that the NCAA's APP is discriminatory against student-athletes at HBCUs, effectively barring student-athletes at HBCUs from competing in the 2017 basketball postseason.[190] The

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183. *See* Khurshudyan, *supra* note 163.

184. *See* Tom Goldman, *supra* note 6 (noting that critics of these academic standards suggest that the penalties for failing to meet such standards disproportionately discriminates upon black college athletes and historically black colleges and universities).

185. Michelle Brutlag Hosick, *NCAA task force backs removal of standardized test score requirement*, NCAA ACAD. UPDATES (Oct. 15, 2021, 9:45 AM), https://www.ncaa.org/news/2021/10/15/general-ncaa-task-force-backs-removal-of-standardized-test-score-requirement.aspx.

186. *Id.*

187. Saquandra Heath, *Proposals to drop test scores for incoming college athletes advance*, NCAA GOVERNANCE UPDATES (Feb. 16, 2022, 12:00 PM), https://www.ncaa.org/news/2022/2/16/media-center-proposals-to-drop-test-scores-for-incoming-college-athletes-advance.aspx; Alcino Donadel, *NCAA eliminates standardized testing requirement for student-athletes,* UNIV. BUS. (Feb. 7, 2023), https://www.universitybusiness.com/ncaa-eliminates-standardized-testing-requirement-for-student-athletes/.

188. *See* Tom Goldman, *supra* note 6 ("Critics claim the academic standards, and the penalties for not meeting them, discriminate against Black college athletes and Historically Black Colleges and Universities…lawyers have filed a class action, civil rights lawsuit demanding the NCAA's current system, called the Academic Performance Program, be abolished.").

189. Complaint, Manassa et al v. Nat'l Collegiate Athletic Assoc'n et al, No. 1:20-cv-03172-RLY-MJD (S.D. Ind. filed Dec. 10, 2020).

190. *Id.* at 3–5.

plaintiffs seek to represent a class of black student-athletes at HBCUs who were penalized because of the APP.[191]

Troyce Manassa is a former student-athlete who played basketball for Savannah State University (SSU), an HBCU, during the 2015-2016 and 2016-2017 seasons.[192] When Troyce signed his National Letter of Intent with SSU, he was unaware of their postseason ban until his arrival on campus.[193] During the 2015-2016 season, SSU advanced to the semifinals, but in the 2016-2017 season, they were unable to participate in postseason competition.[194] Furthermore, Troyce was one of the leading scorers within the MEAC conference.[195]

Due to his inability to play in postseason games, Troyce was less visible to recruiters, limiting his opportunities to play professionally.[196] On a grander scale, the loss of ability to play affected the institution's prestige and encouraged his teammates to transfer to non-banned teams, further disincentivizing student-athletes from attending HBCUs.[197]

Multiple sources in support of these claims show that the NCAA is either aware of this impact or consciously negligent. Approximately six percent of Division I schools are HBCUs (twenty-three out of thirty-five), but 114 out of the 159 postseason competition bans are from HBCUs.[198] Furthermore, 62% of the banned teams are from historically Black conferences.[199]

The NCAA has maintained that the injuries caused by the defendants are not attributable to harm caused by the NCAA.[200] Therefore, they claim that the plaintiff's injuries are not redressable because there is no way for the NCAA to determine any opportunities that may have arisen from SSU's (or any other similarly situated HBCUs') inability to compete in postseason competition.[201] Furthermore, the NCAA does not believe that there was any intentional discrimination because the NCAA has taken steps "[t]o manage and decrease any adverse effects on specific groups of students."[202]

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191. Complaint, Manassa et al, *supra* note 189 at 4.

192. *Id.* at 5.

193. *Id.*

194. *Id.*

195. *Id.* at 7.

196. *See id.* at 41 (describing generally that "[s]tudent-athletes are less visible to recruiters, reducing their opportunities for professional play" in Troyce's Class Action Complaint against the NCAA).

197. *Id.*

198. *Id*.

199. *Id*.

200. Defendants' Memorandum in Support of Motion to Dismiss at 5–7, Manassa v. Nat'l Collegiate Athletic Ass'n, No. 1:20-cv-03172-RLY-MJD, 2023 WL 1765993 (S.D. Ind. filed Dec. 10, 2020).

201. *Id.* at 9-10.

202. *Id.* at 20-21.

Unfortunately, Troyce's case was dismissed after the Court found that he was time-barred by the statute of limitations.[203] However, prior to dismissal, Judge Young agreed that the defendants have shown that "[t]he NCAA had ample evidence that the APP's various iterations disproportionately impacted HBCUs … and the NCAA knew that the formula used to develop the APP relied on metrics that negatively affected black student-athletes."[204]

On May 5, 2021, the Knight Commission issued a formal statement about HBCU athletics programs, asserting that the NCAA has not done enough to provide adequate support for HBCU student-athletes.[205] For context, the Knight Commission's initial recommendation led to the NCAA establishing the APP to ensure strong academic standards. However, they have recognized that HBCUs "need and deserve substantially more support."[206] Unfortunately for the NCAA, this support does not start and end with the Accelerating Academic Success Program grant. The NCAA's governing body must sit down and take a hard look at the history of Historically Black Colleges and Universities.[207] First on the agenda must be a determination of whether the APP is the best way to promote their mission to "provide a world-class class athletic and academic experience for student-athletes" if the means of implementing that mission does not include Black students at HBCUs.[208]

VI. CONCLUSION

HBCUs serve as the backbone of educational systems for black students and black student-athletes, and the APR policy hinders black students who may not have the means to attend other institutions. The NCAA has more than enough knowledge to understand the APR is a broken system with a direct impact on student-athletes at HBCUs.

It is not enough for the NCAA to form new advisory groups and provide additional timing for HBCUs to catch up to their counterparts; there must be a complete overhaul. For HBCUs to continue to serve their

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203. Peter Hayes, *NCAA Gets Dismissal of Race Bias Claims Over Postseason Bans*, BLOOMBERG LAW NEWS (October 20, 2023), https://news.bloomberglaw.com/litigation/ncaa-gets-dismissal-of-race-bias-claims-over-postseason-bans.

204. Rachel Scharf, *NCAA Must Face Race Bias Suit Over Academic Penalty Rule*, LAW360 (Sept. 14, 2021, 7:26 PM), https://www.law360.com/articles/1421694/ncaa-must-face-race-bias-suit-over-academic-penalty-rule.

205. *Knight Commission's Remark on HBCUs*, KNIGHT COMM'N (May 12, 2021), https://hbcugameday.com/wp-content/uploads/2021/05/KNIGHT-COMMISSIONS-REMARKS-ON-HBCUS-05-12-21.pdf.

206. *Id.*

207. *See AASP Grant for Schools*, NCAA, https://www.ncaa.org/sports/2017/2/8/aasp-grants-for-schools.aspx (last visited Dec. 13, 2023) (provides information to universities interested in applying for the Accelerating Academic Success program grant).

208. *Mission and Priorities*, NCAA, https://www.ncaa.org/sports/2021/6/28/mission-and-priorities.aspx (last visited Dec. 13, 2023).

core missions of educating poor and academically underserved black students, they shouldn't face forgoing postseason eligibility. The NCAA must step up and do more than issue press releases that state they care about academics and equity. Their actions need to demonstrate their commitment to institutional equity in postseason play beyond placing Wi-Fi on team buses and giving out laptops. The NCAA must reinstate the pause on postseason bowl-game bans, but this time, also look at the APP through the lens of equity and inclusion of HBCUs. Giving student-athletes at Historically Black Colleges and Universities a fair shot at postseason bowl games is mission critical, not only for the student-athletes but also for the general student body who can economically benefit from athletic success.