Street Agents: Third Party Involvement in College Football Recruiting

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Street Agents

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STREET AGENTS: THIRD PARTY INVOLVEMENT IN COLLEGE FOOTBALL RECRUITING

Scott Foster\textsuperscript{a1}

“There are in-between people getting involved starting 7-on-7 camps...[a]nd they are literally putting kids up on the auction blocks so people can get a look at them. And there are guys who are soliciting kids to go to a camp and getting paid to bring certain kids to camps. You don’t want those people involved in our game.” – Joe Paterno

I. INTRODUCTION AND REASONS FOR REFORM:

In the ever changing landscape of college football recruiting, an enterprise rife with improper benefits and third party influence has emerged.\textsuperscript{1} For example, in the spring of 2011, the National Collegiate Athletic Association (“NCAA”) sent a letter of inquiry to the University of Oregon scrutinizing their involvement with third party recruiting services.\textsuperscript{2} At issue were not the recruiting services themselves, but whether or not recruits were steered to the schools by the services’ operators.\textsuperscript{3} The scrutiny revolved around a $25,000 payment to Willie Lyles, who runs Complete Scouting Services in Houston, from the University of Oregon in March 2010.\textsuperscript{4} Essentially, the NCAA suspects that Lyles directed the recruitment of freshman tailback Lache Seastrunk because of their close relationship and for receiving the payment a month following Seastrunk’s signature on a national letter of intent with Oregon.\textsuperscript{5} Technically, the actions of Lyles was within the NCAA’s rules, the payments, however, are being viewed as a sign that

\textsuperscript{a1} Scott Foster, Faulkner University, Thomas Goode Jones School of Law, J.D. Candidate 2012, B.A. American Studies, University of Alabama.
\textsuperscript{1} Pete Thamel, High School Football Recruiting’s New Face, THE NEW YORK TIMES (March 5, 2011), available at http://www.nytimes.com/2011/03/06/sports/ncaafootball/06camps.html?pagewanted=all.
\textsuperscript{2} John Taylor, NCAA Requests Scouting Services Documents From Oregon, NBC SPORTS (March 4, 2011, 8:28 p.m.), http://collegefootballtalk.nbcsports.com/2011/03/04/ncaa-requests-scouting-services-documents-from-oregon/.
\textsuperscript{3} Id.
college football’s recruiting model is becoming more like basketball, in which college coaches rely on third parties during recruiting.\(^6\) Scouting services in particular provide a direct third-party link between colleges and recruits, raising the potential for NCAA rules violations if a scout were found to have accepted money in exchange for directing a player to a particular school.\(^7\)

In NCAA Division I football, everyone desires a winning team because a BCS National Championship translates into millions of dollars and immense publicity for a football program.\(^8\) Relatively few prospective student-athletes have the requisite talent to compete in major intercollegiate sports and those that do are highly recruited.\(^9\) Since the lure of an athlete’s opportunity to receive an education and the prospect for a professional athletic career are so enticing, some coaches, players, third parties, and even parents yield to the temptation to cheat.\(^10\) Although there are both inconsequential and egregious rule violations in the realm of college football recruiting, unfortunately, such cheating can give a program huge profits and a competitive advantage for the involved individuals, athletic program, and institutions.\(^11\) Recent events in college football have exposed emerging improprieties with college football recruiting, such as Cecil Newton attempting to negotiate a reportedly $180,000 pay-for-play transaction with Mississippi State University for the services of his son Cam, the eventual 2010 BCS National Champion and Heisman winning quarterback for Auburn University.\(^12\) In this instance,


\(^9\) *Id.* at 554.

\(^10\) *Id.* at 555.

\(^11\) *Id.* at 554-55.

however, Cecil Newton has yet to be punished, and likely never will be, for his attempted use of a Street Agent in soliciting a pay-for-play transaction with Mississippi State University.\textsuperscript{13} What is even more troubling is that Cecil Newton, after many public denials and lies, has yet to offer an apology or explanation for his actions.\textsuperscript{14} With the NCAA’s current regulatory scheme of non-enforcement and lack of third party accountability, who in their right mind would offer such?

Allegedly, Cam was ignorant of his father’s actions, which ultimately allowed him to retain his eligibility.\textsuperscript{15} The day following Cam’s reinstatement, NCAA President Mark Emmert issued a statement saying, “[w]e recognize that many people are outraged at the notion that a parent or anyone else could ‘shop around’ a student-athlete and there would possibly not be repercussions on the student-athlete’s eligibility. I’m committed to further clarifying and strengthening our recruiting and amateurism rules so they promote appropriate behavior by students, parents, coaches and third parties. We will work aggressively with our members to amend our bylaws so that this type of behavior is not a part of intercollegiate athletics.”\textsuperscript{16}

Ultimately, a “Street Agent” is a middleman whose motivation is to associate with the best football players in order to gain an advantage over college football programs which allows the person to receive compensation in the form of any benefit, while at the same time, jeopardizing an athlete’s college eligibility. Realistically, every high school football competition should benefit the athlete by improving his football skills, which will be further beneficial to his team and to the college coach fortunate enough to have him sign his letter of intent on National

\textsuperscript{13} Id.
\textsuperscript{14} Id.
Signing Day in February. The old procedure of recruiting a prospective student-athlete was for a coaching staff to get to know a recruit and his family over time, then conduct an evaluation, and handle matters internally.\(^\text{17}\) However, the new practice seems to be to pay someone else to locate the players and evaluate them, while keeping the player’s family in the dark as to what’s really happening.\(^\text{18}\) “One requires hard work and persistence, while the other requires a check book and an apparent deplorable work ethic.”\(^\text{19}\)

This article seeks to explore the emerging problems with third parties, or more appropriately titled “Street Agents,” in college football recruiting. The first section will help the reader understand the situations in which these Street Agents conduct their activities in the college football recruiting context and attempt to define the various terms used throughout the work. The second section will examine the NCAA and congressional legislation regulating agents and third parties in college football. The third and final section will address whether or not the current regulatory schemes in place should be amended and address issues of compliance with the amendments.

A. THIRD PARTIES IN 7-ON-7 COMPETITIONS:

What was once a niche off-season competition, 7-on-7 summer football camps, which are run traditionally by high schools to keep the players in shape and to hone their football skills, has evolved to create concerns among both college and high school football coaches because of a fear that a recruiting culture similar to Amateur Athletic Union basketball will be established.\(^\text{20}\)


\(^{18}\) Id.

\(^{19}\) Id.

\(^{20}\) Joe Schad, 7-on-7: A Touch-and-Go Situation, ESPN (August 5, 2011, 12:54 p.m.), http://sports.espn.go.com/espn/otl/news/story?id=6600377 [hereinafter Schad 7-on-7]; See also Josh Peter and Dan
To this end, the coaches’ main concern is the proliferation of third party involvement in college football recruiting in the form of “Street Agents” who are rapidly showing up as non-scholastic 7-on-7 team coaches and off season trainers, which is helping football to drift from its high school football roots. The competitors of 7-on-7 football camps are the skill players on high school teams who compete against other teams of seven players using no pads or linemen and they have become a commercial enterprise garnering sponsorships from apparel companies such as Nike and Under Armour, while also being legitimized and televised by networks like ESPNU. It is obvious why elite travel football is attractive to apparel companies and ESPN because, for example, most of the players who played in last year’s New Level Athletics National 7-on-7 Tournament either signed with Division I schools or will sign with them as seniors.

Today, a small number of high school football head coaches are involved in 7-on-7 competitions and the majority of the coaches on the all-star 7-on-7 circuit are “high school assistants, local businessmen, athletic trainers and recruiting or scouting service operators or employees.” These competitions, therefore, create numerous opportunities for Street Agents to gain influence over the prospective student-athlete and establish a culture of influence and reliance by college football programs. Recently, the assistant coach of the South Florida Express, the nation’s best 7-on-7 team, confessed to ESPN’s Outside the Lines television

21 Thamel, supra note 2.
22 Id.; See also Schad 7-on-7, supra note 20.
23 Schad 7-on-7, supra note 20; See also Josh Bean, Is 7-on-7 Competition in Alabama Ruining Football and Recruiting?, Al.com (March 10, 2011), http://blog.al.com/sports_impact/print.html?entry=2011/03/is_7-on-7_competition_ruining_football_and_recruiting.
25 Schad 7-on-7, supra note 20.
program that he was the go-between for Express players and college coaches.\textsuperscript{26} The fear is that team coaches “may be tied to specific agents in an effort to funnel the top talent to a specific agency” and “college programs could presumably do the same, [essentially] giving them a farm team that could circumvent the high school squad.”\textsuperscript{27} It should come as no surprise that the NCAA has taken notice of these issues and seeks to begin dealing with them first by sending representatives around the country to better understand the 7-on-7 phenomenon.\textsuperscript{28} A lack of understanding about these events reinforces the presumption that the NCAA is incapable of adequately regulating third parties. However, the NCAA is not without a cautionary tale which has evolved from the very same circumstances in which college football recruitment is being steered.

B. AMATEUR ATHLETIC UNION BASKETBALL: A CAUTIONARY TALE:

The Amateur Athletic Union (“AAU”) is a non-profit association “dedicated exclusively to the promotion and development of amateur... sports.”\textsuperscript{29} Traditionally, “summer basketball was under the auspices of the Amateur Athletic Union, and even today, many people use the term "AAU" to refer to competition by independent travel basketball teams” that are often sponsored by major shoe companies.\textsuperscript{30} As for NCAA regulation of these events, recent attempts to control the summer league teams have mostly failed, while their power has only increased.\textsuperscript{31} Throughout recruiting circles, many independent travel team coaches are now viewed as being

\textsuperscript{26} Id.
\textsuperscript{27} Josh Bean, \textit{Is 7-on-7 Competition in Alabama Ruining Football and Recruiting?}, Al.com (March 10, 2011), http://blog.al.com/sports_impact/print.html?entry=2011/03/is_7-on-7_competition_ruining_football_and_recruiting.
\textsuperscript{28} Schad 7-on-7, \textit{supra} note 20.
\textsuperscript{30} Eric Prisbell and Steve Yanda, \textit{A Whole New Ballgame that Williams Won’t Play}, THE WASHINGTON POST (February 13, 2009), \textit{available at} http://www.washingtonpost.com/wp-dyn/content/article/2009/02/12/AR2009021202299.htm.
\textsuperscript{31} Id.
more influential than their high school counterparts.\textsuperscript{32} According to college assistant coaches, recruiting at an elite level in college basketball becomes difficult, if not impossible, without strong AAU ties.\textsuperscript{33} The reality is that the teams and the competitions they compete in face no oversight from the NCAA and are free to behave as they see fit.\textsuperscript{34} These AAU events have been part of the college basketball recruiting landscape for some time, but the ability for college coaches to continue influencing the parents of a prospective student-athlete with promises of providing an avenue for earning a college degree has lost its weight.\textsuperscript{35}

The decline in influence can be attributed to the exponential increase in the money involved in basketball.\textsuperscript{36} The reporting of huge endorsements from shoe companies and the commercial appeal of stardom has intensified the recruiting landscape, where coaches and parents aim to fast track the student-athlete’s exposure.\textsuperscript{37} According to several prominent college and AAU coaches, what has now become common is the “funneling of cash recruiting inducements between colleges and AAU or high school coaches, in the form of tax-deductible donations usually made by athletic boosters at the behest of college coaches.”\textsuperscript{38} College coaches are reluctant to speak out against AAU basketball coaches, whose coaching credentials are often questionable and their influence so great, because they are afraid that it might hurt their ability to sign players.\textsuperscript{39} Essentially, college basketball coaches have difficulty in fighting these third party influences because their jobs require them to recruit and sign highly ranked high school athletes to benefit their team and provide them with job security. For example, the 2003

\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Prisbell & Yanda, supra note 30.
\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Id.
recruitment of Rudy Gay by the University of Connecticut was clouded by the perception of impropriety when the school reportedly paid $22,000 to the Beltway Ballers for an exhibition game. The Ballers were a loosely organized team made up of players who once played for a veteran summer league coach named Anthony Lewis. Lewis was heavily involved in the recruitment of Gay. Although no rules violations have ever been found in his recruitment, after his commitment to UConn, the NCAA passed legislation banning college teams from scheduling exhibition opponents linked to independent travel teams.

As of April 2011, the problems of third party influence in AAU basketball affected how college football coaches must interpret the NCAA regulation of utilizing online recruiting services. In regards to AAU basketball competition videos, college coaches were subscribing to multiple copies of sham recruiting services for thousands of dollars from AAU basketball coaches and third parties. Essentially, for thousands or tens of thousands of dollars, coaches would get names, height and weight, and generic rankings or ratings like stars or “high major.” And most importantly, through the payments, the coach received access to the AAU coach’s or third party’s prospects. Thus, the rule’s original interpretation was intended to focus on this small faction in college basketball recruiting. Now, however, because of the abuse of oversubscribing in college basketball recruiting, where college basketball coaches pay for several

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40 Prisbell & Yanda, supra note 30.
41 Id.
42 Id.
43 Id.
45 Id.
46 Id.
47 Id.
48 Id.
accounts in order to compensate the services and receive little information, the rule has been extended to all sports.\textsuperscript{49}

The connections between the proliferation of third party influence in college basketball recruiting and the emerging state of influence in college football recruiting has led the NCAA to ban football coaches from attending “non-scholastic events,” while the AAU events are tightly restricted.\textsuperscript{50} Although the rule is well-intentioned, this ban has resulted in a continual growth of AAU basketball and 7-on-7 football camps while diminishing the NCAA’s role in regulating these events.\textsuperscript{51} For the most part, the high school football coach remains the primary conduit to players, but the growing concern of the NCAA and college coaches is that the addition of another layer of third parties will likely increase the number of people searching for illegal payments to steer players to certain schools.\textsuperscript{52} In essence, by removing coaches from these events, the NCAA seems to be promoting the very same improprieties in which the regulation sought to avoid because there is no regulation other than a complete ban.\textsuperscript{53}

The NCAA would be in a better regulatory position if coaches were allowed to attend these events, rather than keeping the broad prohibition from attending in the rules.\textsuperscript{54} To combat this problem, the NCAA has allowed a July evaluation period in summer basketball.\textsuperscript{55} The period is structured and business-like because so many coaches attend the summer camps during this period and they have the ability to watch the games and record their evaluations in the presence of NCAA enforcement personnel.\textsuperscript{56}

\textsuperscript{49} Infante, supra note 44.
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Staples, supra note 24.
\textsuperscript{53} Infante, supra note 44.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
In conclusion, the rampant recruiting improprieties in AAU basketball should be a cautionary tale for the current state of college football recruiting. It is inherent from the many instances of misconduct that AAU summer basketball is rife with improper benefits and third party influence, such as persons who may not have a player’s best interests in mind influencing their decision on where to attend college.\(^{57}\) By looking through the recent history of AAU basketball regulation, it becomes clear that the same issues and techniques employed by third parties to gain benefits on the talents of recruits in basketball are being employed by third parties in college football recruiting.

II. **Regulation of Agents and Third Parties in Collegiate Football:**

The NCAA has taken notice of third party influence issues in college football and is seeking to deal with the problems of influence by Street Agents.\(^{58}\) Rachel Newman Baker, the NCAA’s Director for Agent, Gambling, and Amateurism Activities, has stated that “[Third parties] really are the problem, from multiple levels . . . They have student-athletes’ and their families’ ears.”\(^{59}\) Further, it is Director Baker’s biggest fear that the NCAA will “give outside third parties who do not have a prospective student-athletes’ best interests at heart more room to have those prospects make bad decisions.”\(^{60}\) Additionally, NCAA President Mark Emmert has stated that “we've begun a conversation to find ways to better manage the third-party influences in recruiting, including the role of relatives. We have to find a way to manage that problem clearly and unequivocally so that people know where we stand and what we'll tolerate and what

\(^{57}\) Id.

\(^{58}\) Schad 7-on-7, supra note 20.

\(^{59}\) Id.; See also Q & A with NCAA Director of Agent, Gambling and Amateurism Activities Rachel Newman Baker, NCAA (July 2010), http://www.ncaa.org/wps/wcm/connect/public/ncaa/resources/latest+news/2010+news+stories /july+latest+news+interview+with+ncaa+director+of+agent%2C+gambling+and+amateurism+activities.

\(^{60}\) Schad 7-on-7, supra note 20.
we won’t.”\(^{61}\) Clearly, the necessity for regulation has presented itself to the NCAA recently and has them scrambling to find a quick and “unequivocal” remedy.\(^{62}\)

A. **WHAT IS A STREET AGENT:**

Surprisingly, there is no clear definition of what a Street Agent is due to the lack of regulation over these individuals. However, Director Baker has given some guidance by stating, “[y]ou can call yourself a cousin, you can call yourself a mentor, you can call yourself a friend, but it’s what are doing for that student-athlete or that prospective student-athlete and where does that cross the line and potentially jeopardize that individual’s eligibility?”\(^{63}\) According to the Restatement of Agency, an agent has been generally defined as “one who acts for or in the place of another by authority from him,” or “a person who represents another in contractual negotiations,” or “a business representative whose function it is to bring about, modify, effect . . . contractual obligations between the principle and third persons.”\(^{64}\) Further, NCAA Bylaw 13.3.3 states that an “Athletics Scholarship Agent” is “[a]ny individual, agency or organization that represents a prospective student-athlete for compensation in placing the prospective student-athlete in a collegiate institution as a recipient of institutional financial aid” and “shall be considered an agent or organization marketing the individual’s athletics ability or reputation.”\(^{65}\)

Thus, it is my opinion that an accurate definition of “Street Agent” would encompass Bylaw 13.3.3 and all persons attempting to represent a high school athlete’s interests, either on authority from the athlete or his family (if student-athlete is below the age of majority) or not, in exchange for some form of improper benefit. This definition includes runners, who will befriend

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\(^{62}\) See id.

\(^{63}\) Schad 7-on-7, *supra* note 20.

\(^{64}\) *RESTATEMENT (SECOND) OF AGENCY* § 1 (1958).

\(^{65}\) NCAA 2011-12 DIVISION 1 MANUAL § 13.3.3.
an athlete and advertise himself to agents by offering his services as a close friend and someone who can assert influence over the decisions a student-athlete makes.\textsuperscript{66} Essentially, the differences between a runner seeking to benefit from an athlete’s talent and a Street Agent are non-existent, other than the terms used to describe them. In order to make a fair determination on whether a third party qualifies as a Street Agent, the NCAA should be required to investigate the individual’s activities before deciding whether benefits have been received in exchange for the student-athlete’s participation with a particular college football program.

**B. NCAA REGULATION OF RECRUITING SERVICES:**

In recent years, recruiting services have become a growing industry where high school athletes and their parents can get help in gaining exposure and making contacts with colleges through the use of a third party or online services.\textsuperscript{67} The two most popular online services are Rivals.com\textsuperscript{68} and Scout.com,\textsuperscript{69} which provide data and updates on athletes as they compete in high school. These services are available for a monthly or yearly fee and are utilized by the avid fan and, previously, college football programs.\textsuperscript{70} One applicable NCAA regulation on these services is Bylaw 13.14.3(g), which states, “[a]n institution may subscribe to a recruiting or scouting service involving prospective student-athletes, provided the institution does not purchase more than one annual subscription to a particular service and the service: Provides video that is restricted to regularly scheduled (regular-season) high school, preparatory school or

\begin{itemize}
\item[67] Kathleen Nelson, *Athletes Seek Help in Finding Colleges; Are Recruiting Services the Answer* (January 27, 2011 1:00 a.m.), http://www.stltoday.com/sports/high-school/article_6162a3a9-618c-57c6-b9f9-d7f14baad0d4.html.
\end{itemize}
two-year college contests and for which the institution made no prior arrangements for recording.”

Under a recent interpretation, however, the rule prohibits football programs from using these services because they offer non-scholastic video of potential recruits, such as footage from camps, combines, all-star games or workouts that are not available to the public. However, an April interpretation issued by the NCAA labeling online publications such as Rivals.com and Scout.com as recruiting services and making their subscription content off limits to college programs has drawn criticism from college coaches and administrators because the rule is “difficult to enforce and too complex.”

Due to these concerns, a proposal was submitted in August 2011 on behalf of the Mountain West, the Big East, and Conference USA conferences to the NCAA to relieve the ban on utilizing recruiting services because the rule, as it stands, “leads to difficulty in determining which scouting services are permissible and inconsistencies in enforcing the legislation.” As a sign of concern for third party influence in college football, the conferences have proposed a rule that would relieve the broad ban on utilizing a recruiting or scouting service that provides non-scholastic video for all sports excluding football and basketball, while eliminating the ban on utilizing recruiting services that do not offer non-scholastic competition videos in football and basketball.

As Joe Infante, who pens the NCAA’s Bylaw Blog on the organization’s official website, has stated, “[t]he fact is if even a diehard college football or basketball fan knows

74 Id.
76 http://www.ncaa.org/blog/category/bylawblog/.
about a set of recruiting rankings or analysis, it likely doesn't move the needle for coaches.”

Regardless of its ultimate influence with coaches, however, the bylaw’s intention is to address concerns that recruiting services were "being used as leverage in the recruiting process," according to rationale published alongside the conferences’ proposal.

Although the rules seem to regulate prospective student-athletes representation by a Street Agent prior to enrolling in college, the reality of the situation is that recruiting services are allowed and are a way for third parties to gain influence and receive improper compensation.

Under NCAA Bylaw 13.3.3.1, “[a] prospective student-athlete may allow a scouting service or agent to distribute personal information (e.g., high school academics and athletics records, physical statistics) to member institutions without jeopardizing his or her eligibility, provided the fee paid to such an agent is not based on placing the prospective student-athlete in a collegiate institution as a recipient of institutional financial aid.” Thus, the determining factor regarding a prospective student-athlete’s eligibility is whether or not the service’s fee is contingent upon an acceptance of a scholarship offer from a college football program.

C. NCAA Regulation of Agents and Its Required Extension to Third Parties:

The NCAA has extensive regulations concerning a student-athlete’s representation by an agent. The efforts stem from a mission to promote amateurism by preventing pay-for-play and

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77 Infante, supra note 44.
78 Sherman, supra note 73.
79 NCAA 2011-12 DIVISION I MANUAL § 13.3.3.1.
80 Id.
81 Id. at § 12.
clearly distinguishing intercollegiate from professional athletics.\textsuperscript{82} Although the rules may be comprehensive in addressing the emerging issues with athlete-agent relations, the rules are not adequately enforced and create a need for reform.\textsuperscript{83} Considered the crown jewel of athlete-agent regulation, the “No Agent Rule,” or NCAA Bylaw 12.3.1, states that “[a]n individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletic ability or reputation in that sport. Further, an agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.”\textsuperscript{84} In order to fully understand the rule, one must refer to NCAA Bylaw 12.02.1, which defines “individual” as “any person of any age without reference to enrollment in an educational institution or status as a student-athlete.”\textsuperscript{85} Thus, “by referring to the receipt of benefits by any ‘individual,’ the regulations apply to a class broader than currently enrolled college athletes, including future college recruits.”\textsuperscript{86}

A small exception to the “No Agent Rule” is that the NCAA allows an individual to retain an advisor concerning a proposed professional sports contract without compromising his eligibility, but prohibits the advisor from representing a student-athlete in the negotiations without compromising his eligibility and makes no distinction between lawyers and non-lawyers.\textsuperscript{87} Also, like the regulations governing agency agreements and receipts of benefits, those governing legal counsel apply to student-athletes both before and after they enroll in college.\textsuperscript{88}


\textsuperscript{83} Id.

\textsuperscript{84} NCAA 2011-12 DIVISION 1 MANUAL § 12.3.1.

\textsuperscript{85} Id. at § 12.02.1.

\textsuperscript{86} Payne, \textit{supra} note 82, at 664.

\textsuperscript{87} Id. at 662-63 (citing NCAA bylaw 12.3.2).

\textsuperscript{88} Id.
When determining athlete-agent relationships and compliance, “the NCAA’s critical distinction is whether an individual serves merely as an ‘advisor’ or ‘represents’ the individual in negotiations, either by presence during contract negotiation or by active discussion.”99 However, it is safe to say that the one prohibition that student-athletes do understand is that they must not admit they have ever had impermissible contact with an agent.90 Furthermore, this understanding likely stems from the student-athlete’s continual guidance from the unethical agent who lured him away from and almost destroyed his amateur status.91

Regardless of the NCAA’s extensive regulations governing the conduct of agents, as an institution it suffers from inadequate resources and limited potential penalties which are obstacles frustrating effective enforcement.92 This lack of resources makes rules, like the “No Benefits Rule,” which deems an individual ineligible for NCAA competition for accepting “transportation or other benefits from . . [a]ny person who represents any individual in the marketing of his or her athletics ability; or [a]n agent,” even if the agent has indicated that he has no interest in representing the student athlete and does not represent others in the student-athlete’s sport.93 Through the use of the term “individual,” the rule applies to student-athletes prior to their enrollment in college making it impossible for prospective student-athletes to avoid sanctions for conduct during their recruitment if they were to employ the services of a Street Agent.94 The continuing problem, however, is that the applicable rules only punish the student-

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91 Id. at 152.
93 Id. at 663-64 (citing NCAA Bylaw § 12.3.1.2).
94 Id.
athlete and college institution rather than the third party who has wielded his powers of influence over the athlete and his family.\textsuperscript{95}

Provided the NCAA reforms the bylaws and continues to regulate third parties, it seems only logical that the relevant NCAA bylaws discussed above should be a deterrent and a resolution to the problems of third party influence over a prospective student-athlete’s recruitment. However, a fatal flaw to the bylaws is that the NCAA lacks jurisdiction as a private entity to regulate agents or third parties directly.\textsuperscript{96} Therefore, any penalties it imposes for violations of its bylaws fall disproportionately on the student-athletes and institutions, while the third party escapes the consequences of their actions.\textsuperscript{97} In essence, this lack of accountability by third parties gives them the power and confidence to extend the boundaries of recruiting procedures that have been traditionally respected. Because of this discrepancy in responsibility and accountability, Congress and state legislatures have enacted bills in an attempt to penalize improper agent activities.\textsuperscript{98}

**D. FEDERAL AND STATE REGULATION OF AGENTS:**

Historically, a state’s common law doctrines provided causes of action for student-athletes and educational institutions to bring against athlete-agents for their improper actions in dealing with athletes.\textsuperscript{99} However, because of a variety of countervailing forces and a reluctance to file suit, few civil actions against agents have been filed.\textsuperscript{100} Since the common law doctrines proved mostly ineffective in regulating an agent’s improper activities, states began enacting legislation to protect local universities and student-athlete residents, as well as, provide a more

\textsuperscript{95} \textit{Id.}
\textsuperscript{96} \textit{Id.}
\textsuperscript{97} Payne, \textit{supra} note 82, at 664.
\textsuperscript{100} \textit{Id.}
reliable enforcement mechanism.\textsuperscript{101} As of 2001, twenty-six states had enacted statutes imposing civil and criminal penalties for athlete-agent misconduct, with eleven of these states classifying all or some agent improprieties as a felony.\textsuperscript{102} Regardless of the well-founded intentions of the statutes, they placed a complex compliance burden on agents because the regulations’ lack of uniformity among the states created an atmosphere of non-compliance and non-enforcement.\textsuperscript{103}

The state statutes, by and large, covered many of the same subjects, but differed on important matters, such as the definition of “student-athlete,” what individuals were exempt from registration, registration and renewal procedures and fees, disclosure and education requirements, and the content, form, and timing of required notice to athletes and educational institutions by agents.\textsuperscript{104} Likewise, many state statutes came in direct conflict with the NCAA’s existing regulations, which terminated the few protections provided for student-athletes in the bylaws.\textsuperscript{105} Even with the growing awareness of agent misconduct and a developing body of law, situations of effective deterrence have been extremely rare.\textsuperscript{106} It is important to understand the attempts by Congress to combat the problems with improper agent conduct in order to gauge the inherent problems with regulating Street Agents.

\textsuperscript{101} Id. at 666 (citing Diane Sudia and Rob Remis, \textit{Athlete Agent Legislation in the New millennium: State Statutes and the Uniform Athlete Agents Act}, 11 Seton Hall J. Sport L. 263, 268-69 (2001)).

\textsuperscript{102} Id.


\textsuperscript{104} Id. at 667 (citing Timothy Davis, \textit{Regulating the Athlete-Agent Industry: Intended and Unintended Consequences}, 42 Williamette L. Rev. 781, 808 (2006)).

\textsuperscript{105} Id. (citing Diane Sudia and Rob Remis, \textit{Athlete Agent Legislation in the New Millennium: State Statutes and the Uniform Athlete Agents Act}, 11 Seton Hall J. Sport L. 263, 281 (2001)).

\textsuperscript{106} Id. (citing Willenbacher, \textit{supra} note 66, at 1237).
1. **Uniform Athlete Agents Act:**

In 1997, at the request of the NCAA, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) began developing a model uniform agent regulation.\(^{107}\) According to the NCAA’s official website, “[t]he Uniform Athlete Agents Act (“UAAA”) is a model state law that provides a means of regulating the conduct of athlete-agents.”\(^{108}\) The main regulations entail: “(1) prohibiting an agent from giving false or misleading information or promises with the intent to induce a student-athlete into signing an agency contract, (2) prohibiting an agent from furnishing anything of value to a student-athlete before signing a contract, (3) requirement of written notification to institutions when student-athletes sign an agency contract before their eligibility expires, and (4) requiring an agency contract to contain a notice informing student-athletes that signing a contract may cause them to become permanently ineligible for intercollegiate competition.”\(^{109}\) However, the paramount component of the act is the agent registration requirement, which eases the burden on the athlete-agent and creates efficiency by allowing a “reciprocal registration process in which a valid certificate of registration in one state will be honored in other states that have adopted the act.”\(^{110}\) In order to comply with the standardized registration requirement, a potential agent is required to disclose his or her “(1) training, experience, and education; (2) criminal history regarding felonies and crimes of moral turpitude; (3) legal history of false or deceptive representations; (4) previous

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\(^{109}\) *Id.*

\(^{110}\) *Id.*
denial, suspension, or revocation of licensure in any state; and (5) prior sanctions, suspensions, or declarations of student-athlete ineligibility.”

Currently, forty states have adopted the UAAA and are tasked with the enforcement of its provisions. The act provides for civil, criminal, and administrative penalties, while also creating “a right of action for a college or university against an agent or former student-athlete for any damages caused by a violation of the act.” Essentially, the UAAA seeks to promote voluntary compliance by agents through the establishment of a uniform scheme of state regulations. Also, “[i]t is the sense of Congress that states should enact the [UAAA] . . . to protect student-athletes and the integrity of amateur sports from unscrupulous agents.”

However, as the next section will demonstrate, the UAAA did not prove very beneficial to the regulation of athlete-agent improprieties, so federal regulation was created and it has shown that the problems inherent in legislating proper conduct among agents is often times difficult.

2. THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT:

In 2004, as a response to illegal and unethical agent actions, both the House of Representatives and the Senate introduced a bill to punish agents whom have acted unethically. The Sports Agent Responsibility and Trust Act (“SPARTA”) has three primary objectives. First, is establishes certain activities by agents relating to the signing of contracts with students-athletes, which is the true substance of the act because it defines the duties of

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111 Payne, supra note 82, at 668 (referencing Unif. Athlete Agents Act § 5(a)).
112 FAQ on UAAA, supra note 108.
113 Id.
114 Payne, supra note 82, at 667-68.
116 Willenbacher, supra note 66, at 1233.
118 Willenbacher, supra note 66, at 1234.
sports agents and prohibits certain types of conduct.\textsuperscript{119} Second, SPARTA treats violations of the Act as unfair or deceptive acts or practices of trade to be regulated by the Federal Trade Commission.\textsuperscript{120} Lastly, SPARTA’s third objective is to give institutions of higher learning and a state attorney general a cause of action rooted in federal law for damages caused by agents who violate the act.\textsuperscript{121} The authorized causes of actions allow a state attorney general to bring a civil action on behalf of a state’s population in federal court if a violation of the act “adversely affects the interests of the state’s residents.”\textsuperscript{122} Conversely, the act creates a federal cause of action for educational institutions when agent violations result in institutional expenses, “including NCAA penalties, disqualification, suspension, or restitution arising for institution-imposed penalties in expectation of NCAA compliance matters.”\textsuperscript{123}

Although a federal cause of action has been created, universities are less likely to utilize them because they wish to avoid engaging in publicly damaging civil suits.\textsuperscript{124} It has been asserted that the immense revenues from collegiate sports provide a strong incentive for universities to keep NCAA violations out of the public’s purview.\textsuperscript{125} To strengthen the incentive for universities to forego suing an agent and cover up the improper conduct, an agent may be judgment proof, in that he does not have the funds to pay an extensive judgment.\textsuperscript{126} And, further, the reputation of the university may be destroyed along the way.\textsuperscript{127} Some commentators have suggested that “[l]egal action . . . could make a philosophical statement that universities are

\textsuperscript{119} Id.; See S. 1170, 108th Cong. § 3 (2003); H.R. 361, 108th Cong. § 3 (2003).
\textsuperscript{122} Payne, supra note 82, at 671 (referencing 15 U.S.C. § 7804(a)).
\textsuperscript{123} Id.; 15 U.S.C. § 7805(b).
\textsuperscript{124} Willenbacher, supra note 66, at 1246-47.
\textsuperscript{125} Id. at 1246.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
more concerned with operating a business than educating their student-athletes.”

Undoubtedly, universities and their college football programs do not wish to intentionally place their institutional problems in the public spotlight.

Through the establishment of federal causes of action, Congress has specifically made certain unethical agent actions illegal and subject to scrutiny, not only by the under-resourced NCAA, but from the fully-resourced federal government. Although SPARTA does not specifically address student-athlete and agent actions while currently enrolled in an educational institution of higher learning, the act can be used as an example in addressing the need for regulation over Street Agents whom use unethical and potentially illegal practices to benefit from a high school athlete’s ability to compete at the collegiate level.

III. PROPOSED REGULATIONS AND AMENDMENTS:

As established throughout this article, the NCAA suffers from a lack of requisite manpower and regulations to combat the emerging problems with Street Agents in college football recruiting. Therefore, any proposed alteration to the NCAA’s Bylaws requires consideration of these facts. However, as Jim Delany, the Commissioner of the Big Ten Conference and former NCAA investigator, has stated, “[w]hat I would say on any third-party issue is that the analysis in my view, whether you’re an assistant coach, president or a booster or a parent, is that there ought to be accountability. . . [t]here ought to be consequences.”

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128 Id. at 1247 (citing Kevin Stangel, Protecting Universities’ Economic Interest: Holding Student-Athletes and Coaches Accountable for Willful Violations of NCAA Rules, 11 Marq. Sports L. Rev. 137, 139 (2000) (discussing how NCAA violations severely damaged the reputation of the University of Minnesota in the eyes of the public and legislature according to the chairwoman of the Higher Education Finance Committee in Minnesota)).

NCAA’s issues of non-enforcement and lack of accountability must be addressed in order to regain the reputation of fairness and accountability in college football recruiting.

A. **PROPOSED AMENDMENTS TO SPARTA:**

Recently, it has been argued that since SPARTA is the only federal regulation directly addressing the activities of agents, it should be extended to encompass more individuals and more third party actions. Pursuant to § 7801(2), “Athlete Agent” is defined as “[an] individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.” Based on the recent Cecil Newton and Willie Lyles situations, this definition needs to be expanded to include any person who is found to have an influence on the prospective student-athlete, regardless of an agency contract. Since the determining factor is the solidification of an agency contract under SPARTA, college institutions and a state attorney general do not have a federal cause of action against a Street Agent who is representing his or her own self-serving interests by either receiving payments or preferential treatment from college football programs. The thrust of the amendment should include anyone found to have used the talents of a prospective student-athlete to receive any benefit, whether it is monetary or not. Therefore, the amended definition of “Athlete Agent” should be:

Any individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract with a student athlete.

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133 *Restatement (Second) of Agency* § 1 (1958).
contract, and does not include including any spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization if found to be utilizing the talents of the student athlete for their own personal gain, regardless of an agency contract, whether it be monetary or for the receipt of preferential treatment in any form.134

This amendment is possible because the impediment to regulation is not the definition of “student-athlete,” which is “an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport,”135 it is, however, that the act requires the actions of an agency contract or the solicitation or recruitment of an agency contract.136 In reality, the student-athletes likely do not know that their “non-scholastic” 7-on-7 coach or any other third party is benefiting from their talents. SPARTA, as it is currently enacted, does not provide a remedy for the institutions and states in which the Street Agents practice their unethical behavior. Without this amendment, third party improprieties in college football recruiting will continue to morph into the character of AAU basketball because the NCAA lacks the jurisdiction to penalize these individuals.137 Third party actions, therefore, should be the intended focus of this statute.138

B. AMENDMENTS TO NCAA BYLAWS:

Suppose, for the sake of argument, that Cam Newton was aware of his father’s role in the pay-for-play scheme with Mississippi State University.139 Should he be penalized by the NCAA based only on his knowledge of his father’s actions?140 The answer to the question is a

134 15 U.S.C. § 7801(2) (changes were made by the author).
135 Id. at § 7801(9) (emphasis added).
137 Heitner & Levine, supra note 15, at 366.
138 Id.
139 Id.
140 Id.
resounding “NO!” The determination should not be based solely on knowledge because this could be easily circumvented by a quick denial. Instead, the penalty should be based on the intended purpose of the actions because “purpose triggers penalization of the third party seeking to profit off the athlete.” Additionally, “[i]f a university acquiesces and provides the third party with compensation or engages in any type of negotiation regarding compensation, then that institution should also be penalized. So, then, how is it logical to punish the student-athlete by terminating his eligibility when a third party, unbeknownst to him, actively solicits and shops him around to college football programs for personal gain?

Because of the discrepancy in punishment for improper third party activities (third parties do not get punished while the student-athlete and a college football program does), NCAA Bylaw § 12.3.3 titled “Athletics Scholarship Agent” needs to be broadened to include all types of third parties, mainly family members and Street Agent types. The bylaw states that “[a]ny individual, agency or organization that represents a prospective student-athlete for compensation in placing the prospective student-athlete in a collegiate institution as a recipient of institutional financial aid shall be considered an agent or organization marketing the individual's athletics ability or reputation.” The ideal amendment to this bylaw would be to include language that would encompass a third party’s receipt of any benefit without a requirement that it take the form of “compensation.” Therefore, an all encompassing amendment to Bylaw 12.3.3 would state that an “Athletics Scholarship Agent” is:

“All individual, agency or organization, including but not limited to family members, coaches or trainers, that represents a prospective student-athlete in..."
exchange for any monetary or influential benefit in placing the prospective student-athlete in a collegiate institution as a recipient of institutional financial aid shall be considered an agent or organization marketing the individual’s athletics ability or reputation.”\textsuperscript{147}

Therefore, “[b]roadening the bylaw's language to include any individual associated with a prospective student-athlete makes sense . . . because it harmonizes this vague area of NCAA recruiting with language as it pertains to recruitment in men's basketball.”\textsuperscript{148} Men’s basketball has a broader definition because of the inherent improprieties with college basketball’s recruiting landscape, which are currently appearing in college football recruiting.\textsuperscript{149} The NCAA, however, has taken note of the need to amend its definition of “agent” and has a proposal nearing approval that will expand the definition to include “anyone who benefits from a college athlete turning pro or even enrolling at a particular school.”\textsuperscript{150} Ultimately, the NCAA will need to enact the proposal and reform its regulations addressing third party improprieties in college football recruiting, and an all encompassing definition will not allow the Street Agent to avoid punishment.

C. STATE ATHLETIC ASSOCIATIONS EXTENDING JURISDICTION:

Since the NCAA lacks the jurisdiction and resources to regulate non-scholastic football competitions,\textsuperscript{151} the individual state athletic associations should create rules that are designed to eliminate the ability of Street Agents to gain influence over student-athletes. In essence, this could be considered an extension of the NCAA’s jurisdiction because it will seek to eliminate the

\textsuperscript{147}NCAA 2011-12 DIVISION I MANUAL § 12.3.3 (emphasis was added by author).


\textsuperscript{149}Id.


\textsuperscript{151}Payne, supra note 82, at 662-63 (citing Steve Yanda, Laws Restricting Improper Agent Contact with NCAA Athletes Seen as Ineffective, THE WASHINGTON POST (July 23, 2010), available at http://www.washingtonpost.com/wp-dyn/content/article/2010/07/22/AR2010072205898.html)).
arenas in which these third parties operate. As a general rule, courts are hesitant to interfere with the internal affairs of a voluntary association and “the decisions of the tribunals of an association with respect to its internal affairs will, in the absence of mistake, fraud, illegality, collusion, or arbitrariness, be accepted by the courts as conclusive.”\textsuperscript{152} Therefore, voluntary associations, such as high school athletic associations, are free to establish and enforce their own rules.\textsuperscript{153} The National Federation of State High School Association (NFHS) consists of a membership including fifty state associations plus the District of Columbia.\textsuperscript{154} The NFHS “publishes playing rules in 16 sports for boys and girls competitions”\textsuperscript{155} for its member associations to follow.

The proper course, therefore, would be for the NFHS to endorse, and the individual state athletic associations promulgate and enforce, a rule which requires that any participation in non-scholastic competitions (i.e. 7-on-7 competitions) take place on a member institution’s campus and under the direction of the member institution. Additionally, the rule should be extended to require that the summer competitions only involve high school teams consisting of players selected from their current roster. The language of this rule would eliminate colleges from hosting these events and would help to alleviate the situations (i.e. camps and competitions) in which Street Agents thrive. Third parties in summer competitions are a recent phenomenon in college football recruiting and NCAA President Mark Emmert has stated that “passing new rules alone doesn’t fix any of these problems. . . [w]e need to work with our coaches, our ADs, our student leaders—all those people who understand how these issues play out on the ground so that

\begin{footnotes}
\item[\textsuperscript{152}] 6 Am. Jur. 2d Associations and Clubs § 27 (2011).
\item[\textsuperscript{153}] See generally id.
\item[\textsuperscript{155}] Id.
\end{footnotes}
we don’t just change a rule but change behavior."\textsuperscript{156} It is my opinion that the state athletic associations are in the best position to regulate these activities because they are more familiar with how “these issues play out on the ground.”\textsuperscript{157} Although there is no legal authority or scholarship as it pertains to the issue of state athletic association rules in this new area of high school football, the commentary on the part of the NCAA and various news outlets about the prevalence of third party involvement in college football recruiting makes the need for these types of rules greater.

IV. \textbf{CONCLUSION:}

As shown throughout this work, college football recruiting is big business and success in this area means more money and a better reputation within the college football community. Currently, the NCAA, federal and state government lack the appropriate legislation to combat the problems of third party influence in college football recruiting. Street Agents have turned what was once a respectable and routine practice of college coaches influencing prospective student-athletes to signing a letter of intent to play for a football program into a blossoming industry crowded with the receipt of improper benefits for loyalty to a program. It should come as no surprise that the winners and losers in these transactions are inverted, with the student-athletes and college football programs having all the liability for the actions of third parties.

High school football camps should not harbor these individuals. The competitions must begin to regulate themselves in order to restore what little respect they once had within the college football recruiting community. However, as shown in this work, the ability of the NCAA to regulate them is virtually non-existent because of a lack of jurisdiction over these individuals.

In order for the NCAA to not completely lose a foothold over the non-scholastic 7-on-7 circuit,


\textsuperscript{157} See generally id.
as they essentially have in AAU basketball; swift steps must be taken to amend the current bylaws. College football prides itself on a foundation of amateurism, where those fortunate to have the necessary skills to get offered a scholarship for an education, a position on a team, and all the while being allowed to showcase their talent to the world. But, as a consequence of the proliferation of Street Agents, college football recruiting is facing the same issues inherent with college basketball recruiting. It is the opinion of this author that if new legislation is not enacted or current legislation amended, the sport we all love, and everything inherently American about it, will evaporate before our very eyes.