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EQUAL PLAY, UNEQUAL PAY:

RACE-CONSCIOUS ADMISSIONS AND THE SYSTEMIC EXPLOITATION OF BLACK MALE ATHLETES

BY CHRISTIAN COLLINS | DECEMBER 2023

Introduction

The ban on race-conscious admissions practices greatly limits options for Black men to access an affordable postsecondary education. In the wake of the Supreme Court's (SCOTUS) 2023 rulings, it is likely to become even more challenging for Black men to afford college or university study. One of their few remaining pathways is through collegiate athletics, which economically exploits students' physical labor for the benefit of the institution without legally recognizing the students as employees. And it has long been the case that the most lucrative athletics programs, like football and basketball, are made up primarily of Black men.

The lack of legal protections prevents athletes from collectively bargaining and using the power provided by their accomplishments to advocate for improved working conditions and compensation. This relationship has been studied and acknowledged for nearly a century but has been treated as a justifiable allowance of universities capitalizing on the popularity of athletics for financial gain.¹ The SCOTUS decisions have made it easier for institutions to prioritize athletic rather than academic admissions for Black men, perpetuating racial inequality in the American postsecondary education system.

Black men face a distinctive educational and economic crisis at the hands of SCOTUS. During the Court's 2022-23 term, two cases were brought by the same advocacy organization, Students for Fair Admissions (SFFA), against separate universities. In its case against Harvard College, SFFA argued that race-conscious admissions policies are a violation of Title VI of the Civil Rights Act of 1964, primarily due to alleged discrimination against Asian applicants in favor of Black applicants. In the University of North Carolina at Chapel Hill (UNC) case, SFFA argued that race-conscious admissions policies are in violation of the Fourteenth Amendment's Equal Protection Clause. SCOTUS's rulings in favor of SFFA not only benefit already overrepresented white and Asian students², but also significantly limit a vital pathway for the socioeconomic mobility of Black men.³ Contrary to the Court majority's claim that these rulings are a positive move toward racial equity in postsecondary education, the decisions only underscore the harsh reality that many Black men face: athletic talent is one of the only ways to attain an affordable postsecondary education.

Despite creating billions in collective revenue annually for postsecondary institutions and their business partners, college athletes are not viewed as official institutional employees and aren't guaranteed labor protections from the universities they work for. These athletes are not only expected to perform free labor but are not provided with the support they need both academically and otherwise as students. This report looks at the history of Black male students and college athletics; examines how difficult it is for colleges and universities to be truly diverse in the absence of race-conscious admissions policies; and offers recommendations for fixing the unequal balance between college athletics and the athletes themselves.

College Athletics Have Gone Pro—Except in Their Treatment of Athletes

Three hundred and fifty-two schools make up the National Collegiate Athletic Association’s (NCAA) Division 1, the athletic division that includes the largest schools by population and revenue raised from athletics in the nation. Just under 11 percent of all Black men enrolled in these schools had some form of athletic scholarship⁴ aid for the 2021-22 academic year, making them the second-highest group to receive this aid.⁵ Fifty-five percent of Division 1 football players and 57 percent of Division 1 men’s basketball players, the two highest-revenue college sports, are Black.⁶ Such overrepresentation indicates that Black male undergraduates disproportionately rely on athletic scholarships to access postsecondary educational opportunities at selective institutions. This reliance places them in the precarious position of risking their physical health to gain admission and financial aid.

All Males Attending NCAA Division 1 Institutions for the 2021-22 Academic Year			
Race	Total Undergraduate Males	Total Male Athletes	Percentage of Males as Athletes on Scholarship
American Indian/Alaskan Native	5,916	155	3%
Asian	197,688	507	0%
Black	158,247	16,623	11%
Hispanic	285,830	3,295	1%
Native Hawaiian/Pacific Islander	3,064	455	15%
Non-resident	114,362	5,579	5%
Two or More	85,163	3,166	4%
Unknown	41,946	1,160	3%
White	1,065,903	24,264	2%
Total	1,958,119	55,204	3%

The country’s largest universities raise billions of dollars in revenue each year through athletics, as schools receive millions through media deals and sales both individually and through their member conferences. In 2021 the NCAA raised a record \$1.16 billion for its member institutions alone, and that doesn’t include the largest sources of college athletic revenue: the College Football Playoff and postseason bowl games.⁷ March Madness has secured \$19.6 billion for the NCAA through its current television rights contract.⁸

Individual college athletes do not receive any of that revenue, in large part because they are considered “amateur” athletes. This designation allows college athletes to be unpaid, even as their performances power the formidable engine of college sports. The primary beneficiaries of their work are the schools they play for and their predominantly white coaches,⁹ administrators,¹⁰ and fellow athletes.¹¹ Between 2012 and 2021, spending on coaches and administrators exceeded spending on student athletic scholarships and medical expenses every single year across Division 1 schools, with the spending gap between those categories growing from just over \$1.3 billion in 2012 to over \$2.3 billion in 2021.¹²

Classifying college athletes as amateurs also fosters the concept of the “student-athlete” and establishes access to postsecondary education opportunities as the primary objective of college sports programs. In actuality, the label of amateurism has been used for colleges to purposely limit the compensation of athletes to attendance costs.¹³ As college athletes strive for recognition as official university employees, both public statements and private acknowledgements¹⁴ from coaches signal a growing momentum toward empowering athletes. This acknowledgement has come in both words of encouragement for athletes receiving a fair share of the revenue they generate from leading coaches like Jim Harbaugh¹⁵ and the late John Thompson Jr.,¹⁶ and from statements by figures like Deion Sanders and Pat Narduzzi on how their players have the same disposability as professional athletes.¹⁷ However, prominent figures within the NCAA and member institutions still advocate for inadequate alternatives to recognizing athletes as employees.¹⁸ The NCAA continues to speak on behalf of athletes to the public and legislators, misrepresenting the interests of a population that it refuses to publicly poll on their true attitudes toward gaining employment status.¹⁹

Of the billions in revenue raised every year by college football and basketball, Black men and their families see only a pittance of the wealth they generate. Athletes frequently receive smaller alternative forms of compensation such as free meals,²⁰ but as discussed in a later section, this still is inadequate considering the true value of their labor. From 2005 to 2019, Black college athletes across men’s and women’s basketball and men’s football in the largest five athletic conferences are projected to have lost between \$17 and \$21 billion in compensatory theft, or roughly \$250,000 per athlete per year,²¹ if revenue sharing in collegiate athletics modeled that of professional sports leagues.²²

Affirmative Action, But for Whom?

College athletic programs are often complicit in the economic exploitation of underrepresented student populations. Yet at the same time, siloing certain groups of students into athletics has had the unintended consequence of promoting an illusion of diversity through these programs, as athletes are both highly visible and sought-after socially on college campuses.²³ For the *Students for Fair Admissions v. Harvard College* and the *Students for Fair Admissions v. University of North Carolina* court cases, 348 current and former college basketball coaches filed an amicus brief in support of the two universities, noting that athletes of color would be under substantial risk of becoming the only racially diverse components at many campuses across the country.²⁴

Opponents of affirmative action have commonly pitted underrepresented communities against each other to drive down support for the practice,²⁵ but in reality, financial resources and legacy admissions often provide access to enrollment, even in cases where applicants do not meet eligibility requirements for admission. A notable example is the Admissions by Exemption practice offered through the University of California (UC) system, which is designed to give institutions the flexibility to admit applicants who do not meet admissions criteria but show strong likelihood or potential of success based on their application materials.²⁶ This practice saw the largest benefit received by students wealthier than the average applicants and admitted students, and in the case of UCLA the practice benefitted white students the most.²⁷

Another avenue where wealth comes into play is through college athletics, particularly in sports not commonly available in lower-income communities. Youth sports participation is largely predicated on family income, as families with household incomes above \$150,000 on average spend over double on a child’s primary sport compared to households making between \$50,000 and \$149,000, and nearly

quadruple the average of families making less than \$50,000.²⁸ This spending is targeted not just to revenue sports like football and basketball, but also to non-revenue sports like squash, rowing, field hockey, and lacrosse. ("Non-revenue sports" are sports programs that do not generate enough annual revenue to exceed their annual costs for their respective athletic departments.) Participation in these sports is largely segregated by race due to financial barriers of access. Athletes in non-revenue sports gain an admissions advantage not just from their athletic ability, but also from the economic advantage of being able to pay for recruitment camps, unofficial visits, and private coaches that function as recruiting agents.²⁹

The labor of Black male athletes in the revenue-generating sports of football and basketball subsidizes opportunities for wealthier white students to navigate around race-conscious admissions policies through participation in non-revenue sports.³⁰ Approximately 11 cents of every additional revenue dollar raised by a university's football or men's basketball program is estimated to be spent on non-revenue sports, with the remainder being reinvested for facilities and staff salaries among other factors within respective programs.³¹

Black males in the 2021-22 academic year accounted for more than half of Division 1 football and basketball players but represented less than 10 percent of male athletes receiving scholarships in all other NCAA Division 1 sports.³²

Athletes in non-revenue sports tend to come from less racially diverse high schools with higher median family incomes than football and basketball athletes, and this socioeconomic gap grows when universities are more selective in admissions.³³

"Fair Admissions" In Name Only

Harvard College (the undergraduate college of Harvard University) offers a salient example of how the structural advantages of whiteness are used to counter affirmative action. Ivy League universities don't offer traditional athletic scholarships, so they don't participate in the annual self-reporting of athlete statistics like other NCAA institutions. However, the *Students for Fair Admissions v. Harvard College* case has provided insight on how Harvard makes admissions decisions.

Admissions preferences at Harvard are given to applicants who meet the following criteria: legacies, children of current faculty/staff, the dean's interest list, and recruited athletes. For the class of 2022, nearly 69 percent of accepted athletes had family incomes of \$125,000 or higher, compared to nearly 55 percent for the entire admitted class.³⁴ Of that class, just above 12 percent of admitted athletes come from families making \$80,000 or lower, compared to just above 29 percent for all admitted students.³⁵ The inability to use race-conscious admissions policies would have reduced Harvard's admitted Black freshmen in 2021 by over half according to estimates, signifying how lack of access to wealth disadvantages Black applicants.³⁶

SFFA chose UNC as the school to sue to eliminate affirmative action at public universities, as the Harvard ruling only applies to private universities. UNC has similar enrollment disparities to Harvard, especially in comparing admittance demographics to the population figures of the whole state of North Carolina.

Nearly a quarter of North Carolina’s residents are Black, yet only 8 percent of undergraduates attending UNC are Black.³⁷ **Black men specifically made up only 2 percent—or 95 students—in a class of more than 4,500 students in 2021.**³⁸

Since the 2003-04 academic year, the percentage of Black men at UNC receiving athletic scholarship aid has been in the double digits. No other racial demographic of males reached double digits until the 2016-17 school year.³⁹ Black men are overrepresented among athletes at UNC, but the school does not graduate them at the same rate as their white counterparts. From the 2003-04 to the 2021-22 academic year, Black male athletes have only achieved a six-year graduation rate of above 60 percent twice, while white male athletes did not fall below 60 percent within that period.⁴⁰

Banning Race-Conscious Admissions Has Already Proven Harmful to Black Students Overall

Race-conscious admissions policies have never gone far enough in providing educational opportunities. They have only served as stop-gap measures that fail to address educational inequities. Underrepresented students are excluded from opportunities due to factors that these policies alone can’t address, including a lack of a constitutional right to equitable education system funding,⁴¹ a national K-12 system that rewards familial access to wealth over academic merit,⁴² and the continued overuse of punitive measures on specific groups of students, such as Black males.⁴³

At the same time, certain selective schools continue to use athletics as a primary recruitment tool for Black men, a problematic path toward expanding opportunity for underrepresented students and diversifying campuses that have abandoned race-conscious admissions.

Even though race-conscious admissions policies on their own could not solve racial inequity, removing them only moves the educational system backward. Before the SFFA cases were brought to SCOTUS, there was already evidence that the loss of race-conscious admissions disproportionately affected Black males. Eight states had pre-existing race-conscious admissions bans at the time of SCOTUS’s decisions: California, Florida, Michigan, Nebraska, Arizona, New Hampshire, Oklahoma, and Idaho. The impact of these bans became clear among larger selective public universities within each state, as the share of racially underrepresented students admitted immediately decreased after the bans were passed and continued to trend downward.⁴⁴ Looking into the full public university landscape of the states with the earliest race-conscious admissions bans highlights the true scope of harm on Black admissions rates.

BEFORE THE SFFA CASES WERE BROUGHT TO SCOTUS, THERE WAS ALREADY EVIDENCE THAT THE LOSS OF RACE-CONSCIOUS ADMISSIONS DISPROPORTIONATELY AFFECTED BLACK MALES.

California: In 1996, California voters passed Proposition 209, making the state the first to ban race-conscious admissions statewide. Since then, underrepresentation of Black and Hispanic students has remained a consistent theme across both the California State University (CSU) and UC systems. From 1997 until 2018, the percentage of Black students making up total enrollment across the CSU system fell by roughly half,⁴⁵ and as of 2022, Black enrollment across the CSU system remained at 4 percent.⁴⁶ As of 2017, only 4 of the 23 CSU institutions had equal or higher representation of Black students relative to the market of potential students.⁴⁷

After the passage of Proposition 209, Black first-year enrollment across the UC system fell to under 3 percent and didn't recover to the 1996-97 enrollment rate of 3.8 percent until 2008.⁴⁸ For 2022, the UC system reached its highest first-year enrollment rate and incoming student rate (which includes transfers) for Black students since the proposition went into effect, though neither rate reached 5 percent.⁴⁹ Total enrollment for males across the UC system increased by nearly 25,400 students from 2010 to 2021, but Black males only represented 95 students within that group.⁵⁰

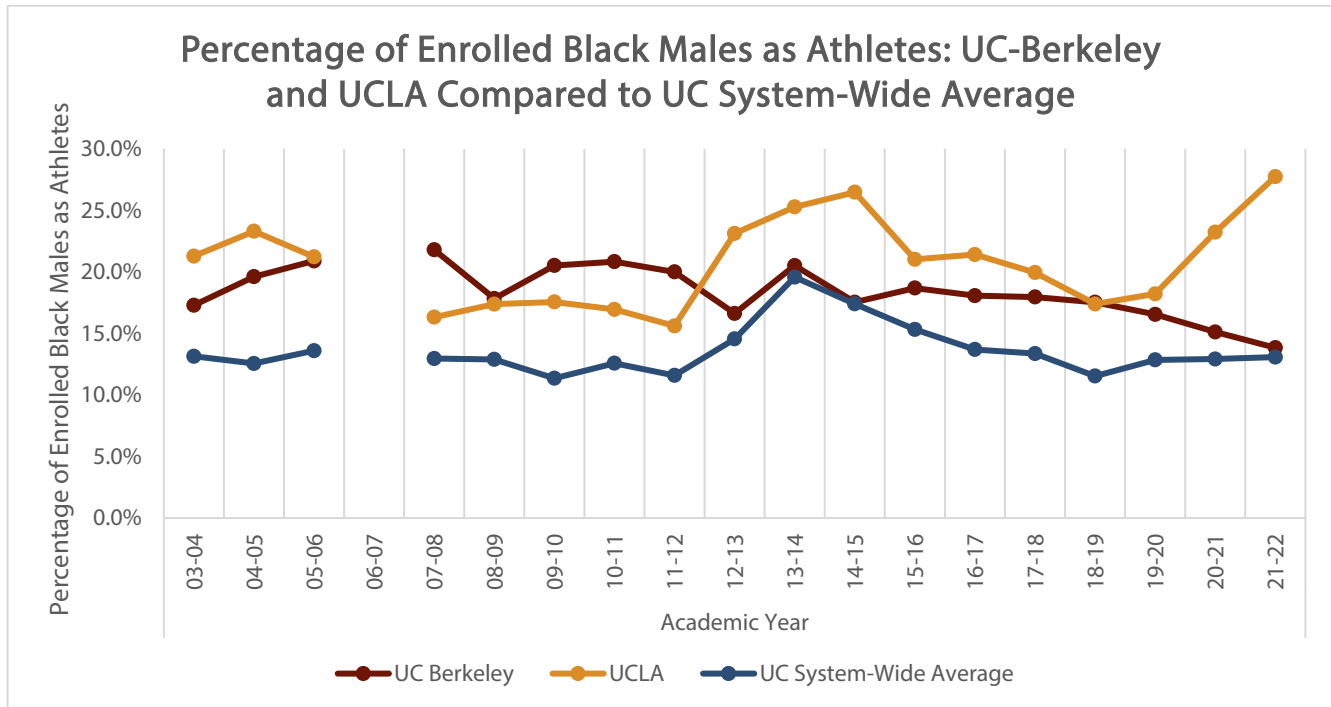
Since the passage of Proposition 209, the University of California system has used several reform efforts to increase diversity across its system. The most recent effort included dropping the standardized test requirement, which has been traditionally biased against marginalized students.⁵¹ Test-optional admissions policies follow a line of logic that reducing the access barrier of standardized testing would result in more diverse admissions, which has led to over 1,900 accredited 4-year institutions nationwide embracing the practice and more considering making tests optional.⁵² But eliminating this requirement doesn't go far enough. Institutions that have adopted test-optional policies have so far only seen marginal improvements to diversity of admissions from gendered, racial, and economic standpoints, as other criteria used by admissions departments like extracurriculars and amount of advanced coursework taken still privilege wealthier white applicants.⁵³

These reforms have shown some mitigation across the UC system for increasing enrollment pathways for Black men and other underrepresented groups outside of athletics. Three schools—Berkeley, Riverside, and Irvine—have marginally reduced the proportion of Black men admitted as athletes compared to those admitted as part of the general admissions process since 2003-04, though Riverside has experienced significant drops in both Black male athletes and general students.⁵⁴

As acknowledged by the UC system in its amicus brief to SCOTUS in support of affirmative action, efforts to increase diversity through race-neutral measures have still fallen short despite decades of implemented strategies.⁵⁵ Only 12 percent and 15 percent of California Black and Hispanic undergraduates, respectively, are enrolled in all UC system schools, both below the 22 percent of all California undergraduates regardless of race enrolled across the UC system.⁵⁶ When examining which individual schools enroll the highest percentages of California four-year undergraduates by race, no UC campus ranks in the top 10 for Black or Hispanic enrollment.⁵⁷

The enrollment discrepancies for Black men within the UC system aren't only apparent when comparing the system to other non-UC California universities, but also within the UC system itself when factoring selectivity and academic reputation. UC-Berkeley and UCLA are the most academically prestigious institutions within the UC system.⁵⁸ Both schools are also the system's largest athletic brands; UCLA will join the Big Ten Conference and UC-Berkeley will join the Atlantic Coast Conference in 2024.

Compared to their UC system peer institutions, UC-Berkeley and UCLA have consistently over-relied on athletics as a primary method of enrolling Black males. For the 2021-22 academic year, almost 28 percent of Black undergraduate males attending UCLA received athletic aid.⁵⁹ At UC-Berkeley, 13.8 percent of Black undergraduate men received athletic aid, which is higher than both the UC system-wide average of 13.1 percent and the national average of 10.5 percent.⁶⁰



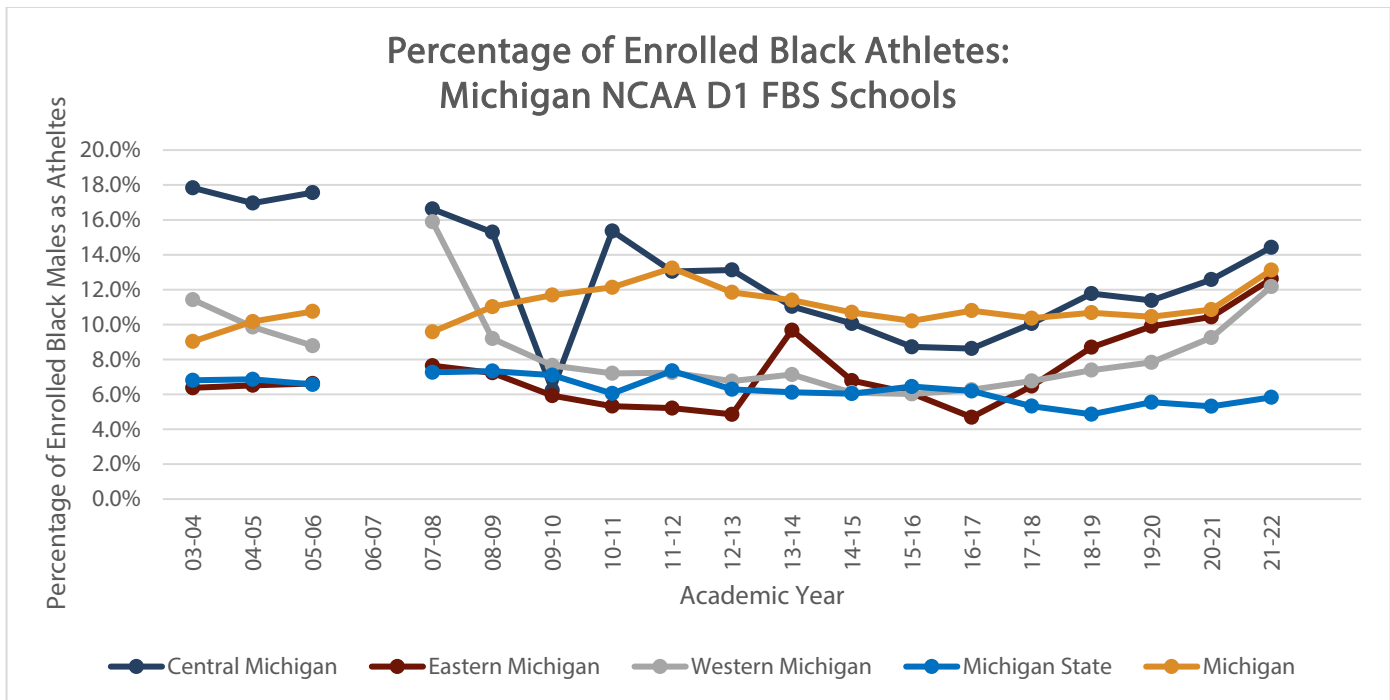
Note: This graph is based on CLASP analysis of the NCAA Graduation Rates Database, <https://web3.ncaa.org/aprsearch/gsrsearch>. Additionally, all NCAA data for the 2006-07 academic year is missing from the NCAA database.

See Appendix A for data.

Michigan: In 2006 Michigan banned race-conscious admissions via a statewide referendum amending the state constitution. By 2016, Michigan was the third-worst state in terms of both the share of Black undergraduates at public four-year institutions and the share of bachelor’s degrees earned by Black students relative to share of Black state residents.⁶¹ By 2020, the Black-white college graduation gap at Michigan’s public universities was almost double-digits between Black and white students.⁶²

Between 2011 and 2021, the percentage of Pell-eligible students and Black students attending college in the state fell by 52 and 48 percent, respectively.⁶³

Black men attending Michigan institutions that offer at least a bachelor’s degree decreased in both raw numbers and as a percentage of all men enrolled within the state, accounting for slightly more than 13 percent of the total decline in males from 2010 to 2021.⁶⁴ For the 2021-22 academic year, over 12 percent of all Black men on the campuses of four of the five NCAA Division 1 schools in the state with football programs received athletic aid.⁶⁵ Notably, two of those schools, the University of Michigan (U-M) and Eastern Michigan University, recorded their highest ratios of Black men receiving athletic scholarships: 13.1 percent and 12.6 percent, respectively.⁶⁶



Note: This graph is based on CLASP analysis of the NCAA Graduation Rates Database, <https://web3.ncaa.org/aprsearch/gsrsearch>. Additionally, all NCAA data for the 2006-07 academic year is missing from the NCAA database. See Appendix B for data.

U-M, one of the nation’s premier public universities, has experienced a significant decline in enrollment rates for underrepresented groups.⁶⁷ U-M has tried several strategies to increase student diversity, including a pipeline program for students from underserved school districts that provides a 4-year full tuition scholarship; eliminating tuition and mandatory fee requirements for accepted students whose families earn no more than \$65,000; and hosting application workshops in diverse and underserved communities.⁶⁸

Even with these programs, U-M confirmed via an amicus brief submitted to SCOTUS that just increasing socioeconomic diversity of enrollees “is not an adequate replacement for the benefits associated with racial diversity.”⁶⁹ The state has experienced a 44 percent decline in Black student enrollment since 2006, even with the overall percentage of Black college-aged students within Michigan increasing during the same period.⁷⁰ Since 2015, Black men have been consistently underrepresented in incoming first-year classes at U-M, representing over 5 percent of all incoming male first-year students exactly once.⁷¹ Over that same period the percentage of Black men receiving athletic scholarship aid has risen from 10.2 percent to 13.1 percent, indicating that athletic skill has become a necessary component for Black males to be considered for admission by U-M.⁷²

There’s Nothing Amateur About the Way Schools and the NCAA Exploit Athletes

The United States has built its national and global economic legacy in large part off the uncompensated and undercompensated physical labor of Black people. College athletics are one of the most glaring examples of how that legacy translates to the modern era. Economic exploitation at the expense of students’ well-being has always been a central concept of the NCAA and its member institutions. In 1955,

Ray Dennison, an offensive lineman for Fort Lewis A&M College (now known as Fort Lewis College) died 30 hours after receiving a head injury during a college football game.⁷³ Dennison was also a married father of three, and his widow Billie sued Fort Lewis A&M for workers' compensation benefits, as Dennison was a scholarship athlete. Then-NCAA president Walter Byers, in consultation with his legal team, crafted a strategy for NCAA member universities to use in the case against Billie Dennison and to protect against future workers' compensation claims: labeling athletes as "student-athletes."⁷⁴

Byers believed that designating college athletes as employees entitled to benefits would bring the collapse of the NCAA and college athletics, but also that aggressive measures to publicly label these athletes as amateurs would hamper their future efforts to receive employee benefits. The prevailing logic was that as the NCAA shaped public perception to view athletes as amateur players, it would become increasingly difficult for athletes to build broad support when advocating for employment status.

What Byers unleashed and later came to regret, was, in his own words, a "neo-plantation" system where coaches and universities "own" the bodies of athletes and hold sole possession of the financial windfalls they generate.⁷⁵

College athletics have developed into a full-fledged sports and media industry, which makes college athletes' inability to be paid for their labor increasingly unfair. Among 106 of the 133 universities that participate in the Division 1 Football Bowl Subdivision (FBS), the average revenue for football was just under \$40.5 million and just above \$9.1 million for men's basketball in the 2021-22 academic year.⁷⁶ Forty-seven football programs earned more than the average,⁷⁷ and 36 of these programs had a higher percentage of Black male undergraduates receiving athletic scholarships than the national average.⁷⁸ Of the same group of 106 universities, 48 earned more than the average men's basketball program revenue,⁷⁹ with 36 having a higher percentage of Black males on athletic scholarships compared to the national average.⁸⁰

Black Male Athletes Are Denied Supports for Academic and Basic Needs

The reliance on athletically gifted Black men to sustain the economic activity of college athletics is proof that Byers' label of "student-athletes" is half true. College athletes are only truly considered students when they seek direct financial compensation for their labor. In practice, the NCAA doesn't even support Black male athletes as students. Their institutions lack safeguards to ensure these athletes receive a quality education. Too often, these students must neglect their academic responsibilities to fulfill their athletic duties.⁸¹ Direct compensation isn't the only way universities fail these students, who also encounter the following challenges:

Lack of Guaranteed Health Care Coverage. Decisions on injury treatments are often influenced by the desires of coaches to compete, forcing many university athletic trainers to place athletes directly at risk of severe injury or death.⁸² In the event of a severe injury, athletes and their families are not guaranteed complete health care coverage, especially if the injury leads to health complications beyond their athletic eligibility.⁸³ An injury may also lead to loss of scholarship, as the NCAA lacks scholarship protections for athletes to maintain the aid they receive in the case of injury.

Low Graduation Rates for Black Male Athletes. Of the 106 institutions examined in terms of revenue, the average 6-year graduation rate for Black male athletes over the last four cohorts (known as the 4-class graduation rate) measured is 55 percent, just slightly over the graduation rate for all Black male undergraduate students of 51 percent.⁸⁴ Black male athletes at 42 schools graduated at rates that were either the same as or less than the graduation rate of all Black men attending their colleges.⁸⁵ Other schools only avoided similar rate discrepancies due to their very low rates of graduating Black men regardless of athletic status, as 55 schools graduated less than half of their Black male students.⁸⁶

College-level basketball, the primary revenue sport for the NCAA due to its direct control over March Madness, currently has the **lowest 4-class federal graduation rate of any sport measured by the NCAA and is the only sport where less than half of participants graduated.**⁸⁷

The Division 1 institutions generating the most revenue only graduated 48 percent of the last 4 classes of all male players, and Black men graduated at even lower rates. Of the 106 universities measured, Black male basketball players over the last 4 classes have an average graduation rate of 40 percent.⁸⁸ Sixteen schools self-reported graduation rates of less than 20 percent.⁸⁹

Lack of Basic Needs Support. In 2014, following public remarks from then-University of Connecticut basketball player Shabazz Napier immediately following that year's men's basketball national championship, the NCAA approved a rule change that allowed all Division 1 athletes to receive unlimited meals and snacks.⁹⁰ However, athletes at Division 1 universities still encounter food and housing insecurity. Prior to the COVID-19 pandemic, almost 14 percent of Division 1 athletes reported experiencing homelessness within the past calendar year, and 24 percent experienced food insecurity in the month before being surveyed.⁹¹

Collusion is Displayed in Direct Financial Compensation and Scholarships

Scholarships traditionally ease the financial burden on students. But athletic scholarships rarely fulfill this function. Rather, they are more often treated as temporary employment contracts.

From 1973 to 2012, the NCAA forbid awarding multiyear scholarships to athletes, meaning that financial access to undergraduate education was based largely on athletic, not academic, performance.⁹² The ability for athletic programs to drop athletes who weren't performing at desired levels has been a primary motivator in efforts to repeal multiyear scholarships.⁹³ This is also a reason for ending restrictions on the number of new scholarship signings for Division 1 football programs,⁹⁴ which has driven increased roster turnover for college programs.⁹⁵ The dollar amounts of scholarship awards have also been inappropriately limited. In 2017, the NCAA had to settle a class-action lawsuit alleging that schools were colluding to keep athletic scholarship amounts below the true costs of attending college.⁹⁶

The historical and current NCAA stipulations on athletic scholarships have operated in a similar manner to private companies colluding to reduce compensation for their workforces. Collusion among universities is not limited to the amount of each athletic scholarship, but also whether to award the scholarships at all. The Ivy League, the Division 1 athletic conference representing some of the country's most select private

colleges, signed the Ivy Group Agreement in 1945 to collectively agree not to offer athletic scholarships to football players.⁹⁷ Nine years later, the Agreement was expanded to cover athletes in all sports.⁹⁸ Section 538 of the Higher Education Act is an antitrust exemption granted to universities to establish shared approaches to awarding need-based financial aid if they adhere strictly to need-blind admissions policies.⁹⁹ From this exemption, the eight universities that make up the Ivy League received legal cover to continue not offering merit scholarships of any type and to share information among each other about students admitted to two or more member universities to cap their financial aid awards at an agreed-upon amount.

However, SCOTUS's 2021 *NCAA vs. Alston* decision held that federal antitrust laws prevent the NCAA from allowing member colleges to not award full education-related compensation or benefits. Under this ruling, athletes have the right to have schools compete for their skills, and coordinated limitation of education-related compensation creates a non-competitive market that restricts available financial aid for prospective athletes. *Alston* and Section 538 (which expired in 2022 and whose renewal is pending) place the Ivy League conference in a position where it is practicing conduct that the NCAA can no longer do.¹⁰⁰

As a result, 6 Ivy League schools are among the 16 colleges currently being sued in the *Henry et. al. v. Brown University et. al.* U.S. District Court case.¹⁰¹ The case alleges that a group of private universities continually violated the Sherman Antitrust Act through not following the commitment to need-blind admissions required to stay within the protection of Section 538.¹⁰² Separately, the Ivy League is facing an additional class action lawsuit brought by a pair of basketball players from Brown University targeting the Ivy Group Agreement.¹⁰³ This lawsuit alleges that the practice of not offering athletic scholarships is by itself a violation of the Sherman Antitrust Act under the terms of the *Alston* ruling, as it constitutes the Ivy League schools illegally barring compensation for education-related expenses.¹⁰⁴



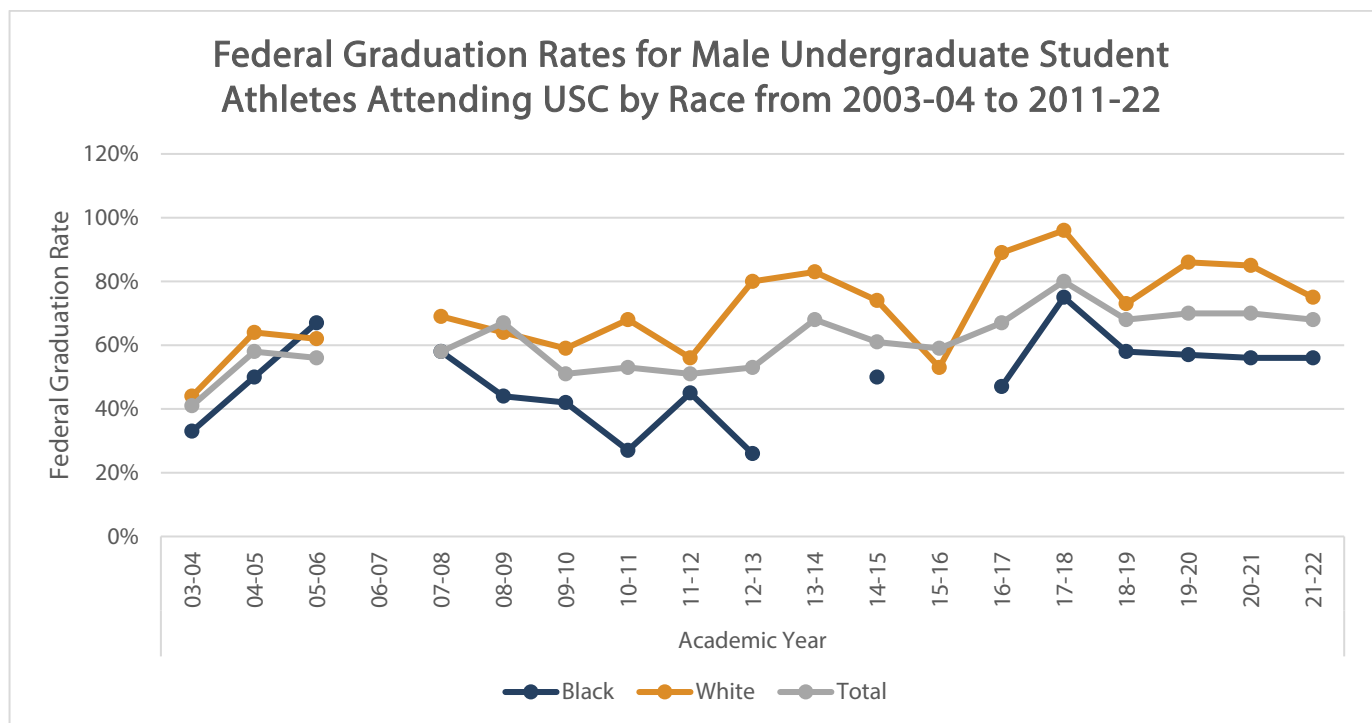
How Student Organizing and Labor Activism Have Brought Renewed Energy to the Movement to Recognize Athletes as Employees

College athletes have turned to organizing in their fight for equitably distributing the wealth they raise for their universities, increasing their economic security, and improving their working conditions. This has been tried before; in 2014, Northwestern University's football team filed a petition with the National Labor Relations Board's (NLRB) Chicago office to form a union.¹⁰⁵ Players wanted to guarantee additional player safety protections for those suffering concussions and wanted the school to cover payment for any future medical care stemming from injuries sustained while playing football at Northwestern. Despite the players' efforts, and extensive media coverage, the NLRB voted unanimously in August 2015 to block the bid.¹⁰⁶ This ruling was made in large part because NLRB jurisdiction only extends to private schools. Even though Northwestern is a private university, its participation in the Big Ten Conference, which includes public schools, raised concerns that granting student athletes at just one team or type of institution the ability to organize would create a messy patchwork of labor regulations for schools and future athletes to navigate. However, this ruling left the door open to future efforts for college athletes to unionize.

Northwestern's athletic department is alleged to have a troubling internal culture that would benefit from the protections available through unionization. Former men's basketball player Johnnie Vassar filed a class-action lawsuit in 2016 claiming that the university took measures meant to encourage him to transfer and relinquish his athletic scholarship.¹⁰⁷ In 2021, a federal lawsuit was filed against the university by former cheerleader Hayden Richardson alleging that the university placed cheerleaders at risk of sexual harassment and assault by encouraging them to attend university-sanctioned fundraising events and mingle with potential donors, and that school officials slowed down and covered up investigations stemming from her initial complaints.¹⁰⁸ Shortly after that, former cheerleader Erika Carter went public with repeated instances of racial discrimination in the cheerleading program that both she and her teammates experienced.¹⁰⁹ And in a three-day period in 2023, Northwestern's baseball and football head coaches were fired due to separate allegations of misconduct and widespread hazing within each program.¹¹⁰

The NLRB has renewed its focus on the lack of compensation and education that college athletes receive. In 2021 the NLRB issued a memo stating that athletes in revenue-generating sports at private universities are effectively employees for their schools.¹¹¹ Serving as a re-introduction of a previous memo that was issued and rescinded in 2017,¹¹² this designation would place college athletes attending private colleges under the National Labor Relations Act, thus granting them all statutory protections for workers under the legislation, including the right to form a union and collectively bargain over wages, benefits, and other working conditions. However, the Act doesn't apply to public employees, including athletes attending public universities. In late 2022, the NLRB's Los Angeles regional office investigated unfair labor practice charges against the University of Southern California (USC), the PAC-12 collegiate athletic conference, and the NCAA.¹¹³ The charges were brought by the National College Players Association, an organization founded in 2001 and made up of current and former college athletes. They alleged that USC "interfered with, restrained and coerced" the ability of athletes from three sports (football, men's basketball, and women's basketball) to use their collective bargaining rights.¹¹⁴

USC stands out as an example of how college athletics departments profit from the uncompensated labor of Black men, both in how it fails them in terms of compensation and graduation rates and in its status as one of the largest brands in college athletics. Between the 2003-04 and 2021-22 academic years, there was a persistent disparity in the school’s 6-year graduation rate between Black male athletes and male athletes overall. The graduation rate gap grew from 8 percent to 12 percent during this period, and the enrollment of Black men as a percentage of all undergraduate males attending USC also declined during these years, falling from just above 5 percent to just under 4.8 percent.¹¹⁵



Note: Data taken from CLASP analysis of the NCAA Graduation Rates Database, <https://web3.ncaa.org/aprsearch/gsrsearch>. Additionally, all NCAA data for the 2006-07 academic year is missing from the NCAA database, and USC reported no Black male data for 2013-14.

See Appendix C for data.

Additional efforts to establish college athletes as employees have been influenced by other labor activism on college campuses. On September 13, 2023, the men’s basketball team at Dartmouth College filed a petition to the NLRB seeking to be recognized as a union;¹¹⁶ this was the latest act of student labor activism on campus, following successful unionization drives from cafeteria workers,¹¹⁷ library workers,¹¹⁸ and graduate students.¹¹⁹ These campaigns not only benefitted those specific campus employees but provided a template for the basketball team, which said that its actions were inspired both through their own experiences and from seeing their classmates engage in collective bargaining with the college.¹²⁰ The NLRB’s regional office in Boston heard both supporting arguments from the team and opposing arguments from Dartmouth College in October 2023. A decision is still pending.¹²¹

Policy Solutions to Reduce the Harm to Black Male Students

The reduction of access to postsecondary education through the loss of affirmative action and the ongoing system of wealth distribution in college athletics places Black men in a potentially dire state. However, there are solutions.

Federal and State Policy Recommendations

Support Athletes Seeking to Unionize. Aside from the examples already discussed, college athletes who want to unionize are in uncharted territory. Being recognized as employees is only the first step to forming a union. Athletes will have to navigate many other obstacles, including high turnover rates due to graduation and dropouts, states having “right-to-work” laws that reduce funding and leverage for unions, and finding capacity to organize while already juggling the challenges that come with simultaneously being an athlete and a college student.

Congress has the authority to directly grant collective bargaining rights to college athletes through updates to their status under the National Labor Relations Act, as expressed through measures like the College Athletes Right to Organize Act.¹²² State legislatures also share the responsibility to make the legislative landscape easier for athletes to unionize, especially given the benefits college athletes provide to their states. Athletic events generate money for many communities; football bowl games alone are responsible for nearly \$1.5 billion annually.¹²³ Along with economic benefits, athletics are a premier marketing opportunity for universities, helping to increase interest among potential applicants.¹²⁴

Federal and state lawmakers should recognize the right of athletes at their public colleges to unionize. Public institutions are not covered within the National Labor Relations Act, so state law is the only way for public university athletes to be recognized as public employees. Some states, such as Iowa, have recently proposed legislation to make such a designation.¹²⁵ Other states like California have proposed remedies that address issues of revenue sharing and cost coverage for injuries and insurance, but still fall short of classifying athletes as official school employees.¹²⁶ State legislatures should pass legislation that recognizes college athletes at public universities as official employees, and Congress must do the same to ensure that that status is recognized at the federal level.

Increase Investments to Institutions that Foster More Opportunities for Upward Socioeconomic Mobility. The conversations around the recent SCOTUS decisions rightly reflect on the role of selective institutions in the broader crisis of decreasing upward socioeconomic mobility for historically marginalized populations. It will not be possible to truly reverse this trend through slight admission tweaks at these institutions. Generational wealth and postsecondary admissions gaps between Black men and other cohorts were built through deliberate public policies crafted to bring about those outcomes, and closing these gaps requires intentional and dedicated policy resources.

Policymakers must meaningfully increase the financial and resource investments in historically Black colleges and universities, institutions that serve minorities, community colleges, and less-selective four-year postsecondary institutions. Despite their severe underfunding, these schools continue to serve as the primary engines of upward socioeconomic mobility.¹²⁷ Advancing racial equity in postsecondary education hinges on bridging the funding and resource gaps faced by more accessible institutions that continue to educate most marginalized students. State governments,¹²⁸ the federal government,¹²⁹ and private philanthropy¹³⁰ have all contributed to the chronic underfunding of critical institutions. These stakeholders must significantly increase their financial and resource investments to not just make up for historical underinvestment but protect the future viability of these institutions.

Institutional Policy Recommendations

Significantly Upscale Institution-Level Investment in Black Men. Sustaining Black male enrollment requires constant vigilance against aspects of systemic racism that lead to Black men dropping out of college at higher rates than their peers.¹³¹ Solutions developed to reverse this trend must also be systematic in nature.

Black men, along with other male students from demographically underrepresented backgrounds, face a litany of institutional and societal barriers to accessing and completing a postsecondary education. Addressing these challenges must be a community-wide effort across policymakers, institutional leaders and staff, K-12 educators, and community advocates. Initiatives such as the California State University (CSU) Young Men of Color Consortium, the Texas Education Consortium for Male Students of Color, and the Lakeland Community College Men's Resource Center are examples of institutional investment to pool resources and share development of targeted practices to meet the educational needs of Black male students. Institutions should not only develop their own programs but also form similar collaborative networks to ensure that access and completion does not vary solely based on the institution one attends.

The CSU Young Men of Color Consortium is a collaborative initiative across all 23 CSU campuses to develop supports for improving educational outcomes of young men of color.¹³² Programs within the Consortium communicate with each other to share best practices and approaches on each campus. This has led to the development of services like the Male Success Initiative at Sonoma State University which, through cohort support and mentorship opportunities, boosted the collective GPA of participants from 2.37 to 3.39 during the COVID-19 pandemic.¹³³

The Texas Education Consortium for Male Students of Color was established in 2013 to connect postsecondary institutions and school districts across Texas for the purpose of developing methods to improve educational outcomes for Latino and Black male students.¹³⁴ Programs in the Consortium include Texas State University's Mentoring and Coaching program (MAC), which operates under the umbrella of the Personalized Academic Career Exploration Center. Retention rates have improved for first-year male students of color that participate in MAC, which specifically shifted focus to better serving men of color upon joining the Consortium.¹³⁵

Created in 1996, the **Men's Resource Center at Lakeland Community College** provides academic and enrollment support services that fit the needs of enrolled and prospective male students.¹³⁶ Only 15 percent of the overall student population at Lakeland are students of color, but roughly half of the students utilizing the Center's resources are men of color.¹³⁷ Among the services offered are the Gateway Program for current and prospective male students 25 years or older and the Pathfinders leadership and development program for male African American students.¹³⁸ Pell-eligible participants in Pathfinders have experienced a 10-to-11 percent higher retention rate compared to Pell-eligible students not in the program, and Pathfinders students who leave college before completion are four times more likely to re-enroll compared to non-Pathfinders students.¹³⁹

Fill Funding Gaps and Guarantee Athletic-Based Financial Aid in the Event of Injury. NCAA Division 1 and 2 universities offer approximately 111,000 athletic scholarships,¹⁴⁰ but these are often not enough for athletes to cover their tuition costs, let alone other expenses that may arise.¹⁴¹ This frequently leads to athletes having to place their eligibility at risk by asking program staff and donors for assistance in paying living expenses for themselves and family members that they support while in school.¹⁴² Athletes under “walk-on” status¹⁴³ face the same labor and time commitments as athletes receiving scholarships but receive no compensation, forcing them to take on debt or place themselves in dangerous financial and legal situations in the hopes of securing financing to stay enrolled and eventually earn a scholarship.¹⁴⁴ Additionally, there are no federal protections to keep athletes’ scholarships from being terminated for non-academic reasons like suffering significant injury or being cut from the team.¹⁴⁵

Ensuring that athletes are fully covered for the costs of attendance and basic needs, and that such aid is guaranteed in the event of significant injury, is the bare minimum of how schools can compensate athletes. In March 2023 the NCAA adopted new rules for member institutions that require them to cover out-of-pocket expenses for sports-related injuries, but that requirement is only for Division 1 schools and doesn’t take effect until August 2024.¹⁴⁶ Similar restrictions were initially placed on the new requirements for coverage of injuries related to athletics for at least two years after graduation,¹⁴⁷ though the NCAA announced in August 2023 that it would provide an option for two years of post-eligibility injury insurance for all member schools regardless of division starting in August 2024.¹⁴⁸ Institutions, both individually and as the collective membership of the NCAA, must ensure that every athlete, regardless of competition level, is fully guaranteed aid and that out-of-pocket medical expenses from sports-related injuries are fully covered.

Expand Both Availability and Awareness Programs for Campus Supportive Services and Reduce Usage of Hyper-Surveillance Tactics to Monitor Athletes Using Services. Part of why the collegiate athletics experience is so exploitative is its weaponization of societal expectations of masculinity to discourage athletes from seeking additional support when needed. Racism and discrimination in U.S. society impacts Black youth long before they enter postsecondary education. Coupled with institutional racism and culturally insensitive practices within the mental health system, behaviors associated with trauma and stress are incorrectly attributed to insubordination or criminal activity, especially when displayed by Black males.¹⁴⁹ Consequently, college athletes, particularly Black men, face as much risk to their mental health as their physical health because of the racism and discrimination they face due to their race and athletic identities.¹⁵⁰

Athletes often face barriers to accessing services that improve their educational outcomes. Removing them requires coordination between an institution’s athletics and academic departments. Though many colleges and universities provide specialized academic services to help athletes maintain eligibility, supportive service practitioners must deal with chronic underfunding and athletic staff who don’t ensure the academic success of their athletes due to a lack of accountability measures.¹⁵¹ Guaranteed access to mental health services was approved by the NCAA in 2019, but only applies to members schools of the “Power Five” group of athletic conferences (the Atlantic Coast, Big Ten, Big 12, Pac-12, and Southeastern¹⁵²). Even for athletes attending schools with available mental health resources, accessing these services frequently comes with the use of hyper-surveillance tactics by both athletic and academic staff who prioritize athletes meeting minimal eligibility requirements over their full integration into academic communities. These tactics include prohibiting personal social media activity¹⁵³ and using apps to track athletes’ physical

location and record their biometric data,¹⁵⁴ and are disproportionately used on Black men playing in the main revenue sports.¹⁵⁵

Maximize Accessibility of Institutions Through Revamping Transfer Pathways. Postsecondary institutions can increase campus diversity through broadening their applicant pools. Sustaining and increasing postsecondary education accessibility for Black males doesn't just come with increasing the amount of high-performing high school graduates who apply to colleges and universities, but also through expanding access for nontraditional postsecondary students like military veterans or community college transfers. Student veterans overall are more likely to come from underrepresented backgrounds based on race, income, parenthood, and age.¹⁵⁶ Black men represent just over 10 percent of all student veterans, tying with Latino males for the highest representation of any non-white student group.¹⁵⁷ Veterans are less likely to enroll at institutions with higher graduation rates and to enroll at public two- and four-year institutions. This is largely due to a web of obstacles affecting veterans and staff at postsecondary institutions seeking to recruit new applicants. Transfer policies that don't accept all of the credits that a student veteran has already obtained, limitations on the number of transfer students an institution accepts in any given class, reducing or eliminating eligibility of institutional need-based aid for transfer students, and lack of flexibility offered for mandatory full-time enrollment or on-campus residency policies all play a role in preventing student veterans from attending postsecondary institutions.¹⁵⁸

Similarly, community college students seeking to transfer to four-year institutions represent a substantial population that could increase the diversity of applicants at selective institutions. Forty-two percent of community college transfer students across the country obtain a bachelor's degree, though only 33 percent of all community college students transfer out.¹⁵⁹ Racial disparities within community college transfer rates were evident prior to the COVID-19 pandemic, with Black students being the least likely to transfer to four-year degree programs, but the racial transfer gap has grown since the pandemic even as the share of total students transferring has decreased nationwide.¹⁶⁰ A patchwork of policies across the country has led to wide variance in how each state's community college transfer students perform when transferring out to complete a bachelor's degree. Both state policymakers and institutions can identify and develop strategies to foster increased bachelor's degree completion for students who initially enter postsecondary education through community colleges.

The Unsettling Consequences of Postsecondary Education Policies on Black Men

In the wake of postsecondary education institutions being compelled to adopt race-neutral admissions, Black men applying to colleges and universities face the disproportionate burden of adverse consequences. Despite not being subject to the SCOTUS rulings, several programs dedicated to increasing access for students from underrepresented populations to postsecondary education have come under increased legal and administrative threat because of deliberate misinterpretation of the scope of the rulings. Scholarships for admitted students from underrepresented groups,¹⁶¹ residency programs designed to increase diversity within certain industries,¹⁶² and initiatives from public universities to promote diversity and inclusion have all come under legal attack following the rulings.¹⁶³ University staff have also come under direct legal threat that they would be personally liable for any efforts perceived as going against the rulings even if they meet the letter of the law.¹⁶⁴ These legal attacks, along with other historical disinvestment in programs meant to help students overcome the financial barriers to a

postsecondary education, have created the current, troubling situation. The removal of race-conscious admissions policies and continuous underfunding of financial aid programs create barriers to educational opportunities for Black men, leaving athletic talent as one of the few avenues for admission.

The vulnerability of current and future collegiate Black males underscores the urgent role of various stakeholders — state policymakers, labor leaders, postsecondary education leaders, alumni, and fellow students — in advocating for racial equity regardless of SCOTUS’s decisions. Historical discrimination has disproportionately cost Black men in terms of both real dollars and generations of lost educational opportunities. U.S. Senator Rand Paul’s comments on college athletics further expose a systemic stereotype of Black male athletes; he said that fans of college basketball will soon see “rap stars instead of basketball stars” if college athletes were given fair compensation and stated how many fans “loved watching amateur athletes that weren’t paid.”¹⁶⁵ These remarks laid bare how college athletics have long been perfectly content with Black men operating as cogs in the machine, further reinforcing the need for comprehensive change.



Appendix A

Percentage of Enrolled Black Males as Athletes: UC-Berkeley and UCLA Compared to UC System-Wide Average																				
School	Academic Year																			
	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	
UC Berkeley	17.3%	19.6%	20.9%		21.8%	17.8%	20.5%	20.8%	20.0%	16.6%	20.5%	17.5%	18.7%	18.1%	18.0%	17.5%	16.5%	15.1%	13.8%	
UCLA	21.3%	23.3%	21.2%		16.3%	17.4%	17.6%	17.0%	15.6%	23.1%	25.3%	26.5%	21.0%	21.4%	19.9%	17.4%	18.2%	23.2%	27.7%	
UC System-Wide Average	13.1%	12.6%	13.6%		13.0%	12.9%	11.4%	12.6%	11.6%	14.6%	19.6%	17.4%	15.3%	13.7%	13.4%	11.5%	12.8%	12.9%	13.1%	

Appendix B

Percentage of Enrolled Black Athletes: Michigan NCAA D1 FBS Schools																				
School	Academic Year																			
	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	
Central Michigan	17.8%	17.0%	17.6%		16.6%	15.3%	6.2%	15.4%	13.0%	13.1%	11.0%	10.1%	8.7%	8.6%	10.1%	11.8%	11.4%	12.6%	14.4%	
Eastern Michigan	6.4%	6.5%	6.6%		7.6%	7.2%	5.9%	5.3%	5.2%	4.9%	9.7%	6.8%	6.1%	4.7%	6.5%	8.7%	9.9%	10.4%	12.6%	
Western Michigan	11.4%	9.9%	8.8%		15.9%	9.2%	7.7%	7.2%	7.2%	6.8%	7.1%	6.1%	6.0%	6.3%	6.8%	7.4%	7.8%	9.3%	12.2%	
Michigan State	6.8%	6.9%	6.6%		7.3%	7.3%	7.1%	6.0%	7.3%	6.3%	6.1%	6.0%	6.4%	6.2%	5.3%	4.9%	5.6%	5.3%	5.8%	
Michigan	9.0%	10.2%	10.8%		9.6%	11.0%	11.7%	12.1%	13.2%	11.8%	11.4%	10.7%	10.2%	10.8%	10.4%	10.7%	10.5%	10.9%	13.1%	

Appendix C

Federal Graduation Rates for Male Undergraduate Student Athletes Attending USC by Race from 2003-04 to 2011-22																				
Race	Academic Year																			
	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	
Black	33%	50%	67%		58%	44%	42%	27%	45%	26%		50%		47%	75%	58%	57%	56%	56%	
White	44%	64%	62%		69%	64%	59%	68%	56%	80%	83%	74%	53%	89%	96%	73%	86%	85%	75%	
Total	41%	58%	56%		58%	67%	51%	53%	51%	53%	68%	61%	59%	67%	80%	68%	70%	70%	68%	

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