The NBA's "One-and-Done" Rule: Procompetitive Justifications and Anticompetitive Effects

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INTRODUCTION

In 2005, the National Basketball Association (NBA) implemented a rule

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prohibiting players from entering the League directly after high school. To be eligible to join the NBA, players need to meet two conditions: (1) at least one year must have elapsed since they graduated high school, and (2) they must be 19 years old or must turn 19 the year they enter.[1] This rule,[2] often termed the "One-and-Done" Rule, was first enacted in advance of the 2006 NBA draft. The most talented high school athletes tend to compete in National Collegiate Athletic Association (NCAA) basketball until they are eligible to play professionally, although a few alternative options do exist. To fully understand the anticompetitive and procompetitive effects of the One-and-Done Rule, this Article will examine the justifications and consequences of the rule under a full-rule-of-reason approach that courts may take if the legality of the rule were to be litigated.[3] The following analysis demonstrates that, on balance, the rule has salient anticompetitive effects on the market for talented young basketball players, and may violate antitrust laws.

I. MODELING THE MARKET: MONOPSONY AND ANTITRUST LAW

The NBA has a monopsony—it is the only employer—in the market for professional basketball players in the United States. Similarly, the NCAA dominates the market for basketball players their first year out of high school. Alternatives to playing college ball are very few, quite new, and not as popular. The Supreme Court has recognized as much:

> [T]he NCAA uses its monopsony power to 'cap artificially the compensation offered to recruits'. . . . [thereby] depressing wages below

1. Before this rule was enacted, star players tended to go straight from high school to the NBA. From 1974 to 2005, over 40 high school players were drafted without having gone to college. Since 2005, however, many of the most well-known college basketball players have, instead, been "One-and-Done." *See Colin* A. Zestcott, Jessie Dickens, Noah Bracamonte, Jeff Stone & C. Keither Harrison, *One and Done: Examining the Relationship Between Years of College Basketball Experience and Career Statistics in the National Basketball Association*. 44 J. SPORT & SOC. ISSUES 299, 301 (2020).

2. *See* NATIONAL BASKETBALL ASSOCIATION & NATIONAL BASKETBALL ASSOCIATION PLAYERS' ASSOCIATION, COLLECTIVE BARGAINING AGREEMENT Art. X § 1(b)(i) (Jan. 19, 2017), https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf ("The player (A) is or will be at least nineteen (19) years of age during the calendar year in which the Draft is held, and (B) . . . at least one (1) NBA Season has elapsed since the player's graduation from high school (or, if the player did not graduate from high school, since the graduation of the class with which the player would have graduated had he graduated from high school").

3. Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2151 (2021). ("This Court has long recognized that in view of the common law and the law in this country when the Sherman Act was passed, the phrase 'restraint of trade' is best read to mean 'undue restraint.' Determining whether a restraint is undue for purposes of the Sherman Act presumptively calls for what we have described as a rule of reason analysis. That manner of analysis generally requires a court to conduct a fact-specific assessment of market power and market structure to assess a challenged restraint's actual effect on competition. Always, the goal is to distinguish between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest.") (Citations and quotation marks omitted).

> competitive levels and restricting the quantity of student-athlete labor. . . . [the NCAA's] member schools compete fiercely for student-athletes but remain subject to NCAA-issued-and-enforced limits on what compensation they can offer. Put simply, this [amounts to] admitted horizontal price fixing in a market where the [NCAA] exercise[s] monopoly control. [I]ts restraints can (and in fact do) harm competition. . . . student-athletes have nowhere else to sell their labor.[4]

The One-and-Done Rule can be understood as creating, between what were formerly horizontal competitors, a monopsony for the NCAA over players aged 18 who graduated from high school. It creates a scheme in which the NBA and NCAA no longer compete for the same players out of high school for which they had competed before. The NCAA, with this monopsony power, limits the maximum compensation that players can receive from their schools to "grant-in-aid," which includes tuition, fees, room, board, course-related books and other expenses up to the value of the full cost of attendance.[5] Only after their first year of college, when a player becomes eligible for the NBA, do they have the additional choice of declaring for the NBA draft.

On the surface, this arrangement appears vulnerable to antitrust scrutiny. The Sherman Antitrust Act prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations," as well as behaviors that "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce."[6] Both horizontal and vertical restraints are subject to antitrust laws.[7]

Despite antitrust law's seeming prima facie application to restraints of trade like the One-and-Done Rule, courts have tended to exempt professional sports league eligibility requirements—both in the NBA and in other leagues—from antitrust oversight. Professional football provides an analogous case study. In *Clarett v. National Football League*,[8] the Second Circuit heard an appeal from Maurice Clarett, a former Ohio State University running back and 2002 Big Ten Freshman of the Year, who challenged the NFL's rule requiring prospective draftees to wait three years after high school before becoming eligible. Clarett argued that the rule was an unreasonable restraint of trade and forced him to miss lucrative years of professional competition or risk a career-compromising injury during the pendency of his three-year wait.

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4. *Id*. at 2152-56 (internal citation omitted). In *Alston*, the Court unanimously held that the NCAA's restrictions on student-athlete compensation violated §1 of the Sherman Act. The current maximum compensation—"grant-in-aid"—is a result of the Court's decision in *Alston.*

5. *Id*. at 2144.

6. 15 U.S.C. §§ 1, 2. The One-and-Done Rule may seem to fall within the purview of Section 1.

7. NCAA v. Bd. of Regents of the Univ. of Okla. and Univ. of Ga. Athletic Ass'n, 468 U.S. 85 (1984).

8. 369 F.3d 124 (2d Cir. 2004).

The U.S. District Court for the Southern District of New York awarded Clarett summary judgment and concluded he was eligible for the draft. The court found Clarett had standing because an "inability to compete in the market" was sufficient injury. It applied the quick look analysis[9] because it deemed the eligibility requirements blatantly anticompetitive.[10] The district court rejected the NFL's argument that the eligibility rules were exempt from antitrust laws due to a non-statutory labor exemption, as they were "1)[] not mandatory subjects of collective bargaining, 2) affect[ed] only 'complete strangers to the bargaining relationship,' and 3) were not shown to be the product of arm's-length negotiations between the NFL and its players union."[11]

The Second Circuit reversed. It held that NFL clubs can act jointly to set employment terms and conditions without violating antitrust law, given that federal law protects and promotes collective bargaining.[12] Of relevance to the court's decision, the three-year rule was the result of a collective bargaining agreement between the NFL and its Players' Association. "[I]n the context of sports leagues . . . multi-employer bargaining units serve the additional, important purpose of allowing the teams to establish and demand uniformity in the rules necessary for the proper functioning of the sport."[13] The court understood collective bargaining agreements by the Players' Union to legally "advantage certain categories of players over others, subject of course to the representative's duty of fair representation."[14] The eligibility rules are "mandatory bargaining subjects" because they are literal conditions for employment and "have tangible effects on the wages and working conditions of current NFL players."[15] The eligibility rule—a restraint on the market for entering players—was enmeshed in the broader context of collective bargaining in which, "by reducing competition in the market for entering players, the eligibility rules also affect the job security of veteran players."[16] Therefore, the

9. Courts employ a quick look analysis to restraints that, although not per se illegal, appear to be prima facie anticompetitive. In California Dental Ass'n v. FTC, 526 U.S. 756, 770 (1999), the Supreme Court held that quick look analysis is appropriate where "an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on customers and markets."

10. Clarett v. Nat'l Football League, 306 F. Supp. 2d 379, 408 (S.D.N.Y.), *rev'd in part, vacated in part*, 369 F.3d 124 (2d Cir. 2004) ("The Rule is the perfect example of a policy that is appropriately analyzed under the 'quick look' standard because its anticompetitive effects are so obvious. Indeed, one can scarcely think of a more blatantly anticompetitive policy than one that excludes certain competitors from the market altogether. Because the Rule has the actual anticompetitive effect of excluding players—including Clarett—from the NFL, it is a naked restriction. Clarett has therefore established a prima facie violation of section 1 of the Sherman Act.").

11. Clarett v. Nat'l Football League, 369 F.3d 124, 129 (2d Cir. 2004).

12. *Id*. at 130-1.

13. *Id*. at 136.

14. *Id*. at 139.

15. *Id*. at 139-40.

16. *Id*. at 140.

court held that federal labor laws' application to these eligibility rules precludes them from antitrust scrutiny.[17]

Since the NBA and the NBA Players' Union are both headquartered in New York, this precedent binds the League. This would appear to suggest that antitrust enforcement against the NBA's rule is foreclosed because the One-and-Done Rule and rookie salary scale (which determines rookie contract prices) are both housed in the collective bargaining agreement. The *Clarett* decision falls in line with key Supreme Court antitrust precedent shielding restrictions on competition from antitrust scrutiny when they also affect labor. In *Local Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co.*, the Supreme Court found non-statutory labor exemptions for otherwise anticompetitive behavior because the company's conduct fell within the definition of "conditions of employment."[18] The rule emanating from this decision is crucial: labor concerns can override antitrust ones and exempt from antitrust law conduct that is otherwise anticompetitive, including when a union collaborates against potential employees.

The Supreme Court applied this rule to professional sports leagues in *Brown v. Pro Football, Inc.*[19] Here, the Court ruled that the non-statutory labor/antitrust exemption applies "to an agreement among several employers bargaining together to implement after [bargaining to an] impasse the terms of their last best good-faith wage offer."[20] The Eighth Circuit, however, commented that "the scope of the non-statutory exemption" that the Court applied to professional sports leagues in *Pro Football* "remain[s] unsettled, so antitrust lawsuits . . . continued to be part of the labor relations landscape when a CBA [Collective Bargaining Agreement] between the NFL's member teams and the NFLPA [National Football Player's Association] expired and bargaining over a new CBA reached an impasse."[21]

Even though the legal landscape is unclear at best (or realistically may foreclose successful antitrust claims) this Article analyzes the procompetitive justifications and anticompetitive effects of the One-and-Done Rule as if it were being litigated on its merits. The Rule merits antitrust scrutiny because of the magnitude of its anticompetitive and procompetitive effects, and this scrutiny is the only way to determine whether the rule is truly beneficial to the NBA and its players. If the scope of the non-statutory labor exemption is truly unclear, as

17. *Id*. at 143 ("This lawsuit reflects simply a prospective employee's disagreement with the criteria, established by the employer and the labor union, that he must meet in order to be considered for employment. Any remedies for such a claim are the province of labor law. Allowing Clarett to proceed with his antitrust suit would subvert 'principles that have been familiar to, and accepted by, the nation's workers for all of the NLRA's [sixty years] in every industry except professional sports.'") (internal citation omitted).

18. 381 U.S. 676, 691 (1965).

19. 518 U.S. 231, 238 (1996).

20. *Id*.

21. Eller v. Nat'l Football League Players Ass'n, 731 F.3d 752, 755 (8th Cir. 2013).

the Eighth Circuit suggests, there may be an opening for courts to apply antitrust scrutiny to the One-and-Done Rule. If not, this Article demonstrates the anticompetitive effects and harms of the One-and-Done Rule that courts have allowed to occur in the market by granting the non-statutory labor exemptions.

II. ANTICOMPETITIVE CONSEQUENCES OF THE ONE-AND-DONE RULE

A. Benefits for the NCAA: Undercompensated Labor and Talent without Competition with the NBA

The One-and-Done Rule serves to greatly benefit the NCAA because the NCAA can attract (and profit from) talented athletes who otherwise may have elected to skip collegiate sports and go straight to playing professionally. The One-and-Done Rule creates a window where professional leagues cannot compete with colleges for young talented athletes. Instead, colleges and universities only compete against each other in a system where payment beyond full cost of attendance is impermissible. Thus, the NCAA and its member colleges can expend far fewer resources to try to attract the most talented high school players.

This is anticompetitive because the One-and-Done Rule increases the quality of one of the inputs to college basketball—the labor of the players—without a corresponding wage increase, because the players' wages in college basketball are fixed.[22] While it is not per se anticompetitive to increase the quality of an input without increasing the payment to an input,[23] in this case the rule increases the gap between the value of what the players produce and their compensation. This is because the quality of the labor input—basketball players—can and often does directly affect basketball revenue at the individual school and NCAA levels due to an increase in ticket prices and donations, as well as improving the quality of college applicants and basketball recruits in following years.[24] Thus, colleges and the NCAA are likely producing better products (for

22. *See* Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2154 (2021) (the "NCAA [does not] dispute that its member schools compete fiercely for student-athletes but remain subject to NCAA-issued-and-enforced limits on what compensation they can offer. …No one disputes that the NCAA's restrictions *in fact* decrease the compensation that student-athletes receive compared to what a competitive market would yield.").

23. The effect of such a quality change may depend on demand and supply conditions or the relationship between input and potential output(s).

24. Andrew Zimbalist, *Analysis: Who is winning in the high-revenue world of college sports?*, PBS (March 18, 2023), https://www.pbs.org/newshour/economy/analysis-who-is-winning-in-the-high-revenue-world-of-college-sports; Carter Coudriet, *How Hoops Success Helps Colleges Get Applicants*, FORBES (April 3, 2018), https://www.forbes.com/sites/cartercoudriet/2018/04/03/how-hoops-success-helps-colleges-get-applicants/?sh=73f715f71354 ; The Data Team, *Colleges receive more applications when their basketball teams do well,* FORBES (March 26, 2018), https://www.economist.com/graphic-detail/2018/03/26/colleges-receive-more-applications-when-their-basketball-teams-do-well; Richard Borghesi, *The Financial and Competitive Value of NCAA Basketball Recruits*, J. SPORTS ECON., *19*(1), 31–49 (2018).

higher prices or future benefits) without compensating the players responsible for that increase in quality. Therefore, the rule is anticompetitive because the quality of one of the inputs (labor of players) is increasing while compensation is remaining as it was when the inputs were of lower quality.

B. Benefits for the NBA: Free Vetting and Exposure without Compensation

The NBA also enjoys significant benefits from the One-and-Done Rule because players who are forced to spend time playing in the NCAA are vetted and tested by the competition, while also improving their skills via training. This reduces the NBA's investment costs. The players also gain popularity in the NCAA, which reduces the NBA's marketing costs and increases its viewership:

> Not only does the NBA pay not a dime in player development, it has always benefitted enormously from the fact that its best players were already household names by the time they were drafted. It costs the NBA nothing to wait another year or two to get the players and works much to their advantage if they're even more famous when they put on an NBA uniform. After all, the boom era of the NBA began in 1978 when Magic Johnson and Larry Bird were drafted, respectively, by the rival LA Lakers and Boston Celtics—after having faced each other in the highest-rated NCAA final up to that time between Michigan State and Indiana State.[25]
>
> In return for providing colleges with a labor force that is willing to work without pay, the professional leagues secure free employee training. They do not have to fund extensive development leagues, such as those that exist in baseball and ice hockey.[26]

The NBA basically admitted as much in a 2009 letter to Congress when then-NBA president Joel Litvin wrote that business interests motivated instituting the One-and-Done Rule, noting that it "increase[es] the chances that incoming players will have the requisite ability, experience, maturity and life skills"[27] to perform at a high level. The Rule, he explained, helps teams make informed hiring decisions because players have an extra year to mature and develop, increasing the odds they can successfully handle the challenges of playing in the NBA.[28]

Meanwhile, rookie contracts for the first-round draft picks are not

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25. Allen Barra, *Both the NBA and the NCAA Want to Keep Athletes in College for Too Long*, ATLANTIC (Apr. 6, 2012), https://www.theatlantic.com/entertainment/archive/2012/04/both-the-nba-and-the-ncaa-want-to-keep-athletes-in-college-for-too-long/255535.

26. Allen R. Sanderson & John J. Siegfried, *The National Collegiate Athletic Association Cartel: Why it Exists, How it Works, and What it Does*, 52 REV. IND. ORGS. 52, 185, 197 (2018).

27. Associated Press, *NBA Defends Age Limit to Congress*, LEDGER (July 21, 2009, 2:09 AM), https://www.theledger.com/story/news/2009/07/21/nba-defends-age-limit-to/8007294007 (quoting Litvin).

28. *Id.* (summarizing)

negotiated by incoming players and are not adjusted to the skill of the draft pool; rather, they are set in advance.[29] Hence, as a result of the One-and-Done Rule, the NBA is getting a "better" pool of athletes than it otherwise would without paying for that benefit unless it increased the rookie salary when the One-and-Done rule was instituted. Players who are selected in the first round of the NBA draft are given four-year contracts, the first two years of which are fully guaranteed (the player will receive the agreed-to compensation over the term of the contract), while the third and fourth years are options (an option for the team to extend the contract to a third and fourth year).[30] Second-round draft picks and undrafted free agents can sign one-to-four-year contracts of any negotiated amount with guaranteed or unguaranteed options. The value of a rookie contract is derived from both the "salary cap" for the season, which is the total amount that a NBA team can spend on all their players combined that season, and the spot in which the player is drafted.[31] The dollar amount for each of the first-round picks is fixed, but the drafted rookies can sign for between 80-120 percent of that amount; almost always, the contracts are signed for 120 percent.[32] Third and fourth contract years are options.

Because first-round picks' salaries are set by a scale negotiated by the NBA and the Players' Union, which consists of current players (not future rookies),[33] current players may be happy to limit what rookies get because the salary caps apply to entire teams, not just incoming draft picks. Although the rookie players will eventually be under the protection of the Union once they are drafted, the rookies' wages are the result of their lack of bargaining power.

Because the salary cap is a fixed percentage of the NBA's revenue,[34] the payment to players reflects NBA revenue. However, wages—while the best measure of the value the NBA has for its players[35]—may not reflect the One-and-Done Rule's effects because the CBA is not renegotiated every year.[36] Thus,

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29. NATIONAL BASKETBALL ASSOCIATION & NATIONAL BASKETBALL ASSOCIATION PLAYERS' ASSOCIATION, COLLECTIVE BARGAINING AGREEMENT Exhibit B-1 (Jan. 19, 2017), https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf.

30. *Id*. at Art, VII § 1(a).

31. *Id*. at Art. VII § 2(a)(1).

32. *Id*. at Art. VIII § 1(c)(i).

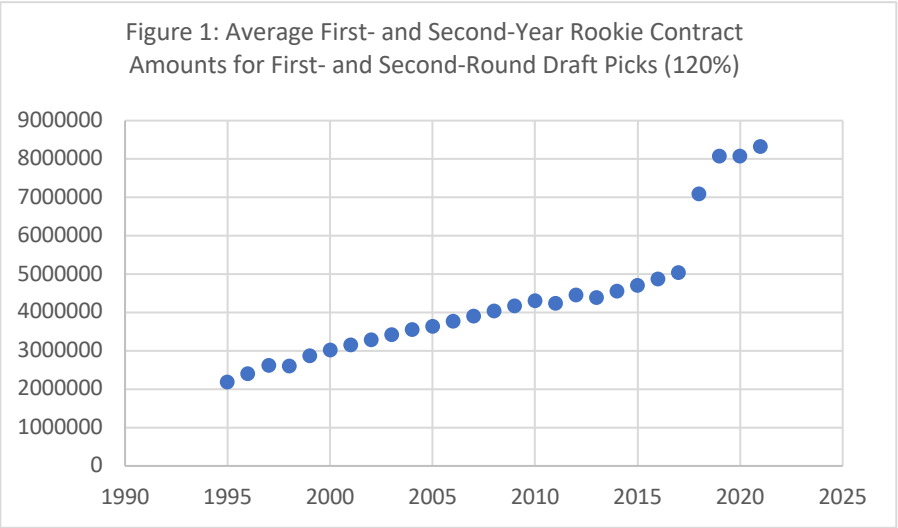
33. *Id*. at Exhibit B-1.

34. *Id*. at Art. VII § 2(a)(1) ("[T]he Salary Cap for each Salary Cap Year covered by the Term of this Agreement will equal forty-four and seventy-four one hundredths percent (44.74%) of Projected BRI [Basketball-Related Income] for such Salary Cap Year, less Projected Benefits for such Salary Cap Year, divided by the number of Teams scheduled to play in the NBA during such Salary Cap Year, other than Expansion Teams during their first two (2) Salary Cap Years in the NBA.").

35. Wages are the best estimation of value because one would expect the contract to which the NBA agrees to reflect the value it has for its players.

36. The 2005 CBA capped player salaries at 57 percent of Basketball-Related Income (BRI). The 2011 CBA set the 2011-2012 salary cap at 51.5 percent of BRI and 49-51 percent of BRI in subsequent years.

wages don't increase in response to an increase in labor quality because the Collective Bargaining Agreement sets wages in advance by capping salaries as a percentage of revenue. The NBA implemented a rule that would increase player quality while also holding wages fixed. Below is a graph of the average first- and second-year rookie contract amounts for first-and second-round draft picks from 1995-2021.[37] The last few years of the graph depict a departure from the decades' prior steady increase due to increased revenue.



Because the One-and-Done Rule is valuable to the NBA in terms of increasing the quality of the players, one would expect to see a corresponding jump in rookie contract prices in 2006, the first draft in which the Rule took effect, or shortly after due to a lag in response or delay until the next CBA was renegotiated, rather than the steady increase that corresponds to year-over-year revenue[38] increases. But, contrary to expectation, there is not an increase in wages. Hence, because the One-and-Done Rule increases the quality of the rookie players without any corresponding competitive increase in wages, the One-and-Done Rule is anticompetitive in this respect.

C. Risks for Players

The top high school players—when forced to delay entering the NBA due to the One-and-Done Rule—incur risks without compensation in addition to

37. *NBA 2006-2007 Rookie Scale*, SPOTRAC (2023), https://www.spotrac.com/nba/cba/rookie-scale/2006.

38. *National Basketball Association Total League Revenue From 2001/02 to 2021/22*, STATISTA (2023), https://www.statista.com/statistics/193467/total-league-revenue-of-the-nba-since-2005/ (year-over-year revenue steadily increases from 2001-02 season to 2009-20 season; major revenue increases begin in 2016-27 but are sporadic).

forgoing the chance to play professionally and that year of NBA salary. Players will have one less year of earning potential and lose a year of more advanced coaching at the professional level. For players from low-income families, this delayed or lost year of NBA play means "some of these players have to watch their families struggle financially for a year while they serve time at a college program they'd rather have skipped in the first place."[39] They also assume a significant risk of injury that wouldn't have the same detrimental effects if they were already being in the NBA when the injury occurred. Players who are ranked at the top of their high school classes and would be drafted first in the NBA have nothing to gain by playing in the NCAA for a year, but they face enormous risks. A significant injury while playing in college could alter or completely eliminate the player's chances of reaching the NBA. For example, Nerlens Noel was the #1 recruit in his high school class of 2012.[40] If he had gone straight to the NBA, he was expected to be the #1 pick, but he tore his ACL in his only season at Kentucky[41] and dropped to the 6th NBA 2013 draft pick, impacting his salary and potentially entire career. Noel represents just one warning of the substantial financial and health risks faced by elite players while in college.

D. Disproportionate Racial Consequences

Although the One-and-Done Rule, and similar WNBA and NFL rules which require a player to be three years out of high school before being eligible to play, do not explicitly contemplate race, they have disproportionate racial effects. "The only three major pro leagues that require players wait a period of time after high school before becoming eligible are also the only three African-American majority leagues (the NBA, WNBA and NFL)."[42] An examination of players who went straight to the NBA from high school between 1998 and 2005 reveals a dramatic racial impact of the One-and-Done Rule: of the thirty-four players drafted straight from high school, only one was white; 97 percent were people of color, the vast majority Black or African American.[43] While disparate

39. Grant Hughes, *Why the NBA's 1-and-Done Rule Is Causing More Harm Than Good*, BLEACHER REPORT (Aug. 8, 2013) https://bleacherreport.com/articles/1723163-why-the-nbas-one-and-done-rule-is-causing-more-harm-than-good.

40. *Recruiting Services Consensus Index (RSCI) Rankings – 2012,* BASKETBALL REFERENCE, https://www.basketball-reference.com/awards/recruit_rankings_2012.html.

41. Jonathan Wasserman, *There Are Only Losers in Wake of Nerlens Noel Injury*, BLEACHER REPORT (Feb. 13, 2013) https://bleacherreport.com/articles/1527573-there-are-only-losers-in-wake-of-nerlens-noel-injury.

42. Michael McCann, *Examining What a Change to the NBA's One-and-Done Rule Could Mean for All Involved*. SPORTS ILLUSTRATED (Mar. 3. 2019), https://www.si.com/nba/2019/03/03/legal-analysis-change-age-eligibility-rule-one-and-done.

43. *Recruiting Services Consensus Index (RSCI) Rankings*, BASKETBALL REFERENCE, https://www.basketball-reference.com/awards/recruit_rankings_1998.html The players were as follows: 1998: Al Harrington, Rashard Lewis, Korleone Young; 1999: Jonathan Bender, Leon Smith; 2000: DeShawn Stevenson, Darius Miles; 2001: Eddy Curry, Tyson Chandler, Kwame Brown, DeSagana Diop; 2002: Amar'e Stoudemire; 2003: LeBron James, Ndudi Ebi, Kendrick Perkins, Travis Outlaw, James Lang; 2004: Dwight Howard, Shaun Livingston, Al Jefferson, Josh

racial impacts are not anticompetitive in and of themselves, anticompetitive consequences that fall inequitably on players of color perhaps should be considered more egregious.[44] These anticompetitive harms disproportionately impact young players of color, which is a factor antitrust law does not account for, as it considers impacts on only the collective consumer welfare.[45]

III. PROCOMPETITIVE BENEFITS OF THE ONE-AND-DONE RULE

Three of the following four argued procompetitive justifications for the One-and-Done Rule—solving the lemons problem, increasing the quality of players and therefore basketball, and the preservation of amateurism—concern out-of-market benefits and would likely be discounted if an examining court closely adhered to the principle set out in *Topco* and *Philadelphia National Bank* that to be considered procompetitive, benefits must accrue to the market itself, rather than other markets.[46]

A. The Lemons Problem

One procompetitive justification for the One-and-Done Rule is that it allows a more standardized assessment of the quality of players in the NCAA. This is especially important because it is hard to compare high school players playing amongst wildly varying levels of competition.[47] This theory would suggest that making players wait one year (to play in college most likely, or elsewhere) facilitates the acquisition of more information for NBA teams and scouts. In other words, the rule could solve what is known, in economics parlance, as the "lemons problem"[48] by forcing players to take a year after high school to test out or "signal" their quality.

Smith, Sebastian Telfair, J.R. Smith, Dorell Wright, Robert Swift; 2005: Monta Ellis, Martell Webster, Lou Williams, Andrew Bynum, C.J. Miles, Amir Johnson, Gerald Green, Andray Blatche, Ricky Sánchez.

44. *See generally* Bennett Capers & Gregory Day, *Race-ing Antitrust*, 121 MICH. L. REV. 523 (2023).

45. *Id*.

46. U.S. v. Topco Assoc.'s, Inc., 405 U.S. 596, 610 (1972) (Competition "cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy."); United States v. Phila. Nat'l Bank, 374 U.S. 321, 370-71 (1963) ("We reject this application of the concept of 'countervailing power.' . . . If anticompetitive effects in one market could be justified by procompetitive consequences in another, the logical upshot would be that every firm in an industry could, without violating [antitrust law], embark on a series of [anticompetitive behavior]. …[anticompetitive behavior] is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial.").

47. NCAA basketball players are recruited from all fifty states and even overseas. In the U.S., players may play at public, charter, magnet, and prep schools across all different divisions, with teammates and coaches of varying quality, and against teams and players of varying levels of skill. In theory, this would make evaluating players more difficult than at the NCAA level.

48. George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488, 495 (1970) ("The presence of people in the market who are willing to offer inferior goods tends to drive the market out of existence- as in the case of our automobile 'lemons.'").

The lemons problem refers to markets involving asymmetric information between buyers and sellers, which creates adverse selections issues. The lemons theory posits that in the market for used cars, for example, sellers have more information about the quality of their vehicles than buyers do. This makes buyers unwilling to pay more than the average price used cars, which benefits sellers of low-quality cars and drives high-quality car sellers out of the market.[49] To escape this problem, sellers of high-quality used cars employ signaling devices[50] to demonstrate the quality of their cars, which decreases buyer uncertainty and results in high-quality cars selling for above-average prices.[51] It's worth noting that economic theories tend to be rather anachronistic in the markets they contemplate. So, while a market for professional athletes—human beings—in the case of the NBA, and a market for used cars in the case of the traditional framing of the lemons problem, are markedly different, and demand drastically different considerations, an analogy must be drawn for the sake of analysis.

In this analogy, players incur the costs of this signaling by sacrificing a year of income and assuming the risk of being injured while playing in college,[52] as used car owners may be burdened with the costs of purchasing Carfax or other signaling services to solve the traditional lemons problem in the used car market. The market for the top young basketball players differs from the market contemplated in the traditional lemons theory, though, in significant ways. In the used car market, car owners choose whether to purchase a signaling device, and that choice itself reveals the owner's knowledge of the car's quality.[53] By contrast, the NBA does not learn about quality by observing who decides to bear the signaling cost because, under the One-and-Done Rule, all potential NBA players incur the same cost of waiting at least one year before becoming eligible for the draft. As well, players are already ranked coming out of high school, unlike a market of cars. Therefore, although the One-and-Done Rule is not the conventional way of solving the lemons problem, it may still help result in fewer draft "mistakes" whereby an overhyped player was drafted at a rank surpassing their skill level and vice versa. Solving the lemons problem in game theory results in higher prices for the best quality goods. Here, NBA wages do not increase with the One-and-Done Rule's implementation as the theory would

49. Akerlof, *supra* note 48, at 499.

50. *Id.* at 500 (discussing brand names to signal quality to the buyer, including licenses that act as certifications to "reduce quality uncertainty.").

51. Akerlof proposes "guarantees to ensure the buyer of some normal expected quality. One natural result of our model is that the risk is borne by the seller rather than by the buyer." *Id.* at 499.

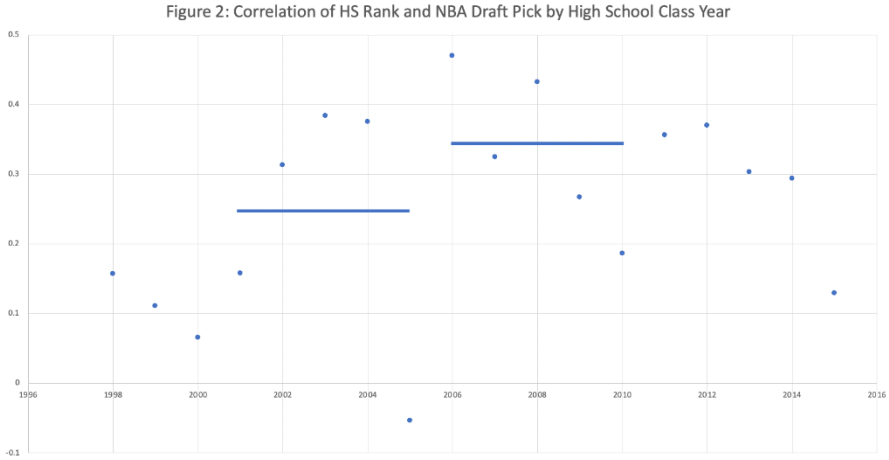
52. NCAA participation does not always change a player's ranking, even when the player's NCAA year does not go well. LSU's Ben Simmons, for example, wanted to go straight to the NBA but was forced to go to college per the One-and-Done Rule. He performed poorly academically, was benched, and his team failed to make the NCAA tournament. He subsequently withdrew from college and declared for the draft. He was still picked first. *See One & Done/Ben Simmons* (Showtime 2016).

53. In the used car market, for example, drivers who know they have high-quality cars would purchase a signaling device, while low-quality car owners would not.

suggest. However, the theory supports the idea that the rule change will provide more information about players. Because high school basketball players are already ranked coming out of high school, "more" information in this context would mean that the imposition of the One-and-Done Rule (or having at least one year of college) changes these relative rankings.

To test this empirically, I used data from the Recruiting Services Consensus Index (RSCI),[54] a set of data containing high school players' rankings from each high school class year (high school ranks one to one hundred) for 1998-2015 and, if a player was drafted, which year they were drafted and what round and pick. Players who were ranked in high school but never drafted into the NBA were removed from the analysis.[55] To see the effect of the One-and-Done Rule in generating more information about players, I computed the correlation between high school rank and NBA draft pick for each year 1998-2015. I plotted those and found no discernable trend in these correlations other than, over time and on average, the correlation between high school rank and draft pick becomes stronger over time. The pre-rule and post-rule correlations confirm this both in the overall year spans and a shorter time frame. The pre-rule average correlation for 1998-2005 is 0.189, while the post-rule average correlation for 2006-2015 was 0.313. Observing a shorter time frame, the pre-rule average correlation from 2001-2005 was 0.235, while the 2006-2010 post-rule average correlation was 0.336. A graph of the data appears below with the 5-year pre- and post-rule averages superimposed as Figure 2.

Figure 2: Correlation of HS Rank and NBA Draft Pick by High School Class Year

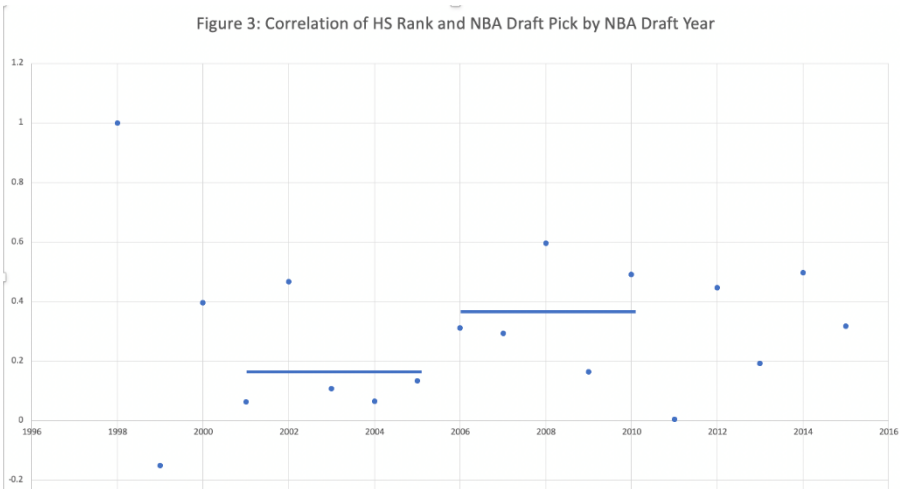


54. *Recruiting Services Consensus Index (RSCI) Rankings*, BASKETBALL REFERENCE, https://www.basketball-reference.com/awards/recruit_rankings_2015.html.

55. This excludes highly ranked high school recruits who may have been drafted pre-Rule, but because they were forced to play one year in NCAA, more information was gathered such that they went from a would-be NBA player to not.

If information from the imposition of the One-and-Done Rule had an effect on NBA draft pick, then we would expect to see a lower correlation in the post period than pre period—but in fact we saw the opposite (albeit not uniformly). This suggests, at minimum, no information gain from the One-and-Done Rule and that the One-and-Done Rule was not solving the lemons problem.

Second, I sorted the data by NBA draft year and plotted the correlation



between high school rank and NBA draft pick. This filters out high school players who didn't go to the NBA, and it also may give a better picture of whether the rule change alters the predictive power of high school rank for NBA draft pick because players in a high school class will eventually sort into up to six different draft years. Figure 3 depicts this data with the five-year pre- and post-rule averages superimposed.

Sorting the data this way, though, tells the same story as sorting by high school class: there is no evidence to suggest that the One-and-Done Rule is solving the lemons problem because, over time, high school rank has become an even better predictor of eventual NBA draft pick. The pre-rule average from 1998-2005 was 0.259, while the post-rule average from 2006-2015 was 0.331. Taking a smaller date range, the pre-rule average from 2001-2005 was 0.166, while the post-rule average from 2006-2010 was 0.370. If the One-and-Done rule facilitated more information-gathering, we would expect to see a decrease in average correlations rather than an increase. Hence, this data does not show that the One-and-Done Rule increases information or knowledge about player skill.

Some pre-rule change descriptive statistics confirm that the One-and-Done Rule affects a sizable portion of the market. Between 1998 and 2005, five out of eight (62.5 percent) of the number one high schoolers in their classes went straight to the NBA. Over the eight years pre-rule change, thirty-four players went straight to the NBA from high school. This represents 15.5 percent of the

220 players from those high school classes 1998-2005 who eventually played in the NBA. The vast majority of players going straight to the NBA came from high school class years 2003 (five), 2004 (eight), and 2005 (nine).

Solving the lemons problem, or facilitating gathering more information about players, is a compelling theoretical justification for the One-and-Done Rule, but the data does not show this is at work. Moreover, even if the rule were to increase information about players, the rule itself would not increase competition in the market, but rather merely allow the NBA to evaluate players more easily. Therefore, it may be discounted as a procompetitive justification.

B. Better Players, Better Basketball?

1. Better NBA Basketball

Another procompetitive justification for the One-and-Done Rule is that it increases consumer welfare because players entering the NBA come with better training, play a better quality of basketball, or have some other college-, time-, or alternative league-increased attribute. In addition to improving a player's on-the-court skills, another common argument for the One-and-Done Rule is that it forces players to "grow up" a bit and become more mature. In this respect, NBA players may be at the center of fewer scandals, and therefore fans may like them more.

A 2020 study on the relationship between years of college basketball and career NBA statistics found that players "may not need to attend college" to succeed in the NBA. The researchers used offensive and defensive statistics from all NBA players for 1995-2016 and found that players who leave college early for the NBA perform better, on average, in all offensive and defensive categories of play. Players who spent less time in college score more points, have higher shooting percentages, and get more rebounds, assists, steals, and blocks than those who spent more time playing in college. Advanced metrics[56] showed that less college experience was correlated with an increase in player value "in their all around on-court performance":

> players coming to the NBA directly from high school have better statistics in some major categories . . . compared to *one and done* players [those who spent one year in the NCAA between high school and the NBA] pre- and post- implementation of the rule in 2006, respectively. These results call into question whether requiring a player to spend a year in college is truly beneficial for a player's development as an

56. *Id.* at 305 (The study used publicly available statistics for all players in the NBA from 1995- 2016 to examine the relationship between years playing basketball in college and NBA success. "Two advanced metrics were also used to capture overall performance—PER and value over replacement player (VORP). PER is a rating of a player's per-minute productivity and is computed using a variety of metrics, including positive and negative accomplishments. The league PER average is maintained at 15.0 each season. VORP is an estimate of the points per 100 team possessions that a player contributed over a replacement-level player.").

athlete.[57]

Despite these results, players who spent fewer years in college committed more turnovers and fouls, although this could be because players who perform better often play more minutes per game and thus have more opportunities to foul and turn the ball over. Though these findings are expected—the best players often leave college early because they can play in the NBA—this research may suggest that keeping the best young players in the NCAA may increase the quality of the basketball there, but at the expense of the quality of the basketball in the NBA. This study is observational—it does not use college as a treatment to test the effect of college on player skill—so the conclusions to draw from it are limited.

At the study's strongest, it may suggest that justifications for the One-and-Done Rule along the lines of player skill development are problematic because the best players often spend as little time in college as possible. If the One-and-Done Rule's effect on basketball quality operates by reallocating skill from the NBA to the NCAA, rather than improving basketball quality in the market overall, then it is possible that the One-and-Done Rule chiefly benefits the NCAA in terms of skill quality. Therefore, the rule may not have procompetitive effects in this respect on the market for professional basketball because it may be helping its competitor rather than increasing competition.

2. *Better NCAA Basketball*

Consumers (defined broadly as those watching high-level basketball) may also value watching improved quality NCAA games. RSCI data from 2006 to 2020[58] demonstrate that almost all the top hundred high school basketball players from each graduating class go on to play in the NCAA. Thus, benefits of the One-and-Done rule to leagues other than the NBA will accrue almost entirely to the NCAA. Table 1 details the number of players in each high school class year who went to the NBA, played in the NCAA after high school, and opted not to play in the NCAA. Of players who chose not to go to the NCAA after high school but did play in the NBA between 2006 and 2020, six played internationally, four played in the NBA's Developmental/G-League, four trained on their own or were ineligible to play in the NCAA but would have liked to, three reclassified their high school graduation year or did a postgraduate (postgrad) year in high school, and one played in an alternative league other than the NBA's developmental league.[59]

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57. *Id.*, at 310.

58. *Recruiting Services Consensus Index (RSCI) Rankings – 2006,* BASKETBALL REFERENCE, https://www.basketball-reference.com/awards/recruit_rankings_2006.html. Notably, it appears that the RSCI data contains a couple of errors. Table 1 notes two errors where a player appears in the ranking of high school seniors for two years in a row. Although it is possible other players are repeated in the data or there are other errors in the data, the author does not have reason to believe errors are a frequent occurrence in the data. Both discovered errors were in cases of players who did not go to college and then went to the NBA.

59. As Table 1 details, these categories can overlap. See, for example, Ricky Ledo or LaMelo

Table 1: Post-High School League Choices Among Top-Ranked High School Players

High School Class Year	**Total Players in Class**	**Total Eventually Drafted into the NBA**	**Total Going to NBA Straight from High School**	**Total Playing in College After High School**	**Total Other** (not playing basketball after high school, playing in an alternative league, playing internationally, playing in community college). Players who did not play in college but were drafted into the NBA are specifically named and their post-high school choice detailed.
2006	100	32	0	99	1
2007	100	37	0	98	2
2008	100	32	0	96	4 (Brandon Jennings—international then NBA. Latavious Williams—NBA Developmental League then NBA).
2009	100	27	0	97	3 (Note: Latavious Williams appears as a repeat in the data here. He went to the NBA Developmental League and then the NBA).
2010	100	31	0	96	4 (Enes Kanter Freedom planned to play in the NCAA but was ineligible because he had played professionally overseas before going to the NBA).
2011	100	24	0	99	1
2012	100	31	0	98	2 (Ricky Ledo is counted in the other category because he never played in college, although he enrolled at NCAA school Providence College but was ineligible to play. Ledo then went to the NBA).
2013	100	25	0	98	2
2014	100	28	0	98	2 (Emmanuel Mudiay played professionally in China before playing in the NBA).

Ball.

2015	100	32	1 (reclassification)	98	2 (Thon Maker reclassified himself in high school and technically spent his final high school year as a "postgrad" year, which made him eligible for the 2016 draft).
2016	101*	34	0	99	2 (Terrance Ferguson played professionally in Australia). *Note: Thon Maker appears as a repeat in the data here.
2017	100	32	0	97	3 (Mitchell Robinson dropped out of college to train on his own until eligible for the NBA draft).
2018	100	30 (so far)	1 (reclassification)	98	2 (Anfernee Simons graduated high school in 2017 but reclassified into the class of 2018 and was then eligible for the 2018 Draft. Darius Bazley decided to train on his own until he was eligible for the 2019 draft).
2019	100	29 (so far)	0	97	3 (R.J. Hampton played professionally in Australia before entering the NBA; LaMelo Ball played professionally in Lithuania and for the Junior Basketball Association (alternative to college league) while in high school. He played in Australia after high school).
2020	100	28 (so far)	1 (postgrad year)	92	8 (Jalen Green and Isaiah Todd went to the NBA's G League Ignite before the NBA; Kenyon Martin Jr. did a postgrad year).
2021	100	19 (so far)	0	97	3 (Jaden Hardy went to the NBA's G League Ignite before the NBA).

Taking these attributes together—increased player skill in both the NCAA and NBA and maturity in the NBA—the procompetitive justification may posit that the One-and-Done Rule creates a special value to spectators in both markets that may pay off in increased player exposure and fan base. However, because procompetitive justifications need to be procompetitive on their face, such as by,

for example, lowering prices for consumers (or in this case, competitively raising wages for laborers) or increasing competition, increased fan support or enjoyment at the expense of players cannot be a procompetitive justification.[60]

C. Priliferation of new Leagues: Are the Alternative Markets or Non-NCAA Options for talented Players Out of Hight Scholl?

Some NCAA and NBA officials have defended the One-and-Done Rule by proposing players play overseas if they don't want to be forced into the NCAA. Mark Emmert, then-NCAA President, responded to criticisms of the One-and-Done Rule with: "If someone wants to be a pro basketball player and doesn't want to go to college, don't go to college…[w]e don't put a gun to your head."[61] But the answer to an allegation of anticompetitive behavior is not just to tell the complainant to leave the market; that is not how U.S. courts consider antitrust allegations. In *Law v. NCAA*, the Tenth Circuit concluded that wage-fixing of coaches' salaries was illegal and that telling the coaches to go coach in a different market—like telling players to "go play overseas"— is not an appropriate answer under antitrust precedent.[62] The courts have repeatedly held that procompetitive justifications for an alleged antitrust violation must apply to the same market in which the restraint is found, and they must be procompetitive on their face. For example, in *United States v. Topco Associates, Inc.,* the Supreme Court said that competition "cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might

60. U.S. v. Topco Assoc.'s, Inc., 405 U.S. 596, 610 (1972) (Competition "cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy."); United States v. Phila. Nat'l Bank, 374 U.S. 321, 370-71 (1963) ("We reject this application of the concept of 'countervailing power.' . . . If anticompetitive effects in one market could be justified by procompetitive consequences in another, the logical upshot would be that every firm in an industry could, without violating [antitrust law], embark on a series of [anticompetitive behavior]. …[anticompetitive behavior] is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial.").

61. Bill DiFilippo, *Mark Emmert Fires Back at Ben Simmons by Saying the NCAA Doesn't 'Put a Gun to Your Head'*. YAHOO! NEWS (Nov. 6, 2016), https://www.yahoo.com/news/mark-emmert-fires-back-ben-181615135.html. Jonathan Abrams, *Despite War and Griner's Arrest, American Men Hoop in Russia*. NY Times. (Sept. 20, 2022) (discussing how despite the war and Brittany Griner's imprisonment in Russia, many male U.S. professional basketball players are going overseas, even to Russia, to make over $1 million and receive other benefits such as free housing and cars).

62. 902 F. Supp. 1394, 1405 (D. Kan. 1995), *aff'd*, 134 F.3d 1010 (10th Cir. 1998) ("The NCAA first argues that the Restricted Earnings Coach Rule has no anti-competitive effect because restricted earnings coaches may avoid the restraining effect of the rule by obtaining coaching positions with high school teams, non-NCAA college teams, NCAA Division II or III teams, overseas teams or, in fact, by obtaining other employment not related to their coaching duties. …This argument by the NCAA is wholly unconvincing. The absence of proof of market power does not foreclose a finding of anticompetitive behavior under the Sherman Act. …Where a restraint runs counter to the Sherman Act's requirement that price be responsive to consumer preference, proof of market power is unnecessary because such an agreement's anticompetitive character is evident.")

promote greater competition in a more important sector of the economy."[63] In *Sullivan v. National Football League,* the First Circuit said that it seems "improper to validate a practice that is decidedly in restraint of trade simply because the practice produces some unrelated benefits to competition in another market."[64] Therefore, citing opportunities to play overseas isn't an appropriate or justiciable response considering the Court's precedent in this area.

One procompetitive justification for the One-and-Done Rule may be that it initiated additional choice on both the labor and the viewing side by spurring the creation of new leagues that are alternatives to the NCAA. Out of high school, the most talented players have a few options beyond the NCAA: as noted *supra*, they can go overseas to play professionally in a different market, or they can join an alternative U.S. league.[65]

The NBA G-League is a developmental league (formerly called the D-League or Developmental League) that has become the most attractive alternative to college for young talented players. The G-League enjoys the NBA's backing, and it has also proved it can develop NBA draft prospects. It offers players who are at least 18 years old but not yet eligible for the NBA draft "select contracts" of $125,000 per year plus benefits. And players do not have to sacrifice their NCAA eligibility or NIL rights. The G-League functions as both an alternative to college and to the NBA, but this was perhaps more lucrative when the NCAA banned compensation for Name, Image, and Likeness. Additionally, the G-League existed before the One-and-Done Rule was implemented, so its existence as an alternative to the NCAA isn't a procompetitive consequence of the rule.

Overtime Elite was founded in 2021 as another new alternative to college for players as young as sixteen. Players receive at least $100,000 per year in exchange for forgoing the rest of their high school and college eligibility, as well as all their NIL rights.[66] Alternatively, they can forgo a salary, maintain their NIL right, and remain eligible to play in college.[67] The Professional Collegiate League (PCL), founded in 2020, pays players between $50,000 and $150,000 and offers players academic scholarships (it requires them to be enrolled in college).[68] Overtime Elite and the Professional Collegiate League function

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63. 405 U.S. 596, 610 (1972).

64. 34 F.3d 1091, 1112 (1st Cir. 1994).

65. Seth Davis, *Pick Your Future: The NCAA, G League Ignite, Overtime Elite (and More) are in Competition for the Same Top Recruits*, ATHLETIC (May 28, 2021), https://theathletic.com/2617726/2021/05/28/pick-your-future-the-ncaa-g-league-ignite-overtime-elite-and-more-are-in-competition-for-the-same-top-recruits.

66. *Id*. Kurt Streeter, *Once a Star of College Basketball, Kevin Ollie is Now Disrupting It*, N.Y. TIMES (Nov. 28 2022), https://www.nytimes.com/2022/11/28/sports/ncaabasketball/kevin-ollie-overtime-elite-basketball.html. Overtime Elite has thirty-one players.

67. Streeter, *supra* note 66.

68. Ben Strauss, *A Start-up Basketball League, Hoping to Compete with the NCAA, Announces TV Deal.* WASH. POST (Apr. 22, 2021), https://www.washingtonpost.com/sports/2021/04/22/professional-collegiate-league-tv-david-west.

primarily as alternatives to the NCAA before a player is eligible for the NBA.

Lesser-known, mostly regional, minor leagues also exist, but these are often part-time, pay extremely little, and are not housing the kind of talent at issue here (*i.e.,* players out of high school who are talented enough to be drafted straight out of high school but cannot be in the draft due to the One-and-Done Rule).[69] Thus, these aren't at all comparable to national leagues where the top talent in the country is playing.

Despite these alternatives to the NCAA, both overseas markets and alternative leagues have produced very few players with long NBA careers. Brandon Jennings, for example, is a player commentators discuss as a "cautionary tale" rather than an alternative-to-the-NCAA success.[70] Jennings was the second-ranked high school player in the country in 2008 and went overseas instead of to college. He eventually was drafted and sponsored by Under Armour, but he publicly warned American players of making the same choice he did, citing bad working conditions and not getting paid on time.[71]

Table 1 shows that among the top high school basketball players between 2006 and 2020, almost all play in the NCAA after high school, and, of those who did not play in the NCAA but made it to the NBA, more played internationally than in the G-League and alternative leagues combined. Moreover, leagues functioning as alternatives to the NCAA while players await NBA eligibility (similar to Overtime Elite and the Professional Collegiate League) have generally failed. For example, the Junior Basketball Association, which intended to serve as an alternative to the NCAA, existed for only one season in 2018 and was regarded as a total flop. It went under almost as soon as it came into existence.[72]

Since many of these leagues didn't come into existence until years after the

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69. East Coast Basketball League started in 2015, and is "an independent basketball minor league with teams operating in the Carolinas, Georgia, Virginia and the Southeastern United States." *About the East Coast Basketball League,* E. COAST. BASKETBALL LEAGUE, https://www.eastcoastbasketballleague.org/teams/default.asp?u=EASTCOASTBASKETBALLLEAGUE2015&s=basketball&p=about. *See, e.g.,* FLA. BASKETBALL ASS'N, http://thefba.com; UNIVERSAL BASKETBALL ASS'N, http://www.ubanow.com; UNITED BASKETBALL LEAGUE, http://ublhoops.com; THE BASKETBALL LEAGUE, http://thebasketballleague.net.

70. Kevin Trahan, *A Vegas Hoops Startup Wants to Compete With the NCAA, Does It Stand a Chance?,* VICE SPORTS (May 22, 2015), https://www.vice.com/en/article/wn33mw/a-vegas-hoops-startup-wants-to-compete-with-the-ncaa-does-it-stand-a-chance.

71. Ray Glier, *Brandon Jennings Sends Home a Warning from Europe*, N.Y. TIMES (Jan. 23, 2009), https://www.nytimes.com/2009/01/24/sports/basketball/24recruit.html?_r=0.

72. Akash Murty, *"LaVar Ball fell completely behind on the promises he made to us": Former JBA player reveals how the league that was supposed to overtake NCAA shut down in a year*, THE SPORTS RUSH (April 2, 2022), https://thesportsrush.com/nba-news-lavar-ball-fell-completely-behind-on-the-promises-he-made-to-us-former-jba-player-reveals-how-the-league-that-was-supposed-to-overtake-ncaa-shut-down-in-a-year/; Jake Nisse, *The Broken Dreams and Promises of LaVar Ball's Failed Basketball League*, N.Y. POST (September 20, 2019), https://nypost.com/2019/09/20/the-broken-dreams-and-promises-of-lavar-balls-failed-basketball-league/.

One-and-Done Rule was enacted, arguing that their creation serves as a "procompetitive justification" for the rule is a tenuous proposition at best. Although no antitrust case establishes a specific time period for determining whether purported consequences of a restraint of trade can reasonably be attributed to that restraint, the PCL was established 14 years after, and Overtime Elite 15 years after, the One-and-Done Rule took effect. Additionally, these leagues are not direct consequences flowing from the One-and-Done Rule itself (the rule does not itself establish other, new leagues). New leagues affecting the labor market, if created immediately after the One-and-Done Rule's implementation, may be a compelling procompetitive justification for the rule. However, citing a secondary effect of imposing a restriction (the proliferation of new leagues in the market) that occurred over a decade later as a procompetitive effect isn't a compelling justification because it occurred so much later in time. Rather, procompetitive effects must result directly from the restriction itself, such as by changing supply or demand.[73] The alternative leagues are not direct consequences of the One-and-Done Rule, but rather are indirect, long-term knock-on effects. Hence, the creation of these leagues isn't a procompetitive justification for the One-and-Done Rule.

D. Preservation of Amateurism

A final procompetitive justification proffered up in favor of the One-and-Done Rule is that it helps preserve amateurism by forcing players who would otherwise enter the NBA straight out of high school—the best high school players— to wait at least one year, which is usually spent in the NCAA. The NCAA defines an amateur as a student athlete who does not receive "pay or the promise of pay for [their] athletics skill,"[74] although the Supreme Court recently noted in *Nat'l Collegiate Athletic Ass'n v. Alston* that the NCAA itself has not adopted any consistent definition of the term.[75] Proponents of this theory hold the preservation of amateurism out to be of fundamental importance to the NCAA's ability to offer a product differentiated from professional sports. Amateurism involves price-setting by the NCAA and its member institutions because student-athletes in the NCAA are paid only up to the college's cost of

73. *See* U.S. v. Topco Assoc.'s, Inc., 405 U.S. 596, 610 (1972) (Competition "cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy."); United States v. Phila. Nat'l Bank, 374 U.S. 321, 370 (1963) ("We reject this application of the concept of 'countervailing power.'…If anticompetitive effects in one market could be justified by procompetitive consequences in another, the logical upshot would be that every firm in an industry could, without violating [antitrust law] embark on a series of [anticompetitive behavior]…[anticompetitive behavior] is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial.").

74. NCAA Bylaw, Article 12, *Amateurism and Athletics Eligibility,* https://web3.ncaa.org/lsdbi/search/bylawView?id=8740.

75. 141 S. Ct. 2141, 2163 (2021).

attendance.[76] Although such a scheme would normally invite antitrust scrutiny, the Supreme Court has seemingly allowed for special exceptions for the NCAA[77] (*e.g.*, the NCAA's own price restraints and other rules, not another entity's).

In *Alston*, the Supreme Court considered the NCAA's argument that some of its rules limiting education-related benefits in lieu of compensation "preserve amateurism, which in turn widens consumer choice by providing a unique product—amateur college sports as distinct from professional sports."[78] This is a benefit to consumers of the NCAA's product, rather than to student-athletes, at least in the short term.[79] In *NCAA v. Board of Regents of University of Oklahoma*, the Court agreed that fostering competition amongst amateur teams is an important interest: "The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports. There can be no question but that it needs ample latitude to play that role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act."[80] In *O'Bannon v. National Collegiate Athletic Association*, the Ninth Circuit summarized *Board of Regents* in part by saying that the "opinion supports the proposition that the preservation of amateurism is a legitimate procompetitive purpose for the NCAA to pursue."[81]

However, the NBA cannot offer NCAA amateurism as a procompetitive justification for the One-and-Done Rule because benefiting consumers of a competitor is not the same as benefitting competition itself, unless promoting amateurism in the NCAA somehow also had positive effects for the NBA. The relevant market in which to examine the NBA's One-and-Done Rule is the market for potential professional athletes, not the market for amateur sports consumption. In fact, amateurism may be harmful to the NCAA's ability to compete in this market. Despite the NCAA's general interest in preserving amateurism, in this context it is detrimental to competition because it prevents the NCAA from offering wages sufficient to dissuade all top players from pursuing professional careers overseas or, when eligible, in the NBA.

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76. Andy Schwarz & Kevin Trahan, *The Mythology Playbook: Procompetitive Justifications for "Amateurism," Biases and Heuristics, and "Believing What You Know Ain't So,"* 62 ANTITRUST BULL 140, 174-5 (2017).

77. In NCAA v. Board of Regents of the University of Okla., 468 U.S. 85 (1984), the Court distinguished amateur college athletics from professional sports, allowing amateur sports to exist as a separate product from professional sports.

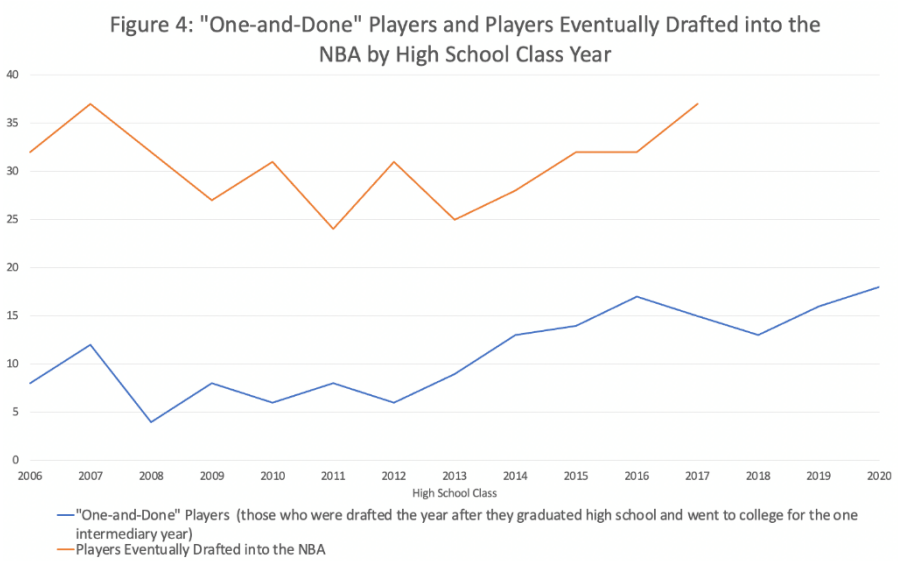
78. Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2152 (2021).

79. *Id*. If in fact amateurism leads to a better product with higher consumer demand, then it is possible that money from this increased demand eventually comes back to the athletes in the form of athletic department donations, for example. However, because these are potential future effects, the athletes who function to preserve amateurism in the present are likely not the same athletes receiving the potential knock-on benefits of that amateurism.

80. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 120 (1984).

81. 802 F.3d 1049, 1063 (9th Cir. 2015).

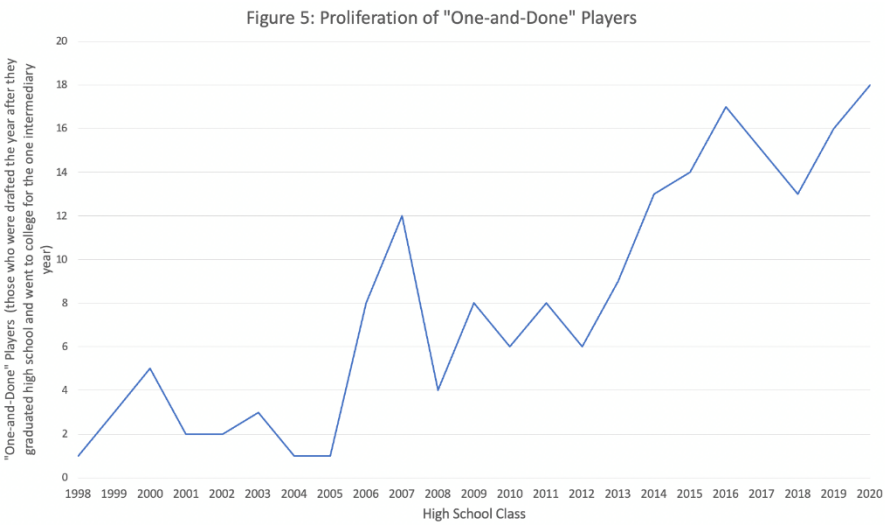
The large number of top college players spending only one year playing in the NCAA before leaving for the NBA supports the notion that amateurism limits the NCAA's ability to compete for the best young players in the country. Of the roughly 100 top-ranked high school players in each class between 2006 and 2020, an average of eleven of them each year were "One-and-Done" players, meaning they were drafted as soon as they became eligible one year after graduating from high school and spent that one year in the NCAA.[82] Between 2006 and 2017, these "One-and-Done" players made up 32.6 percent of eventual NBA players. Figure 4 plots the "One-and-Done" players in comparison to the total players who were drafted into the NBA. 2018 and subsequent years are excluded from this calculation and the trend on the graph because players from those high school classes can continue to enter the NBA.



Although the One-and-Done Rule may help the NCAA retain talented young players that it otherwise wouldn't be able to compete for on its own, this benefit to a competitor or consumers of the competitor's product is not considered a procompetitive effect of the restraint. Amateurism, because it effectively caps wages for student-athletes in the NCAA, hinders the NCAA's ability to compete with the NBA for talented young players. Although the NCAA may benefit from the One-and-Done Rule, as discussed in other sections of this Article, amateurism itself does not seem to benefit. In fact, the data seem to suggest that amateurism is contributing to the high number of basketball players spending just one year in college before leaving for the NBA. Figure 5

82. *Recruiting Services Consensus Index (RSCI) Rankings – 2006*, BASKETBALL REFERENCE, https://www.basketball-reference.com/awards/recruit_rankings_2006.html.

demonstrates that the number of "One-and-Done" players has increased quite dramatically since the One-and-Done Rule was implemented in 2006.



IV. NAME, IMAGE, AND LIKENESS INFLUENCE

In 2019, California was the first state to pass legislation allowing NCAA student-athletes to profit from their name, image, and likeness (NIL).[83] Other states, including Florida, Georgia, Alabama, Mississippi, and New Mexico, quickly followed suit. By June 2021, 27 states had passed NIL laws. On June 30, 2021—the day before the first of these state laws would take effect—the NCAA suspended its policy prohibiting student athletes from profiting from their NIL.[84] Collegiate student athletes can now sign brand deals and sponsorships and otherwise profit from their own name, image, and likeness without forfeiting their NCAA eligibility.

Thus, as of 2021, athletes in the NCAA are, in this one respect, on equal footing with NBA players, who can likewise profit from their own fame. This raises the potential income of NCAA players dramatically and can potentially eliminate pay disparities between collegiate and professional basketball players. However, this change came a whole 16 years after the One-and-Done Rule was implemented. And it, at most, only indirectly affects the market for talented young basketball players because, although it eliminates a price ceiling in the

83. Fair Pay to Play Act, CAL. EDUC. CODE § 67456 (West 2019) (otherwise known as the Fair Pay to Play Act (SB 206)).

84. Tim Tucker, *NIL Timeline: How we Got Here and What's Next*, ATL. J.-CONST. (Mar. 18, 2022), https://www.ajc.com/sports/georgia-bulldogs/nil-timeline-how-we-got-here-and-whats-next/EOL7R3CSSNHK5DKMAF6STQ6KZ4.

NCAA, it doesn't raise the price floor. Especially important is the fact that it's not a guaranteed "wage"—student athletes still need to work hard for their social followings to grow to profit from this, and it's not an upfront wage as cost of attendance or a rookie salary might be. NIL is not direct compensation for student athlete labor, but rather just an easing of a restriction on compensation for their name, image, and likeness. Additionally, NIL success, fame, or profit doesn't necessarily flow from athletic skill but from other aspects of fame such as networking with brands, following TikTok trends, and even posting provocatively.[85] So, although the ability to profit from NIL in the NCAA may change a player's decision-making on the margin, the rule change to allow NIL is not a consequence of the One-and-Done Rule and it doesn't change the aforementioned analysis.

CONCLUSION

Although formal antitrust scrutiny of the NBA's One-and-Done Rule via the courts may be foreclosed due to nonstatutory labor exemptions, the foregoing analysis underscores the salient anticompetitive effects of the rule on the market for the most talented young basketball players in the country. The data suggest that if a court applied a rule of reason analysis, it may find that the One-and-Done Rule violates antitrust laws, rendering it illegal. The rule greatly benefits the NCAA by ensuring that the most talented players go to college for at least one year, but the NCAA does not have to compete for this talent. Further, the NBA receives vetted players that were tested and had the opportunity to gain popularity in the NCAA, reducing the NBA's investment costs, without forcing it to increase compensation for its players. Not only do these players forgo significant financial and competitive opportunity costs while they wait to become eligible, but they also incur significant risks of injury during this period. Even more, the One-and-Done Rule may disproportionally impact players of color, placing the anticompetitive harms disparately on an already-marginalized group of young people. Furthermore, the data does not favor the idea that the One-and-Done Rule even has countervailing procompetitive effects. The rule does not seem to increase information about players that could change their relative rankings out of high school, and the rule may in fact benefit the NCAA more than the NBA in terms of basketball quality. Until the NBA abolishes the One-and-Done Rule and allows players to enter the League out of high school, more research should be done to examine the effects of this restraint of trade on players' ability to sell their skill and labor for competitive wages.

85. Kurt Streeter, *New Endorsements for College Athletes Resurface an Old Concern: Sex Sells*, N.Y. TIMES (Nov. 11, 2022), https://www.nytimes.com/2022/11/08/sports/ncaabasketball/olivia-dunne-haley-jones-endorsements.html.