Priscilla S.

PF Debate

**Affirmative**

My partner I affirm resolved: NCAA student athletes ought to be recognized as employees under the Fair Labor Standards Act.

Before I begin I will define the The Fair Labor Standards Act which establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting fulltime and part-time workers.

Point 1: Student athletes in the NCAA generate billions of dollars for the colleges

they attend, therefore not only making them eligible to be employees

under the FLSA, but also bringing forth a moral obligation to student

athletes.

1. The US Department of Labor states if “The extent to which the work performed is an integral part of the employer’s business,” then the person qualifies as an employee. NCAA colleges are hugely dependent on the publicity and money they make off their athletes, therefore meeting the criteria that the FLSA states.
2. The 231 NCAA Division I schools with data available generated a total of *$9.15 billion* dollars in revenue during the 2015 fiscal year. That is *only* D1 schools. An integral part of these colleges’ revenue is based off the work these athletes do, however most do not get any compensation for this service. Universities recruit them to operate within the NCAA—a fully commercialized, multi-billion dollar industry that regulates players to the point of exploitation. “ All television revenue, ticket and jersey sales, promotions and other sources of income go to the NCAA, the schools, the coaches, the event staffs and everyone else involved in the business—except for the athletes creating the value.” Colleges in the NCAA are unethically exploiting their athletes. These athletes spend over 40 hours per week working for their sport, many times prioritizing their sport over their education, but they get nothing for the risks and services they provide.

Point 2: Student athletes meet every criterion the FLSA states

defines an employee.

1. Firstly, the FLSA states that “Whether the worker’s managerial skills affect his or her opportunity for profit and loss,” defines an employee. Analysis of this factor should focus on whether the worker exercises managerial skills and, if so, whether those skills affect that worker’s opportunity for both profit and loss. For college athletes, their performance decides their future in athletics. If they do not perform well, they will not be drafted by the NBA, NFL, etc, and will not get sponsorships or other athletic jobs in their future.
2. Secondly, the FLSA states that “The relative investments in facilities and equipment by the worker and the employer,” defines an employee. The worker must make some investment compared to the employer’s investment in order for there to be an indication that he/she is an independent contractor in business for himself or herself. When athletes take a scholarship, or are committed to a school’s certain athletics team, they are betting their whole future in athletics on that school, team, and coach, therefore meeting that criterion.
3. Third, the FLSA states that “The permanency of the worker’s relationship with the employer,” defines an employee. Permanency or indefiniteness in the worker’s relationship with the employer suggests that the worker is an employee, as opposed to an independent contractor. College athletes are with their team for their whole college career, and coaches have the power to ban their athletes from speaking to other coaches, just to keep them on the team. This shows the level of commitment and permanency of college athletes to the college, therefore meeting the criterion.
4. And finally, the FLSA states that “The nature and degree of control by the employer.” defines an employee. Analysis of this factor includes who sets pay amounts and work hours and who determines how the work is performed, as well as whether the worker is free to work for others and hire helpers. Coaches and colleges set extensive practice hours, which they have complete control over. While playing the sport, a coach has extensive control over their athletes’ physical and mental health, and social life; Therefore meeting the final criterion for being an employee.

Point 3: NCAA athletes, in reality, are athletes first and students second.

1. The idea that they are student athletes, students first, is unrealistic and false. Yet colleges and the NCAA paint a picture of student athletes being primarily students. They find it appropriate to use them as a vehicle for institutional promotion during sporting events that have nothing to do with education. The reality is, they care almost exclusively about a player’s talent and marketability. The “student athlete” is a false concept.
2. A former Northwestern quarterback, Kain Colter, who is pushing for athletes to be recognized as employees, testified that that advisors kept him from pursuing a dream of becoming a doctor in favor of easier classes to cater to his football schedule. That is not putting someone in a position to succeed academically if they aren’t going professional athletically. In this case and many others, colleges allow and support the prioritization of athletics over education for their own profit.
3. This proves that colleges are lackluster in their endeavours to enforce a student first policy, therefore paying them would not hurt their education, as my opponent may suggest, because their education is already being ignored.

For these reasons my partner and I urge the judge to vote affirmative.

**Guy’s intellectual career discouraged from coaches:** <https://www.thenation.com/article/ncaa-makes-billions-and-student-athletes-get-none-it/>

“That’s what former Northwestern quarterback Kain Colter is pushing to change in his fight for unionization of the College Athletes Players Association (CAPA). He wants better medical insurance and academic support for players, and rightfully so.

The NCAA’s exploitative marketing comes in exchange for a scholarship incidental to the industry, and it requires far more time spent playing a major sport than studying for classes. Colter testified that advisors kept him from pursuing a dream of becoming a doctor in favor of easier classes to cater to his football schedule. That’s not putting someone in a position to succeed academically if they aren’t going professional athletically.”

**Fake classes in college to help student athletes:**

<http://www.cnn.com/2014/10/22/us/unc-report-academic-fraud/index.html>

“Chapel Hill, North Carolina (CNN)For 18 years, thousands of students at the prestigious University of North Carolina took fake "paper classes," and advisers funneled athletes into the program to keep them eligible, according to a scathing independent report released Wednesday.

"These counselors saw the paper classes and the artificially high grades they yielded as key to helping some student-athletes remain eligible," Kenneth Wainstein wrote in his report. He conducted an eight-month investigation into the scandal, which has plagued the university for nearly five years.

Four employees have been fired and five more disciplined because of their roles. One other former employee had honorary status removed, Chancellor Carol Folt said Wednesday.

In all, the report estimates, at least 3,100 students took the paper classes, but adds the number "very likely falls far short of the true number."

UNC has long been a place where it was believed that athletics and academics went hand in hand. It has enjoyed a stellar reputation. Even well respected colleges have been caught doing this, showing how the idea of a “student first, athlete second” promoted by the colleges is false.

**Fake classes in college to help student athletes:**

<https://www.nytimes.com/2017/03/31/sports/ncaabasketball/north-carolina-final-four-cheating-fake-classes.html>

For two decades until 2013, the University of North Carolina provided fake classes for many hundreds of student athletes, most of them basketball and football players. A touch of plagiarism, a no-show, were O.K. if it gave the young man more time to work on his drop step. There was one goal: Keep those grade-point averages at the minimum needed to compete for the university.

**How much money D1 schools make off their athletes:**

<http://www.businessinsider.com/ncaa-schools-college-sports-revenue-2016-10>

“While it is no secret that there is a lot of money being made from college sports, that money is not even close to being evenly distributed. The 231 NCAA Division I schools with data available generated a total of $9.15 billion in revenue during the 2015 fiscal year. But while there are 24 schools that make more than $100 million, most make much less. “

**Colter discouraged from being a doctor:**

<https://www.thenation.com/article/ncaa-makes-billions-and-student-athletes-get-none-it/>

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**Possible Rebuttals**

1. “They will lose motivation for education if they are being paid.”
   1. Cont. 1- they already have a deteriorated education.
   2. If anything, they will be more motivated to have a successful education for the sole purpose to stay on the sports team and receive a salary.

**Criterion for being an employee:**

<https://www.dol.gov/whd/regs/compliance/whdfs13.pdf>

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| 1) The extent to which the work performed is an integral part of the employer’s business. If the work performed by a worker is integral to the employer’s business, it is more likely that the worker is economically dependent on the employer and less likely that the worker is in business for himself or herself. For example, work is integral to the employer’s business if it is a part of its production process or if it is a service that the employer is in business to provide. |
| 2) Whether the worker’s managerial skills affect his or her opportunity for profit and loss. Managerial skill may be indicated by the hiring and supervision of workers or by investment in equipment. Analysis of this factor should focus on whether the worker exercises managerial skills and, if so, whether those skills affect that worker’s opportunity for both profit and loss.  3) The relative investments in facilities and equipment by the worker and the employer. The worker must make some investment compared to the employer’s investment (and bear some risk for a loss) in order for there to be an indication that he/she is an independent contractor in business for himself or herself. A worker’s investment in tools and equipment to perform the work does not necessarily indicate independent contractor status, because such tools and equipment may simply be required to perform the work for the employer. If a worker’s business investment compares favorably enough to the employer’s that they appear to be sharing risk of loss, this factor indicates that the worker may be an independent contractor.    4) The worker’s skill and initiative. Both employees and independent contractors may be skilled workers. To indicate possible independent contractor status, the worker’s skills should demonstrate that he or she exercises independent business judgment. Further, the fact that a worker is in open market competition with others would suggest independent contractor status. For example, specialized skills possessed by carpenters, construction workers, and electricians are not themselves indicative of independent contractor status; rather, it is whether these workers take initiative to operate as independent businesses, as opposed to being economically dependent, that suggests independent contractor status.  5) The permanency of the worker’s relationship with the employer. Permanency or indefiniteness in the worker’s relationship with the employer suggests that the worker is an employee, as opposed to an independent contractor. However, a worker’s lack of a permanent relationship with the employer does not necessarily suggest independent contractor status because the impermanent relationship may be due to industry-specific factors, or the fact that an employer routinely uses staffing agencies.  6) The nature and degree of control by the employer. Analysis of this factor includes who sets pay amounts and work hours and who determines how the work is performed, as well as whether the worker is free to work for others and hire helpers. An independent contractor generally works free from control by the employer (or anyone else, including the employer’s clients). This is a complex factor that warrants careful review because both employees and independent contractors can have work situations that include minimal control by the employer. However, this factor does not hold any greater weight than the other factors. For example, a worker’s control of his or her own work hours is not necessarily indicative of independent contractor status; instead, the worker must control meaningful aspects of the working relationship. Further, the mere fact that a worker works from home or offsite is not indicative of independent contractor status because the employer may exercise substantial control over the working relationship even if it exercises less day-to-day control over the employee’s work at the remote worksite. |

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