

NCAA EXTERNAL GENDER EQUITY REVIEW

Phase I: Basketball Championships

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EXECUTIVE SUMMARY

On the night of March 18, 2021, University of Oregon basketball player Sedona Prince posted a video on social media contrasting the spacious room full of assorted barbells and other weightlifting equipment provided to the men’s NCAA championship participants with the small, single tower of hand weights provided to the women’s NCAA championship participants at the start of the NCAA Division I Men’s and Women’s Basketball Tournaments.¹ Like the contemporary equivalent of “the shot heard round the world,” that video immediately went viral, and issues of gender equity at the NCAA took center stage in the news and the public consciousness. While the differences between the experiences of male and female players have been significant for years, seeing the student-athletes play in parallel COVID-19 “bubbles” at the same time this year shined an unprecedented light on those differences for the world to see.

Indeed, as a result of the Sedona Prince TikTok video, even before the tip-off of the first women’s game, student-athletes, coaches, and the media began a very public, often photographic comparison on social media and elsewhere of the men’s and women’s tournaments in Indianapolis and San Antonio, respectively.² Nearly every time, the women’s tournament fell short. As NCAA President Mark Emmert later acknowledged, “When you lay the men’s and women’s [Division I basketball] championships side by side, as has been made clear over the past weeks, it is pretty self-evident that we dropped the ball in supporting our women’s athletes, and we can’t do that.”³

Although the disparities at this year’s Division I Men’s and Women’s Basketball Championships sparked a wide-ranging public discourse about gender equity within the NCAA, college sports, and sports in general, gender disparity is not something new to any of these areas. The NCAA, for example, did not sponsor a championship for women’s basketball, or any other women’s sport, until 1982—more than 75 years after the association was founded. And even then, it opposed (ultimately unsuccessfully) the application of Title IX—the federal law prohibiting gender discrimination in educational programs and activities receiving federal funds—to college

¹ Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), <https://www.tiktok.com/@sedonerrr/video/6941180880127888646>.

² See, e.g., Jason Gay, *A TikTok Video Says It All About the NCAA Tournaments*, Wall Street Journal (Mar. 21, 2021), <https://www.wsj.com/articles/ncaa-tournament-womens-basketball-mens-basketball-11616344310>; Mike Brehm, *South Carolina Women’s Basketball Coach Dawn Staley Criticizes NCAA’s Mark Emmert Over Disparities Between Tournaments*, USA Today Sports (Mar. 20, 2021), <https://www.msn.com/en-us/sports/ncaabk/south-carolina-womens-basketball-coach-dawn-staley-criticizes-ncaas-mark-emmert-over-disparities-between-tournaments/ar-BB1eLXwG>; Joseph Salvador, *Tara VanDerveer on Inequality in College Sports: ‘I Feel Betrayed by the NCAA,’* Sports Illustrated (Mar. 20, 2021), <https://www.si.com/college/2021/03/21/tara-vanderveer-calls-out-ncaa-blatant-sexism-tournament-disparities>; Juliet Macur and Alan Blinder, *Anger Erupts Over Disparities at N.C.A.A. Tournaments*, N.Y. Times (Mar. 19, 2021), <https://www.nytimes.com/2021/03/19/sports/ncaabasketball/women-ncaa-tournament-weight-room.html>; Scott McDonald, *Stanford Coach Exposes Huge Disparity in Men’s, Women’s Workout Gyms at NCAA Tournaments*, Newsweek (Mar. 18, 2021), <https://www.newsweek.com/stanford-coach-exposes-huge-disparity-mens-womens-workout-gyms-ncaa-tournaments-1577254>.

³ Heather Dinich, *NCAA President Mark Emmert Admits Inequality But Wants Women’s Basketball Leaders To Push Progress*, ESPN (Mar. 31, 2021), https://www.espn.com/womens-college-basketball/story/_/id/31172132/ncaa-president-mark-emmert-admits-inequality-wants-women-basketball-leaders-push-progress.

sports.⁴ The NCAA also to date has successfully resisted the application of Title IX to the NCAA itself.⁵

At various points throughout its history, there have been those within the NCAA who have engaged in concerted, salutary efforts to address inequities in women’s college basketball (and college athletics generally) including, but not limited to: the creation of a Women’s Basketball Discussion Group by former NCAA President Myles Brand in 2006, the hiring of a marketing consultant to advise the NCAA on improving the marketing of women’s basketball in 2007, the retention of now-Big East Conference Commissioner Val Ackerman to complete a White Paper on women’s basketball in 2013, as well as ongoing internal efforts to achieve gender equity with respect to women’s basketball by the NCAA Committee on Women’s Athletics, the Gender Equity Task Force, the Women’s Basketball Committee, the Women’s Basketball Oversight Committee, and the women’s basketball staff. But while it is true that some progress has been made, all too often, the proposed reforms that came out of these efforts ended up doing no more than sitting on a shelf. With respect to women’s basketball, the NCAA has not lived up to its stated commitment to “diversity, inclusion and gender equity among its student-athletes, coaches and administrators.”⁶

The primary reason, we believe, is that the gender inequities at the NCAA—and specifically within the NCAA Division I basketball championships—stem from the structure and systems of the NCAA itself, which are designed to maximize the value of and support to the Division I Men’s Basketball Championship as the primary source of funding for the NCAA and its membership. The NCAA’s broadcast agreements, corporate sponsorship contracts, distribution of revenue, organizational structure, and culture all prioritize Division I men’s basketball over everything else in ways that create, normalize, and perpetuate gender inequities. At the same time, the NCAA does not have structures or systems in place to identify, prevent, or address those inequities. The results have been cumulative, not only fostering skepticism and distrust about the sincerity of the NCAA’s commitment to gender equity, but also limiting the growth of women’s basketball and perpetuating a mistaken narrative that women’s basketball is destined to be a “money loser” year after year.

Nothing could be further from the truth. The future for women’s sports in general, and women’s basketball in particular, is bright. Television viewership for this year’s Division I women’s tournament was the highest it has been since 2014. This year, for the first time ever, ESPN nationally televised all 63 games of the women’s tournament. And many Division I women’s basketball players now have huge followings on social media that are unrivaled by their male counterparts.⁷

⁴ Ellen J. Staurowsky, Title IX and College Sport: The Long Painful Path to Compliance and Reform, 14 Marq. Sports L. Rev. 95, 100-04 (2003).

⁵ See *NCAA v. Smith*, 525 U.S. 459, 469 (1999).

⁶ NCAA Inclusion Statement (as amended by the NCAA Board of Governors April 2017), <https://www.ncaa.org/about/resources/inclusion/ncaa-inclusion-statement>.

⁷ See, e.g., Hanna & Haley Cavinder (@cavindertwins), TikTok (last visited July 23, 2021), <https://www.tiktok.com/@cavindertwins> (approximately 3.4 million followers); Sedona Prince (@sedonerrr), TikTok (last visited July 23, 2021),

As part of this review, and with the full support of the NCAA, Kaplan Hecker & Fink LLP (“KHF”) engaged an independent media expert, Ed Desser, to assess the true value of women’s Division I basketball. Desser and his team estimate that the annual broadcast rights for women’s basketball will be worth between \$81 and \$112 million in 2025—a figure multiples higher than what ESPN currently pays for an entire annual broadcast package that includes Division I women’s basketball *as well as* 28 other NCAA championships. Even if the NCAA were able to realize only a portion of that estimate as the result of future negotiations, those funds would make a significant difference in the money available to support NCAA championships and the NCAA membership. Further, Desser’s expert analysis shows that pursuing gender equity is not only the right thing to do, but also has real and significant long-term financial value—and therefore strategic importance—to the NCAA overall.

Although the gender inequities at this year’s Division I basketball tournaments were serious, many student-athletes, coaches, and administrators have expressed their deep gratitude to the NCAA for the opportunity to compete in the tournaments during an unprecedented global pandemic. Hundreds of NCAA staff and volunteers worked long and hard over the months before and during the 2021 men’s and women’s tournaments, planning the events and working to manage the significant health risks so that thousands of student-athletes could compete on college basketball’s biggest stage. Millions of fans were treated to game after exciting game. The Stanford University women’s team won the national championship in a showdown with the University of Arizona, and co-Freshman of the Year recipients Paige Bueckers and Caitlin Clark faced off in the women’s Sweet Sixteen. Baylor University won the men’s championship for the first time, and Gonzaga University’s buzzer-beater defeat of UCLA in the men’s semi-finals will be replayed for years to come.

While there is near universal support for treating student-athletes equitably, there unfortunately is also deep distrust in the NCAA’s willingness and ability to make the necessary changes to achieve that goal. We believe, however, that now is the time. Our investigation has revealed broad consensus within the NCAA—from the operational staff to the most senior leadership, from the committees responsible for planning and overseeing basketball championships to the Board of Governors—that it is time for change. The NCAA has already started having important conversations around several of the gender equity issues discussed in this report. Others will require significant work and commitment over the coming years by the NCAA leadership, Board of Governors, committees, membership, staff, and broadcast and corporate partners.

This report provides concrete recommendations on how the NCAA can address these gender equity issues, with a focus on sustainable, systemic improvements that will enable the NCAA to ensure an equitable student-athlete experience in the future.

<https://www.tiktok.com/@sedonerr> (approximately 2.5 million followers); Paige Bueckers (@paigebueckers), Instagram (last visited July 30 2021), <https://www.instagram.com/paigebueckers/> (approximately 900,000 followers); *see also* Kendall Baker, *Eight of the 10 Most-Followed NCAA Elite 8 Basketball Players Are Women*, Axios (Mar. 29, 2021), <https://www.axios.com/ncaa-basketball-social-media-followings-a98b2f21-e907-4276-b860-32565654d64a.html>.

1. Review Process & Scope

As the 2021 Division I Women’s Basketball Championship was still being played in San Antonio, the NCAA announced that it had retained KHF to investigate disparities identified between this year’s men’s and women’s tournaments. Our firm’s mandate was to conduct a comprehensive and thorough review of gender equity issues in connection with the NCAA, focusing on the NCAA championships, to assess the causes of any gender disparities, and to make recommendations for how the NCAA should address those disparities going forward. The initial focus of our review has been on men’s and women’s basketball, including Divisions I, II, and III, which will be followed by a second phase that will address the many other NCAA-sponsored sports.

The NCAA guaranteed KHF complete independence in its work and agreed that the firm could gather whatever information we believed necessary. The NCAA fulfilled that promise, cooperating fully in our fact-gathering efforts by providing documents and information requested, making well over a hundred NCAA executives, employees, and committee members available to us, and facilitating as appropriate our interviews with more than a hundred external stakeholders. The NCAA further committed to respect the confidentiality of our communications with, and the anonymity of, any sources who asked not to be identified to the public or the NCAA. The NCAA announced that KHF’s independent findings and recommendations would be made public.⁸ While NCAA staff were given an opportunity to confirm the accuracy of certain facts (*e.g.*, budgetary numbers), the NCAA did not approve this report or change any of its recommendations before it was issued.

Although intended to be broad, the scope of KHF’s review was not unlimited. We did not address every possible disparity that might relate to basketball. KHF did not, for example, examine differences in rules between the men’s and women’s games, disparities in campus resources dedicated to men’s and women’s basketball, or the salaries of coaches or referees. Instead, KHF focused on the ways in which the NCAA’s policies, practices, and culture impact the student-athlete experience, primarily through the NCAA’s administration of the championships.

While the United States Supreme Court has suggested that Title IX does not apply to the NCAA,⁹ Title IX, which does apply to the vast majority of the NCAA’s members, requires schools to look at whether an institution “provide[s] equal athletics opportunities for members of both sexes.”¹⁰ That guidance has provided us with a helpful lens for assessing the gender equity of the NCAA’s championships. A similarly useful guide has been the NCAA Gender Equity Task Force’s 1992 definition of gender equity: “An athletics program can be considered gender equitable when the participants in both the men’s and women’s sports programs would accept as

⁸ Report of the NCAA Board of Governors (Apr. 27, 2021), https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec_boardgov/APR2021BOG_REPORT.pdf (“The board reaffirmed its expectation created at the outset of the review that Kaplan’s final conclusions and recommendations will be transparent to the membership and public.”).

⁹ See *NCAA v. Smith*, 525 U.S. 459, 469 (1999).

¹⁰ 34 C.F.R. § 106.41(c).

fair and equitable the overall program of the other gender.”¹¹ This definition aptly frames the inquiry at the heart of our review: Would the student-athletes participating in the women’s basketball championship accept as fair and equitable their championship as compared to the championship that the NCAA currently administers for the men?

As explained further below, the answer to that question is clearly “no.” It is important to note, however, that “equitable” does not mean “identical,” and the goal of our review was not to eliminate all possible differences between men’s and women’s basketball. Both men’s and women’s basketball should be permitted to make decisions that enhance the unique nature of their own sport, and those differences should be accepted so long as they exist for non-discriminatory, neutral reasons and their impact on the student-athlete experience has been taken into account.

Not surprisingly given the above, Phase I of our review was a significant undertaking, involving the review of thousands of documents and interviews with hundreds of stakeholders. Exhibit A to this report contains a detailed summary of our work, which included the following:

- **External stakeholders.** An essential component of this review was hearing directly from key stakeholders about their experiences, insights, and concerns with respect to gender equity in connection with the NCAA and the NCAA championships. As an initial step, KHF conducted listening sessions with constituency groups and individual stakeholders, including, but not limited to, current and former student-athletes, parents, coaches, athletic directors, senior woman administrators (“SWAs”), college and university presidents, conference commissioners, academics and experts, and representative athletics groups. These discussions helped KHF identify and understand the relevant issues and informed our review, analysis, and recommendations.

As part of that effort, the firm reached out to all 64 NCAA Division I women’s basketball teams that participated in the 2021 tournament through their schools, and held listening forums for the student-athletes, coaches, athletic directors, senior woman administrators, and parents of student-athletes at those schools. KHF also held additional forums with key student-athlete groups, including some team-specific forums with schools that participated in this year’s Division I tournament and the students-athletes on the NCAA Division I Women’s Basketball Student-Athlete Engagement Group. The firm also met with representatives of all Division I conferences, including 31 Division I conference commissioners. In addition, KHF met with several key stakeholders from Division II and Division III conferences and member institutions. In total, KHF conducted 110 stakeholder interviews and 21 discussion forums.

In addition, KHF created a website, ncaagenderquityreview.com, where anyone could submit comments and provide information for consideration in this review. As of the date

¹¹ Gender Equity and Title IX, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/inclusion/gender-equity-and-title-ix>.

of this report, that website has received 12,125 unique visitors and more than 1,750 submissions from student-athletes, parents, coaches, fans, NCAA staff, and others.

- **NCAA.** KHF requested, received, and reviewed thousands of pages of internal documents from the NCAA, including from NCAA committees, the Board of Governors, the Division I Board of Directors, the Division I Council, and relevant NCAA staff.¹² These documents covered a range of topics, including the planning and execution of the basketball championships in 2021 and previous years; NCAA finances; broadcast, corporate sponsorship, and branding agreements; and prior gender equity reviews and initiatives.

In addition to receiving documents from the NCAA, KHF also conducted nearly 150 interviews with NCAA committees, executives, and staff from all three divisions, as well as with local organizing committees and third-party contractors who help run the basketball championships. These interviews included staff who manage finance and accounting, broadcast services, branding and fan experience, media services, corporate champions and partners, ticketing and marketing, and logistics involved in the basketball championships.

KHF's interviews covered members of NCAA senior management, including the NCAA's President, Chief Operating Officer, Senior Vice President ("SVP") of Basketball, Vice President of Women's Basketball, Chief Financial Officer, and many others. KHF spoke with members of the Division I Women's and Men's Basketball and Basketball Oversight Committees, among others, and met weekly with representatives from the Women's Basketball and Basketball Oversight Committees throughout the process. KHF also engaged with the NCAA's equity and inclusion committees, including the Board of Governors Committee to Promote Cultural Diversity and Equity, the Committee on Women's Athletics, the Gender Equity Task Force, and the Minority Opportunities and Interests Committee.

- **Expert analysis and valuation.** To determine the true value of the media rights associated with the Division I Women's Basketball Championship, KHF, with the full support of the NCAA, engaged a team of independent media experts led by Ed Desser, the founder and president of Desser Sports Media, Inc. and a former senior media executive in the Commissioner's Office of the National Basketball Association. Desser's valuation team included John Kosner, president of Kosner Media and former head of digital media at ESPN for more than two decades, and Neil McDonald, who has more than three decades of experience in sports media and has helped broker dozens of sports media deals. Desser and his team were tasked with identifying issues with the NCAA's media partnerships, making recommendations about how to improve those relationships, and assigning an

¹² While the NCAA was not able to provide KHF with all the requested documentation, it is our view that the NCAA made a good-faith effort to substantially comply with the requests for documents, that KHF has sufficient information to assess the issues and make recommendations, and that obtaining additional documents would be unlikely to substantially change the report or its recommendations.

accurate estimated value to the media rights for Division I women’s basketball. The team was provided large volumes of documents and data at their request and met with KHF on a regular basis. Desser’s report is attached to this report as an Addendum.

To seize on the momentum created by the gender inequities exposed at this year’s Division I Men’s and Women’s Basketball Championships, and to begin making progress in advance of next year’s championships, KHF committed to completing this phase of its review and issuing a final report before an NCAA Board of Governors meeting in early August 2021. KHF has already begun the second phase of its review, focusing on the other NCAA championships, which we currently anticipate will be completed this fall.

2. Summary of Findings

It is beyond dispute that there were significant disparities between the 2021 Division I Men’s and Women’s Basketball Championships. As highlighted on social media, there were differences in the goods, services, and resources provided to the women’s basketball players, including their weight training facilities, COVID-19 tests, food, recreational opportunities, and gifts and mementos. In addition, there have been significant—and longstanding—disparities in the production and operation of the championships, including, among other things, differences in the quality and quantity of branding and signage at the arenas and host cities; in the use of the “March Madness” trademark; and in the sponsorship of the fan festivals, etc. In all of these areas and more, the experience of the women’s tournament participants was markedly different from and inferior to that of the men’s tournament participants.

The unique logistical challenges presented by the coronavirus pandemic impacted the 2021 championships in many ways. Perhaps most significantly for purposes of gender equity, the pandemic gave rise to a view on the part of tournament organizers that, after the NCAA was forced to cancel the 2020 tournament, a failure to hold the 2021 men’s championship would have had a disastrous financial impact on the NCAA going forward. That attitude resulted in a prioritization of men’s basketball that shaped every facet of the 2021 championships, starting with the public announcement of the host cities and continuing through the planning process and into the tournaments themselves. But this prioritization of men’s basketball existed well before the pandemic. Indeed, as discussed below, there are underlying, systemic gender equity issues at the NCAA which must be remediated if the goal of equitable treatment of student-athletes is to be achieved.

The NCAA’s organizational structure and culture prioritizes men’s basketball, contributing to gender inequity. As a not-for-profit, member-led organization, the work of the NCAA is conducted by internal staff and member committees. In both areas, men’s basketball is prioritized over women’s basketball.

With respect to the Division I basketball staff, many stakeholders report that, in both practice and perception, women’s basketball essentially reports to and is subordinate to men’s basketball. The SVP of Basketball, although tasked with managing both men’s and women’s

basketball, focuses the majority of his time and energy on men’s basketball, in large part because the vast majority of the NCAA’s current revenue comes from men’s basketball. In addition, leaders of the NCAA’s chief revenue functions, such as broadcast services and corporate relations, report directly to the SVP of Basketball and, in some cases, the Managing Director of Men’s Basketball. With respect to the committees, the men’s basketball committees are comprised of more senior leaders within the NCAA membership than the women’s basketball committees, which negatively impacts the women’s committees’ ability to effectuate change.

Moreover, the resources allocated to men’s and women’s basketball differ significantly, even taking into account the differences in the size of the tournaments. Men’s basketball has substantially more full-time staff and contractor support to plan their championship. There are sizeable disparities between the budgets for the men’s and women’s tournaments; in 2019, the last year for which there are finalized financials, the difference in spending was approximately \$35 million. In some respects, these disparities are justifiable in that they result from objective differences in the tournaments themselves, including, for example, the tournaments’ respective fan attendance, media attention, and use of neutral sites. But the differences in the tournaments do not fully account for the differences in spending. And the impact of these disparities on the student-athlete experience is exacerbated by the lack of communication and coordination between the men’s and women’s basketball staffs and committees. The staffs and committees for men’s and women’s basketball operate largely in “silos,” independently from each other, with little strategic coordination or common purpose. This “silo-ing” of operations impedes the NCAA’s ability to provide equitable championship experiences for student-athletes.

Finally, the NCAA lacks the infrastructure necessary to effectively review budgets, staffing, or any other aspect of the Division I Men’s and Women’s Basketball Championships to monitor and assess gender equity. There is currently no individual—or group—within the NCAA responsible for that task.

The structure of the NCAA’s media agreements perpetuates gender inequity. The NCAA has divided the rights and obligations to broadcast and sell sponsorships of its championships across two media partners, with whom it has long-term, lucrative contracts.

With CBS Broadcasting Inc. and Turner Broadcasting System, Inc. (together, “CBS/Turner”),¹³ the NCAA is party to several contracts that require CBS/Turner to broadcast the Division I Men’s Basketball Championship and to market and sell the NCAA’s corporate sponsor program (the “Corporate Partner Program”), which supports all 90 NCAA championships. In exchange, CBS/Turner will pay the NCAA an average of nearly \$1.1 billion annually as part of the most recent contract, which sets rights fees for the 2024-32 period.¹⁴

With ESPN, Inc. and ESPN Enterprises, Inc. (together, “ESPN”), the NCAA exchanges the right to broadcast 29 NCAA championships, including Division I women’s basketball, for a

¹³ WarnerMedia, LLC now owns Turner Broadcasting System, Inc., but because the NCAA and its media partners still refer to the relationship and the accompanying agreement as “CBS/Turner,” this report does the same.

¹⁴ Under the contract that sets rights fees for the 2010-24 period, CBS/Turner pays the NCAA an average of \$771.4 million annually.

substantially lower fee of, on average, \$34 million per year, or approximately 4.5% of the total rights fee that the NCAA receives from CBS/Turner over the same time period. But based on an independent analysis by expert Ed Desser, the Division I Women's Basketball Championship *alone* is worth much more—between \$81 and \$112 million annually in 2025. This significant undervaluation is the result of the growing popularity of women's basketball, a changing media landscape, and the fact that the championship's media rights have not been up for competitive bid in nearly two decades.

In addition to significantly undervaluing women's basketball as an asset, the structure of these contracts prioritizes support for men's basketball to the exclusion of women's basketball (and other sports). Because CBS/Turner controls the sponsorship rights for *all* NCAA championships, but the broadcast rights for men's basketball only, CBS/Turner is incentivized to create and encourage sponsorship opportunities for men's basketball above all other sports. And because CBS/Turner requires its Corporate Champions and Partners to purchase the sponsorship rights to all 90 championships *and* the media rights to the men's championship in order to participate as a sponsor, the cost of supporting the women's championship is prohibitively expensive for many companies, shutting out sponsors who might otherwise be interested in supporting women's basketball, but cannot afford the more costly sponsorship of men's basketball. Further, the structure of the contracts imposes a significant set of hurdles even for an existing NCAA sponsor to support other championships: to air advertisements during the women's basketball championship while reaping the benefits of the NCAA's brand, for example, a corporate sponsor must first buy into the expensive CBS/Turner Corporate Partner Program, and then turn to ESPN and separately negotiate and pay for airtime during the women's basketball championship.

As a result, the structure of these contracts has a direct and inequitable impact on the student-athlete experience of women players. Because CBS/Turner has the incentive to build up men's basketball at the expense of all other sports, the men's tournament has a different look and feel—drawing leading artists who perform at a concert during the Final Four, television advertisements that feature famous athletes and public figures, and programming that airs during the broadcast of the tournament covering players, their stories, and their families. Further highlighting men's basketball, the CBS/Turner relationship also includes the broadcaster's obligation to develop and maintain the March Madness Live mobile app, which, by design, only covers men's basketball; the women's basketball app, which is operated by the NCAA itself, has a smaller staff and budget at its disposal and cannot livestream games, leading to a less-functional product. Together, these features make the men's tournament feel like a professional sporting event, while the women's championship lags far behind.

Further, the NCAA's treatment of revenue from these contracts skews the conversation about which sports purportedly make and lose money for the NCAA and its members. The NCAA allocates all of the incredibly lucrative CBS/Turner rights fee—this year, \$850 million—as revenue from men's basketball only, notwithstanding the fact that the agreement includes selling CBS/Turner the management of the Corporate Partner Program, which covers the right to use and profit off of the NCAA's brand and logo in connection with *all* 90 championships, not just men's

basketball. This revenue allocation impacts the internal NCAA narrative, which has been repeated in the press, that women’s basketball is a revenue loser and, therefore, not as worthy of investment.

The NCAA’s revenue distribution model prioritizes and rewards investment in men’s basketball. One of the NCAA’s fundamental tenets is that it distributes the majority of its revenue back to its membership—most of which goes to the Division I conferences and schools to fund their athletic programs. The largest slice of the pie is distributed through what is known as the “Basketball Fund,” which allocates revenue among conferences based *solely* on the participation of a conference’s automatic qualifying team in, and a conference’s overall performance at, the Division I Men’s Basketball Championship. In other words, the further a school’s team makes it in the men’s tournament, the more revenue that school’s conference is given. As a result, institutions are incentivized to invest in their men’s basketball programs in the hopes of progressing as far as possible in the men’s tournament to gain as much revenue as possible. There is no analogous financial reward for participation in or performance at the Division I Women’s Basketball Championship. This sends a very clear and loud message to student-athletes, conferences, and schools about which sports matter and which sports do not.

The disparity in participation opportunities for men’s and women’s basketball further impacts the student-athlete experience. Not only is there a disparity between the student-athlete experience at the Division I Men’s and Women’s Basketball Championships, but there are also more participation opportunities provided by the NCAA to men’s basketball players than to women’s basketball players. Those increased participation opportunities result from, among other things, the larger bracket size for the Division I men’s championship (68 teams in the men’s versus only 64 in the women’s); the NCAA’s ownership and operation of only the men’s National Invitation Tournament (“NIT”) and not the Women’s National Invitation Tournament (“WNIT”), post-season tournaments for top Division I basketball teams not selected for the Division I championships; and the NCAA’s operation of the College Basketball Academy, a developmental academy for high school boys without an equivalent for high school girls.

Fewer disparities exist in Division II and Division III men’s and women’s basketball. Our review showed that Division II and III basketball have managed to avoid many of the systemic gender equity issues that are present in Division I basketball. This is attributable to the fact that neither men’s nor women’s basketball in these divisions brings in any real revenue for the NCAA, so there is no financial incentive to prioritize one gender over the other. In addition, the governance structure for these divisions better facilitates conversations between men’s and women’s basketball, and the leadership and staff focus on and prioritize gender equity. Disparities still exist, however, particularly with respect to the size and quality of venues. There is also no formal requirement that NCAA staff members or the relevant basketball committees coordinate on individual championship planning decisions, which can result in small disparities occurring each year between the championships.

3. Summary of Recommendations

Although the systemic issues summarized above are significant, we believe that there are concrete steps that the NCAA can and should take that will make the student-athlete experience far more equitable from the perspective of gender. This report's recommendations—all of which are discussed in detail below—fall into the following seven categories:

First, the NCAA should **provide structural support for gender equity** in connection with the Division I Men's and Women's Basketball Championships. In order to address the organizational, staffing, and budgetary disparities identified in this review, the NCAA should:

- 1.1: Change the leadership structure of Division I basketball to prioritize gender equity and coordination between the men's and women's tournaments.
- 1.2: Before the next budget cycle, conduct a "zero-based" budget for Division I men's and women's basketball to ensure that any gender differences are necessary, appropriate, and equitable.
- 1.3: Develop equity in staffing for Division I men's and women's basketball.
- 1.4: Establish regular communications between the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

The NCAA should also take steps to **improve transparency and accountability around gender equity**. Specifically, the NCAA should:

- 1.5: Perform a real-time gender equity audit of the Division I Men's and Women's Basketball Championships as they are being planned and executed each year.
- 1.6: Prepare an annual report on the results of the real-time gender equity audit, including issues identified, how those issues were resolved, and lessons learned.
- 1.7: Conduct an external gender equity assessment of the Division I Men's and Women's Basketball Championships in five years.
- 1.8: Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.
- 1.9: Evaluate and reward performance for contributions to gender equity.
- 1.10: Increase NCAA staff with expertise in Title IX and gender equity.

Second, the NCAA should take steps to **maximize value through gender equity in marketing, promotion, and sponsorships**. Many of the gender inequities identified in this review

stem from the view that men’s basketball is and will continue to be the primary source of funding for the NCAA and its membership. Taking steps to maximize the value of women’s basketball—and other sports—will promote gender equity while at the same time increasing and diversifying the NCAA’s revenue streams. Specifically, the NCAA should:

- 2.1: Market the rights to the Division I Women’s Basketball Championship as a stand-alone property.
- 2.2: Use “March Madness” for both the Division I Men’s and Women’s Basketball Championships.
- 2.3: Negotiate for a new tier of corporate sponsors for the Division I Women’s Basketball Championship (and other NCAA championships).
- 2.4: Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.
- 2.5: Implement an overall strategy to realize the value of the Division I Women’s Basketball Championship (and other championships across the NCAA).
- 2.6: Establish a system for tracking sponsorship activations across the Division I Men’s and Women’s Basketball Championships (and all other championships across the NCAA).
- 2.7: Pursue marketing and promotional opportunities that will benefit both the Men’s and Women’s Division I Basketball Championships.
- 2.8: Increase cross-promotion of the Division I Men’s and Women’s Basketball Championships.

Third, the NCAA should take steps to **improve gender equity at future championships**. To address the disparities in the student-athlete experience that marred the 2021 championships and reduce the likelihood that such disparities will recur, the NCAA should:

- 3.1: Hold the men’s and women’s Final Fours together in one city.
- 3.2: Ensure that items impacting the student-athlete experience at the Division I Men’s and Women’s Basketball Championships are gender-equitable.

Particularly in light of the long-term nature of the CBS/Turner contract, it is our view that combining the Final Fours in a single location is, practically speaking, the best possible way to ensure that male and female players have similar, if not the same, experiences at the championships with respect to sponsorship, gifts, signage, etc.

Fourth, the NCAA should **recognize gender equity in revenue distribution**. The existing revenue distribution model rewards performance in only the men’s championship, not the women’s. This sends a very strong message to women’s basketball players that their contributions and achievements do not matter. Over time, and in a way that minimizes immediate disruption to the membership and their budgets, the NCAA should take thoughtful and calibrated steps to:

- 4: Apply gender equity values to revenue distribution.

Fifth, the NCAA should take steps to **ensure gender equity in participation opportunities**. The NCAA should address the differences in the overall number of participation opportunities made available by the NCAA to both current and prospective women’s basketball players and:

- 5: Provide an equitable number of participation opportunities.

Sixth, the NCAA should take steps to **enhance gender equity in Division II and III basketball**. Although KHF’s review showed that Divisions II and III basketball have managed to avoid many of the systemic gender equity issues that are present in Division I, disparities still exist. In order to address them, the NCAA should:

- 6.1: Establish regular communications between the Division II and III Men’s and Women’s Basketball Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.
- 6.2: Ensure that items impacting the student-athlete experience at the Division II and III Men’s and Women’s Basketball Championships are gender-equitable.

Seventh, the NCAA should **ensure progress on gender equity** by requiring there to be transparency and accountability. Many of the issues identified in this review—and some of the recommendations put forward—are not new. Efforts to resolve gender equity issues in the NCAA have percolated at various times over the past 20 years or more. To make the most of this opportunity to improve the experiences of thousands of student-athletes, and to ensure that this latest effort does not simply “sit on a shelf,” the NCAA should:

- 7: For the next five years, conduct an annual public assessment of the NCAA’s progress in implementing the recommendations set forth in this report.

WHAT HAPPENED AT THE 2021 NCAA BASKETBALL CHAMPIONSHIPS

The 2021 Division I basketball championships were unique in many ways. Looming over everything, of course, is the fact that planning for the tournaments took place amidst an unprecedented global pandemic, which presented significant logistical challenges. Indeed, the lengthy uncertainty about whether the tournaments would be able to go forward at all shortened the timeframe to prepare. At the same time, because of the massive financial loss the NCAA sustained as a result of the cancellation of the basketball championships the year before, the NCAA was engaged in a number of belt-tightening measures that impacted the staffing resources available for tournament preparation.

Due to COVID-19, the NCAA held both the men's and women's tournaments in a controlled environment at a single site for all rounds—*i.e.*, a “bubble”—requiring significant changes to the structure of both tournaments. Because these tournament bubbles meant that the men and the women were, for the first time, each playing all of their tournament rounds in a single location, the two tournaments were more alike than ever before. By the same token, however, the bubbles enabled a side-by-side, real-time comparison that revealed critical gender equity issues and garnered significant public attention.

It should be noted that hundreds of NCAA staff and volunteers worked incredibly long hours over a period of months to safely conduct the 2021 college basketball championships despite the pandemic. While they achieved that goal, many of them were devastated by the gender inequities that marred the student-athlete experience and ultimately overshadowed the women's tournament. Many student-athletes and coaches expressed deep gratitude for the opportunity to compete in the tournament, but similarly felt that their experience had been tarnished by the inequities they experienced firsthand.

Those gender inequities were baked into the very fabric of the tournaments and how the tournaments were viewed by the NCAA. It was clear to tournament organizers that after the NCAA was forced to cancel the 2020 men's tournament due to the pandemic, failure to hold the 2021 men's championship would have a potentially catastrophic impact on the NCAA's financial position moving forward. As one senior NCAA official explained, “We knew if we failed with the men, the NCAA was doomed. We'd be nothing. . . . There wasn't the same sense of angst with the women.”

1. Announcement & Planning

This fundamental difference in perspective about the relative importance of the 2021 men's and women's championships led to gender disparities from the very outset of the planning process. The first decision the NCAA faced was whether to hold the tournaments at all and, if so, whether to host each tournament in a single location or “bubble” because of COVID-19. Making those decisions, and making them public, was the essential prerequisite to tournament planning. Men's

basketball announced their plans for going forward with the tournament in one location on November 16, 2020, but women’s basketball was not permitted to make their announcement until a month later on December 14, 2020.¹⁵ This ultimately left women’s basketball almost a full month behind in the planning process. While the timing of the men’s basketball decision and announcement was driven specifically by the NCAA’s need to release hotel rooms for the preliminary rounds of the tournament in order to avoid being on the hook for upwards of \$2 million under the applicable contracts, that rationale fails to explain why women’s basketball was not permitted to proceed on a similar timeline.

Women’s basketball was not told about the men’s announcement with sufficient time to decide to make a similar announcement on November 16, but they quickly mobilized and informed the SVP of Basketball just days later that they were prepared to make a parallel announcement on November 23. The women’s basketball staff and leadership of the Women’s Basketball Committee raised concerns about both the optics of men’s basketball making its announcement first and separately from women’s basketball, as well as about the impact of the delay on the women’s planning. As one leader explained, the “main concern was the delay. The longer the delay, the more difficult it was going to be. Every day that goes by makes it more difficult.”

Ultimately, the NCAA did not permit the women’s basketball announcement to go forward in November 2020. Instead, women’s basketball was instructed that they would first have to conduct a financial review to determine, and then get approval for, the significant additional pandemic-related costs so that the NCAA could decide whether to follow the men’s plan and hold all rounds of the women’s championship in one location. This direction came from NCAA senior leadership, including the SVP of Basketball, the Chief Operating Officer, and the Chief Financial Officer. Men’s basketball did not have to undergo the same financial analysis and approval process. As senior NCAA leaders made clear, because the men’s tournament generated nearly a billion dollars in revenue, the NCAA “need[ed] to expend the resources to make [the men’s tournament] happen.”

After extensive meetings and financial analysis, the NCAA Division I Board of Directors Finance Committee approved the proposed budget for the women’s tournament on December 7, noting the importance of holding the women’s tournament despite the additional expense as part of their commitment to gender equity.¹⁶ The Division I Women’s Basketball Committee approved the decision to hold the tournament in one geographic location on December 10.¹⁷ The PowerPoint presented to the Women’s Basketball Committee emphasized “the importance of conducting the championship in a manageable geographic area that limits travel and provides a safe and controlled

¹⁵ The NCAA accompanied these announcements with releases on the NCAA website. See David Warlock, *NCAA Relocating 2021 Division I Men’s Basketball Championship Sites*, NCAA (Nov. 16, 2020), <https://www.ncaa.org/about/resources/media-center/news/ncaa-relocating-2021-division-i-men-s-basketball-championship-sites>; Rick Nixon, *San Antonio Region Viewed as Potential Host for 2021 DI Women’s Basketball Championship*, NCAA (Dec. 14, 2020), <https://www.ncaa.org/about/resources/media-center/news/san-antonio-region-viewed-potential-host-2021-di-women-s-basketball-championship>.

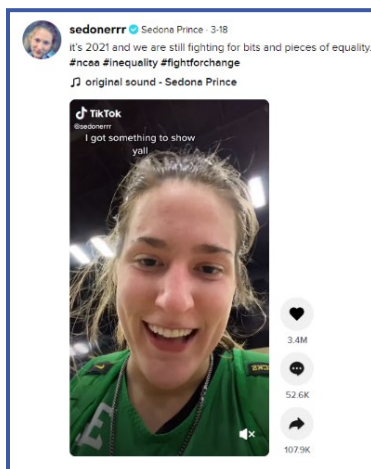
¹⁶ Report of the NCAA Division I Board of Directors Finance Committee (Jan. 12, 2021).

¹⁷ Division I Women’s Basketball Committee PowerPoint Presentation (Dec. 10, 2020).

environment with competition and practice venues, medical resources and lodging for teams and officials all within proximity of one another.”¹⁸ As a result, the NCAA did not publicly announce that the women’s tournament would be held in a single city until December 14, 2020—just three months before the student-athletes were scheduled to arrive.¹⁹

Even after the December 14 announcement, however, planning for the women’s event still continued to lag behind planning for the men’s tournament. The NCAA announced on January 4, 2021 that the men’s tournament would take place in Indianapolis;²⁰ the NCAA did not announce that the women’s tournament would take place in San Antonio until a month later, on February 5.²¹ The women’s staff made their first site visit to San Antonio on January 25-28 and then worked to try to solidify hotel and facility contracts, as well as coronavirus protocols, in the days leading up to the February 5 announcement.²²

The men’s and women’s teams began arriving at their bubbles on March 13 and 16, respectively. Even before the first women’s game took place, the issue of gender equity took over the news, when, as discussed above, University of Oregon player Sedona Prince posted a video on social media depicting differences between the men’s and women’s weight rooms.



Sedona Prince’s TikTok Video from March 18, 2021²³

¹⁸ *Id.*

¹⁹ See Rick Nixon, *San Antonio Region Viewed as Potential Host for 2021 DI Women’s Basketball Championship*, NCAA (Dec. 14, 2020), <https://www.ncaa.org/about/resources/media-center/news/san-antonio-region-viewed-potential-host-2021-di-women-s-basketball-championship>.

²⁰ David Warlock, *NCAA Announces Further Details for 2021 Division I Men’s Basketball Championship*, NCAA (Jan. 4, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-announces-further-details-2021-division-i-men-s-basketball-championship>.

²¹ Meghan Durham, *San Antonio Region to Host 2021 Division I Women’s Basketball Championship*, NCAA (Feb. 5, 2021), <https://www.ncaa.org/about/resources/media-center/news/san-antonio-region-host-2021-division-i-women-s-basketball-championship>.

²² 2021 Women’s Basketball Championship Planning Timeline by Women’s Basketball Staff.

²³ Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), <https://www.tiktok.com/@sedonerrr/video/6941180880127888646>.

That video was quickly picked up and shared by professional athletes and thousands of other basketball fans.²⁴ Other reports quickly followed, raising questions about everything from disparities in COVID-19 testing and food, to the NCAA's unequal promotion of the men's and women's events.²⁵

The unique challenges created by the pandemic and the compressed planning timeline for the women's tournament certainly contributed to the inequities in the student-athlete experience at this year's Division I championships. But it would be a mistake to conclude that disparities between the men's and women's tournaments were limited to this year or to look at this year's tournaments out of context. As discussed below, many of the disparities that received public attention this past spring stem from systemic issues that contribute to and exacerbate gender inequities in the NCAA basketball championships.

2. Weight Rooms

The first issue to garner significant public attention at this year's tournament was the differences in the weightlifting facilities provided to the men and women as a result of Sedona Prince's March 18 TikTok video.²⁶ That video highlighted for the public the fact that the NCAA had provided the men a large, central weight room divided into six weightlifting areas, which was available to all 68 men's teams as soon as they cleared their two-day quarantine upon arrival in Indianapolis.²⁷ In addition, the NCAA set up a small pyramid of dumbbells in the holding room adjacent to the practice courts, where the student-athletes would stretch and wait while the court and courtside areas were sanitized and cleaned.

By contrast, the NCAA did not plan to set up any weight room for the women at all until the Sweet Sixteen, when they planned to have three private weightlifting areas available.²⁸ For the first two rounds of the women's tournament, the student-athletes were intended to have access

²⁴ See, e.g., Courtney Connley, *Steph Curry, A'ja Wilson and Other Athletes Call Out NCAA for Unequal Treatment of Men and Women Basketball Players*, CNBC (Mar. 19, 2021), <https://www.cnbc.com/2021/03/19/steph-curry-other-athletes-call-out-ncaas-treatment-of-women-players.html>.

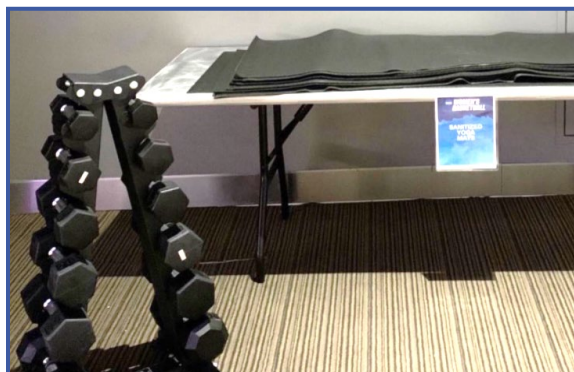
²⁵ See, e.g., Juliet Macur and Alan Blinder, *Anger Erupts Over Disparities at N.C.A.A. Tournaments*, N.Y. Times (Mar. 19, 2021), <https://www.nytimes.com/2021/03/19/sports/ncaabasketball/women-ncaa-tournament-weight-room.html>; Molly Hensley-Clancy, *NCAA Vows to Improve Conditions at Women's Basketball Tournament, as Outcry Continues*, Wash. Post (Mar. 19, 2021), <https://www.washingtonpost.com/sports/2021/03/19/ncaa-women-basketball-weight-room/>; Becky Sullivan, *Under Fire, The NCAA Apologizes And Unveils New Weight Room For Women's Tournament*, NPR (Mar. 20, 2021), <https://www.npr.org/2021/03/20/979596524/under-fire-the-ncaa-apologizes-and-unveils-new-weight-room-for-womens-tournament>; Scott McDonald, *NCAA Gender Inequity Cuts Deeper Than Just Weight Room Issues at Tournament*, Newsweek (Mar. 20, 2021), <https://www.newsweek.com/ncaa-gender-inequity-cuts-deeper-just-weight-room-issues-tournament-1577617>; Gabriella Levine, *NCAA March Madness drops the ball for women's basketball with sexism outrage*, NBC News (Mar. 23, 2021), <https://www.nbcnews.com/think/opinion/ncaa-march-madness-drops-ball-women-s-basketball-sexism-outrage-ncna1261775>; Molly Hensley-Clancy, *Pressure Mounts on NCAA as House Democrats Demand Answers Over Tournament Disparities*, Wash. Post (Mar. 24, 2021), <https://www.washingtonpost.com/sports/2021/03/24/ncaa-tournament-house-democrats-megan-rapinoe/>.

²⁶ See Sedona Prince (@sedonerrr), TikTok (Mar. 18, 2021), <https://www.tiktok.com/@sedonerrr/video/6941180880127888646>.

²⁷ 2021 Men's Basketball Participant Manual at 84.

²⁸ 2021 Women's Basketball Participant Manual at 4-5.

only to a small set of dumbbells, a stationary bike, and yoga mats placed in the women’s holding room, similar to the holding room that had been set up for the men.²⁹



Pictures Shared on Social Media of Men’s Full Weight Room and Women’s Holding Room Weights at the Start of the Tournaments³⁰


The decision to provide a full weight room for the duration of the men’s tournament was made by the NCAA men’s staff after consulting with the NBA about the bubble set up for the 2020 NBA Playoffs. On February 17, the NCAA men’s staff sent the women’s staff a draft manual for tournament participants,³¹ which noted the then-current plans for private weight rooms next to each practice court.³² The following week, on February 26, the men’s staff sent athletic directors and conference commissioners a PowerPoint—one of a series of weekly PowerPoints that provided real-time updates on coronavirus protocols and other championship logistics—that contained details about equipment available at the men’s tournament. The February 26 PowerPoint made clear that a weight room would be available through the entirety of the men’s tournament, and even listed the specific equipment that would be included:


²⁹ See Workout and Weights Facts & Plans (Mar. 18, 2021); see also 2021 Women’s Basketball Participant Manual at 5.

³⁰ Ali Kershner (@kershner.ali), Instagram (Mar. 18, 2021), <https://www.instagram.com/p/CMkRJ2LswFp>. Ali Kershner is the performance coach for the Stanford women’s basketball team.

³¹ Participant manuals are created each year to provide teams with detailed logistical information for the upcoming tournament.



³² See Email from Men’s Basketball Staff to Women’s Basketball Staff re: MBB Team Manual (Feb. 17, 2021); see also 2021 Indianapolis All-Team Manual Draft (“This time will include weight training, which will be available on each court, should any individuals wish to utilize this equipment.”)





WEIGHT ROOMS (AVAILABLE NON-GAME DAYS)

- Weights will be provided for team use at the convention center starting on Tuesday, March 16.
- A reservation form will be provided to reserve times outside of the practice windows if desired.
- The NCAA will make best efforts to accommodate teams preferred time.

Quantity	Equipment
5	8' Half Racks w/ pull up bar
5	DB Bench
2	Small Horizontal Bumper Plate Racks
4	Large Horizontal Bumper Plate Racks
5	Men's Training Bar (20kg)
20	20 Kg Training Bumper Plate (Blue)
20	15 Kg Training Bumper Plater (Yellow)
10	10 Kg Training Bumper Plate (Green)
5	Iron Grip 7' Olympic bar
20	45 lb Urethane Olympic plate
10	25 lb Urethane Olympic plate
10	10 lb Urethane Olympic plate
5	5 lb Urethane Olympic plate
1	Iron Grip 5-50 lb DBs
1	Iron Grop 55-75 lb DBs

Slide from February 26, 2021 Men's Basketball PowerPoint³³

Although this PowerPoint was forwarded to the women's staff that same day,³⁴ the volunteer helping the women's staff to review the men's weekly PowerPoints for updates relating to coronavirus protocols did not scrutinize the slides in order to identify potential disparities between the two tournaments. The same was true with respect to the participant manuals. As one NCAA women's basketball staff member explained, "We never put those manuals side by side. We didn't have time to do this. We just tried to get our information into the manual as soon as possible."

Neither the first nor second draft participant manual that the women's staff shared with the men's staff included any reference to a weight room at the women's tournament.³⁵ The final version of the women's manual, circulated on March 15, was the first time that the women's staff shared detailed information about their weight room plans, which they highlighted in green, and which explained that other than "access to a stationary bike and free weight pyramid within the holding areas and/or team practice locations" there would not be workout facilities in the first and

³³ See 2021 DI Men's Basketball Tournament Update #4 (Feb. 26, 2021).

³⁴ See Email from Men's Basketball Staff to Women's Basketball Staff re: MBB Tournament Update #4 (Feb. 26, 2021).

³⁵ See 2021 First Edition – WBB Participant Manual (Mar. 5, 2021); 2021 Second Edition – WBB Participant Manual (Mar. 10, 2021).

second rounds “due to limited space, movement of teams, number of individuals within each property and sizes of workout facilities with COVID-19 capacity restrictions.”³⁶

Weight & Workout Facilities / Outdoor Spaces -
1st and 2nd Rounds. Each team will have access to a stationary bike and free weight pyramid within holding areas and/or team practice locations. No hotel or other workout facilities will be available due to limited space, movement of teams, number of individuals within each property and sizes of workout facilities with COVID-19 capacity restrictions.
Sweet 16/Elite Eight. Starting on Wednesday, March 25th, a workout/weight facility (up to 90 minutes per day per team) will be made available at the Convention Center as part of the team coordinated schedule of events. A list of expected equipment is provided below.
Women’s Final Four. A workout/weight facility (up to 90 minutes per day per team) will be made available at the Convention Center as part of the team coordinated schedule of events. A list of expected equipment is provided below.

Excerpt of March 15, 2021 Final Edition of Participant Manual for Women’s Basketball Championship³⁷

Even shortly before the tournaments began, details for the weight rooms intended for the women’s Sweet Sixteen and beyond were still being sorted out. On March 13, for example, one women’s basketball staff member emailed another a screenshot of the men’s participant manual section on the weight room, noting that the men’s plans could be used as a basis to decide what equipment they would need: “FYI – a snapshot from MBB manual on weight room usage and set-up. Again, this list is FAR too heavy for WBB needs, yet a good start for review.”³⁸ The women’s basketball staff member later explained that March 13 was the first time she learned that the men were providing a full weight room for the duration of the tournament. And the night before Sedona Prince posted the weight room photos, on March 17, women’s basketball received a \$100,000 estimate for their planned Sweet Sixteen weight rooms.³⁹

The public outcry unleashed by Sedona Prince’s video caused the NCAA to quickly pivot from its original plan. After discussions with women’s coaches and NCAA basketball leadership, the women’s staff worked with an outside contractor to construct a weight room virtually overnight.⁴⁰ To do so, the NCAA provided the contractor with what essentially amounted to a

³⁶ 2021 Women’s Basketball Participant Manual at 4-5.

³⁷ *Id.* at 4.

³⁸ Emails between Women’s Basketball Staff re: Weight Details (Mar. 13, 2021).

³⁹ See Email from MKTG to Women’s Basketball Staff re: Weight Room Estimate (Mar. 17, 2021).

⁴⁰ See Teamworks Message from NCAA to Women’s Basketball Teams re: New Weight Room and Enhanced Courtside Workout Spaces (Mar. 20, 2021). This semi-private weight room could accommodate two teams simultaneously and was constructed despite the NCAA’s initial statement that the planned disparity in weight rooms was “due to the limited space.” Statement from Vice President of Women’s Basketball, NCAA Women’s Basketball (@ncaawbb), Twitter (Mar. 18, 2021), <https://twitter.com/ncaawbb/status/1372676389208477696>; see also Gabriel Fernandez, *2021 Women’s NCAA Tournament: NCAA Says Women Got Smaller Gym Than Men Because There Wasn’t Enough Space*, CBS Sports (Mar. 19, 2021), <https://www.cbssports.com/college-basketball/news/2021-womens-ncaa-tournament-ncaa-says-women-got-smaller-gym-than-men-because-there-wasnt-enough-space/>.

blank check. In an initial estimate on March 19, the contractor informed the NCAA that it might cost anywhere between \$400,000 and \$500,000 to complete the weight room in the requested timeframe; the NCAA responded that “while mindful of budget, [the] first priority is to make it happen.”⁴¹ The NCAA ultimately paid \$370,139 to set up the new women’s weight room.⁴²



Picture of the New Weight Room Set Up at the Women’s Tournament on March 20, 2021⁴³

That weight room opened on March 20 and was divided into two separate areas, allowing two women’s teams to work out at once.⁴⁴ The NCAA also set up spaces next to the practice courts that included workout benches, workout bikes, rowing machines, and treadmills. Both the enhanced courtside spaces and the weightlifting areas saw significant use in the days after they were set up.⁴⁵ For the Sweet Sixteen and beyond, starting on March 25, the NCAA replaced the temporary weight room with the three private weight rooms that had originally been planned, containing equipment similar to that used for the men.⁴⁶

Some members of the women’s staff, senior NCAA leadership, and the Women’s Basketball Oversight Committee described being shocked when the Sedona Prince video began circulating online and they saw the disparities in the weightlifting facilities. The video also made the contrast starker for those NCAA staff who had been aware of the difference for a few days.

⁴¹ See Email from Women’s Basketball Staff to MKTG re: APPROVAL NEEDED - Weight Room Budget (Mar. 19, 2021).

⁴² See NCAA Women’s Overnight & Extended Weight Room Final Budget.

⁴³ Image from the NCAA.

⁴⁴ See Teamworks Message from NCAA to Women’s Basketball Teams re: New Weight Room and Enhanced Courtside Workout Spaces (Mar. 20, 2021); Email from NCAA Women’s Basketball Staff to NCAA Communications Staff re: New Offerings for Women’s Teams (Mar. 29, 2021).

⁴⁵ See Email from Women’s Basketball Staff to Vice President of Women’s Basketball re: Convention Center Room Metrics (Mar. 30, 2021).

⁴⁶ See Teamworks Message from NCAA to Women’s Basketball Teams re: New Weight Room and Enhanced Courtside Workout Spaces (Mar. 20, 2021). Compare 2021 Men’s Basketball Participant Manual at 84 (detailing equipment in men’s weight room), with 2021 Women’s Basketball Participant Manual at 5-6 (detailing equipment in women’s weight room).

For example, one women’s basketball staff member noted, “When we learned about the video, I’ll be frank, a lot of us went white in the face. And rightfully so; we didn’t have a big weight room.”

3. COVID-19 Protocols

Soon after the weight room issue came to light, public attention turned to differences in COVID-19 protocols for tournament participants. While everyone who entered the tournament bubbles had to undergo seven consecutive days of negative COVID-19 tests (including at least one polymerase chain reaction (“PCR”) test) before arrival and a two-day quarantine upon arrival, teams at the men’s tournament received daily PCR tests, whereas teams at the women’s tournament instead received daily antigen tests, with only one PCR test per week.⁴⁷

As with the rest of championship planning, the men’s staff was several weeks ahead of the women’s staff in developing COVID-19 protocols.⁴⁸ Men’s basketball and the NCAA’s Chief Medical Officer partnered early with Indiana University (“IU”) Health and with the Marion County Public Health Department to develop safety and testing protocols. The Marion County Public Health Department required daily PCR testing that would not interfere with the local community’s ability to obtain testing. IU Health had a sophisticated lab that was able to run large batches of tests to fulfill those requirements.

On December 22, 2020, the Director of the Marion County Public Health Department approved the following plan of daily PCR testing for the men’s championship:

DRAFT

DAILY COVID-19 PCR TESTING: Daily PCR testing (witnessed and self-administered PCR nasal swab) will take place throughout the entire tournament for Tier 1 individuals who remain in the tournament. All COVID-19 testing will take place in designated locations in hotels in Marion County.

Men’s Tournament Medical Protocol from December 22, 2020⁴⁹

⁴⁷ See 2021 Women’s Basketball Participant Manual at 12, 18-19; 2021 Men’s Basketball Participant Manual at 25-26, 32. The physical distancing guidelines, mask policies, movement restrictions inside and outside hotels, and in-room quarantine policies were similar between the men’s and women’s championships. Compare 2021 Women’s Basketball Participant Manual at 10-32 (COVID-19 protocols), with 2021 Men’s Basketball Participant Manual at 20-42 (COVID-19 protocols).

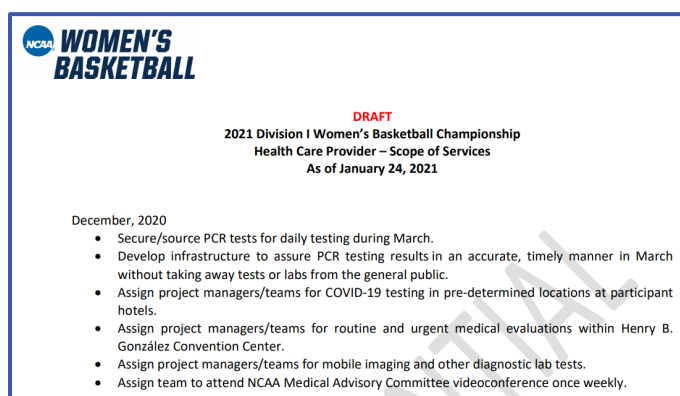
⁴⁸ For example, men’s basketball executed their agreement with Stratoscope—a contractor who assisted with reviewing the medical and testing plans, implementing testing schedules and protocols, managing the collection of necessary health data pre-tournament, and providing onsite support—on February 15, 2021. The women’s staff did not execute a similar agreement until March 5, 2021. See Master Services Agreement and Scope of Work Agreement between the NCAA and Stratoscope Consulting, LLC. In fact, the women’s staff did not execute the agreement with Stratoscope until NCAA leadership recognized that the women’s tournament did not have the appropriate infrastructure for COVID-19 testing and connected the women’s staff with Stratoscope two weeks before the start of the tournament.

⁴⁹ 2021 NCAA Division I Men’s Basketball Tournament Medical Protocol Draft at 2 (Dec. 22, 2020).

Men's basketball confirmed this plan with the Health Department Director by letter on January 1, 2021,⁵⁰ and announced the partnership with IU Health on January 6, 2021.⁵¹

Meanwhile, the NCAA was working out a larger plan for COVID-19 testing across all the other NCAA championships. On January 1, 2021, the NCAA entered into an agreement with Diamond Health to “plan for, schedule, implement, manage and oversee all on-site COVID-19 testing activities” for the NCAA championships.⁵² On January 11, the NCAA announced that Diamond Health would be the testing provider for all championships other than Division I men's and women's basketball.⁵³ The testing procured through Diamond Health was daily antigen testing, with rapid PCR tests for confirmatory or inconclusive tests.⁵⁴

Over the following weeks, the NCAA worked to determine whether Diamond Health could provide testing for the women's championship and what the local health authorities in San Antonio would require. In the earliest drafts of the scope of service for the women's championship, the NCAA noted a plan in December 2020 to “secure/source PCR tests for daily testing during March.”⁵⁵



*Draft of 2021 Division I Women's Basketball Championship Health Care Provider –
Scope of Services as of January 24, 2021*⁵⁶

⁵⁰ See Letter from NCAA to Director of Marion County Public Health Department (Jan. 1, 2021) (“I am pleased that we have reached consensus and agreement with the [Marion County Public Health Department] on the protocols discussed, which are reflected in the attached document. As you know, the NCAA’s ability to move forward with planning the 2021 Division I Men’s Basketball Championship exclusively in Marion County is reliant upon shared agreement with the protocols.”).

⁵¹ *NCAA Announces Health and Safety Protocols for DI Men’s Basketball Championship*, NCAA (Jan. 6, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-announces-health-and-safety-protocols-di-men-s-basketball-championship>.

⁵² See Amended & Restated Services Agreement between the NCAA and Diamond Health, Inc. (Jan. 1, 2021), Ex. A.

⁵³ Mark Bedics, *NCAA Announces Health and Safety Plans for All Other Winter Championships*, NCAA (Jan. 11, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-announces-health-and-safety-plans-all-other-winter-championships> (“The NCAA will work with IU Health to provide health related support including the administration of daily PCR tests for Tier 1 individuals upon arrival and throughout the tournament.”).

⁵⁴ See Amended & Restated Services Agreement between the NCAA and Diamond Health, Inc. (Jan. 1, 2021), Ex. B.

⁵⁵ 2021 Division I Women’s Basketball Championship Health Care Provider – Scope of Services Draft (Jan. 24, 2021).

⁵⁶ *Id.*

But the draft medical protocols circulated ahead of an introductory call with the San Antonio regional medical contacts on January 25, 2021, instead proposed daily antigen testing for the women’s championship.⁵⁷

NCAA DI WBB Championship: Medical Protocol
January 25, 2021
Page 2

DRAFT – WORKING DEVELOPMENT OF POLICIES

DAILY COVID-19 ANTIGEN TESTING: Daily antigen testing (administered antigen nasal swab) will take place throughout the entire tournament for Tier 1 individuals who remain in the tournament. All COVID-19 testing will take place in designated locations in hotels in Bexar County.

*Draft of NCAA Women’s Basketball Medical Protocol from January 25, 2021*⁵⁸

On this January 25 call, the San Antonio health authorities indicated that they would like to add PCR testing to the proposed medical protocol of daily antigen testing.⁵⁹ The local health authorities did not specify whether they required daily PCR testing or a combination of PCR and antigen testing. In an email following that meeting, the women’s basketball staff noted: “Yes, they said they wanted PCR, but it also seemed that they may be comfortable with a combination of antigen and PCR. We need them to tell us exactly what they’ll support.”⁶⁰

On February 1, 2021, the NCAA had a follow-up meeting with the Director of the San Antonio Metropolitan Health District, who informed the NCAA that she would require at least

⁵⁷ Memories around the decision to use antigen testing for the women’s tournament differed. This report therefore relies on the timeline as established by contemporaneous documents. For example, one senior NCAA staff member recalled that the reason why the NCAA proposed daily antigen tests in San Antonio was that the local health officials in San Antonio were concerned about the availability of PCR tests in the community and that a local health provider, a contractor for Methodist Health, informed them that they would be unable to perform testing. The local health authorities did not recall such a concern at that time, and the contractor for Methodist Health recalled that he was told that he was not needed to provide testing and shared an email from the NCAA staff to him stating that the NCAA was: “likely using a testing partner who will be responsible for securing and administering the tests to meet our required COVID testing protocols.” Email from Women’s Basketball Staff to Methodist Health re: 2021 DI WBB Championship - Health Care Provider (Feb. 2, 2021). While memories differed on the reason why the NCAA proposed daily antigen testing to the San Antonio health authorities, both the NCAA and the San Antonio health authorities expressed confidence that the testing protocol used at the women’s tournament protected the health and safety of the student-athletes and others in the tournament bubble.

⁵⁸ NCAA Division I Women’s Basketball Tournament – Medical Protocols Draft (Jan. 25, 2021).

⁵⁹ See Email from Women’s Basketball Staff to Diamond Health re: Meeting with San Antonio Health Authorities (Jan. 28, 2021).

⁶⁰ *Id.*

once-a-week PCR testing to supplement the antigen testing.⁶¹ The NCAA then updated the language in its proposed medical protocol to account for this change.

NCAA DI WBB Championship: Medical Protocol
February 1, 2021
Page 2

DRAFT – WORKING DEVELOPMENT OF POLICIES

DAILY COVID-19 ANTIGEN TESTING: Daily ~~antigen~~ testing (~~administered antigen nasal swab~~) will take place throughout the entire tournament for Tier 1 individuals who remain in the tournament. Daily testing will be primarily antigen (administered antigen nasal swab) with one PCR test per week. All COVID-19 testing will take place in designated locations ~~in hotels~~ in Bexar County.

*NCAA Women’s Basketball Medical Protocol Redline as of February 1, 2021,
after Meeting with San Antonio Health Department⁶²*

Once Diamond Health confirmed they could provide both the once-per-week PCR and daily antigen tests, and the San Antonio health authorities gave their sign off, the NCAA moved forward with Diamond Health as the testing provider for the women’s championship.⁶³

Student-athletes, coaches, and others raised concerns that the women were receiving lesser quality tests because they considered PCR tests to be the gold standard in COVID-19 testing. As one student-athlete noted, “It’s not about the gifts, whatever it may be. But something like our health, the weight room, how we were getting tested . . . we want to be treated equally in that aspect of our lives.” Another student-athlete felt the difference in COVID-19 tests “was really telling about how [the NCAA] felt about us as people, like we weren’t important enough to have good testing for [COVID-19] which is life-threatening.”

There is no evidence to suggest that the difference in testing caused disparities in health outcomes for the men’s and women’s tournament participants, and the NCAA’s Medical Advisory Group—made up of team physicians, public policy experts, and infectious disease experts—provided guidance that either PCR or antigen testing performed with a regular cadence could be used to manage risks associated with COVID-19.⁶⁴ Nevertheless, antigen tests have lower

⁶¹ See Email from Women’s Basketball Staff to San Antonio Health Authorities re: Draft Medical Protocol (Feb. 1, 2021).

⁶² See NCAA Division I Women’s Basketball Championship: Medical Protocol Draft (Feb. 1, 2021).

⁶³ The NCAA used the Mesa Biotech Accula SARS-CoV-2 test for the rapid PCR testing and the Quidel Sophia point of care antigen test for the daily antigen testing. See Amended & Restated Services Agreement between the NCAA and Diamond Health, Inc. (Jan. 1, 2021); see also Emails between Women’s Basketball Staff re: PCR testing for Women’s BB (Feb. 2, 2021).

⁶⁴ See COVID-19 Guidance on Multiple Teams in the Same Location, NCAA (last visited July 21, 2021), <https://www.ncaa.org/sport-science-institute/covid-19-guidance-multiple-teams-same-location>; COVID-19 Medical Advisory

specificity than PCR tests and thus create a higher likelihood of false positive or inconclusive results.⁶⁵ The NCAA itself recognized in coronavirus guidelines that “[p]oint-of-care antigen testing has a specificity of about 98%, meaning that the test may produce a false-positive result in about two cases for every 100 tests performed. Although this may seem low, it means that there is the potential for athletes to be assumed infectious when in fact they are not.”⁶⁶

The dramatically higher number of false positives from antigen tests did end up having a negative impact on the student-athlete experience at the women’s tournament. As one women’s basketball player noted, “Every day there were at least two or three people who had to stay back because of a false positive or the test was inconclusive.” This took a toll on mental health and preparedness, with some players receiving false positive tests on the day of competition and being told they might have to sit out the game. The false positives also impacted the staff and support crew. For example, the University of Arizona’s women’s basketball team was excluded from a video about the women’s Final Four teams in part because a false positive antigen test prevented the individuals responsible for putting together the video from attending and photographing the Arizona practice. As Arizona coach Adia Barnes observed, “Those are things that get missed, sometimes, and shouldn’t be. Because there are four teams that have worked really hard to get here. Stuff like that shouldn’t happen.”⁶⁷

Group, NCAA (last visited July 29, 2021), <https://www.ncaa.org/sport-science-institute/covid-19-medical-advisory-group>. As the NCAA’s Resocialization Guide indicated: “For the purposes of this document, based on current evidence and standards, PCR testing, or antigen testing that is performed with a regular cadence, should be considered the standard testing methods for both baseline and ongoing surveillance testing. Testing strategies are always contingent on the availability of ample testing supplies, laboratory capacity and the adequacy of turnaround time and access to testing.” NCAA, *Resocialization of Collegiate Sport: Developing Standards for Practice and Competition* at 16 (2d ed., first update Dec. 15, 2020), https://ncaaorg.s3.amazonaws.com/ssi/COVID/SSI_ResocializationDevelopingStandardsSecondEdition.pdf. After the differences in testing were reported in the media, the NCAA released a statement that the Medical Advisory Group had “advised that either daily PCR or daily antigen testing were equally effective models for basketball championships, as they recommended adopting the testing approach that worked best with the provider and local health officials.” *NCAA Testing Protocols for Basketball Championships*, NCAA (Mar. 20, 2021), <https://www.ncaa.org/about/resources/media-center/news/ncaa-testing-protocols-basketball-championships>.

⁶⁵ See, e.g., *Potential for False Positive Results with Antigen Tests for Rapid Detection of SARS-CoV-2 - Letter to Clinical Laboratory Staff and Health Care Providers*, U.S. Food & Drug Administration (Nov. 3, 2020), <https://www.fda.gov/medical-devices/letters-health-care-providers/potential-false-positive-results-antigen-tests-rapid-detection-sars-cov-2-letter-clinical-laboratory> (“Laboratories should expect some false positive results to occur even when very accurate tests are used for screening large populations with a low prevalence of infection. Health care providers and clinical laboratory staff can help ensure accurate reporting of test results by following the authorized instructions for use of a test and key steps in the testing process as recommended by the Centers for Disease Control and Prevention (CDC), including routine follow-up testing (reflex testing) with a molecular assay when appropriate, and by considering the expected occurrence of false positive results when interpreting test results in their patient populations.”); see also *Interim Guidance for Antigen Testing for SARS-CoV-2*, Centers for Disease Control and Prevention (updated June 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antigen-tests-guidelines.html> (“Despite the high specificity of antigen tests, false positive results will occur, especially when used in communities where the prevalence of infection is low – a circumstance that is true for all in vitro diagnostic tests. In general, for all diagnostic tests, the lower the prevalence of infection in the community, the higher the proportion of false positive test results.”).

⁶⁶ See NCAA, *Resocialization of Collegiate Sport: Developing Standards for Practice and Competition* at 16 (2d ed., first update Dec. 15, 2020) https://ncaaorg.s3.amazonaws.com/ssi/COVID/SSI_ResocializationDevelopingStandardsSecondEdition.pdf.

⁶⁷ See Mechelle Voepel, *Arizona Wildcats Irked After Omission from NCAA Women’s Final Four Promotional Video*, ESPN (Apr. 1, 2021), https://www.espn.com/womens-college-basketball/story/_/id/31180290/arizona-wildcats-irked-omission-ncaa-womens-final-four-promotional-video.

It should be noted that while issues of false positives were not the same, the PCR testing used at the men's tournament also had a negative impact on the players. The men's teams often had to undergo testing at early morning hours. They also faced delays in practices and team meetings as they waited for results because lab-based PCR tests require a longer wait time for results than do rapid antigen tests.

Overall, the men's tournament conducted almost 20,000 PCR tests of Tier 1⁶⁸ individuals, with only seven positive tests detected. The women's championship conducted almost 18,000 tests of Tier 1 individuals (15,597 antigen and 2,342 PCR), with 226 positive antigen tests, but only two positive PCR tests.⁶⁹ There was no evidence of any spread of COVID-19 from team to team, and no evidence of an increase in community spread either.⁷⁰ Both the NCAA and the San Antonio health authorities strongly believe that the testing protocol used at the women's tournament protected the health and safety of the student-athletes and others in the tournament bubbles.

4. Food, Meeting Space & Recreation

Hotel food. Women's basketball players and coaches raised the following four main concerns about the food served during their NCAA championship tournament: quantity, quality, lack of flexibility/choice, and lack of variety. These disparities in food were concerning given the obvious importance of nutrition to the competing student-athletes, and may have been based on unfounded assumptions at the hotels about what, and how much, women eat as compared to men. As one student-athlete noted, "They gave us little portions. It wasn't warm and wasn't good." Another recalled, "It was really [a] little amount of food and not good food." Yet another stated, "Food was our biggest thing. We were on our feet so much of the day. So not having good meals was frustrating." A coach attending the tournament reported, "The portions originally were very small. I didn't ask the men's team about the food. I saw a buffet on Twitter. . . . I would love to be in a buffet situation." Because the food provided was of such poor quality and meager proportions, many schools (who could afford it) paid out of their own pockets to supplement the packaged meals by ordering in groceries, snacks, and restaurant meals for their women's basketball players. Several coaches and athletic directors explained to us that they found themselves "struggl[ing]" to purchase food to ensure their team had sufficient "fuel" to play basketball.

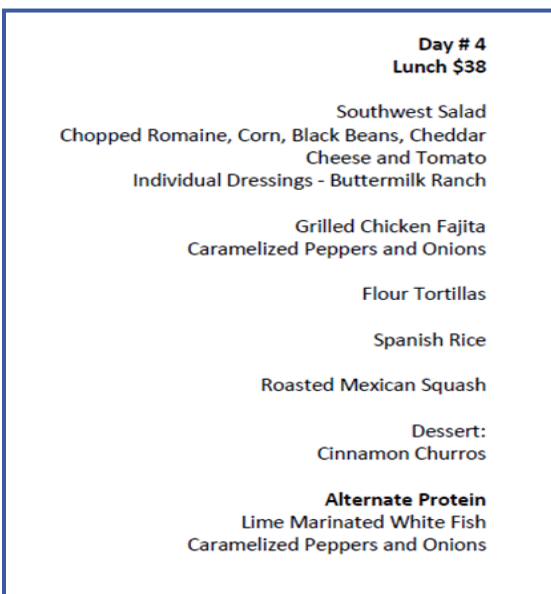
Our investigation confirmed that the food served at the women's tournament was, in fact, quite different from the food served at the men's tournament. After serving pre-packaged meals

⁶⁸ The NCAA implemented a tiered system for testing and for the controlled environment in the bubbles. All individuals in a team's official travel party were considered Tier 1 and had to adhere to strict COVID-19 guidelines. *See* 2021 Men's Basketball Participant Manual at 22; 2021 Women's Basketball Participant Manual at 27.

⁶⁹ *See* Division I Basketball COVID-19 Testing Results PowerPoint.

⁷⁰ *See, e.g.,* City of San Antonio Metropolitan Health District, *COVID-19 Monthly Epidemiological Report March 2021* (Apr. 22, 2021), <https://covid19.sanantonio.gov/files/assets/public/health/epidemiological-reports/epireport-202103.pdf>; City of San Antonio Metropolitan Health District, *COVID-19 Monthly Epidemiological Report April 2021* (May 27, 2021), <https://covid19.sanantonio.gov/files/assets/public/health/epidemiological-reports/epireport-202104.pdf>; Shari Rudavsky, *As Indianapolis Sees Small Surge in COVID-19 Cases, Officials Urge Vaccination*, *IndyStar* (April 22, 2021) ("Contact tracing found that less than 1% of the cases confirmed since [the NCAA men's basketball tournament] stemmed from the tournament.").

during the two-day arrival quarantine in the Indianapolis bubble, the hotels provided the men’s teams with curated, self-service buffets for the remainder of the tournament.⁷¹ The women’s teams faced a similar two-day quarantine period in San Antonio with pre-packaged food—but then continued to receive pre-packaged meals thereafter.⁷² As a result, the women received less food, and of a lower quality and variety, than the men. By way of example, below are two lunch menus that two different Marriott hotels provided for men’s and women’s teams on the very same day:



Women’s Lunch Menu (Left) and Men’s Lunch Menu (Right)⁷³

⁷¹ There was significant confusion within the NCAA about whether the men were provided buffets, even after the championships ended. For example, weeks after the championships ended, a women’s basketball staff member said, “I was still confused if the men’s had buffets. Senior management said they didn’t have buffets. I really don’t know what actually occurred.” Senior management confirmed their view that the men’s championship did not use buffets. But multiple interviews with the NCAA men’s basketball staff and local organizing committee in Indianapolis, as well as photographic and documentary evidence, revealed that the men’s championship had self-service buffets, which hotel staff would set up in team meeting rooms. See, e.g., 2021 Men’s Basketball Championship Hotel Food Menus (describing “Quarantine/Isolation Meals” and “Buffet menus”).

⁷² See 2021 Women’s Basketball Championship Hotel Food Menus.

⁷³ Women’s Lunch Menu, Marriott San Antonio Rivercenter (Mar. 19, 2021); Men’s Food Menu, Marriott Indy Place (Mar. 19, 2021).



Pictures Shared on Social Media of Food Served at the 2021 Basketball Championships⁷⁴

Not surprisingly, women’s teams raised concerns about the hotel food almost immediately upon arrival in San Antonio. In response, the women’s basketball staff called all seven hotels that the NCAA was using for the women’s tournament in order to increase the quantity of food being served. But the hotels continued to serve pre-packaged meals, which the women’s staff understood to be the only approved method for food service under applicable coronavirus protocols. Later, after the media began reporting on food disparities between the two tournaments, the NCAA made alternative arrangements with respect to the format of food service, allowing Final Four participants at the women’s tournament to have self-service buffets similar to those already provided to the men in Indianapolis.⁷⁵ To do this, the NCAA coordinated with the local health officials in San Antonio—just as it had done with Indianapolis officials weeks earlier—to receive approval for self-service buffets.

In our view, the disparity in food offerings between the tournaments was largely the result of coordination and communication failures during the tournament planning process. The NCAA’s Chief Medical Officer provided guidance to both the men’s and the women’s staff on “a safe way to provide meals with physical distancing and no shared utensils”; boxed meals were required for the initial quarantine period and were identified as a safe way to provide food. The men’s staff

⁷⁴ AJ McCord (@AJ_McCord), Twitter (Mar. 18, 2021), https://twitter.com/aj_mccord/status/1372759106121912320. AJ McCord is a sports reporter and anchor for the CBS affiliate in Portland, Oregon, and the co-host of an ESPN podcast.

⁷⁵ See Marriott Rivercenter Final Four Buffet Menus.

decided that they wanted to provide more than boxed meals to the student-athletes, so they worked with the local organizing committee and the Marion County Public Health Department over the course of weeks and multiple site-visits to develop a plan for self-service buffets. The women's staff, on the other hand, understood the guidance from the NCAA's Chief Medical Officer to require boxed meals for the duration of the tournament, and presented a plan for boxed meals to the San Antonio health authorities, which San Antonio approved. Because the men's and women's staffs did not coordinate their meal planning, they did not consider the potential effect that the disparate plans would have on student-athletes.

Corporate sponsor food. The disparities in hotel food provided to the student-athletes were exacerbated by the fact that the men's tournament participants had greater access to food from NCAA corporate sponsors. The NCAA men's staff, anticipating that the hotel food alone would be inadequate and insufficient, worked with corporate sponsors—including Pizza Hut, Wendy's, and Buffalo Wild Wings—to provide free, supplemental food at the men's tournament. Some of these corporate partners offered similar opportunities for the women's tournament, but they were not accepted, at least in part because the offers came very close to the start of the tournament, and the women's staff—already operating with reduced time to prepare—simply did not have the bandwidth to coordinate the necessary logistics. The NCAA women's staff also did not anticipate the inadequacies with the hotel food options.⁷⁶

For example, on March 5, 2021, the NCAA's corporate relations team told the women's staff that Wendy's could provide a food truck near the Convention Center for service from March 23 to March 30. The women's staff declined the offer because they thought it was too late in the process to obtain the necessary permits: “Unfortunately, due to the San Antonio historic district, there are limitations on locations for food trucks downtown along with city clean zone restrictions for any non-tenant marketing. . . . Therefore, we are unlikely to make this activation happen. [The San Antonio Local Organizing Committee] usually works with [corporate partners] on these to work through nuisances, yet any exceptions to the San Antonio historical council review requires much advance planning.”⁷⁷

After the disparities between the two championships gained public attention, the women's staff and the NCAA corporate relations team worked quickly with San Antonio officials to secure permission for a Wendy's food truck to park outside the Marriott Rivercenter (where all of the women's teams were staying starting with the Sweet Sixteen), from March 21 to March 30.⁷⁸ This effort was led primarily by the NCAA's corporate relations team, not the women's basketball staff. The NCAA also made plans with Buffalo Wild Wings to serve food from March 22 to 24, and with Pizza Hut to serve food for one night on March 26.⁷⁹

⁷⁶ See Email from Women's Basketball Staff to NCAA Corporate Staff re: Wendy's – Food to SA's – Food trucks comp (Mar. 8, 2021).

⁷⁷ *Id.*

⁷⁸ See 2021 Women's Basketball Inventory – Final.

⁷⁹ *Id.*

The NCAA women’s staff rejected other last-minute offers of food because of concerns about conflicts with existing corporate sponsor relationships and “ambush” marketing.⁸⁰ For example, on March 20, H-E-B, the Texas-based grocery store chain, dropped off bins of food to the hotels where the women’s teams were staying.⁸¹ The NCAA women’s basketball staff was surprised by the delivery and determined that they were required to send the bins back because the bins contained products that were competitors of the NCAA’s Corporate Champions and Partners. The women’s staff eventually worked with H-E-B to deliver a second set of gift baskets that contained items from the NCAA’s corporate partners, and those baskets were delivered to teams later in the tournament.⁸²

Recreation space and student-athlete lounges. There was also a significant discrepancy in the outdoor space available to student-athletes at the men’s and women’s tournaments. As one student-athlete at the tournament observed, “Early on we weren’t allowed to leave the hotel except for going to the gym or testing. . . . It was a poor set up for the mental health of players.” Another noted, “The guys had opportunities to go outside and do things to get out of the hotel room for mental health, not being stuck inside. But for us, it took a couple of days before we were allowed to do something outside with the team. . . . Mental health is real and if you’re stuck in a hotel room, it was pretty tough.” A coach at the tournament similarly shared, “An outdoor area would have made a world of difference.”

Due to the pandemic, both the men’s and women’s teams were in a controlled environment where their movements both inside and outside of their hotels were understandably strictly limited due to COVID-19.⁸³ Except for a few planned outings, teams were unable to explore their respective cities and were allowed to travel only to practices, games, and other settings within the controlled environment.⁸⁴

The men, however, had access to outdoor space from the beginning of the tournament at Victory Field, a minor-league baseball stadium located across from the Convention Center in Indianapolis.⁸⁵ There, the NCAA constructed a recreation area where the men could play

⁸⁰ “Ambush” marketing occurs when a company attempts to associate its products with an event that already has official sponsors.

⁸¹ See Email from NCAA Corporate Staff to Local Organizing Committee re: Virtual Hosts/HEB Basketball (Mar. 21, 2021) (“A lot of the hotels received the baskets from HEB with food yesterday. The women’s basketball staff have declined this going to the teams.”).

⁸² See Email from Women’s Basketball Staff to NCAA Corporate Champions and Partners Team re: HEB Gift Basket Offerings (Mar. 24, 2021) (listing “recommended offerings of NCAA CCP product in the HEB gift baskets”). Alongside the baskets were notes for the women’s teams written by a local youth group, which the women’s basketball staff did not expect. Those notes read, for example: “What you are doing is important, equal rights for everyone are important. This was an act of sexism [sic], yet you pulled through and got your own weight room. I hope you can change more, and keep fighting for future players.” The staff made a decision not to distribute those notes because they considered them to be “obviously not appropriate” and “were afraid of creating another viral moment.”

⁸³ See 2021 Women’s Basketball Participant Manual at 21 (describing controlled environment); see 2021 Men’s Basketball Participant Manual at 35 (describing controlled environment).

⁸⁴ *Id.*

⁸⁵ See 2021 Big Dance Final Tournament Update #6 at 14.

badminton, pickleball, cornhole, soccer, and football. The women, by contrast, were not intended to have any outdoor space—except for the path from the hotel to the Convention Center in San Antonio—until the Sweet Sixteen.⁸⁶ From the Sweet Sixteen on, the women were scheduled to have access to an outdoor green space, Civic Park, adjacent to the Convention Center.⁸⁷

Once again, little if any consideration was given pre-tournament to the disparities in outdoor recreation space. Men’s basketball did not develop its plan to use Victory Field until shortly before the tournament began.⁸⁸ Even so, there was nothing similar to Victory Field available in San Antonio, and the women’s basketball staff did not plan on opening access to the local park earlier because of challenges in getting approval to do so and perceived difficulties in managing the logistics of 64 teams using the park.

In the wake of reporting on gender equity at the tournaments, the women’s staff worked to set up additional outdoor spaces at the Convention Center. As one senior NCAA official noted: “We had had [Civic Park] that was fenced in that we were going to use originally, because it was COVID-safe. But we were concerned about the aesthetics of the men at Victory Field in a minor league baseball stadium, and the women basically in a dilapidated city park. We just didn’t think that would work.” The NCAA ended up cancelling the plan to use Civic Park and instead set up two alternative outdoor spaces which they believed created less of a direct contrast with Victory Field—a balcony and an outdoor patio at the Convention Center.⁸⁹ From March 29, 2021, through the remainder of the tournament, women’s teams could sign up to use those new spaces in 60-minute increments.⁹⁰

⁸⁶ See 2021 Women’s Basketball Participant Manual at 6 (describing outdoor space).

⁸⁷ *Id.*

⁸⁸ See Email from Men’s Basketball Staff to Women’s Basketball Staff re: 2021 DI Men’s Basketball Tournament Update – FINAL Updates (Mar. 12, 2021) (noting the availability of Victory Field).

⁸⁹ See Email from NCAA Women’s Basketball Staff to NCAA Communications Staff re: New Offerings for Women’s Teams (Mar. 29, 2021); see also Email from NCAA Women’s Basketball Staff to NCAA Men’s Basketball Staff re: Questions from Today (Mar. 27, 2021).

⁹⁰ See Email from NCAA Women’s Basketball Staff to NCAA Communications Staff about New Offerings for Women’s Teams (Mar. 29, 2021); see also Email from NCAA Women’s Basketball Staff to NCAA Men’s Basketball Staff re: Questions from Today (Mar. 27, 2021).



Outdoor Patio Space at the Convention Center in San Antonio (Left) and Men's Victory Field in Indianapolis (Right) ⁹¹

The women's basketball staff also made a last-minute fix when they identified a disparity in the lounges available to the student-athletes who reached the Final Four. For the men, the NCAA had planned to provide four student-athlete lounges at the Indiana Convention Center starting March 31, located next to each Final Four team's meeting room. The lounges included gaming stations, TVs, ping pong, etc.⁹² For the women, the NCAA initially discussed one student-athlete lounge for the teams to share at a cost of \$20,000, then considered four smaller lounge areas with fewer amenities within the hotel meeting rooms for each of the Final Four teams. After the gender disparities between the championships gained public attention, the NCAA created separate student-athlete lounges at the Convention Center in San Antonio for each of the women's Final Four teams, "using the [men's basketball] outline" for what those lounges would contain.⁹³ These new lounges cost the NCAA almost \$100,000 to set up on short notice.⁹⁴

The disparities this year between the men's and women's lounges were not new. At the 2019 men's tournament, for example, the NCAA created one lounge each for the Final Four teams, and one lounge each for the families of the Final Four teams, spending \$67,575 on the four student-athlete lounges and \$2,971 on the four family lounges.⁹⁵ In contrast, at the 2019 women's tournament, the NCAA provided only one student-athlete lounge that the Final Four teams shared, and no family lounges; the cost of that single student-athlete lounge was \$10,500.⁹⁶

⁹¹ Images from the NCAA.

⁹² See 2021 Men's Basketball Final Four Manual at 8.

⁹³ See Email from Women's Basketball Staff to Men's Basketball Staff re: SA lounges (Mar. 25, 2021).

⁹⁴ See NCAA Lounge & Movie Budget (Mar. 25, 2021).

⁹⁵ See 2019 Final Four Lounges Invoices.

⁹⁶ See 2019 Student-Athlete Mementos Comparison Spreadsheet.

5. Gifts & Mementos

Student-athlete gifts. The gifts that the men’s and women’s teams received at their respective tournaments differed significantly. As with the differences between weight rooms, social media posts illustrating the discrepancies were quick to grab the public’s attention.



Pictures Shared on Social Media of Gifts at Men’s Tournament (Left) and Gifts at Women’s Tournament (Right)⁹⁷

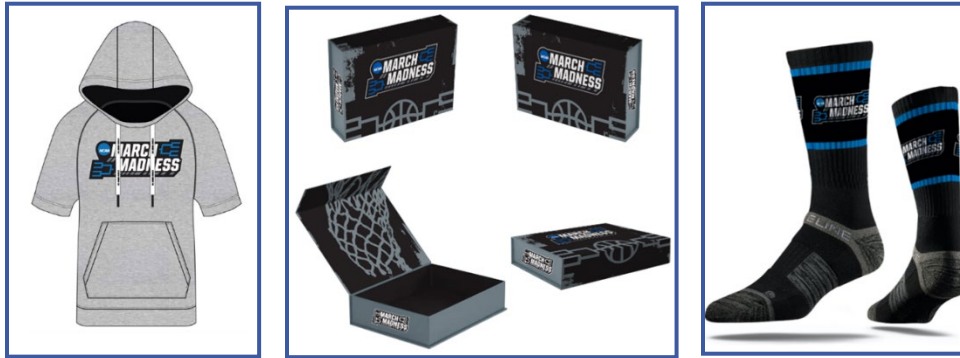
One student-athlete who attended the women’s tournament noted that the women players saw photos on social media and realized that the “men got nicer quality stuff, and a little bit more,” while the women received only “a little drawstring bag that had some stuff in it.” Another reported that “our stuff fit in a gift bag,” whereas “the men’s swag bag was laid out on their beds in their hotel rooms” because of the sheer number of items.

There were indeed disparities between the gifts that the NCAA provided to men’s and women’s tournament participants. For the first and second rounds, the NCAA spent \$125.55 per player on gifts and mementos distributed at the men’s tournament, whereas it spent only \$60.42 per player—or less than half as much—on gifts and mementos distributed at the women’s tournament.⁹⁸ Men’s basketball dedicated part of its additional budget to purchasing more items

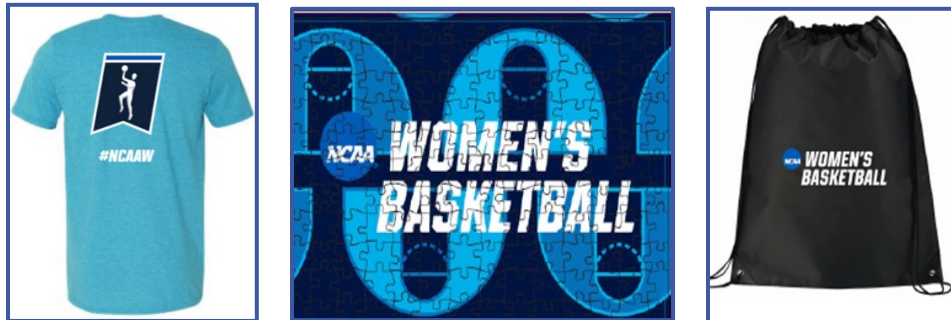
⁹⁷ AJ McCord (@AJ_McCord), Twitter (Mar. 18, 2021), https://twitter.com/aj_mccord/status/1372759106121912320.

⁹⁸ See MBB Memento-SA Experience-Covid Kit Breakdown and WBB 2021 Budget Spreadsheet. In the first and second round, both men and women received a hat, game socks, a game towel, a cinch bag, a Fossil watch, and a puzzle. In addition, the men received a hooded shirt, a March Madness-branded box, a book, two bag tags, three Unilever products, a notebook and pen, a blanket, two pillowcases, two postcards, two lapel pins, a duffle bag, a flag, and two form core logo decals. The women received a t-shirt, a white gift bag, access to a virtual library, one bag tag, one Unilever product, a scrunchie, a COVID-19 patient card, an umbrella, access to the “Tourney Town Connect” online platform (containing free games, yoga instruction, and speakers), a welcome card, Powerade water bottles, and a fiesta serape pouch. The figures above do not include the cost of Tourney Town

and items of higher quality as compared to the women. For instance, the men received a March Madness hooded t-shirt that cost approximately \$16.25, whereas the women received a t-shirt with the hashtag #NCAAW, but no championship-specific branding, that cost \$8.28.⁹⁹



March Madness Branded Hoodie T-Shirt, Gift Box, and Socks for the Men's Teams¹⁰⁰



Women's Basketball-Branded T-Shirt, Puzzle, and Cinch Bag for the Women's Teams¹⁰¹

In addition to the money spent on men's gifts and mementos, the NCAA spent \$70,539 on kits that contained supplies and other accessories—e.g., disinfectant wipes, bathroom air fresheners, and sneaker deodorizer balls—that the 68 men's teams, but none of the women's teams, received.¹⁰²

Connect (\$17,000 for the entire tournament), nor do they include the cost of the Fossil watch provided to both the men and the women, which have not been finalized for 2021. In 2019, the total watch cost was \$164,864 for the men's tournament and \$140,613 for the women's.

⁹⁹ Compare MBB Memento-SA Experience-Covid Kit Breakdown, with WBB 2021 Budget Spreadsheet.

¹⁰⁰ Images from the NCAA.

¹⁰¹ Images from the NCAA.

¹⁰² See MBB Memento-SA Experience-Covid Kit Breakdown; see also 2021 MBB – COVID Kit.

As gender equity issues surrounding the tournaments gained national attention, the NCAA sought to correct for these disparities in the later rounds of the tournaments. For example, in the Sweet Sixteen, the men’s staff chose not to distribute additional items that had been purchased only for the men’s teams including a March Madness robe (\$32) and March Madness beach towel (\$15.25).¹⁰³ The women’s staff, for its part, added a hooded blanket (\$35.75). Accordingly, as the tournaments progressed, gifts were more evenly distributed to the men’s and women’s teams. For the Sweet Sixteen and Elite Eight, before the NCAA removed men’s gifts and added women’s gifts, the NCAA planned to spend \$77.68 per male student-athlete and \$39.96 per female student-athlete. After removing the men’s robe and beach towel and adding the women’s hooded blanket, the NCAA ultimately spent \$30.43 per male student-athlete and \$67.21 per female student-athlete.¹⁰⁴ In the Final Four, the NCAA spent \$139.82 per player on gifts distributed to the men and \$168.68 per player on gifts distributed to the women.¹⁰⁵ It is worth noting that the gifting opportunities provided by corporate sponsors this year—including a Nintendo Switch, HyperX headphones, portable chargers, a duffle bag, and a laptop desk—were identical between the men’s and women’s championships, although men’s basketball declined a gift from Powerade that women’s basketball accepted.¹⁰⁶

The NCAA’s unequal gifting budget this year is consistent with previous years. In 2019, for example, the NCAA spent \$560,130 on men’s basketball gifts—\$241,494 for the first and second rounds, \$55,724 for the Sweet Sixteen and Elite Eight, and \$262,912 for the Final Four. That same year, the NCAA spent only \$395,150, or about 30% less, on women’s basketball gifts—\$193,054 for the first and second rounds, \$50,036 for the Sweet Sixteen and Elite Eight, and \$152,062 for the Final Four.¹⁰⁷ Following the 2019 tournament, the women’s basketball staff requested a \$75,000 budget increase that would, in part, have allowed women’s basketball to provide gifts in 2020 that only men had received in 2019 (*e.g.*, game towels, hangers, and bag tags). In the budget request, the women’s staff wrote:

Each year we continue to hear from women’s championship teams/conferences and committee members whose counterparts, either at their school or within their

¹⁰³ See MBB Memento-SA Experience-Covid Kit Breakdown.

¹⁰⁴ Compare WBB 2021 Budget Spreadsheet, with MBB Memento-SA Experience-Covid Kit Breakdown. Note: the women also removed a “Nail Polish Kit” from distribution.

¹⁰⁵ Compare WBB 2021 Budget Spreadsheet, with MBB Memento-SA Experience-Covid Kit Breakdown. These figures exclude the costs of championship rings provided during the later tournament rounds. They also exclude the costs of certain “backpack stuffers” that were provided to the men’s and women’s teams, including water bottles and notebooks.

¹⁰⁶ See Powerade Student-Athlete Gifting Summary; Coke-Wendy’s Gifting Summary.

¹⁰⁷ See 2019 Student-Athlete Mementos Comparison Spreadsheet. This trend continues for previous years. For example, in 2018 the NCAA spent \$633,115 on gifts and mementos for the men’s tournament and \$305,477 on gifts and mementos for the women’s tournament. Similarly, in 2017, the NCAA spent \$773,010 for the men’s tournament and \$485,237 for the women’s tournament. See DI Basketball Pivoted Expenses FY 2016-17, 2017-18 (Apr. 2021). These amounts only include money spent by the NCAA and exclude any money fundraised and spent by the local organizing committees on gifts and mementos. Some of the difference in this total spending on gifts is attributable to the fact that the men’s championship provides a larger total number of gifts, as they order gifts for additional guests and staff—*e.g.*, corporate sponsors, security personnel, and CBS/Turner Productions. See, *e.g.*, 2021 MBB – Miscellaneous Mementos.

conference, have attended the men’s championship and received an increased level of experience. Due to recent emphasis on providing similar experiences for both men’s and women’s basketball teams during the tournaments, the additional requested dollars would make a visible and memorable impact on the student-athlete experience that is comparable to what is already being done in men’s basketball. Women’s Basketball currently spends \$365K on student-athlete mementos, which is inclusive of all rounds.¹⁰⁸

Online gifting suites. Apart from the predetermined gifts and mementos distributed at the tournaments, the NCAA also provides participating student-athletes with access to gifting suites where the student-athletes can select from an array of higher priced items. This year, as in other recent years, the NCAA operated an online gifting suite for players at the Sweet Sixteen and again at the Final Four. The suites were identical for the men’s and women’s championships. Student-athletes received a certain amount of money to spend on the online platform, which included items ranging from a beach chair and popcorn popper to Apple AirPods Pro and a 50-inch television.¹⁰⁹

Equity in these gifting suites, however, came only after another previous public backlash. The NCAA first offered a gifting suite to student-athletes at the 2016 tournament—and, in that year, only to the men. The NCAA women’s basketball staff had to scramble after the media reported on the men’s gifting suite. In hopes of providing something of comparable value to the women’s Final Four teams, the head of women’s basketball got approval from the NCAA to make a last-minute order of GoPro cameras for overnight delivery. In fact, a member of the NCAA basketball staff had to put approximately \$20,000 on a personal credit card as they tried to “create a gifting suite on the fly.” After the 2016 championship ended, women’s basketball requested, and the NCAA approved, funding to set up gifting suites at both the men’s and women’s events.¹¹⁰ Those gifting suites have been comparable in price and items ever since.

6. Use of “March Madness”

There are material differences in the way that the NCAA markets and brands the men’s and women’s tournaments. The most prominent difference is the use of the “March Madness” trademark and branding for the men’s—but not the women’s—tournament. Student-athletes explained that when they arrived at this year’s tournament, they expected to see the arenas, their mementos, and the courts marked with the instantly recognizable March Madness logo. But that branding was completely missing from the women’s tournament.

¹⁰⁸ See Division I Women’s Basketball: FY2019-20 Budget Requests at 3. The \$50,000 in funding for additional gifts and mementos was approved, while \$25,000 in funds requested for student-athlete lounges was not approved.

¹⁰⁹ See 2021 Catalog of 2-Tier and 7-Tier Gifting Suites.

¹¹⁰ Meghan Durham, *Division I Men’s and Women’s Basketball Student-Athletes to Receive Championships Gifts*, NCAA (Mar. 3, 2017), <https://www.ncaa.org/about/resources/media-center/news/division-i-men-s-and-women-s-basketball-student-athletes-receive-championships-gifts>.



Photographs of Women's (Left) and Men's (Right) 2021 Tournament Courts¹¹¹

The student-athletes we interviewed expressed near universal disappointment about this situation. One player explained, “My biggest thing is that people were saying men’s is the only one that’s March Madness. . . . I don’t understand that because everyone said we were going to March Madness.” Another emphasized, “We strive for March Madness. To have no affiliation with it is a bummer.”

From the perspective of many stakeholders—including student-athletes, coaches, NCAA staff, committee members, and others—using March Madness in connection with the women’s basketball tournament would be a huge advantage. As our independent media expert observed, using the popular March Madness mark “would raise the perception of the [Division I Women’s Basketball Championship] as a major championship for many in the media, marketers and among sports fans.”¹¹² Another branding expert said to the Wall Street Journal, “There is no question in my mind that the value of the women’s tournament would go up pretty dramatically if [the women’s teams] were able to have the halo of the March Madness branding as well.”¹¹³

The NCAA adopted the term “March Madness” from the Illinois High School Association decades ago.¹¹⁴ The logo that now accompanies the March Madness trademark was created within the last 10 years and quickly became synonymous with the men’s tournament. Indeed, the formal document in which the NCAA sets forth the bid specifications for upcoming men’s tournaments states that March Madness is “inextricably connected with the NCAA’s Division I Men’s Basketball Championship.”¹¹⁵ Similarly, the NCAA’s own online “March Madness history – The

¹¹¹ Images from the NCAA.

¹¹² Desser Report § 4.1.

¹¹³ Rachel Bachman, et al., *NCAA Withheld Use of Powerful ‘March Madness’ Brand From Women’s Basketball*, Wall Street Journal (Mar. 22, 2021), <https://www.wsj.com/articles/march-madness-ncaa-tournament-womens-basketball-11616428776>.

¹¹⁴ A Brief History of March Madness, Illinois High School Association (last visited July 21, 2021), <https://www.ihsa.org/Sports-Activities/March-Madness-Experience/March-Madness-History>.

¹¹⁵ NCAA Division I Men’s Basketball Championship 2023, 2024, 2025 & 2026 Preliminary Round Sport-Specific Bid Specifications.

ultimate guide” recounts the history of the men’s tournament only.¹¹⁶ But there are no trademark limitations on the use of March Madness for women’s basketball, and the NCAA’s contracts with CBS/Turner, ESPN, and various corporate sponsors do not contain such a limitation either—in fact, they specifically note that March Madness may be used for “Division I men’s or women’s basketball only.”¹¹⁷ The NCAA’s legal department has told us that they agree with this conclusion.

There is some dispute as to why the women’s tournament does not use March Madness branding. Certain NCAA executives and staff, as well as external stakeholders, have suggested that women’s basketball has deliberately chosen not to use the March Madness mark and logo out of a desire to pursue unique branding for the women’s tournament. For example, one NCAA executive recalled that the women’s staff opted against using the March Madness logo on their courts, in favor of the phrase and logo “Four It All.” This year, after the media began reporting on the absence of March Madness branding at the women’s tournament, the NCAA issued a public statement: “When the current version of the March Madness logos and branding were developed five years ago, women’s basketball leadership at that time chose to pursue their own brand identity.”¹¹⁸

But the NCAA retracted that statement one day later, citing it as “inaccurate.”¹¹⁹ And interviews with the NCAA staff members who purportedly declined to use March Madness in the past explained that they had never communicated or intended to communicate that women’s basketball was not interested in using March Madness. To the contrary, NCAA staff who have been involved in planning this and prior years’ tournaments recounted that women’s basketball had repeatedly asked to use the March Madness branding, but were repeatedly rebuffed. These staff members were told that the mark was “off limits” to women’s basketball; some were told that this was because of the NCAA’s relationship with CBS/Turner and CBS/Turner’s use of the mark for their programming. Significantly, no one at the NCAA was able to identify any instance in which CBS/Turner itself suggested that the women’s tournament could not use March Madness—or even an instance in which the NCAA asked the broadcaster for its position on the issue.

To give one illustration, after the NCAA first introduced the March Madness logo, the women’s staff created several gifts for student-athletes containing the logo, including a laptop sleeve and a bracelet. They described being reprimanded for doing so and being told to stop using the logo. Again around 2018, a senior member of the women’s basketball staff asked members of the corporate relations team whether the March Madness mark could be used in connection with the women’s tournament and was told that the mark was “off limits” because of obstacles with the

¹¹⁶ Daniel Wilco, *March Madness History – The Ultimate Guide* (Mar. 18, 2021), <https://www.ncaa.com/news/basketball-men/article/2021-03-14/march-madness-history-ultimate-guide>.

¹¹⁷ See, e.g., Corporate Partner Agreement between CBS/Turner and General Motors LLC (Jan. 31, 2020), Ex. C; ESPN-NCAA Multi-Media Agreement (Jan. 25, 2011), Ex. B.

¹¹⁸ Rachel Bachman, et al., *NCAA Withheld Use of Powerful ‘March Madness’ Brand From Women’s Basketball*, Wall Street Journal, Mar. 22, 2021, <https://www.wsj.com/articles/march-madness-ncaa-tournament-womens-basketball-11616428776>.

¹¹⁹ *Id.* (“Over the weekend, the NCAA initially assigned responsibility for that decision to its women’s basketball leaders before reversing course to say that was inaccurate.”).

CBS/Turner contract. This year, the women’s staff sought to use face masks labeled “Mask Madness” at the San Antonio games similar to those that were to be distributed by the State of Indiana and the City of Indianapolis at the men’s tournament. The head of women’s basketball was told no by the SVP of Basketball, who explained that while he was supportive of the idea, “Mask Madness” was not “consistent with the branding of the women’s championship,” because it had been used only in connection with the men’s tournament.

In June 2021, the NCAA publicly announced that women’s basketball may use the March Madness brand moving forward.¹²⁰ The Women’s Basketball Oversight Committee has said that it will work with the Men’s Basketball Oversight Committee to review the potential use of March Madness in connection with both the men’s and women’s tournaments.¹²¹

7. Signage & Championship Atmosphere

The men’s and women’s tournaments have historically been very different in their look and feel, and this year was no exception. One student-athlete who played in San Antonio noted that it “didn’t feel like it was the big tournament,” while parents of student-athletes in this year’s women’s tournament noted that local residents “didn’t even know the tournament was going on.” Indeed, as the New York Times reported, “The banners, at least ones this large, are unique to Indianapolis. . . . In fact, the signs that are omnipresent here — covering pedestrian bridges, lampposts and the sides of buildings — are absent in San Antonio.”¹²²

Our investigation confirmed these observations. Even after taking into account the requirements associated with the men’s larger venue, there were significant disparities in the signage and branding in Indianapolis and San Antonio, both inside and outside the tournament venues. This was the result of the NCAA spending approximately \$2,416,000 on signage for the men’s tournament and only \$783,000 on signage for the women’s tournament.¹²³ And this budget disparity is what existed *after* the women’s tournament added significant signage in an effort to “provide a more equitable signage plan” once the gender equity issues first came to light.¹²⁴ It goes without saying that with over a million dollars more to spend, men’s basketball was able to do far

¹²⁰ Bob Williams, *NCAA Women’s Basketball Tournament Could Be Finally Given ‘March Madness’ Branding*, SportBusiness (June 8, 2021), <https://www.sportbusiness.com/news/ncaa-womens-basketball-tournament-could-be-finally-given-march-madness-branding/>.

¹²¹ Meghan Durham, *Women’s Basketball Oversight Committee Sets Priorities Amid Gender Equity Review*, NCAA (June 8, 2021), <https://www.ncaa.org/about/resources/media-center/news/women-s-basketball-oversight-committee-sets-priorities-amid-gender-equity-review>.

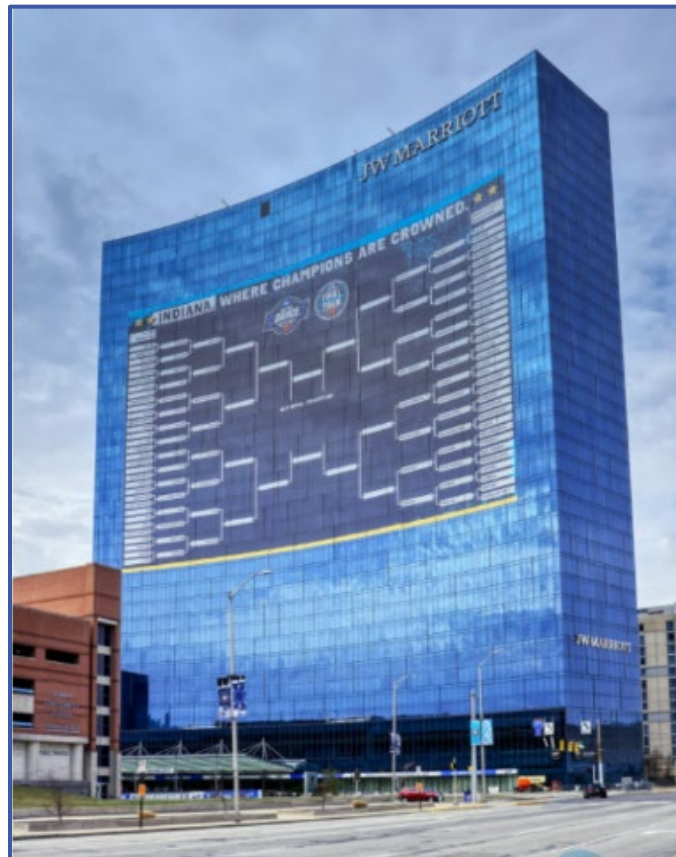
¹²² See Billy Witz, *In Indianapolis, Checking the Bracket Means Looking Up*, N.Y. Times (Mar. 25, 2021), <https://www.nytimes.com/2021/03/25/sports/ncaabasketball/biggest-ncaa-bracket-indianapolis.html>.

¹²³ Compare 2021 Men’s Signage Budget, with 2021 Women’s Signage Budget. The men’s Final Four is held in a bigger venue—*i.e.*, a football stadium instead of a basketball stadium—which impacts some, but not all, of the signage budget.

¹²⁴ See Email from NCAA Signage and Branding Staff to Women’s Basketball Staff re: Additional Signage – Regional Rounds and FF (Mar. 23, 2021).

more to dress up arenas and promote the tournament in hotels, on public walkways, and around Indianapolis.

One prominent example was the giant tournament bracket that men's basketball displayed this year on the side of the JW Marriot in Indianapolis.



*JW Marriot Bracket Display*¹²⁵

The NCAA spent more than \$100,000 on this display. There was no equivalent display in San Antonio for women's basketball.¹²⁶ Instead, San Antonio had the women's Final Four logo projected on windows on the side of the Alamodome, something the men's tournament had as well.

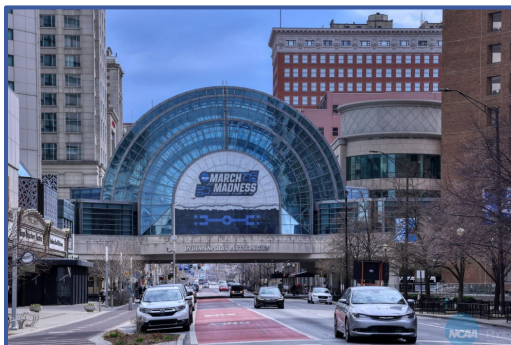
¹²⁵ Image from the NCAA.

¹²⁶ See 2021 Men's Signage Budget.



Lucas Oil Stadium in Indianapolis (Left) and Henry B. González Convention Center in San Antonio (Right)¹²⁷

Indianapolis also had extensive signage in the local airport and on major roads throughout the city. Signage in San Antonio was present, but far more limited, consisting mainly of streetlamp banners and localized displays near or on the Alamodome.



Signage at the Men's Tournament in Indianapolis¹²⁸



Signage at the Women's Tournament in San Antonio¹²⁹

¹²⁷ Images from the NCAA.

¹²⁸ Images from the NCAA.

¹²⁹ Images from the NCAA.

While the fact that San Antonio’s downtown is a historic district did have some impact on the types and amount of signage permitted in some areas,¹³⁰ those restrictions were not responsible for many of the significant signage discrepancies.

For example, the NCAA spent approximately \$27,000 on the men’s championship’s airport signage and \$61,300 on street pole banners, while the NCAA spent nothing on airport signage in San Antonio and only approximately \$8,700 on street pole banners.¹³¹ This difference was noticed by those attending the championships. One athletic director who attended both the men’s and women’s tournaments this year noted that “in Indy, it felt like you were at an NCAA championship anywhere you arrive in the city. In San Antonio, there was nothing when you arrive at that venue. [Indianapolis] had street signs for a mile . . . nothing like that in Austin. So the branding piece, you never felt like you were at a women’s NCAA championship event.”

Signage was similarly different at the venues where the student-athletes played. On the “Inner Bowl” of the venues, the NCAA spent approximately \$169,000 on the men’s tournament and \$35,300 on the women’s; on the “Player Hallways and Tunnels” the NCAA spent approximately \$288,000 on the men’s tournament and \$30,400 on the women’s; and on locker rooms, the NCAA spent approximately \$188,000 on the men’s tournament and \$46,200 on the women’s.¹³² Overall, the NCAA spent less than a quarter on these signage and décor items at the women’s tournament than it did at the men’s tournament.¹³³

This disparity permeated the rest of the signage budgets, from where the student-athletes stayed to how they traveled. The NCAA spent approximately \$59,000 for the men on signage at the hotels while spending only \$26,400 on the women. The NCAA spent approximately \$71,000 decorating 12 buses for the men while spending only \$27,200 decorating the same number of buses for the women.¹³⁴

Like many other tournament elements discussed in this report, these disparities in signage between the men’s and women’s 2021 tournaments were not new. While there have been years in which participants in the women’s tournament have been more satisfied with their signage than they were this past year, the men’s tournament has spent significantly more on signage year over year, and the circumstances in previous years did not facilitate the same kind of detailed comparison of signage at the separate tournaments that happened this year. In 2019, the NCAA

¹³⁰ See City of San Antonio, Historic Districts (last visited July 21, 2021), <https://www.sanantonio.gov/historic/scoutsa/HistoricDistricts>.

¹³¹ Compare 2021 Men’s Signage Budget, with 2021 Women’s Signage Budget.

¹³² Compare 2021 Men’s Signage Budget, with 2021 Women’s Signage Budget.

¹³³ As explained above, the men’s Final Four’s larger arena increases the necessary signage budget for the “Inner Bowl” and for the venue generally. The NCAA prioritizes signage and décor in the following order: (1) inner bowl; (2) locker rooms; (3) player hallways and tunnels; (4) stadium exterior; (5) concourses; (6) hotels; (7) street pole banners; and (8) airport. See Kaplan NCAA – Budget Numbers (July 20, 2021).

¹³⁴ Compare 2021 Men’s Signage Budget, with 2021 Women’s Signage Budget.

spent \$1,524,471 on signage for the men’s tournament, and only \$87,760 on the women’s.¹³⁵ Part of that difference—approximately \$875,000 of the \$1,436,711—stemmed from the fact that the men played at neutral sites for the first and second rounds, whereas the women played on campuses which received only small décor kits so that hosts could add some NCAA tournament branding to their arenas.¹³⁶ But the remaining difference—approximately \$560,000—relates to the Sweet Sixteen, Elite Eight, and Final Four, all of which are played at neutral sites for both the men’s and women’s tournaments. An even greater difference was seen in 2018, when the NCAA spent more than \$1.1 million more on men’s signage and décor for the Final Four alone—a gap that is only partially explained by the greater size of the men’s Final Four venue.¹³⁷ Similarly, in 2017, the men’s signage and décor spending totaled \$2,289,721, whereas the women’s spending was \$212,643.¹³⁸ These are significant discrepancies, even after taking into account that the size of the men’s Final Four venue requires more signage.

These figures do not account for the additional funds that the NCAA spends on March Madness branded basketball courts for the men as compared to the women. In a normal year, the men’s first and second rounds take place at neutral sites, and the NCAA owns nine courts that it uses for these early round games. It pays approximately \$180,000 every year for storage, transportation, and installation of these courts.¹³⁹ The women’s first and second rounds take place at campus sites and are played on the home floors of those host institutions. As one senior NCAA staff member explained, “Generally, these home sites have significant logos and branding of their own that make any covering or rebranding challenging, unrealistic, or would not be aesthetically pleasing to cover, especially in a 2-3 day window to execute.” As a result, the only branding for the first and second rounds of the women’s tournament is an “NCAA” decal that is placed on the floor, which costs the NCAA approximately \$38.75 per decal, with three sent to every host site (two for the floors and one back-up).¹⁴⁰ A large number of the women’s basketball players who

¹³⁵ See Financial Outcome on Parity: Basketball Championships PowerPoint Presentation for NCAA Board of Governors from NCAA Chief Financial Officer (Apr. 27, 2021). The spending figures provided for signage and décor in this report include only the amount spent by the NCAA and not any amount fundraised or spent by the local organizing committee. For example, in 2019, the local organizing committee spent approximately \$656,000 on signage and décor at the men’s Final Four and only \$190,000 at the women’s Final Four. See Kaplan NCAA – Budget Numbers (July 20, 2021).

¹³⁶ See Financial Outcome on Parity: Basketball Championships PowerPoint Presentation for NCAA Board of Governors from NCAA Chief Financial Officer (Apr. 27, 2021).

¹³⁷ Compare 2018 Men’s Signage Budget (\$1,477,496), with 2018 Women’s Signage Budget (\$373,167). The detailed budget breakdown shows that the men’s championship spent significantly more money for signage at the airport (\$10,908 versus \$5,000) and hotels (\$182,567 versus \$59,830).

¹³⁸ See 2017 Women’s Signage Budget; 2017 Men’s Signage Budget.

¹³⁹ See Agreement between NCAA and Connor Sports Court, International (Sept. 1, 2020); see also Financial Outcome on Parity: Basketball Championships PowerPoint Presentation for NCAA Board of Governors from NCAA Chief Financial Officer (Apr. 27, 2021).

¹⁴⁰ After the first and second rounds, both the men’s and women’s tournaments use courts owned by Connor Sports Court, with the NCAA paying only for their installation. Connor Sports Court also pays to stain and paint the floors with logos and branding up to a certain price per square foot, with the NCAA covering any cost over that limit. See Agreement between NCAA and Connor Sports Court, International § 3.7 (Sept. 1, 2020).

attended the 2021 tournament with whom we spoke expressed disappointment over the way the women’s basketball courts looked, particularly as compared to the courts used by the men.

8. Fan Festivals & Other Events/Meetings

Even in a year when most of the non-competition events were cancelled due to the pandemic, the men’s tournament managed to significantly outshine the women’s tournament with respect to promotion, hosting a made-for-TV virtual concert by Miley Cyrus that took place between the Final Four games on April 3, 2021. The concert gave the men’s Final Four the feel of a professional sports event, while there was nothing comparable at the women’s Final Four. The men’s concert was sponsored by the NCAA’s Corporate Champions—AT&T, Coca-Cola, and Capital One—and cost the NCAA almost \$5 million, through a contribution required by a contract between the NCAA and CBS/Turner.¹⁴¹



*Stage of the Grammy Award-Winning Singer, Songwriter, and Actress
Miley Cyrus Performing at the 2021 NCAA Men’s Final Four¹⁴²*

One month before the women’s championship, NCAA sponsor AT&T offered to do a virtual concert for the women’s championship, but the women’s basketball staff declined out of concern that only a couple hundred people would tune in and that it would not be worth the \$150,000 it would cost the NCAA to support. The 90-minute intermission between the women’s

¹⁴¹ See Comparison of Men’s to Women’s Division I Basketball, FY 2021 Projections (Apr. 27, 2021).

¹⁴² Drew Quinones, *4Wall Provides Lighting & Rigging for the Capital One Tournament Central at the 2021 NCAA Men’s Final Four*, 4Wall (May 12, 2021), <https://www.4wall.com/about/press/4wall-provides-lighting-rigging-for-the-capital-one-tournament-central-at-the-2021-ncaa-men-s-final-four>.

Final Four games was instead filled by studio dialogue. Women’s basketball had also considered a drive-in concert at the Alamodome, but that fell through because of space and timing issues, especially once the city of San Antonio set up a large COVID-19 vaccination site in the Alamodome parking lot.

In a typical year, the differences between the side events at the men’s and women’s championships—fan festivals, exhibition basketball games, concerts, and youth basketball events—are even more pronounced. At the men’s Final Four, the NCAA’s corporate partners typically sponsor a multi-day music festival that features several A-list musicians, ranging from Rihanna to Bruce Springsteen.¹⁴³ The women’s Final Four, by contrast, does not consistently have a fan concert and, when it does, the concert has been headlined by lesser-known acts. For example, in 2019, AT&T agreed to sponsor a one-night concert at the women’s tournament headlined by Gavin DeGraw.¹⁴⁴ That same year, the 2019 March Madness Music Series at the men’s tournament, sponsored by AT&T, Coca-Cola, and Capital One, featured musical performances by Katy Perry, the Jonas Brothers, and the Chainsmokers.¹⁴⁵

Similarly, while multi-day fan festivals are held near the competition venues at both the men’s and women’s Final Fours,¹⁴⁶ these fan festivals have an entirely different look and feel, largely due to differing levels of investment by the NCAA’s corporate sponsors. The total cost of fan events (including the concerts) at the 2019 men’s tournament—which was largely paid for by corporate sponsors—was approximately \$7 million.¹⁴⁷ By contrast, the total cost of fan events at the 2019 women’s tournament was a little over \$300,000—with approximately \$200,000 paid for by a single corporate sponsor.¹⁴⁸

Further contributing to the general feeling that the men’s tournament is the “priority event” is the fact that many more NCAA governance meetings, networking events, and business meetings take place at the men’s Final Four than at the women’s. The NCAA senior leadership hosts an annual dinner with the NCAA’s broadcasting partners at the men’s Final Four, and in 2019, there was a dinner and meeting of the Board of Governors Executive Committee at the men’s Final Four

¹⁴³ March Madness Music Festival, NCAA (last visited July 21, 2021), <https://www.ncaa.com/final-four/ncaa-march-madness-music-festival>.

¹⁴⁴ NCAA Women’s Final Four Super Saturday Concert with Street Laced, Street Laced Marketing & Promotions (last visited July 21, 2021), <https://www.streetlaced.com/ncaa-womens-final-four-super-saturday-concert-with-street-laced/>.

¹⁴⁵ 2019 NCAA March Madness Music Series Will Feature Headline Performance by GRAMMY® Award-Nominated Multiplatinum Powerhouse Trio, Jonas Brothers, Presented by Coca-Cola on April 6, NCAA (Mar. 21, 2019), <https://www.ncaa.com/news/ncaa/2019-03-21/2019-ncaa-march-madness-music-series-will-feature-headline-performance-grammyr>; Additional Final Four® Resources, City of Minneapolis (last visited July 21, 2021), <https://www.minneapolis.org/other-resources/>.

¹⁴⁶ 2017-20 Division I Men’s Basketball Championship Final Four Bid Specifications; 2017-20 Division I Women’s Basketball Championship Final Four Bid Specifications.

¹⁴⁷ Comparison of Men’s to Women’s Division I Basketball, FY 2019 and 2021 Actuals and Budget (Apr. 26, 2021).

¹⁴⁸ *Id.*

as well.¹⁴⁹ The NCAA Executive Office also hosts an event honoring the spouses and partners of the Men’s Basketball Committee members, but hosts no similar event for spouses and partners of the Women’s Basketball Committee members. It is not surprising, based on all of these networking opportunities, that key stakeholders, including conference commissioners and college athletic directors and presidents, spend more time at the men’s championship each year than they do at the women’s—assuming they even attend the women’s championship at all. This matches the travel pattern of the NCAA’s own senior leadership, who generally spend far more time at the men’s tournament than the women’s.¹⁵⁰

9. Press Conference Transcripts & Photo Posting

On March 22, 2021, a reporter publicized the fact that no pictures from the women’s championship were available in the NCAA’s Photo Hub, an online portal used this year for the first time to make tournament photographs available for free download.



Tweet About NCAA Photo Hub from March 22, 2021¹⁵¹

Hundreds of high-resolution photographs from the early rounds of the men’s tournament were available to the media, fans, student-athletes, and their families, but the Photo Hub was

¹⁴⁹ See 2019 NCAA Division I Men’s & Women’s Final Four Executive Schedule; 2017 NCAA Division I Men’s & Women’s Final Four Executive Schedule.

¹⁵⁰ See 2019 NCAA Division I Men’s & Women’s Final Four Executive Schedule; 2017 NCAA Division I Men’s & Women’s Final Four Executive Schedule.

¹⁵¹ AJ McCord (@AJ_McCord), Twitter (Mar. 22, 2021), https://twitter.com/AJ_McCord/status/1373849223347765249.

devoid of any equivalent photographs from the women’s tournament. As one women’s coach noted: “Even from a marketing/promotion standpoint, if you went in as media to do a story on the women’s tournament pre-Sweet Sixteen, there were not many photos on the website or anything for them to grab. So that ‘afterthought’ process echoes throughout.”

On-site photographers and transcriptions of post-game press conferences and interviews are two expenses that this year, as in years past, the NCAA budgeted for the entirety of the men’s tournament, but only for the Sweet Sixteen and later rounds of the women’s tournament.¹⁵² Transcripts and photographs are fundamental tools that facilitate media coverage of the tournaments, especially for offsite or local media who are unable to attend the events in person—a circumstance that was exacerbated this year by the pandemic. The COVID-limited audiences made providing these services all the more important this year and caused the NCAA to decide for the first time to make its online photo portal accessible to the public, which made the lack of photography at the women’s tournament far more noticeable.

After the news broke about the lack of photographs from the women’s tournament on the NCAA Photo Hub, the NCAA scrambled to get a photographer onsite for the first two rounds of the women’s championship. One NCAA staff member got a call requesting that she get “photographers in San Antonio, now,” for a game starting just two hours later. That staff member called the contractor who fortunately already had a photographer at the game taking pictures. It ultimately cost the NCAA more than \$40,000 for the additional services in the first and second rounds—a higher figure than the NCAA would have had to pay had it planned ahead.¹⁵³ NCAA photographers were quickly hired to be on-site and were deployed on March 22, 2021 (the second day of the first round).¹⁵⁴

* * *

The disparities between the 2021 men’s and women’s tournaments bring into sharp contrast a fundamental difference in attitude that led to gender disparities from the outset of the planning process this year, as well as underlying gender equity issues at the NCAA. When these issues were compounded by the unique challenge of planning and executing a championship amidst a global pandemic, the world took notice. We next address what we believe to be the root causes of the problem—systemic issues in the NCAA’s organizational structure, its contracts with media partners, its revenue distribution, and its participation opportunities for student-athletes. We also provide specific recommendations for how the NCAA leadership, staff, membership, and partners can work to ensure an equitable student-athlete experience for women’s basketball.

¹⁵² The NCAA spent \$16,380 for transcripts at the women’s tournament as compared to \$65,232—or four times more—at the men’s. *Compare ASAP 2021 MBB Invoice, with ASAP 2021 WBB Invoice.*

¹⁵³ *See WBB 2021 Invoice from Clarkson Creative* (noting “last minute fees for coverage of the 2021 NCAA Women’s Basketball Tournament”).

¹⁵⁴ Even then, however, since the photographers were local photographers (as opposed to the typical photographers the NCAA’s contractor uses for NCAA events), the NCAA elected to wait until the Sweet Sixteen to place earlier round photos on the online public photo portal. The NCAA did make the first and second round photos available on the NCAA Digital Media Hub for media and member institutions.

THE NCAA'S ORGANIZATIONAL STRUCTURE & CULTURE

The NCAA, a not-for-profit, member-led organization, is operated by two groups: (1) NCAA employees; and (2) the NCAA membership, which includes colleges, universities, and athletic conferences.¹⁵⁵ The NCAA employees (*i.e.*, leadership and staff) are largely responsible for the day-to-day operation of the NCAA, which includes regulating the athletics programs of its members; planning, running and promoting the NCAA championships; supporting the work of the NCAA committees (see below); managing the NCAA's relationships with corporate and media partners; and providing financial and programmatic support to its members. Representatives from the membership—*e.g.*, college presidents, athletic directors, coaches, and student-athletes—sit on and work through committees to determine the rules and policies that govern the NCAA and college athletics generally for NCAA sports. The NCAA committees are the key decision-making bodies of the organization and make decisions on a wide range of issues, from how NCAA revenue is distributed to whether individual sport brackets should be expanded.

The membership's heavy reliance on the monies it receives from the NCAA has had a significant impact on the structure and culture of the NCAA. The NCAA and its members have a stated commitment to certain values, including diversity, inclusion, and gender equity.¹⁵⁶ They also have a commitment to provide superior athletic programming for their student-athletes. As many academic institutions are operating under incredible financial strain, particularly in light of the pressures put on college and university budgets due to COVID-19, NCAA member institutions are dependent now more than ever on the financial support they receive from the NCAA. That, in turn, puts pressure on the NCAA to maximize revenue—a goal that can conflict, or at least be perceived to conflict, with some of the organization's other objectives and values, like gender equity. These tensions and skewed incentives are embedded in the NCAA's organizational structure, staffing, budgeting, and culture.

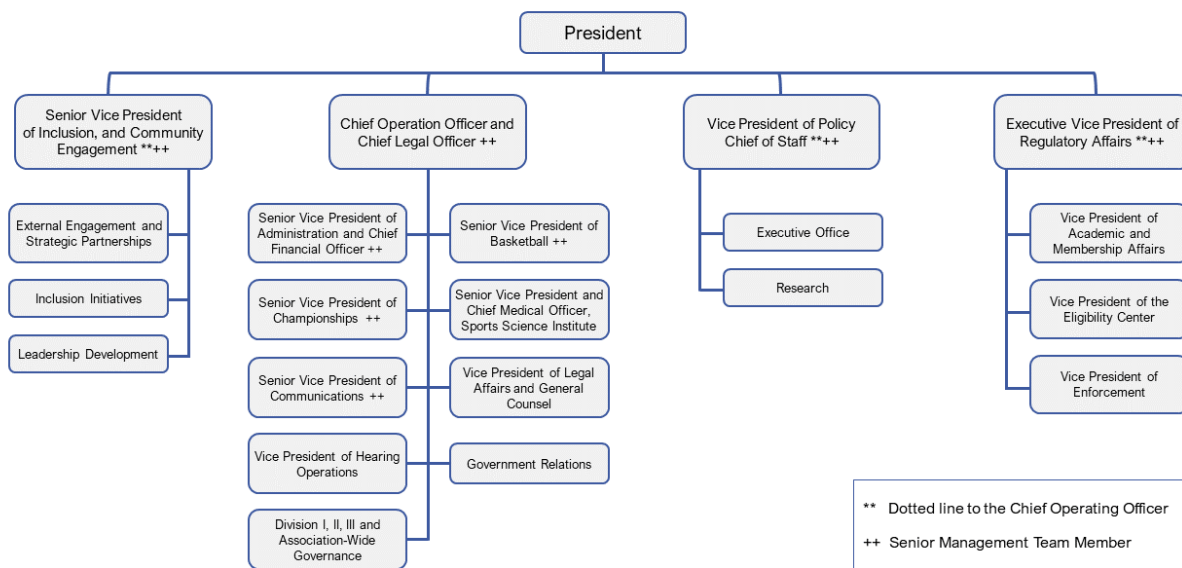
¹⁵⁵ What Is the NCAA, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa>.

¹⁵⁶ *See, e.g.*, NCAA Constitution, Article 2.2.2 (adopted Jan. 10, 1995) (“It is the responsibility of each member institution to establish and maintain an environment that values cultural diversity and gender equity among its student-athletes and intercollegiate athletics department staff.”); NCAA Constitution, Article 2.3.3 (adopted Jan. 11, 1994) (“The activities of the Association should be conducted in a manner free of gender bias.”); NCAA Inclusion Statement (adopted Apr. 2010, and amended Apr. 2017) (“As a core value, the NCAA believes in and is committed to diversity, inclusion and gender equity among its student-athletes, coaches and administrators.”); NCAA Presidential Pledge (adopted by the NCAA Board of Governors in 2016, and signed by 980 member institutions as of Sept. 2020) (“Consistent with our mission and values, our institution, a member of the National Collegiate Athletic Association, pledges to specifically commit to establishing initiatives for achieving ethnic and racial diversity, gender equity and inclusion, with a focus and emphasis on hiring practices in intercollegiate athletics, to reflect the diversity of our membership and our nation.”); Gender Equity and Title IX, NCAA (last visited July 20, 2021), <https://www.ncaa.org/about/resources/inclusion/gender-equity-and-title-ix> (“One of the NCAA's principles of conduct for intercollegiate athletics focuses on gender equity. The office of inclusion is committed to supporting the membership as it strives to comply with federal and state laws regarding gender equity, to adopting legislation that augments gender equity and to establishing an environment that is free of gender bias.”).

1. Division I Basketball Organizational Structure

The SVP of Basketball, a position currently occupied by Dan Gavitt, oversees all of basketball at the NCAA. Until recently, the SVP of Basketball reported to the Chief Operating Officer/Chief Legal Officer, but at present reports to the President, because the Chief Operating Officer/Chief Legal Officer position is not currently filled. The SVP of Basketball also sits on the President’s Senior Management Team (“SMT”).¹⁵⁷

Senior NCAA Leadership at the Time of the 2021 Championship



The SMT includes all SVPs and Executive Vice Presidents at the NCAA and is described as a group of the NCAA President’s “closest advisors.”¹⁵⁸ The SMT is tasked with helping the NCAA President make strategic decisions for the organization and with providing guidance to key leaders at the NCAA member institutions. The SVP of Basketball stated that if he wants to bring an issue to the President’s attention, he primarily does that at an SMT meeting. These meetings are generally held twice a week.

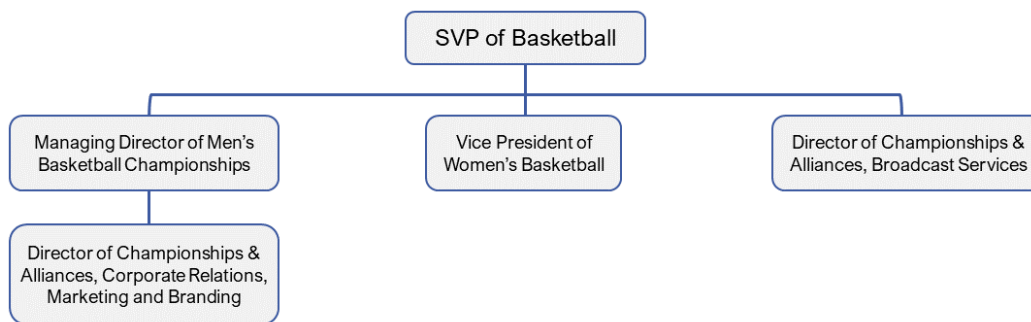
Currently, the SVP of Basketball’s primary responsibilities are to manage the men’s and women’s Division I, Division II, and Division III tournaments and the men’s NIT at a macro level, to manage the NCAA’s broadcast relationships for all NCAA sports, and to oversee the corporate sponsorship program for all NCAA sports. The following all report directly to the SVP of Basketball: the head of women’s basketball, Lynn Holzman (a Vice President); the head of men’s

¹⁵⁷ National Office Leadership Team, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/who-we-are/office-president/ncaa-leadership-team>.

¹⁵⁸ *Id.*

basketball, JoAn Scott (a Managing Director); and the Director who administers the NCAA’s broadcasting contracts with CBS/Turner and ESPN, Julie Kimmons (the Director of Championships & Alliances, Broadcast Services). The Director who oversees the NCAA’s corporate relationships and other marketing and branding efforts across all sports, Ellen Lucey (the Director of Championships & Alliances, Corporate Relations, Marketing and Branding), reports directly to the Managing Director of Men’s Basketball.

Current Reporting Lines to the SVP of Basketball



Although this structure, on its face, should not necessarily disadvantage Division I women’s basketball,¹⁵⁹ many stakeholders report that, in both practice and perception, women’s basketball essentially reports, and is subordinate, to Division I men’s basketball. This view results, at least in part, from the fact that Gavitt himself was formerly the Vice President of Men’s Basketball at the NCAA. At that time, he and then-Vice President of Women’s Basketball Anucha Browne reported to the Executive Vice President for Championships and Alliances, Mark Lewis. After Lewis left the NCAA in 2016, Gavitt became the SVP of Basketball, with responsibilities for both men’s and women’s basketball, and no longer reported up to a head of all championships.¹⁶⁰

The perception that women’s basketball effectively reports up through men’s basketball also stems from the fact that although the SVP of Basketball is tasked with managing both women’s and men’s basketball, he spends most of his time on men’s Division I basketball.¹⁶¹ The current SVP of Basketball explained to us that his work is “[d]efinitely more tilted toward men’s

¹⁵⁹ In fact, the head of women’s basketball currently holds a more senior title than the head of men’s basketball.

¹⁶⁰ *NCAA Promotes Gavitt to New Position to Oversee Basketball*, AP (Dec. 14, 2016), <https://apnews.com/article/ea7a39922e2f4b2c8d4e8fbb83a91c9f>.

¹⁶¹ For example, when the NCAA was asked to present on men’s and women’s basketball at meetings involving all Division I conference commissioners in the months leading up to the 2021 championships, the SVP of Basketball dedicated his presentation to men’s basketball, and the Vice President of Women’s Basketball discussed women’s basketball.

basketball.” One NCAA senior staff member noted that the SVP of Basketball is not “engaged in strategic thinking and initiatives” for women’s basketball; another NCAA executive noted that the SVP of Basketball expects the Vice President of Women’s Basketball to largely run women’s basketball autonomously. Tellingly, a significant number of leaders in the women’s basketball community describe and understand the current SVP of Basketball to be the head of *men’s* basketball only, not the head of *all* of basketball at the NCAA.¹⁶²

The SVP of Basketball’s focus on Division I men’s basketball is unsurprising. No one questions that men’s basketball currently brings in the vast majority of the NCAA’s current revenue. As President Emmert put it, men’s basketball is “just economically way more important. We can have problems in any of our championships but that one. It’s just a fact. Everyone in the membership knows that.”

The SVP of Basketball’s primary focus on Division I men’s basketball, however, creates significant challenges for women’s basketball. It means that women’s basketball is not fully represented in important discussions within the NCAA and important information does not always flow to women’s basketball. The Vice President of Women’s Basketball does not sit on the SMT (which is limited to only SVPs and higher),¹⁶³ and does not attend the NCAA’s quarterly meetings with CBS/Turner or ESPN regarding broadcast agreements and corporate sponsors. Thus, the Vice President of Women’s Basketball was not in the room during discussions among senior NCAA management on whether or not to cancel the basketball tournaments in 2020, or for early meetings on COVID-19 protocols for the 2020-21 season. Accordingly, the Vice President of Women’s Basketball was often wholly reliant on the SVP of Basketball to relay to her any information pertinent to women’s basketball and to advocate for women’s basketball with NCAA senior leadership.

Another challenge with the current leadership structure is that it aligns the NCAA’s chief revenue-generating departments with basketball, and often specifically with men’s basketball, as described above. As a result, the NCAA’s broadcasting relationships and corporate sponsorship program are set up in a way that largely benefits men’s basketball—to the exclusion of all other championships, including women’s basketball, as detailed further below. If the staff of these departments continue to report to basketball or, even more specifically, to men’s basketball, it seems unlikely that they will shift attention to supporting and benefitting women’s basketball and the other championships.

¹⁶² In fact, his NCAA website biography does not mention women’s basketball at all: “In his current role, Gavitt oversees the day-to-day operations of the NCAA Division I men’s basketball championship, as well as the NCAA’s 11-year, \$10.6 billion contracts with broadcast partners CBS and Turner Broadcasting. He also supervises the Postseason NIT and NCAA Division II and III Men’s Basketball Championships and serves as the staff’s day-to-day contact to the Division I Men’s Basketball Committee and the Men’s Basketball Oversight Committee.” National Office Leadership Team, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/who-we-are/office-president/ncaa-leadership-team>.

¹⁶³ *Id.*

2. Staff Size & External Support

Disparities in staffing complicate matters further. Excluding the SVP of Basketball, there are currently 11 full-time men's basketball staff (including the Managing Director of Men's Basketball), and only seven full-time women's basketball staff (including the Vice President of Women's Basketball and her executive assistant).¹⁶⁴ Taking into account the time that other NCAA employees (in departments such as ticketing, corporate alliances, and statistics) allocate to support the Division I Men's and Women's Basketball Championships, men's basketball has the equivalent of 21.86 full time employees, while women's basketball has only 13.92.¹⁶⁵

To some extent, different levels of staffing are understandably attributable to the differences between men's and women's Division I basketball. For example, one of the men's basketball staff members largely manages the NIT; there is no similar staffing on the women's side because the NCAA does not own the WNIT and therefore plays no role in that non-NCAA event. Additional staffing is also needed for the men's tournament because the first and second rounds are played at neutral sites (unlike the women, whose first and second rounds are hosted at member campuses), and because of the significantly larger scale of the men's tournament.

This reasoning goes only so far, however, as a single women's basketball staff member often shoulders all of the same responsibilities as several colleagues on the men's side. For example, for the 2021 championships, the person responsible for mementos and gifts for the women's tournament had approximately 20 other responsibilities and seven counterparts in men's basketball.¹⁶⁶ The person responsible for gifts and mementos for the men's tournament had approximately three other responsibilities (although one was running the Division III Men's Basketball Championship) and only three counterparts in women's basketball.¹⁶⁷

This disparity in staff size is exacerbated by the fact that men's basketball employs more external contractors to help run the tournament than women's basketball does. In particular, the NCAA engages Populous to help with logistics like directional signage, scheduling, coordinating with media partners, and coordination of NCAA-related construction projects for the men's Final Four.¹⁶⁸ In 2021, Populous dedicated eight workers to those tasks.¹⁶⁹ The NCAA paid Populous consulting fees of \$942,668 in 2019 and \$733,037 in 2021 (through July 1, 2021). Although the NCAA paid \$211,200 as compensation for outside contractor assistance with operations and

¹⁶⁴ Men's and Women's Basketball Championships Roster (as of Mar. 1, 2020); 2020-21 Women's Basketball Organizational Chart.

¹⁶⁵ Championships and Alliances Staffing Allocation (Apr. 15, 2021).

¹⁶⁶ This women's basketball staff member's additional responsibilities included coordinating all volunteers, planning hotels and lodging, dealing with space assignments, and planning the Salute presentation for all of the women's Final Four teams. *See* Men's and Women's Basketball Buddy List (2020-21).

¹⁶⁷ *Id.*

¹⁶⁸ NCAA and Populous Master Service Agreement (2021-26); Populous 2021 Final Four, Indianapolis, Indiana, Work Order Assignment Number: 1.

¹⁶⁹ Populous 2021 Final Four, Indianapolis, Indiana, Work Order Assignment Number: 1 § 6.5.

logistics in connection with the 2021 women’s tournament,¹⁷⁰ it does not typically do so, and the NCAA women’s basketball staff tend to bear many of the responsibilities outsourced to contractors for men’s basketball.

Even with respect to those external contractors that the NCAA uses on a regular basis for both men’s and women’s basketball, the contractor’s responsibilities are usually greater for men’s basketball than for women’s. For example, both women’s and men’s basketball use Anthony Travel to help arrange travel to and from the men’s and women’s tournaments and to manage hotel reservations for the tournaments. But while Anthony Travel was required under the travel-related services contract in effect from 2016 to 2021 to arrange all “travel to and from airports” for selected hotels for the men’s Final Four, the contract noted that the women’s Final Four “will utilize existing airport transportation when it is feasible.”¹⁷¹ In addition, Anthony Travel is required under the hotel management agreement in effect from 2018 to 2023 to perform a host of additional responsibilities at the men’s basketball tournament such as hotel reservations management for media, staff, committees, and fans; NCAA staff members must perform these responsibilities for the women’s tournament.¹⁷² Finally, men’s basketball has historically had two employees from Anthony Travel on site at their tournament to help with hotel arrangements. Women’s basketball has had no similar employee from Anthony Travel on site until this year, when they were—after multiple requests—able to ensure that one Anthony Travel employee was on the ground in San Antonio.

A final difference in staffing between the men’s and women’s tournaments is the number of unpaid volunteers. The larger-scale Division I Men’s Basketball Championship has many more unpaid volunteers that assist with the tournament each year. For example, in 2019, the total number of unpaid volunteers that helped out at the women’s tournament was 912, whereas the total number of unpaid volunteers at the men’s tournament each year is approximately 2,200 to 2,500.

3. Communication/Coordination Between Men’s & Women’s Staffs

Despite having a common SVP, the men’s and women’s basketball staffs operate largely independently of one another, with limited strategic communication or coordination. At present, there are no joint strategic meetings involving the SVP of Basketball, the Vice President of Women’s Basketball, and the Managing Director of Men’s Basketball to discuss an overall strategy for basketball or to jointly determine budget priorities. The Vice President of Women’s Basketball and the Managing Director of Men’s Basketball do not regularly communicate or meet with each other either. Although the entire men’s and women’s basketball staffs meet jointly on a monthly basis, the meetings have been described to us as ineffective, and they did not occur during the months immediately preceding this year’s tournaments. One NCAA staff member, for

¹⁷⁰ NCAA and MKTG, Inc. Master Services Agreement (Oct. 14, 2020); MKTG Scope of Work (Feb. 22, 2021).

¹⁷¹ NCAA and Anthony Travel LLC Transportation Management Agreement at 12 (Sept. 2016).

¹⁷² See NCAA and Anthony Travel LLC Hotel Management Agreement (2018).

example, relayed that some of the men’s basketball staff do not consider it their responsibility to help the women’s basketball staff plan their tournament.

Coordination between the two staffs largely occurs on an individual staffer-by-staffer basis and depends on how well staff members with parallel responsibilities communicate with each other. Although some men’s and women’s basketball staff members report a positive working relationship, others do not. Attempts have been made to improve information-sharing between the two staffs, including the creation of a “buddy list” in the fall of 2020.¹⁷³ The buddy list detailed the responsibilities of each staff member, with the goal of facilitating communications between men’s and women’s staff members with similar responsibilities. But many staff members reported that the buddy list was not successful, in large part because the distribution of responsibilities for the men’s basketball staff does not correlate well to the distribution of responsibilities for the women’s basketball staff. For example, the women’s basketball staff member responsible for credentials, game operations, and approximately 30 other tasks had approximately eight men’s basketball counterparts with whom she was in theory supposed to coordinate.¹⁷⁴

Overall, the men’s and women’s basketball staffs operate in separate silos, and with one of those silos—men’s basketball—institutionally prioritized over the other. This results in a dynamic where men’s basketball makes decisions, women’s basketball finds out about those decisions, and women’s basketball must then choose whether to follow suit. As one NCAA leader put it, there is not much “let’s sit together and talk about what we should do.” This dynamic explains how significant disparities often go unnoticed within the NCAA—or at least until they become public at the tournaments, as was the case this past March.

4. Men’s & Women’s Basketball & Basketball Oversight Committees

The NCAA committees responsible for men’s and women’s Division I basketball have some of the same communication and coordination issues. There are four key committees responsible for Division I basketball: the Division I Men’s and Women’s Basketball Committees administer the national championships, and the Division I Men’s and Women’s Basketball Oversight Committees review recommendations from the Basketball Committees and are responsible for strategic matters relating to both regular-season and post-season basketball.¹⁷⁵

Similar to the men’s and women’s basketball staffs, there is little communication between the Men’s and Women’s Basketball Committees, and no apparent sense of joint purpose. As one member of the Women’s Basketball Committee, for example, explained: “In terms of formal or

¹⁷³ Men’s and Women’s Basketball Buddy List (2020-21).

¹⁷⁴ *Id.*

¹⁷⁵ Division I Women’s Basketball Oversight Committee, NCAA (last visited July 21, 2021), <https://www.ncaa.org/governance/committees/division-i-women-s-basketball-oversight-committee>; Division I Men’s Basketball Oversight Committee, NCAA (last visited July 21, 2021), <https://www.ncaa.org/governance/committees/division-i-men-s-basketball-oversight-committee>.

informal collaboration, there is none.” This was echoed by a member of the Men’s Basketball Committee, who similarly noted that “there’s zero communication with the Women’s Basketball Committee.” An NCAA staff member confirmed that communication is “nonexistent” between the Men’s and Women’s Basketball Committees.

There is more communication between the Men’s and Women’s Basketball Oversight Committees. In the months leading up to this year’s championships, the two committees met jointly approximately 10 times in order to discuss the unique circumstances of holding tournaments during a pandemic.¹⁷⁶ In the past, the two committees have had joint meetings when discrete issues arose that touched on both sports (*e.g.*, recruiting rules or credentialing coaches).¹⁷⁷ The two committees do not, however, have regular discussions to coordinate on strategic matters to ensure gender equity between men’s and women’s basketball generally.

The dynamic between and the relative effectiveness of the men’s and women’s committees are also influenced by the composition of each committee. The Men’s Basketball Committee and Basketball Oversight Committee are largely composed of conference commissioners and athletic directors, whereas the Women’s Basketball Committee and Basketball Oversight Committee have a greater proportion of associate commissioners, assistant athletic directors, and/or SWAs.¹⁷⁸ For example, as of July 2021, 10 members of the Men’s Basketball Committee were either commissioners or athletic directors, in contrast to only three of the 10 members of the Women’s Basketball Committee; similarly, eight of the 15 members of the Men’s Basketball Oversight Committee were either commissioners or athletic directors, in contrast to only five of the 15 current members of the Women’s Basketball Oversight Committee.¹⁷⁹ This difference in committee membership may be contributing to the lesser stature of women’s basketball within the NCAA, as

¹⁷⁶ Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Mar. 3, 2021); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Jan. 25, 2021); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Dec. 14, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Nov. 16, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Nov. 19, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Oct. 29, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Oct. 23, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Oct. 5, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Sept. 11, 2020); Joint Report of the Division I Men’s and Women’s Basketball Oversight Committees (Sept. 1, 2020).

¹⁷⁷ See, *e.g.*, Agenda of Joint Meeting of the NCAA Division I Men’s and Women’s Basketball Oversight Committees (Apr. 17, 2019); Agenda of Joint Meeting of the NCAA Division I Men’s and Women’s Basketball Oversight Committees (Oct. 1, 2018); Agenda of Joint Meeting of the NCAA Division I Men’s and Women’s Basketball Oversight Committees (Apr. 16, 2018).

¹⁷⁸ A Senior Woman Administrator, or SWA, is the highest-ranking woman in an athletics department or conference office. The SWA designation was created 40 years ago, in 1981, the year the NCAA added women’s championships, to “promote meaningful representation of women in the leadership and management of college sports.” Senior Woman Administrators, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/inclusion/senior-woman-administrators>. Some stakeholders expressed the view that it may be time to re-examine this designation.

¹⁷⁹ Division I Men’s Basketball Committee, NCAA (last visited July 21, 2021), https://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1MBB; Division I Women’s Basketball Committee, NCAA (last visited July 21, 2021), https://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1WBB; Division I Men’s Basketball Oversight Committee Roster, NCAA (last visited July 21, 2021), https://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1MBBOVERSIGH; Division I Women’s Basketball Oversight Committee Roster, NCAA (last visited July 21, 2021), https://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1WBBOVERSIGH.

the people with the most influence in college athletics are not necessarily the ones behind the strategic discussions and decisions that affect women’s basketball. As one interviewee aptly put it, due to the lack of athletic directors and commissioners on the committees, women’s basketball has “no juice to make change” within the Division I Council and the Board of Governors; when the committees try to “request changes, growth, and solutions,” they often “fall flat.”

In certain ways, the disparity in committee membership is self-perpetuating. Potential committee members are drawn to the men’s basketball committees because of their greater prestige, and filling the committees with athletic directors and conferences commissioners maintains that prestige for future rounds of nominations. Indeed, the disparate compositions of the men’s and women’s committees have not gone unnoticed by the NCAA, which is now taking steps to rectify it. More specifically, during an April 2021 meeting regarding vacancies on the Men’s Basketball Committee, the Council Coordination Committee formally recommended that “changes should be made to help ensure that the composition of committees for men’s and women’s sports (e.g., men’s basketball and women’s basketball) are similar in terms of the positions and responsibilities.”¹⁸⁰ In addition, during a meeting of Division I conference commissioners in June 2021, the NCAA asked the conferences to prioritize nominating athletic directors and commissioners to the Women’s Basketball Committee.

5. The Budget & the Budget Process

As discussed above, many of the differences experienced and observed at the championships stem from significant disparities between the men’s and women’s tournament budgets and spending. In 2019—the last year for which the NCAA held basketball championships and has final spending figures—the men’s basketball tournament cost \$53.2 million, and the women’s basketball tournament cost \$17.9 million.¹⁸¹ The 2019 unaudited financials break down as follows:¹⁸²

¹⁸⁰ NCAA Division I Council Coordination Committee: Summary of Actions and Key Informational Items (Apr. 15, 2021). When there is a vacancy on an NCAA committee, conferences are tasked with nominating individuals to fill the spot, and the NCAA Division I Nominating Committee then reviews the list of names and makes recommendations to the Council Coordination Committee who has final approval over an appointment.

¹⁸¹ Comparison of Men’s to Women’s DI Basketball, FY 2019 and 2021 Actuals and Budget (Apr. 27, 2021); DI Basketball Pivoted Expenses (2017-18).

¹⁸² Comparison of Men’s to Women’s DI Basketball, FY 2019 and 2021 Actuals and Budget (Apr. 27, 2021).

	Actuals - FY 2019		
	Men	Women	Difference
Basketball Direct Game Expense			
Facilities	\$ 6,130,414	\$ 700,076	\$ 5,430,338
Ticket taxes/fees and credentials	\$ 3,116,118	\$ 48,638	\$ 3,067,480
Honorariums and hosting settlements	\$ 2,757,194	\$ 421,398	\$ 2,335,795
Personnel (includes contractors and consultants)	\$ 3,360,150	\$ 1,284,147	\$ 2,076,002
Signage	\$ 1,524,471	\$ 87,760	\$ 1,436,711
Equipment	\$ 1,659,911	\$ 311,726	\$ 1,348,185
Media production, technology, and telecomm	\$ 1,713,688	\$ 488,910	\$ 1,224,777
Other travel (includes staff travel)	\$ 974,815	\$ 111,274	\$ 863,541
Hospitality and catering	\$ 783,063	\$ 244,289	\$ 538,775
Apparel	\$ 316,733	\$ 59,342	\$ 257,391
Officials	\$ 750,454	\$ 510,300	\$ 240,154
Awards/mementos	\$ 629,464	\$ 406,828	\$ 222,637
Promotion	\$ 338,380	\$ 374,402	\$ (36,022)
Office and professional services	\$ 27,483	\$ 124,821	\$ (97,338)
Game Expense Total	\$ 24,082,339	\$ 5,173,911	\$ 18,908,428
	Actuals - FY 2019		
	Men	Women	Difference
Basketball Other Direct Expense			
Team travel	\$ 9,404,705	\$ 6,446,785	\$ 2,957,919
Per diem and lodging costs	\$ 6,189,663	\$ 4,107,888	\$ 2,081,775
Committee expense	\$ 427,184	\$ 262,264	\$ 164,920
Total Direct Expenses	\$ 40,103,890	\$ 15,990,848	\$ 24,113,042
Basketball Support Expense			
Fan Events, Promotion, and Presentation	\$ 8,496,045	\$ 949,777	\$ 7,546,268
NCAA Marketing and Ticketing Expense	\$ 651,759	\$ 162,723	\$ 489,035
Credit Card Fees	\$ 707,218	\$ 67,419	\$ 639,799
NCAA Champs Functional Group Expenses	\$ 714,833	\$ 319,797	\$ 395,036
Playing Rules and Officiating Improvement	\$ 487,773	\$ 417,367	\$ 70,406
Insurance	\$ 2,025,211	\$ -	\$ 2,025,211
Total Support Expenses	\$ 13,082,838	\$ 1,917,083	\$ 11,165,755
TOTAL DISBURSEMENTS	\$ 53,186,729	\$ 17,907,931	\$ 35,278,798

In 2021, the men’s tournament costs are projected to be around \$20 to \$25 million more than the women’s tournament.¹⁸³

To be sure, gender equity does not require equal budgets, as a tournament with greater fan attendance, corporate sponsorship, and media attention, and one with all rounds hosted at neutral sites, naturally commands additional resources and support. However, the view that men’s basketball is highly profitable and therefore worthy of increased investment has cultivated a culture within the NCAA in which men’s basketball is not required to abide by many of the same budgetary constraints as women’s basketball (or other sports). For example, the women’s basketball staff and the Women’s Basketball Oversight Committee have previously been tasked

¹⁸³ See *id.* These financial figures were presented to the Board of Governors in April 2021, following this year’s Division I basketball championships. They include expenses that the NCAA paid itself, as well as those that host institutions paid to various vendors. Figures for the 2021 championships are projections, as the NCAA continues to collect invoices and make payments in connection with the tournaments. The 2021 financials will not be final until after the end of the fiscal year on August 31, 2021.

with making significant cuts to the women’s basketball budget, decreasing the funding for Division I women’s tournament travel, fan festivals, and operational costs. As one committee member noted, “The mandate was we need to cut a couple million dollars out of the women’s basketball budget. . . . Someone asked is the men’s championship doing a similar exercise. And [the answer] was of course not because they’re making so much money.” Another stakeholder explained that a couple of years ago, a group met within the NCAA with the goal of cutting championship expenses, and that NCAA senior leadership said that the Division I Men’s Basketball Championship was “off the table” with respect to such cuts.

In general, the NCAA does not actively consider or monitor whether the differences between the men’s and women’s basketball budgets or spending are equitable. Rather, the championship budgets remain relatively stagnant from year to year, with championship staff having the opportunity either to request additional funds that would be allocated from an annual inflation-based increase or to move funds from one line item in the championship budget (*e.g.*, photography) to another (*e.g.*, mementos).¹⁸⁴ For both men’s and women’s basketball, the SVP of Basketball has the final approval of the yearly championship budgets, for which he consults with a member of the finance staff.¹⁸⁵ The SVP of Basketball has approved budget requests for both men’s and women’s basketball operations, but has also denied multiple requests from the women’s basketball staff to increase the amount spent on Tourney Town (the fan festival at the women’s tournament), and the concert during the Final Four weekend, even though prior budget cuts had already reduced the NCAA’s spend on these two student-athlete and fan-facing events by more than \$1 million.¹⁸⁶

Because the NCAA’s general practice is to maintain similar line items as compared to prior years (*e.g.*, allocating a similar amount for gifts and mementos as the year before), differences in particular line items can grow unchecked for many years. And while the SVP of Basketball has the authority to move funds between budget categories and between men’s and women’s basketball as he deems appropriate, the SVP has rarely done so.

¹⁸⁴ The NCAA’s budget for all championships is based on a 10-year model for Division I set forth by the Chief Financial Officer, as approved by NCAA senior leadership. This 10-year plan provides high-level projections for Division I Distributions, Division I Championships and Programs, allocations and revenues for Divisions II and III, and association-wide expenses. Based on these 10-year projections, each year, the Board of Governors approves a proposed business plan, reviewed by several executive staff and committees, which determines how much each championship is allocated for that year. Based on this business plan, the annual budget for each championship covers all regular and anticipated expenses to plan and put on the championships and is subject to an annual growth rate based on inflation.

¹⁸⁵ If the SVP of Basketball decides not to grant a request for additional funds in the championship budget, he may instead submit a request for additional funds from a small “association-wide allocation.” The association-wide allocation is a distinct budget allocation of which each championship and staff group can apply for a portion. In basketball, the championship staff may make a request to the SVP of Basketball for specific budgetary items, which may be funded through part of the association-wide allocation. The SVP, in turn, may elevate a request that he chooses not to fund through the championship budget to senior leadership, including the Chief Financial Officer and President, who, along with certain committees, conduct budget hearings and have the discretion to approve or deny the request. These association-wide requests are less frequent and issued more sparingly. In 2019, the NCAA awarded the women’s basketball staff funds from the association-wide allocation to implement their Strategic Plan. 2019-20 Basketball Business Unit – Budget Submission Summary (2019).

¹⁸⁶ 2019-20 Basketball Business Unit – Budget Submission Summary (2019).

Overall, the NCAA does not have appropriate measures in place for monitoring gender equity in the budget and spending process. The men’s and women’s basketball staffs do not coordinate on planning the budget or on what their total expenses are for each line item, and the SVP of Basketball does not share—or discuss—the budgets for men’s and women’s basketball between the two staffs.¹⁸⁷ As a result, the basketball staffs cannot plan to have similar spending, or identify issues created from differences in spending, while they are planning the men’s and women’s championships. Although aware of both budgets, the SVP of Basketball historically has not run a comparison between them or focused on the disparities between the men’s and women’s basketball budgets until the NCAA ran comparisons following the 2021 tournaments.

In 2019, the NCAA formed the Division I Championships Finance Review Working Group, which was tasked with reviewing legislation and policy governing championship resources.¹⁸⁸ The NCAA Board of Directors, with input from the Division I Council, approved seven guiding principles for the review, including one on gender equity: “NCAA championships will reflect the NCAA’s commitment to diversity and inclusion and student-athlete gender equity.”¹⁸⁹ As a result, many of the Working Group’s recommendations focused on policies that strengthen gender equity among student-athletes, including express directives that the NCAA adopt gender equity principles when considering the administration and funding of the championships.¹⁹⁰ The Division I Finance Committee adopted the Working Group’s recommendations incorporating gender equity as a key consideration for certain decisions, such as on bracket and field size, and those recommendations are planned to be adopted in August 2021. As part of this process, the NCAA also began to develop a numerical formula intended to assist in prioritizing spending requests across the championships, but that process has been put on hold pending this external gender equity review. While the formula under consideration considers gender equity as an express element, if the NCAA chooses to move forward with such a formula, the gender equity factor would need to be appropriately weighted to ensure meaningful changes in NCAA practice.¹⁹¹

6. Internal Gender Equity Controls

As evidenced by the above discussions of inequities in NCAA staffing and budgets, no one at the NCAA is currently tasked with regularly reviewing budgets, staffing, or any particular aspects of the Division I Men’s and Women’s Basketball Championships to ensure that they are equitable from a gender perspective. To be sure, the NCAA has various offices and committees

¹⁸⁷ While the NCAA’s budget software system does permit men’s and women’s basketball to review each other’s materials, those materials only show a dollar amount associated with a general spending category, and staff are not instructed to review those materials or to coordinate spending with each other.

¹⁸⁸ Report of the NCAA Division I Championships Finance Review Working Group at 4 (Oct. 7, 2020).

¹⁸⁹ *Id.* at 5.

¹⁹⁰ *Id.* at 12, 18-19.

¹⁹¹ Championships Investment Evaluation and Prioritization Act II Presentation (2021).

tasked with working on issues of diversity and inclusion. However, each is largely focused on promoting diversity and inclusion externally—that is, within the NCAA membership institutions—rather than internally. For example, the NCAA Office of Inclusion is tasked with educating the membership on Title IX and other diversity, equity, and inclusion matters; planning diversity and inclusion programming for the membership, including an annual NCAA Inclusion Forum; and helping to manage the NCAA’s diversity and inclusion committees and task forces.¹⁹² The Office has only six full-time staff members, but serves more than 1,100 colleges, universities, and conferences.¹⁹³ The NCAA also has four committees that focus on diversity and inclusion, but none is tasked with ensuring that there is gender equity in NCAA championships or Division I basketball specifically. As one NCAA staff member put it, “Who is really responsible for [gender equity]? That’s an overall point that needs to be addressed in a meaningful way.”¹⁹⁴

7. Recommendations

Recommendation 1.1

Change the leadership structure of Division I basketball to prioritize gender equity and coordination between the men’s and women’s tournaments.

The leadership of men’s and women’s basketball should be at equivalent levels of seniority within the organization and should be tasked with working together to coordinate a joint strategy to maximize the value of both championships while ensuring gender equity in the student-athlete experience. The leadership of men’s basketball should no longer have responsibility for the broadcast or corporate partnership arrangements for all sports, as explained in Recommendation 2.4.

Both men’s and women’s basketball and the leadership of other championships should report up to a Head of Championships who is responsible for ensuring gender equity across championships. In particular, the Head of Championships would be responsible for reviewing budgets and participation opportunities for gender disparities, and for ensuring that items that impact the student-athlete experience, which are detailed in Recommendation 3.2, are equitable.

¹⁹² Office of Inclusion, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/inclusion>; Gender Equity and Title IX, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/inclusion/gender-equity-and-title-ix>; 2021 Inclusion Forum, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/events/2021-ncaa-inclusion-forum>.

¹⁹³ Office of Inclusion, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/inclusion>.

¹⁹⁴ In late March 2021, the NCAA was asked by members of the U.S. House of Representatives to describe the processes that the NCAA has in place to ensure championship competitions adhere to the gender equity principles of Title IX. The NCAA responded that it required those bidding for NCAA championships to provide assurances that anyone associated with an NCAA event will be treated with fairness and respect, but was otherwise unable to identify processes in place to ensure that the women’s and men’s championships are equitable. *See* Letter from President Mark Emmert to Honorable Mikie Sherrill, et al., U.S. House of Representatives (Apr. 2, 2021).

When selecting a Head of Championships, a key qualification for the position should be a demonstrated commitment to gender equity.

These changes are designed to improve coordination and communication between the heads of men's and women's basketball, eliminate the current perception that women's basketball reports up through men's basketball, and ensure the regular consideration of gender equity across NCAA championships, with equity in the student-athlete experience as the guidepost. Separating out the business functions from the championship management structure will also help ensure that managers of championships are maintaining a primary focus on how to provide the best student-athlete experience possible. *See* Recommendation 2.4 below, concerning the creation of a new senior position of Chief Business Officer.

Recommendation 1.2

Before the next budget cycle, conduct a “zero-based” budget for Division I men's and women's basketball to ensure that any gender differences are necessary, appropriate, and equitable.

To reset the budgets for men's and women's basketball based on a detailed assessment of whether discrepancies in the budgets are justifiable and appropriate in light of differences in the structure of the championships, the NCAA should create a “zero-based” budget before the next budget cycle. This process involves starting from a “zero base” and adding back each budget line item for men's and women's basketball, as opposed to the annual NCAA process of adopting the previous year's budget as a base. This will enable the NCAA leadership of championships, men's and women's basketball, and the financial office to work together not only on ensuring equitable budgets, but in creating efficiencies across budgets and maximizing the impact of spending.

After this “zero-based” budget has been created, the heads of men's and women's basketball, under the oversight of the Head of Championships, should each year work together to confirm that those line item expenses that touch on the student-athlete experience are equitable and that any disparities in budgetary line items continue to be reasonable. This process will require men's and women's basketball to openly share budgetary information with one another and to collaborate on the strategic and efficient use of basketball funds.

Recommendation 1.3

Develop equity in staffing for Division I men's and women's basketball.

In order to enable the women's basketball staff to provide female student-athletes with a championship experience that is equitable to their male counterparts, the NCAA should make changes to ensure that the staffing for the tournaments is equitable. The NCAA could adjust staffing in one of two ways. First, the NCAA could increase the total number of staff and/or

contractors in women's basketball to ensure that equitable time is able to be spent on those tasks that impact the student-athlete experience, as outlined in Recommendation 3.2. Alternatively, the NCAA could require the same individuals to handle specific roles for both men's and women's basketball. For example, the NCAA could choose to have a single employee order swag and gifts for both the men's and women's tournaments. Not only is having the same employee perform certain roles for both women's and men's basketball likely to be more efficient; it may also help to avoid unintended disparities between the tournaments. Moreover, some overlap in the two staffs is likely to promote a feeling of joint purpose and a sense that they are a unified team. Variables such as the fact that staff members often have multiple responsibilities that do not always match up with their counterparts on the other staff, that the size and structure of the men's tournament currently add certain responsibilities for the men's staff, and that contractors often supplement full-time staff, should be considered when analyzing how best to make the staffs more equitable.

Recommendation 1.4

Establish regular communications between the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

To facilitate joint decision making and management and ensure gender equity in the Division I basketball tournaments, the chairs of the Division I Men's and Women's Basketball Committees and Basketball Oversight Committees should regularly communicate with their counterparts in order to coordinate on broader strategic decisions made by the Committees. Each Committee separately, and the Men's and Women's Committees together, should regularly consider and discuss how best to ensure that the student-athletes have equitable championship experiences.

To further facilitate coordination, the NCAA should also consider some cross-pollination between the members of the Division I Men's and Women's Basketball and Basketball Oversight Committees. For example, the NCAA could require that at least one seat on the Men's Basketball and Basketball Oversight Committees be occupied by a sitting member of the Women's Basketball and Basketball Oversight Committees, and vice versa. Having individuals who know about the planning of both championships will be particularly vital if the men's and women's Final Four events are held in one city, as outlined in Recommendation 3.1. Alternatively, there could be joint committee meetings held on a more regular basis.

KHF also supports recent efforts by the NCAA to request that conferences put forward candidates of equal seniority for openings on both the Men's and Women's Basketball and Basketball Oversight Committees, thereby striving to make the composition of the Committees roughly similar in seniority.

Finally, the same four Committees should coordinate on their Committee budgets to ensure that their own spending is equitable and that any differences are reasonable and appropriate.

Recommendation 1.5

Perform a real-time gender equity audit of the Division I Men’s and Women’s Basketball Championships as they are being planned and executed each year.

Starting with the 2022 championships, the NCAA should develop and implement a real-time gender equity review protocol for the Division I Men’s and Women’s Basketball Championships, starting from the earliest possible point in the planning process and continuing through the entire planning cycle (including the budget process) and execution of the championships. The review protocol should include a specific process for resolving in real-time any gender equity issues that are identified as part of the review, including how and to whom issues will be elevated for resolution. The review protocol should be developed and implemented by NCAA staff with expertise in Title IX and gender equity issues generally, *see* Recommendation 1.10 below, in consultation with staff responsible for the men’s and women’s basketball championships.

Recommendation 1.6

Prepare an annual report on the results of the real-time gender equity audit, including issues identified, how those issues were resolved, and lessons learned.

Each year, directly following the championships, the NCAA should prepare a standardized report of the results of the real-time gender equity review for the Division I Men’s and Women’s Basketball Championships that took place that year. The report should be prepared by the staff with expertise in Title IX and gender equity issues who performed the review. The report should go to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women’s Athletics, the Division I Board of Directors, the Men’s and Women’s Basketball and Basketball Oversight Committees, and the NCAA President and Senior Management Team.

Recommendation 1.7

Conduct an external gender equity assessment of the Division I Men's and Women's Basketball Championships in five years.

To ensure that gender equity is being achieved, and similar to the periodic assessments in which the Division I member institutions regularly engage, the NCAA should conduct a gender equity assessment of the Division I Men's and Women's Basketball Championships in five years. That assessment should be led by an external auditor with expertise in Title IX compliance in collegiate athletics and gender equity issues generally. The external auditor should provide its report to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Men's and Women's Basketball and Basketball Oversight Committees, and the NCAA President and Senior Management Team, and an executive summary should be made publicly available on the NCAA's website. The external audit should include an assessment of the efficacy of the measures prescribed in Recommendations 1.5, 1.6, and 1.8, and a recommendation for their continuation or alteration as appropriate. Depending on the results of this five-year external audit, another external audit should be conducted periodically thereafter.

Recommendation 1.8

Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.

Beginning no later than fall 2022, the NCAA should:

- Develop a gender equity impact statement template;
- Identify those actions being taken within the NCAA that are connected to the Division I Men's and Women's Basketball Championships, but not part of the general annual planning process for those championships that are to be reviewed as part of the real-time audit process in Recommendation 1.5 (such as negotiating broadcast and media rights contracts, corporate partnership changes, and legislative changes), that would require the submission of a gender equity impact statement; and
- Establish a process for the submission, review, and sign-off of gender equity impact statements, including a specific process for how and to whom gender equity impacts that are identified, if any, will be elevated for resolution.

The gender equity impact statement and associated protocol should be developed, and the statements themselves reviewed, by NCAA staff with expertise in Title IX and gender equity issues. *See* Recommendation 1.10 below. Used in a variety of other settings, gender equity impact

statements seek to ensure that decisionmakers identify possible negative consequences of a proposed action on gender equity and preemptively develop mitigation strategies.

Recommendation 1.9

Evaluate and reward performance for contributions to gender equity.

While protocols should be put into place to help ensure that there is gender equity in the student-athlete championship experience, *see* Recommendations 1.5-1.8 above and Recommendation 3.2 below, actually achieving that gender equity goal should be considered part of everyone's job at the NCAA. Achieving gender equity is the responsibility of the NCAA leadership, and working towards gender equity goals is something that should be expected, evaluated, and rewarded as part of the NCAA's internal performance review process for all NCAA leadership and staff.

Recommendation 1.10

Increase NCAA staff with expertise in Title IX and gender equity.

To implement the recommendations contained in this report, additional full-time employees should be added (including in the Office of Inclusion) to assist with performing these tasks. These individuals should have experience with Title IX compliance as it relates to collegiate athletics and expertise in gender equity issues generally.

THE NCAA'S LONG-TERM MEDIA AGREEMENTS

The NCAA has decades-long relationships with two media partners: (1) CBS/Turner; and (2) ESPN. Both are valued partners who, among other things, help generate financial stability for the NCAA and its membership. The NCAA has entered into several long-term agreements with CBS/Turner, pursuant to which CBS/Turner pays the NCAA billions of dollars over time in exchange for the exclusive right to broadcast the Division I Men's Basketball Championship in the United States and sell and manage the NCAA's marketing rights as part of the NCAA's Corporate Partner Program.¹⁹⁵ ESPN pays a substantially lower fee to the NCAA for the broadcast rights to 29 other championships, including Division I women's basketball.¹⁹⁶

The NCAA's goal has long been to maximize the revenue produced by the CBS/Turner contract to ensure the long-term sustainability of the NCAA and the predictable and significant distribution of funds to its membership to help support their athletic programs. To achieve this goal, the NCAA has entered into agreements structured to generate corporate sponsorship of, and produce substantial revenue in connection with, Division I men's basketball alone—without regard for the significant hurdles that those same agreements put in place with respect to the sponsorship of other NCAA championships, including women's basketball. The result is a system that devalues women's basketball (and other NCAA sports) within the NCAA and significantly undervalues and underutilizes the Division I Women's Basketball Championship (and likely other NCAA championships) as a revenue-producing property. This, in turn, has had a negative impact both on the student-athlete experience and on the growth of women's basketball.

1. The History & Structure of the Media Agreements

The NCAA's broadcasting relationships with ESPN and CBS/Turner are made up of multiple agreements governing the media and marketing rights to all 90 NCAA championships.

CBS/Turner. Since 1982, CBS and later CBS/Turner have contracted with the NCAA to broadcast the Division I Men's Basketball Championship. The NCAA most recently extended its relationship with CBS/Turner in 2016, entering into a new Multi-Media Agreement, which is set to expire in August 2032.¹⁹⁷ Pursuant to the Multi-Media Agreement, CBS/Turner must pay the

¹⁹⁵ See generally Multi-Media Agreement between CBS, Turner, and the NCAA (Mar. 14, 2016) ("2016 CBS/Turner Multi-Media Agreement"); Multi-Media Agreement between CBS, Turner, and the NCAA (Apr. 22, 2010) ("2010 CBS/Turner Multi-Media Agreement").

¹⁹⁶ See generally Multi-Media Agreement between ESPN, Inc. and the NCAA (Dec. 15, 2011) ("ESPN Multi-Media Agreement"). While the ESPN Multi-Media Agreement signed in 2011 only covered the broadcast rights for 24 championships, ESPN has since agreed to air an additional 5 championships through supplemental agreements with the NCAA.

¹⁹⁷ 2016 CBS/Turner Multi-Media Agreement § 1(eee) & Ex. B.

NCAA a yearly, fixed rights fee, which currently sits at \$850 million and increases each year, with the contract reaching a rights fee of \$1.165 billion by 2032.¹⁹⁸

In exchange for that annual payment, CBS/Turner has the obligation to broadcast all 67 games of the Division I Men’s Basketball Championship in the United States, and to manage, solicit, and contract with corporate sponsors through the Corporate Partner Program.¹⁹⁹ While the earliest iteration of the contract gave CBS the non-exclusive right to sell sponsorship opportunities for the men’s tournament, the most recent Multi-Media Agreement, like its immediate predecessors, grants CBS/Turner the exclusive right to sell sponsorship opportunities for all 90 championships, including women’s basketball. Through the Corporate Partner Program, CBS/Turner may contract with corporate sponsors and grant them both marketing and media rights to the NCAA championships.²⁰⁰ The marketing rights give the sponsor the exclusive right, within its particular product category,²⁰¹ to use the NCAA’s brand, including trademarks, taglines, tickets, and other marketing rights for all 90 championships.²⁰² The media rights, which are included in every sponsorship agreement, give sponsors the right to air advertising and programming on the CBS/Turner networks that air the men’s—but not the women’s—tournament games.

The NCAA and CBS/Turner have agreed to keep the Corporate Partner Program small. Today, there are just 18 sponsors that occupy two distinct tiers, and CBS/Turner may engage at most 30 sponsors total.²⁰³ The first tier—called “Champions”—contains only three sponsors: AT&T, Capital One, and Coca-Cola. It requires a significantly higher buy-in and includes substantial rights in connection with various NCAA championships. The second tier—called “Partners”—contains 15 sponsors: Aflac, General Motors-Buick, Buffalo Wild Wings, Geico, Great Clips, Hershey’s/Reese’s, Invesco, Lowe’s, Marriott Bonvoy, Mondelez/Nabisco, Nissan, Pizza Hut, Uber/UberEats, Unilever, and Wendy’s.²⁰⁴ The second tier similarly requires payment of a substantial (although not as substantial as the Champions) annual fee to CBS/Turner in exchange for marketing rights to the NCAA and its 90 championships and media rights to the

¹⁹⁸ The royalty fees through August 31, 2024, are set by the 2010 Multi-Media Agreement, while the royalty fees from September 1, 2024, to August 31, 2032, are governed by the 2016 Multi-Media Agreement. *See* 2010 CBS/Turner Multi-Media Agreement, Ex. B; 2016 CBS/Turner Multi-Media Agreement, Ex. B. The royalties for the former timeframe are supplemented by small additional pre-term payments pursuant to the 2016 Multi-Media Agreement. *See* 2016 CBS/Turner Multi-Media Agreement, Ex. B. In the 2026-27 contract year, CBS/Turner and the NCAA will meet to discuss opportunities to increase revenue in the contractual relationship. *See* 2016 CBS/Turner Multi-Media Agreement § 16.1(d).

¹⁹⁹ 2010 CBS/Turner Multi-Media Agreement §§ 1(c), 5.1, 10; 2016 CBS/Turner Multi-Media Agreement §§ 1(c), 5.1, 10.

²⁰⁰ 2010 CBS/Turner Multi-Media Agreement § 10; 2016 CBS/Turner Multi-Media Agreement § 10.

²⁰¹ The product category refers to the type of product the sponsor sells. No two Corporate Partners can occupy the same product category. For example, Lowe’s has the exclusive marketing rights for the NCAA in the “home improvement” category, while Marriott has the exclusive marketing rights for the NCAA in the “lodging and accommodation for the general public for any type of travel” category.

²⁰² 2016 CBS/Turner Multi-Media Agreement § 10; *see also, e.g.*, NCAA Corporate Champion Agreement between AT&T Services, Inc., Turner, and CBS § 1.47.1 (Sept. 1, 2017).

²⁰³ 2016 CBS/Turner Multi-Media Agreement § 10.2(b).

²⁰⁴ NCAA Corporate Champions and Partners, NCAA (Feb. 12, 2021), <https://www.ncaa.com/news/ncaa/article/2011-02-25/corporate-champions-and-partners>; *see also* Corporate Champion and Partners Agreements with CBS/Turner.

Division I Men's Basketball Championship. While Corporate Champions and Partners purchase the exclusive right to market their products at all championships, they must separately decide whether to pay to run advertisements at each championship beyond Division I men's basketball. The NCAA maintains a list of potential ways a sponsor can support the NCAA's championships while simultaneously promoting the company's brand, known as "activations" (e.g., Unilever providing its products for student-athletes in the locker rooms),²⁰⁵ but it does not internally track the annual activations in which its Champions and Partners have engaged. As a result, there is currently no precise way to measure or compare the degree of sponsor activation at the men's and women's tournaments.

In addition to the Multi-Media Agreement, the NCAA and CBS/Turner are parties to two other agreements with notable implications for the men's and women's basketball tournaments. First, the NCAA contracts with CBS/Turner to operate the fan festival at the Division I Men's Basketball Championship and a few other NCAA championships, including by selecting vendors, hiring event staff, making financial and operational decisions, and designing and developing the events.²⁰⁶ Although that agreement does not require CBS/Turner to provide the same services at the fan festival at the women's basketball tournament, it does grant CBS/Turner the sponsorship and media rights at *both* the men's and women's basketball fan festivals.²⁰⁷

Second, the NCAA and CBS/Turner have entered into a Digital Rights Agreement pursuant to which CBS/Turner creates and maintains several digital media platforms for the NCAA, including (1) NCAA.com, which covers all 90 championships, and (2) the March Madness Live app, which covers only Division I men's basketball.²⁰⁸

ESPN. Since 1996, ESPN has agreed to broadcast the Division I Women's Basketball Championship, along with, at present, 28 other NCAA championships. The current broadcast agreement grants ESPN and its subsidiary and sister networks (ESPN1, ESPN2, ESPN+, ESPNU, and/or ABC) the right to air these 29 championships, as well as broadcast rights to the Division I men's basketball NIT and the international broadcast rights for the Division I Men's Basketball Championship.²⁰⁹

²⁰⁵ NCAA Corporate Champions and Partners Activation Opportunity Playbooks, 2018-20; Spreadsheet from Corporate Relations Staff Member of Champions and Partners Activations from 2018-19.

²⁰⁶ See Letter Agreement between CBS/Turner and the NCAA regarding the NCAA Fan Festivals (Mar. 14, 2016).

²⁰⁷ *Id.* § 2(A).

²⁰⁸ See generally Digital Rights Agreement between Turner and the NCAA (Aug. 23, 2010) ("Digital Rights Agreement"); Amendment to Digital Rights Agreement (Mar. 14, 2016).

²⁰⁹ ESPN Multi-Media Agreement §§ 1(e), 2.1, 3.1, 4.1. The championships that ESPN agrees to broadcast are: Division I FCS football; Division II football; Division III football; Division I women's volleyball; Division I men's soccer; Division I women's soccer; Division I women's basketball; Division I men's and women's indoor track and field; Division I men's and women's outdoor track and field; Division I women's swimming and diving; Division I men's swimming and diving; Division I wrestling; Division I men's ice hockey; women's ice hockey; women's gymnastics; men's and women's fencing; men's volleyball; Division I men's lacrosse; Division I women's lacrosse; Division I men's and women's cross country; Division I softball; Division I baseball; field hockey; beach volleyball; and women's bowling. See *id.*, Ex. A; Agreements between ESPN and the NCAA regarding Women's Ice Hockey, Field Hockey, Beach Volleyball, and Men's and Women's Cross Country.

The current ESPN Multi-Media Agreement was entered into in 2011 and is now set to expire in 2024. Pursuant to this Agreement, ESPN pays the NCAA an annual rights fee of approximately \$34 million (on average) over the life of the contract in exchange for the broadcast rights—or about 4.5% of the value of the rights fee that the NCAA receives from CBS/Turner over the same time period; in 2021, ESPN is set to pay the NCAA approximately \$41.8 million.²¹⁰ Unlike CBS/Turner, ESPN does not have the right to sell any corporate sponsorships, does not play a role in creating or managing the fan festivals, and is not required to promote on ESPN’s networks or its digital platforms the men’s tournament aired on CBS/Turner.

2. Effects on Gender Equity

Although it is undoubtedly true that the NCAA’s broadcast relationships have been highly lucrative for the NCAA, the way in which these relationships are structured has disadvantaged the women’s basketball tournament in the past and is not geared toward growing the women’s basketball tournament in the future.

The contracts prioritize support for men’s basketball to the exclusion of women’s basketball (and other sports). The CBS/Turner Multi-Media Agreement prioritizes support for men’s basketball in two key and very basic ways. First, while CBS/Turner controls the sponsorship rights for all NCAA championships (including women’s basketball), it has the broadcast rights only for the Division I Men’s Basketball Championship, with limited obligations to “cross-promote” the women’s tournament.²¹¹ CBS/Turner is therefore incentivized to focus its efforts on developing sponsorships for men’s basketball, not for women’s basketball (or any other sport, for that matter), so as to bring in the greatest amount of money possible for CBS/Turner.²¹² This is borne out in the NCAA Corporate Champion and Partner contracts, each of which is between the corporate sponsor and CBS/Turner (as approved by the NCAA), and each of which requires a corporate partner to spend a significant percentage of its total contract fee on advertisements and programming during the men’s tournament broadcast on CBS/Turner’s networks and mobile apps.²¹³ As independent media expert Ed Desser explains in his accompanying report, CBS/Turner wants to maximize the spending of the Champions and Partners on programming within CBS/Turner’s control: “they don’t actually want those sponsors to *spend anything* on the ESPN presentation of the” women’s tournament “if it results in any decrease in buying [the men’s basketball] inventory or other CBS/Turner-owned inventory.”²¹⁴ Directing corporate sponsor support and advertising buys to the men’s tournament in this way leaves the women’s basketball

²¹⁰ ESPN Multi-Media Agreement § 6.1.

²¹¹ 2016 CBS/Turner Multi-Media Agreement § 9.5(g).

²¹² Desser Report § 6(4).

²¹³ See, e.g., NCAA Corporate Partner Agreement between CBS/Turner and Geico (Jan. 1, 2019).

²¹⁴ Desser Report § 6(4) (emphasis in original).

tournament (and other NCAA championships) without the sponsorship support it might otherwise garner if the media contracts were structured differently.

Second, and equally as important, because the marketing rights for men’s basketball are, for the foreseeable future, significantly more costly than the marketing rights for other NCAA championships, and because each of the Champion and Partner agreements include both marketing and certain media rights for men’s basketball, bundling the marketing rights for all sports together with the media rights for men’s basketball (as the CBS/Turner Multi-Media Agreement does) makes sponsorship of any NCAA championship prohibitively expensive to many, if not most, potential corporate partners.²¹⁵ Put another way, at present, a sponsor must either go “all-in” on *all* NCAA championships—including the costly sponsorship of, and media rights to, the Division I Men’s Basketball Tournament—or not participate at all. There is no space for sponsors who might be interested in sponsoring women’s basketball, but who do not want or cannot afford to buy the required advertising time to support men’s basketball. As Desser has observed, the substantial cost of buy-in to the NCAA Corporate Partner Program “places a very high practical financial hurdle in front of those that might be interested in supporting” the women’s tournament or other championships “because of the significant mandated advertising spend CBS/Turner insist upon to support the” men’s tournament.²¹⁶

In addition, even corporate sponsors who do buy into the Corporate Partner Program must separately purchase airtime on ESPN if they want to run advertisements as an NCAA sponsor during the women’s basketball tournament. And, as explained above, CBS/Turner has no reason to encourage them to do so. Requiring a corporate sponsor to negotiate with—and pay—both CBS/Turner and ESPN to provide similar support to the women’s championship as to the men’s significantly disincentivizes the sponsors from doing so, even where they are interested in supporting the championships in equitable ways.²¹⁷

This structure unnecessarily places women’s basketball at a distinct disadvantage from a marketing and sponsorship perspective, which in turn perpetuates the view that women’s basketball is a less appealing investment. By depriving women’s basketball of sponsorship opportunities it might otherwise have if these agreements were structured differently, the CBS/Turner Multi-Media Agreement contributes to the narrative that women’s basketball is a supposed revenue loser, and that men’s basketball needs to be prioritized so that it can maximize revenue for the benefit of all NCAA sports. This narrative has long been used by many in the NCAA and its membership to justify unequal investment in men’s basketball as compared to women’s basketball, leaving the growth potential of women’s basketball untapped.

²¹⁵ *Id.* § 6(2).

²¹⁶ *Id.*

²¹⁷ As noted above, because the NCAA does not track the activations in which its sponsors have engaged, there is no complete record demonstrating which Champions and Partners engage at the men’s basketball tournament as compared to the women’s tournament or other championships, and at what level. This makes it impossible as a practical matter to compare sponsorship activations between the men’s and women’s basketball championships, disincentivizing both the NCAA and its sponsors from promoting gender equity.

The contracts have a direct and inequitable impact on the student-athlete experience.

The involvement of corporate sponsors and the synergy between the corporate sponsors and CBS/Turner make a significant difference in the look and feel of the championships, including the production quality of the events and their television broadcasts, the size and production quality of the fan festivals and other public-facing events, and advertising both in-person at the venues and during the television broadcasts. For example, CBS/Turner, as well as the NCAA's Champions and Partners, fund a massive and expensive concert at the men's tournament (this year, Miley Cyrus, which was aired on CBS, and in past years, drawing names such as Katy Perry, Rihanna, and Bruce Springsteen),²¹⁸ whereas the women's tournament has historically attracted fewer headline performers, if any, at a concert that is substantially smaller in size and budget.

Student-athletes and their families and fans notice these differences. The men's tournament comes across as "so exciting and so big," appearing as if men's basketball is "the *real* basketball," whereas the women's tournament broadcast is all about "calling plays and commenting on the game itself." Student-athletes commented that when they found out that the men's tournament had a Miley Cyrus concert, "[i]t was extremely upsetting," even though they were familiar with the fact that the corporate sponsors disproportionately supported the men's tournament as compared to the women's tournament. One student-athlete explained that "there should be some sort of way to ask these big corporations to give money to the women's tournament as well." Other stakeholders who have long-term experience attending both tournaments recognized the impact of the CBS/Turner relationship and its skewed incentives on the student-athlete experience at the women's tournament. One commissioner explained that under the current structure, when sponsors "buy rights to all championships and only choose to activate at the men's [tournament], everyone else is screwed."

What's more, as CBS/Turner broadcasts the men's games, it promotes the other events that it manages, including the fan festival and the concert. Because ESPN does not manage the women's fan festival or other fan events, it is not similarly incentivized to promote these events. For student-athletes and fans watching the tournaments on television, they see on CBS a coherent, coordinated broadcast, with expensive ads often featuring celebrities and famous athletes (Capital One with Samuel L. Jackson, Spike Lee, and Charles Barkley),²¹⁹ and with programming highlighting the student-athletes playing in the men's tournament. On ESPN, by contrast, the advertising content is often more typical of any sports broadcast, with some of the same ads playing, as one student-athlete put it, "over and over from day one." Our media expert has described this disparity in the relevant advertising as "discordant."²²⁰

The NCAA's treatment of revenue from these contracts skews the conversation about which sports generate revenue. Within the NCAA, no portion of the significant CBS/Turner rights

²¹⁸ Daniel Kreps, *Watch Miley Cyrus Cover Queen Classics at NCAA Final Four Concert*, Rolling Stone (Apr. 4, 2021), <https://www.rollingstone.com/music/music-news/miley-cyrus-cover-queen-ncaa-final-four-concert-1150947/>.

²¹⁹ Desser Report § 6(2).

²²⁰ *Id.*

fee is credited to any other championship besides Division I men’s basketball. The NCAA’s website itself, in explaining to the public “Where Does The Money Go,” credits “Division I Men’s Basketball Championship television and marketing rights” with bringing in \$867.5 million for fiscal year 2018-19—approximately the rights fee from the CBS/Turner Multi-Media Agreement.²²¹ This treatment ignores the fact that the Corporate Partner Program in the Multi-Media Agreement sells the exclusive right to use and profit off of the NCAA’s brand and logo in connection with *all* 90 championships, not just men’s basketball. While the amount that Champions and Partners spend at championships other than men’s basketball is admittedly small,²²² the presumption that all of the revenue from the CBS/Turner agreement is attributable to the Division I men’s tournament feeds into the narrative that women’s basketball is not and can never be revenue-generating.

The NCAA uses the hefty rights fee from CBS/Turner and the presumption that men’s basketball is solely responsible for all of that revenue to justify treating men’s basketball inequitably. For example, shortly after this year’s championship, the NCAA released background information to the press that ultimately shaped news reporting around the differences between the two championships’ spending. That background information furthered the narrative that women’s basketball “lost \$2.8 million” in 2019, which it described as the “largest loss of any NCAA championship” that year.²²³ The supposed \$2.8 million loss, however, appears to be based on a calculation of revenue that attributed all revenue from the CBS/Turner contract to men’s basketball alone.²²⁴

CBS/Turner owns and operates the March Madness Live app, which does not include coverage or information about women’s basketball. Pursuant to the CBS/Turner Multi-Media Agreement and the Digital Rights Agreement, CBS/Turner has developed and maintains the March Madness Live app, which tracks coverage of the Division I Men’s Basketball Championship only.²²⁵ The app, presented by NCAA Corporate Champions Coca-Cola and CapitalOne and NCAA Corporate Partner Buick, is well-developed and includes, among other things, stories about the teams, clips from the games, scores, and the ability to enter into the March Madness Bracket Challenge (sponsored by NCAA Corporate Champion Capital One) and to track the Official Bracket (a different feature, presented by NCAA Corporate Partner Reese’s).

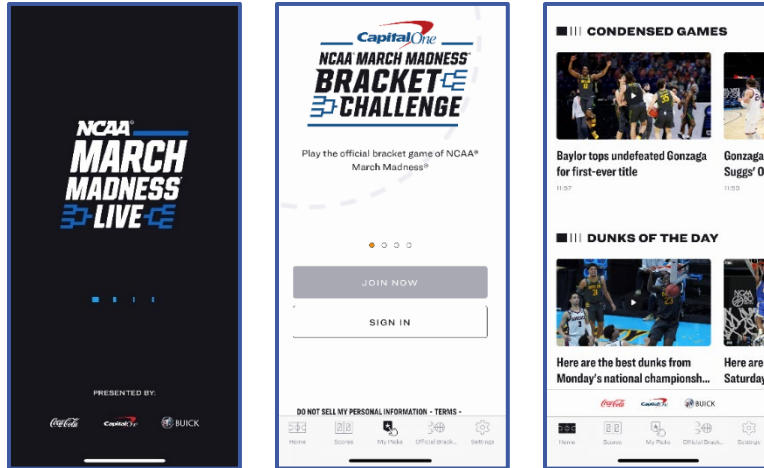
²²¹ Where Does The Money Go, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/where-does-money-go>.

²²² Desser Report § 6(5). While Desser considered the amounts “earmarked for an NCAA Championship other than the” Division I Men’s Basketball Championship, *id.*, Champions and Partners may—and often do—spend additional activation dollars for other promotions on top of those described in their contracts with CBS/Turner.

²²³ See, e.g., Heather Dinich, *NCAA Budget for Men’s Basketball Tournament Almost Twice as Much as Women’s Budget*, ESPN (Mar. 26, 2021), https://www.espn.com/mens-college-basketball/story/_/id/31141363/ncaa-budget-men-basketball-tournament-almost-twice-much-women-budget.

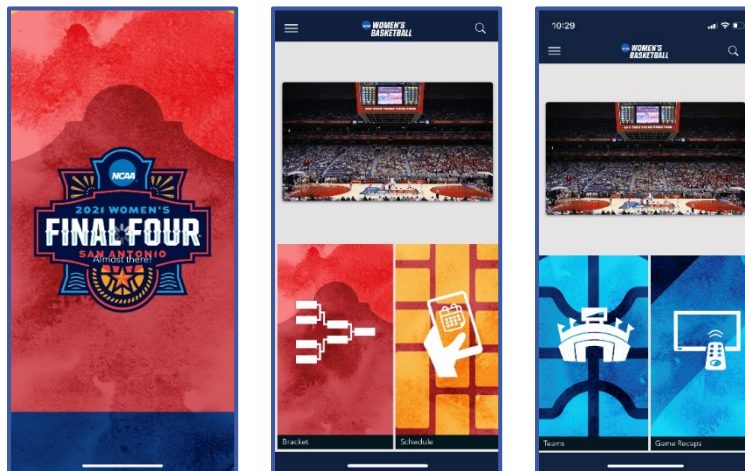
²²⁴ *Id.*

²²⁵ 2016 CBS/Turner Multi-Media Agreement § 5.5; Digital Rights Agreement § 2.



March Madness Live App²²⁶

That women’s basketball is not covered on the March Madness Live app reinforces the primacy of men’s basketball; women’s basketball players reported feeling confused and upset to find that the ostensibly gender-less March Madness Live app excluded them. In addition, there is no equivalent digital coverage for the women’s championship. The only mobile app for the women’s tournament is the NCAA DI WBB app, which is developed and managed by the NCAA digital team and is meant to be a digital fan guide. The app, which has no corporate sponsor, has limited clips of the games and no news articles. Rather, it is designed to enhance the fan experience for those attending the event, informing fans where certain events are being held on site, how to purchase merchandise and tickets, and about health and safety information.



NCAA DI WBB App²²⁷

²²⁶ Screenshots of March Madness Live App.

²²⁷ Screenshots of NCAA DI WBB App.

The NCAA DI WBB app is not tied to the broadcaster of the Division I Women’s Basketball Championship, and thus it cannot stream games live unless redirected to an ESPN app (to which it links on a sub-page of the mobile app). Moreover, unlike the dozens of CBS/Turner employees who work on the March Madness Live app and other digital platforms, the NCAA digital staff includes at most four full-time employees, three contractors, and one full-time post graduate intern who work on a total of six apps and all social media accounts, four of whom work on the NCAA DI WBB app.

ESPN does not close the gap in digital coverage of women’s basketball. While ESPN distributes the championship games that it broadcasts on its digital platforms (*i.e.*, ESPN’s website and ESPN’s mobile app), it does not (and is not required to) maintain a separate NCAA website like www.NCAA.com (which is developed and managed by CBS/Turner) and does not create or manage any mobile apps specific to women’s basketball like March Madness Live. Instead, fans can access individual pages and information for each NCAA championship to which ESPN has rights on ESPN’s general mobile app (called simply “ESPN”) or through the main page of ESPN’s website (www.ESPN.com).

In addition to the mobile apps that fans can download, the NCAA maintains social media accounts for each of its championships; Division I women’s basketball is @ncaawbb on Twitter, for example. These social media accounts on Twitter, Facebook, Instagram, SnapChat, YouTube, and TikTok do not currently contain advertisements from Champions or Partners.

3. The True Value of the Division I Women’s Basketball Championship Is Not Reflected in the Contracts

The Division I Women’s Basketball Championship is “one of the most valuable U.S. sports media properties” around, according to the team of sports media and marketing experts led by Ed Desser.²²⁸ Yet, under the current ESPN Multi-Media Agreement, ESPN pays the NCAA an annual rights fee for an “all in one” package—including women’s basketball and 28 other sports—which amounts to an average of \$34 million per year over the life of the contract.²²⁹ The original decision to grant ESPN, the “Worldwide Leader in Sports,” the right to broadcast the women’s championship packaged with then-20 other NCAA championships was made in 2001, before the launch of several national sports networks.²³⁰ Accordingly, the ESPN Multi-Media Agreement—now two decades since it was last put to bid—does not accurately reflect the value of women’s basketball in today’s market or sports media landscape, which has changed in important and significant ways since 2001.²³¹ Based on his own independent analysis, Desser estimates that the

²²⁸ See Desser Report §§ 1.1, 2. In 2021, ESPN is set to pay the NCAA approximately \$41.8 million. ESPN Multi-Media Agreement § 6.1.

²²⁹ Desser Report §§ 1.10, 3.2; ESPN Multi-Media Agreement § 6.1.

²³⁰ Desser Report § 3.2.

²³¹ *Id.* § 3.1.

Division I Women’s Basketball Championship is worth between \$81 and \$112 million annually beginning in 2025.²³²

There are multiple reasons why the broadcasting rights to the women’s basketball championship are significantly more valuable than is reflected in the current ESPN contract:

First, as Desser explains, the Division I Women’s Basketball Championship has matured into an increasingly popular “tentpole” event.²³³ After years of steadily increasing ticket sales, viewership, and ratings of the women’s tournament, the 2021 women’s Final Four had an average of more than 2.9 million viewers—a 14% increase from 2019.²³⁴ This year, for the very first time, ESPN nationally broadcast all 63 games of the women’s tournament on its television networks—a recognition of the tournament’s growing popularity.²³⁵ The 2021 women’s championship game saw its highest viewership since 2014, averaging 4.1 million viewers.²³⁶

Indeed, as Desser concludes, the women’s Final Four “generally outdraws the TV viewership for all sporting events taking place in its event window except for” the men’s tournament.²³⁷ It “ranks among ESPN’s highest-rated programs, other than NFL games and the College Football Playoff,” and it is one of few championships that ESPN broadcasts during March and April, “filling a hole after football season and before the NBA and NHL Playoffs, both attracting subscribers to ESPN and, crucially, keeping them from dropping ESPN.”²³⁸ In fact, as depicted in the graphic below developed by Desser, the women’s tournament delivers an audience on par with NBA playoff conference finals, college football conference championship games and regular-season college football games, Major League Baseball Wild Card Playoffs, Men’s and Women’s Tennis Grand Slam Finals, and more than four times the Duke v. UNC regular-season rivalry games.²³⁹

²³² *Id.* § 7.7.

²³³ *Id.* § 2.

²³⁴ *Id.* § 2.1. Like its increasing television viewership, ticket sales for the Division I Women’s Basketball Tournament have been steadily increasing for the past several years. In 2019, the women’s tournament had the most ticket sales in nearly two decades. *See* Attendance History – Division I Women’s Basketball Championship, NCAA (1982-2019).

²³⁵ Desser Report § 2.8.

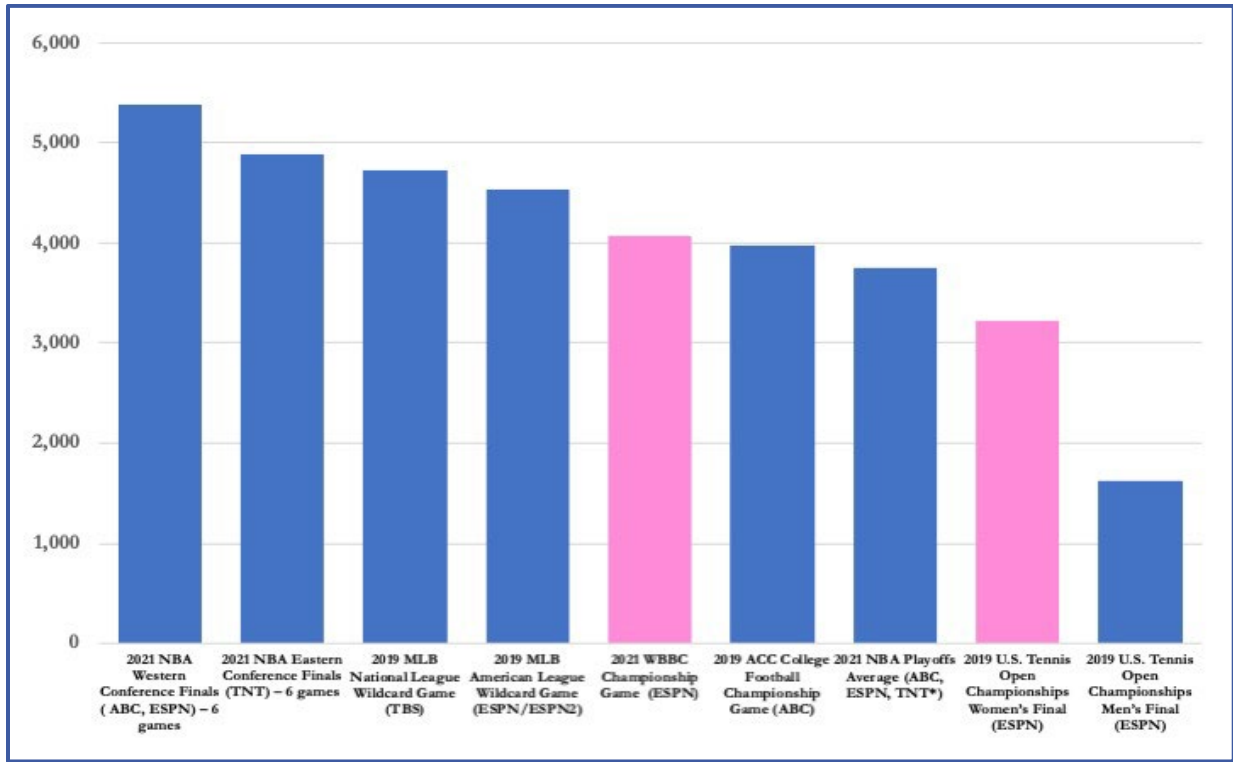
²³⁶ *Id.* § 2.1.

²³⁷ *Id.* § 1.2.

²³⁸ *Id.*

²³⁹ *Id.* § 2.2, Figure 2.2.

Desser Figure 2.2: Marquee ESPN Properties (excl. NFL & CFP)



Moreover, the women’s tournament is a national championship with a far-reaching audience, aired during a time of year when few other professional athletic competitions air, which further increases its value.²⁴⁰ It features many well-known American universities with substantial fan bases and compelling single-elimination playoff games.²⁴¹ And because the WNBA does not accept players until they are twenty-two years old, many of the student-athletes playing women’s basketball are able to draw fandom for several consecutive years.²⁴² Combined with the advent and ubiquity of social media, this repeat fandom has made women’s basketball even more popular. University of Connecticut player Paige Bueckers, for example—the first freshman to ever win the Associated Press National Player of the Year—has 900,000 followers on Instagram.²⁴³ That is more than the twenty 2021 men’s Final Four starters combined.²⁴⁴

Overall, when viewed over the life of the tournaments—the men’s tournament has occurred for 83 years, and the women’s for just 40—the women’s tournament is on a similar growth

²⁴⁰ *Id.* §§ 2.3, 2.4.

²⁴¹ *Id.* § 2.9(1)-(2).

²⁴² *Id.* § 2.9(3).

²⁴³ Paige Bueckers (@paigebueckers), Instagram (last visited July 30, 2021), <https://www.instagram.com/paigebueckers/>.

²⁴⁴ Desser Report § 2.9(3).

trajectory as the men’s, “benefiting from a virtuous cycle of increasing viewership and broadening exposure.”²⁴⁵

Second, as Desser explains, the marketplace for sports rights has “changed dramatically in the decade since the NCAA renewed its” contract with ESPN; it now has more potential bidders for high-quality live sports than ever before.²⁴⁶ As this media landscape has grown and begun to morph from linear paid television services like Comcast, DirecTV, Spectrum, etc., which air channels such as ESPN, CBS, and Fox, to streaming platforms (ESPN+, Paramount+, etc.), so has the value of digital rights, which were not as prevalent when the ESPN agreement was last negotiated in 2011.²⁴⁷

Third, the current ESPN contract likely does not reflect the true value of the women’s basketball championship broadcast rights because NCAA has not put the women’s championship to competitive bid since 2001, when it first entered into the ESPN Multi-Media Agreement, thus foregoing “the single most important negotiating tactic the NCAA could have used in order to assure that it was receiving fair market value” for the tournament.²⁴⁸

4. Recommendations

Recommendation 2.1

Market the rights to the Division I Women’s Basketball Championship as a stand-alone property.

The NCAA should market the Division I Women’s Basketball Championship as a stand-alone property when it is next up for bid, which our independent media expert has determined would “unlock considerable value and attract far more bidders than keeping it combined with 28 other NCAA Championships.”²⁴⁹ The women’s tournament has achieved a level of popularity that translates into a unique and highly desirable programming opportunity for any number of broadcasting partners. Moreover, as the ESPN contract is up for renewal in just a few years (in 2024), the NCAA will have the opportunity to take full advantage of all of the changes in media and broadcasting that have occurred since the ESPN contract was signed back in 2001 and renewed in 2011. And during the 10 years since the existing ESPN contract was signed, other NCAA championships have similarly grown in stature such that our independent media expert believes that separating out the Division I Women’s Basketball Championship “will not negatively impact

²⁴⁵ *Id.* § 1.3.

²⁴⁶ *Id.* § 1.4; *see also id.* § 3.1.1.

²⁴⁷ *Id.* § 3.1.2.

²⁴⁸ *Id.* § 3.2.

²⁴⁹ *Id.* § 1.10.

the value, attention and opportunities the Other Championships will receive prospectively.”²⁵⁰ Combined, all of these factors will allow the NCAA to realize the significant untapped monetary potential of the Division I Women’s Basketball Championship as a stand-alone property.

Recommendation 2.2

Use “March Madness” for both the Division I Men’s and Women’s Basketball Championships.

The NCAA owns one of the most popular brands in sports—March Madness—and should use it in the marketing and presentation for both the Division I Men’s and Women’s Basketball Championships. For example, the NCAA’s @MarchMadness Twitter and Instagram accounts have a combined 2.3 million followers, but they are used only to promote the men’s tournament.²⁵¹ Nothing in the CBS/Turner or ESPN Multi-Media Agreements (or any other agreement, including the Champion and Partner agreements) limits use of the mark in this way.²⁵² Moreover, as detailed above, there is significant value that could be realized from the women’s tournament using the mark. *See* pp. 37-40.²⁵³ The NCAA could generate branded, cross-promotional marketing for both championships, which will become even more important and practical if there is a combined men’s and women’s Final Four, *see* Recommendation 3.1.²⁵⁴

Similarly, there should be no differentiation between the men’s and women’s championships by using gender modifiers in front of only the women’s tournament, *i.e.* “Final Four” to describe the Division I Men’s Basketball Championship finals and “Women’s Final Four” to describe the Division I Women’s Basketball Championship finals. Instead, to the extent necessary, the championships can be distinguished by referring to the location (*e.g.*, “San Antonio

²⁵⁰ *Id.* This is one of a number of recommendations made by Desser that are designed to create new and increased sources of revenue for the NCAA and its media partners while simultaneously strengthening the marketing clout of the Division I Women’s Basketball Championship and other NCAA tournaments. Desser has also provided more specific and sensitive suggestions for navigating these negotiations to the NCAA under private cover in order to protect the NCAA’s ability to succeed in those negotiations.

²⁵¹ *See* NCAA March Madness (@marchmadness), Twitter (last visited July 21, 2021), <https://twitter.com/marchmadness> (tagline states “The official NCAA March Madness destination for all things Division I NCAA Men’s Basketball. #MarchMadness”); NCAA March Madness (@marchmadness), Instagram (last visited July 21, 2021), <https://www.instagram.com/marchmadness/> (tagline states “Official Instagram account for all things #marchmadness & D1 Men’s Basketball.”).

²⁵² *See, e.g.*, NCAA Corporate Champion Agreement between AT&T Services, Inc., Turner, and CBS (Sept. 1, 2017), Ex. B (“**March Madness®** - Division I men’s or women’s basketball only **March Mayhem™**- Division I men’s or women’s basketball only **Midnight Madness®** - Division I men’s or women’s basketball only . . . **The Big Dance®** - Division I basketball only **The Final Four®** - Division I men’s or women’s basketball only.”).

²⁵³ Desser Report § 4.1 (describing significant benefits of using March Madness for Division I Women’s Basketball Championship, without taking anything away from Division I Men’s Basketball Championship).

²⁵⁴ While the Division I Finance Committee’s branding and marketing study is exploring how the NCAA can best capitalize on using its trademarks (including March Madness and Final Four) outside of Division I men’s basketball, that should not delay the NCAA’s use of the March Madness mark and branding at both the 2022 Division I Men’s and Women’s Basketball Championships.

Final Four” and “Indianapolis Final Four”) or by using “Men’s Final Four” along with “Women’s Final Four.”

Recommendation 2.3

Negotiate for a new tier of corporate sponsors for the Division I Women’s Basketball Championship (and other NCAA championships).

The way in which the existing broadcast and sponsorship agreements are currently structured does not encourage, and in fact makes it exceedingly difficult (if not impossible) for sponsors to activate at events other than the Division I Men’s Basketball Championship. The NCAA should therefore encourage CBS/Turner to permit the sale of a new tier of non-conflicting corporate sponsorships, which would include marketing rights to Division I women’s basketball (or another agreed-upon event or series of events) that are more limited than those available to Champions and Partners. This new non-conflicting sponsorship tier should permit flexible formats and customized sponsorship opportunities (*e.g.*, creating an opportunity for a women’s basketball-specific product at the Division I Women’s Basketball Championship or a swimming-specific product at the swimming championships).²⁵⁵

Recommendation 2.4

Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.

The NCAA should create a new senior position of Chief Business Officer (“CBO”) responsible for implementing a strategy designed to maximize value across all NCAA championships while promoting gender equity. That leader would oversee the NCAA’s media partner relationships with CBS/Turner and ESPN, the Corporate Partner Program, and branding and marketing for all championships, specifically by having reporting responsibility over the Directors for each of those programs. The CBO should report directly to the President or Chief Operating Officer of the NCAA, and would be responsible for implementing many of the recommendations within this report, *see* Recommendations 2.1-2.3 and 2.5-2.8, and made by our independent media expert.

One of the CBO’s key responsibilities would be to implement a strategy, working with the NCAA’s media partners and within the current broadcast contracts, to find ways to increase gender

²⁵⁵ Desser Report § 6(5).

equity through flexibility and modest accommodations. Ultimately, the CBO would be responsible for negotiating future contracts that are structured to maximize benefits throughout the NCAA championships.

There would be several benefits to this newly created CBO position and structure, which also was recommended by Desser.²⁵⁶ First, removing responsibility for broadcasting, Champions and Partners, marketing, and branding out from under the leadership of basketball would help to ensure that the broadcasting agreements and the Corporate Partner Program maximize the value of all championships, not just men's basketball. Second, putting these departments (which currently report up through different leaders at the NCAA) under a single individual will make it easier for these groups to work in concert and to think creatively and cohesively about maximizing value and how to grow a diverse set of revenue producing championships, including women's basketball. In addition, this reporting structure acknowledges the substantial responsibilities of the newly created CBO and Head of Championships, each of whom will have responsibility for ensuring gender equity if the recommendations in this report are implemented.

Recommendation 2.5

Implement an overall strategy to realize the value of the Division I Women's Basketball Championship (and other championships across the NCAA).

Working in conjunction with its media and corporate partners, and based on the advice, analysis, and recommendations of our independent media expert, *see* Desser Report, the NCAA, led by its new CBO, should implement a strategy to realize the significant value of Division I women's basketball (and other sports) by (1) working within the current broadcast contracts to seek increased flexibility and accommodations in order to increase gender equity, and (2) ultimately negotiating future contracts that are structured to maximize benefits across the NCAA championships.

As our independent media expert has explained, "While the NCAA's media agreements are locked in for three (ESPN) and 11 (CBS/Turner) more years, there is nothing stopping the NCAA and its media partners from exploring changes to the current agreements now that can create more value for everyone involved going forward. And, as the NCAA's media partners, CBS/Turner and ESPN should all be open to adjustments as the current gender equity issues that have surfaced provide ample justification for changes to the status quo. Here, the combined efforts of the NCAA and its media partners would protect the premium value of the [Division I Men's Basketball Championship] and the continued development of the [Division I Women's Basketball Championship] and the NCAA's Other Championships."²⁵⁷

²⁵⁶ *Id.* §§ 1.8, 5.2.

²⁵⁷ *Id.* § 5.2

Recommendation 2.6

Establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships (and all other championships across the NCAA).

To be able to work strategically to maximize sponsorships and sponsor activation at the Division I Men's and Women's Basketball Championships (and across all NCAA championships), the NCAA should establish a system for tracking where and how the NCAA's corporate sponsors have been and are activating, both historically and in real time. Such a system should be established no later than 2022 and will allow the NCAA to better track sources of revenue and evaluate opportunities on an ongoing basis.

Recommendation 2.7

Pursue marketing and promotional opportunities that will benefit both the Men's and Women's Division I Basketball Championships.

The NCAA can and should make changes now, working within the parameters of the existing broadcast agreements, so as to maximize the value of the Division I Women's Basketball Championship. Ideally, each of these changes should be implemented before the 2022 Division I Men's and Women's Basketball Championships so that the NCAA can begin obtaining data and feedback prior to, and best equip itself to take full advantage of, combined Division I Final Fours, *see* Recommendation 3.1:

- **Televising the women's Final Four on ABC.** The NCAA should encourage ESPN to exercise its contractual right to air the women's Final Four, or at the very least the championship game, on ABC, and ideally during the best time slot in prime time (9-11 pm ET). According to our independent media expert, airing these games on ABC would carry the Division I Women's Basketball Championship to a broader audience who may not have access to ESPN through a cable or streaming subscription.²⁵⁸
- **Optimize mobile apps.** To optimize gender equity and maximize the championships' value, our independent media expert has recommended that the March Madness Live mobile app become the go-to location for all basketball fans to follow both the men's and women's tournaments, including news, information, scores, schedules and live streaming.²⁵⁹ This would require changes to the existing contracts, because the current March Madness Live

²⁵⁸ See ESPN Multi-Media Agreement § 5.3; Desser Report § 3.6(1).

²⁵⁹ Desser Report §§ 1.9(2), 4.1.

app is run and owned exclusively by CBS/Turner and yet the rights to broadcast the live women's tournament are exclusive to ESPN. Under the existing contracts, it is also unlikely that ESPN would have any incentive to develop an app for the Division I Women's Basketball Championship that is of similar quality to the March Madness Live app, because ESPN benefits from the live streaming of the women's tournaments on its current ESPN app. Within the existing media agreements, however, the NCAA could: (1) encourage CBS/Turner to include the Division I Women's Basketball Championship bracket, and feature players and stories from Division I women's basketball, on its March Madness Live app, within legal limits; and (2) enhance the NCAA-run Division I women's basketball app (titled "DI WBB"), including by posting features on players, games, and the tournament bracket. To the extent CBS/Turner is unwilling to include women's basketball content on the app, CBS/Turner should be encouraged to change the name of the March Madness Live app to the "Men's March Madness Live app" to ensure that consumers understand that the app is covering only the men's tournament.

- **Monetize social media accounts.** The NCAA should create a plan for developing and monetizing the NCAA's social media accounts for the Division I Men's and Women's Basketball Championships.

These examples are by no means exhaustive, and the NCAA should explore opportunities to implement other such arrangements with its broadcast and corporate partners.

Recommendation 2.8

Increase cross-promotion of the Division I Men's and Women's Basketball Championships.

There are some additional steps that the NCAA can and should take immediately to encourage cross-promotion of the men's and women's championships that may require modest tweaks to its contractual agreements with its media partners. As our independent media expert has explained, "More aggressive cross-promotion of the [Division I Men's Basketball Championship] and [Division I Women's Basketball Championship] can help to lift each other" by driving up viewership and the value of media rights.²⁶⁰ By way of example only:

- CBS/Turner and ESPN could hold combined or successive, and cross-promoted, selection show(s) in which the networks reveal both the men's and women's tournament brackets, instead of holding the selection shows separately on different days and on different networks (as is the current practice).

²⁶⁰ *Id.* § 4.3.

- Throughout the year, ESPN and CBS/Turner could run combined highlights of both the men's and women's championships (and even other championships) in vignette packages.²⁶¹

These examples are by no means exhaustive, and the NCAA should explore opportunities to implement other such cross-promotion arrangements with its broadcast and corporate partners.

²⁶¹ *Id.* § 6(5).

WHAT SHOULD BE DONE WITH RESPECT TO THE DIVISION I MEN'S & WOMEN'S BASKETBALL CHAMPIONSHIPS

1. The Student-Athlete Experience

Given the above, there can be no serious dispute that the student-athlete experience is not the same at the NCAA women's and men's basketball tournaments. For all the reasons discussed herein, the two championships are materially different events. The involvement of corporate sponsors at the men's tournament, and the synergies between the corporate sponsors and CBS/Turner, mean that the men's championship has a meaningfully different look and feel, with professional quality events, venues, and broadcasts, all of which is lacking at the women's championship. *See* pp. 40-47, 70-75. Relatedly, the disparate financial investment made by both sponsors and the NCAA in everything from signage and branding to gifts and mementos means that NCAA women's basketball players do not currently have the same championship experience as their male counterparts. *See* pp. 34-47, 57-60, 70-75.

Achieving gender equity at the Division I Men's and Women's Basketball Tournaments, however, does not mean that the championships need to be identical. As a group of Division I commissioners acknowledged, "the need for equitable treatment . . . does not necessarily require identical or equal characteristics in all circumstances."²⁶² The key inquiry, as distilled down by the Women's Basketball Oversight Committee and the Women's Basketball Coaches Association, among others, is which aspects of women's and men's basketball must be equal, which should be comparable, and which are and should be "different for a reason."²⁶³

There is a general consensus among stakeholders that those elements of the men's and women's tournaments directly impacting the student-athlete experience must be the same, or at least comparable. As the SVP of Basketball explained, the "baseline has to be making sure that the experience of the student-athletes, if not exactly the same, is close to it." This does not mean that "every part of the [Women's Basketball] NCAA Championship must follow the men's structure."²⁶⁴ It does mean, however, that, to the extent they are not already, tournament elements like branding, the size of the brackets, student-athlete amenities (*i.e.*, food, swag bags, weight rooms, etc.), and transportation and lodging, among other things, should be roughly the same or comparable.²⁶⁵

²⁶² Letter from Select NCAA Division I Commissioners to Kaplan Hecker & Fink LLP (May 14, 2021).

²⁶³ Women's Basketball Oversight Committee, Game Plan for Gender Equity in Basketball (May 27, 2021); *see also* Our Fair Shot, WBCA (last visited July 21, 2021), <https://ourfairshot.com/>.

²⁶⁴ Letter from Division I Commissioner to Kaplan Hecker & Fink LLP (Apr. 20, 2021).

²⁶⁵ Letter from Select NCAA Division I Commissioners to Kaplan Hecker & Fink LLP (May 14, 2021) ("[V]isible presentation . . . of all NCAA championships (e.g., signage, décor, branding) in the game facility including back of the house (e.g., locker rooms, media rooms)," "[g]ifts provided to student-athletes" and "[e]vent production" should be equitable, recognizing that in some

2. Recommendations

Recommendation 3.1

Hold the men’s and women’s Final Fours together in one city.

One way to ensure that the student-athlete experience at the men’s and women’s championships is more equitable is to have a single, combined event—in this case, a combined Final Four over the same weekend in the same city. Having the men and women participate in a single, combined event would require careful and thoughtful planning, with meticulous attention to detail to ensure an equitable student-athlete experience. In light of the structure of the NCAA’s existing broadcast and sponsorship contracts, however, there is no realistic way to obtain the same level of corporate sponsorship and promotional synergies at a separate women’s championship in a separate city. Put simply, without combining the Final Fours, the women’s championship will continue to have a different look and feel from the men’s championship, at least until the CBS/Turner Multi-Media Agreement expires in 2032. Indeed, our independent media expert, Ed Desser, has strongly recommended combining the Final Fours because, in his view, doing so would “enhance both the [Division I Women’s Basketball Championship] and the [Division I Men’s Basketball Championship] too—through improved promotion” and a myriad of other benefits.²⁶⁶

According to Desser, combined Final Fours would create a more compelling weekend schedule in the host city that the media partners could aggressively cross promote; provide additional ticketing demand for the women’s Final Four because of the large fan pool in the city, many of whom cannot acquire the higher-demand men’s basketball tickets; help facilitate and expand corporate partner involvement in the women’s Final Four due to sponsor proximity; and enhance press and electronic media coverage and social media activation such as ESPN bringing “SportsCenter” to the host city and social media companies establishing home bases in the city.²⁶⁷ Combined Final Fours could also be an amazing (and lucrative) fan-building event—serving as a premier basketball showcase that would create increased interest and support from corporate sponsors, broadcasters, and other NCAA partners. As discussed in the previous section, because of the way in which the NCAA’s contracts are structured, there is no way to compel the NCAA’s sponsors to “activate” at the women’s tournament, especially if the women’s Final Four is held in another city at the same time as the men’s Final Four.²⁶⁸

To be successful, however, the transition to combined Final Fours cannot be made halfheartedly. While the first combined Final Fours may not be perfect, it is important that the NCAA

instances, the “scope and scale” of the events may “warrant different deliverables.”). Some policies at the NCAA are already the same for men and women, such as the per diem policy.

²⁶⁶ Desser Report §§ 1.7, 4.

²⁶⁷ *Id.* §§ 1.8, 4.2.

²⁶⁸ *Id.* § 4.2(4).

and its partners work diligently and put in the necessary effort and attention to ensure that combined Final Fours are as successful as possible—both in terms of the student-athlete experience and as a revenue driver for the NCAA. Combining the men’s and women’s Final Fours will require a lot of thoughtful planning and promotion. For example, efforts will need to be undertaken to achieve the goal that every sponsor that chooses to “activate” at the men’s Final Four does the same for the women’s Final Four. Any concert by Miley Cyrus or anyone else that is open to the male student-athletes and their fans will obviously have to be available to the female student-athletes and their fans on the same terms. In other words, each and every detail will need to be considered, and decisions will need to be made carefully and with intent to ensure that the student-athlete experience is gender-equitable.

There is also no question that planning and promoting combined Final Fours, rather than two separate events, would create significant efficiencies and cost-savings for the NCAA, its membership, and its partners. These cost savings would be even more significant if the NCAA chose to also hold the Final Fours in the same venue. There would similarly be an advantage from a monitoring perspective since it would be a lot easier to determine whether hotel rooms, food, locker and weight room facilities, or signage are comparable if they are all in the same city.

Of course, combining the Final Fours in one city is not a new idea—current Big East Commissioner Val Ackerman recommended combining Final Fours almost a decade ago in her 2013 White Paper.²⁶⁹ Others have encouraged the NCAA to consider the idea by pointing to the world of professional tennis. Billie Jean King, winner of 39 Grand Slam tournament titles and renowned gender equity advocate, has always preferred combined men’s and women’s events, even when she broke away from the United States National Lawn Tennis Association in 1970 over gender pay disparities to found the women’s-only Virginia Slims Circuit in 1971.²⁷⁰ As she explained to us, “Virginia Slims was Plan B. Plan A was always to have the men and women together. Men and women together create much more value, and that’s what we want the world to look like.” A Division I conference commissioner similarly attributed the growth and success of women’s tennis to the fact that it is “side by side with the men in its most important moments. It’s a unified product, and that brings eyeballs and popularity and brand value to the women’s.”

Even many of those who are skeptical about the idea of combining the Final Fours because of the not-irrational fear that the women’s games will be “drowned out,” have expressed an openness to trying it to see if it works. Perhaps most importantly, however, the overwhelming majority of women’s basketball players whom we asked about this possible solution during our review were in favor of attempting to combine the Final Fours to grow the profile of the women’s tournament and provide a more comparable experience to the men’s tournament. And we and our

²⁶⁹ Val Ackerman, Division I Women’s Basketball White Paper at 43 (June 15, 2013), <https://wbca.org/sites/default/files/061513-ackerman-white-paper.pdf> (“Ackerman White Paper”).

²⁷⁰ Melissa Murphy, *Original 9 Trailblazers Stood for Tennis Equality in 1970*, AP (Sept. 23, 2020), <https://apnews.com/article/new-york-billie-jean-king-virginia-us-open-tennis-championships-wimbledon-cc4f2a1684a5efd286cbfb31a7611764>.

independent media expert believe that women’s basketball now has the maturity, the fanbase, and the positive momentum to carry it to the “next level.”

Accordingly, we recommend that the men’s and women’s Final Four events should be combined as soon as possible—preferably no later than the 2022-23 season (*i.e.*, spring 2023) so as to continue building on this positive momentum. While there certainly would be a more limited number of cities in the United States capable of hosting combined Final Fours, both Houston and Dallas, which are scheduled to host the 2023 men’s and women’s Final Fours, respectively, are capable of hosting such a combined event.²⁷¹ Moreover, our independent media expert has strongly recommended implementation of this recommendation by the 2023 championship, because it would “generate significant incremental value for the [Division I Women’s Basketball Championship] immediately and thus provide the NCAA with a tremendous strategic advantage heading into its ESPN renewal discussion.”²⁷² In our view, combined Final Fours should be held in this manner for at least three or four years to give the NCAA time to fine tune the combined event and assess its full impact.

We do not make this recommendation lightly. We understand that the NCAA has made commitments to host cities for multiple years, and this recommendation will require the NCAA to work with those host cities to make changes to their plans based on the serious and shared value of promoting gender equity. We also appreciate the understandable reluctance of many longstanding members of the women’s basketball community to do a combined event given the long, unfortunate history of discrimination against women’s sports, including women’s basketball. It is critical, however, to make this change and to do so quickly to take advantage of the current momentum, to demonstrate the NCAA’s significant commitment to change, to garner the significant benefits to the women’s Final Four described above, and to capture the strategic value that combined Final Fours could yield for future contract negotiations.

Indeed, the primary objection we have heard with respect to combining the men’s and women’s Final Fours was the fear that the women would be overshadowed by and treated as “second-class” to the men. Many suggested that regardless of how carefully the NCAA plans such an event, disparities will remain and the presence of the tournaments simultaneously in the same location will only sharpen the focus on those disparities, making for an inferior student-athlete experience. While such concerns are certainly not unfounded, a combined Final Four, if thoughtfully and intentionally planned and implemented, is the best potential solution to existing tournament gender inequities given the NCAA’s current long-term contracts, especially the 2016 CBS/Turner Multi-Media Agreement. After all, the men’s and women’s tournaments already

²⁷¹ Indeed, Dallas has previously bid on both the men’s and women’s tournament for the same year and conveyed to the NCAA its ability to hold both tournaments together. Other possible cities for a combined Final Four other than Dallas and Houston include Indianapolis, New Orleans, Las Vegas, Atlanta, Los Angeles, and St. Louis, among others. *See* Desser Report § 4.2. All of these cities have two separate venues capable of hosting the men’s and women’s tournaments. Although women’s basketball intends to hold a large Title IX 50th anniversary celebration at the 2023 championship, this presents an ideal opportunity to combine the Final Fours, highlight the strength and value of both men’s and women’s basketball, and emphasize how much women’s basketball has grown in the 50 years since Title IX was enacted.

²⁷² Desser Report § 5.2.

reflect numerous disparities that can be, and now have been, brought to the attention of the wider public in a manner that dampened the student-athlete experience. The mere possibility that some disparities *could* remain despite careful planning, and that those disparities would be noticed by student-athletes, would leave the tournament no worse off than it is now.

Although many stakeholders we contacted would favor combining the men’s and women’s Final Fours at least on a trial basis, others proposed alternative changes such as (1) maintaining separate men’s and women’s Final Four events, but holding them on different weekends so as to minimize competition for fans,²⁷³ and (2) maintaining separate tournaments, but holding the women’s Final Four (and potentially earlier rounds) in the same location for several years in a row (or possibly permanently) in order to grow a local following and establish event planning infrastructure. For all of the reasons discussed above, and particularly in light of the incentives and limitations created by the CBS/Turner contract, KHF believes that a combined Final Four is the best available means to grow women’s basketball and create equity between the men’s and women’s championship experience.

Recommendation 3.2

Ensure that items impacting the student-athlete experience at the Division I Men’s and Women’s Basketball Championships are gender-equitable.

The NCAA should develop, preferably in conjunction with the real-time gender equity review of the men’s and women’s basketball championships in Recommendation 1.5, a defined set of items directly impacting the student-athlete championship experience that should be substantially the same at all basketball championships going forward, starting with the 2022 championships. This list of items should be developed by NCAA staff with expertise in Title IX and gender equity, in consultation with staff responsible for the men’s and women’s basketball championships. “Substantially the same” means that any differences in quality and/or quantity of the items should be reasonable based on the structure of the championship, the size of the audience, and the location of the events. Obviously, as noted above, it will be easier for the NCAA to ensure gender equity with respect to many if not all of these items if the men’s and women’s Final Fours are held together in one city, as opposed to two separate, simultaneous championships being held hundreds of miles apart. At a minimum, however, the following principles should apply:

- **Health and safety.** Anything that falls within the broad category of health and safety should be substantially the same.

²⁷³ Although various stakeholders and NCAA staff members highlighted scheduling conflicts with other major sporting events as one barrier to holding the men’s and women’s tournaments at separate times, this barrier could potentially be overcome with careful planning.

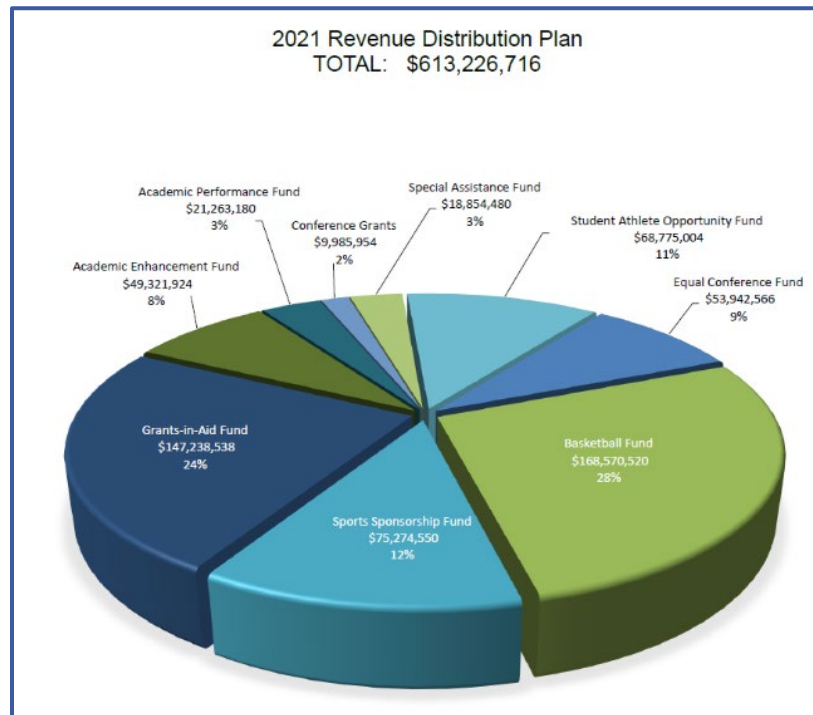
- ***Practice facilities and locker rooms.*** Understanding that there may be some differences based on the particular location of an event, the size, quality, and proximity of practice facilities and locker rooms should be substantially the same.
- ***Travel and accommodations.*** The type (bus versus plane, charter versus commercial, etc.) and quality of transportation to the championships should be substantially the same, as should the degree to which travel considerations are permitted to impact the brackets. Once at the championships, transportation should also be of a substantially similar quality, including escorts to facilitate travel to and from game venues. Hotels should be of the same quality with substantially similar amenities and located a similar distance from playing venues. To the extent feasible, travel and accommodations should be booked at the same time for both championships, and efforts should otherwise be made to ensure that the men and the women have similar access to limited travel and hotel options so that the best options can be maximized for all teams going to the championships. The food provided at the championships should also be of a substantially similar quality, quantity, and variety.
- ***Gifts, mementos, and other amenities.*** Any gifts, mementos, “swag,” or amenities given to student-athletes or their families at the men’s and women’s tournaments should be substantially the same.
- ***Signage, marketing, promotional efforts, and branding.*** The quality and quantity of signage, marketing, promotional efforts, and branding should be substantially the same. This should include the same opportunity for signage and branding on any team buses and in game facilities, locker rooms, hotels, and public spaces throughout the tournament locale.
- ***Entertainment.*** Any entertainment or other recreational activities made available to student-athletes, their families, and their fans should be substantially the same.

Once developed, the list should be reviewed and updated regularly in order to reflect the current state of the championships.

THE NCAA’S REVENUE DISTRIBUTION MODEL

1. The Current Model

Since the 1970s, the NCAA has distributed approximately 60% of its revenue back to its Division I conferences and schools to fund their Division I athletics and academic-support programs.²⁷⁴ In 2021, the total amount distributed pursuant to the Division I Revenue Distribution Plan was more than \$613 million.²⁷⁵ The NCAA employs a complex formula to distribute this revenue through nine separate “funds.”²⁷⁶ The largest amount of revenue is distributed through two funds—the Basketball Performance Fund and the Equal Conference Fund—which allocate revenue to conferences based on their participation in, and success at, the Division I Men’s Basketball Championship.²⁷⁷ There is currently no equivalent fund for participation in, or success at, the Division I Women’s Basketball Championship.



²⁷⁴ Distributions, NCAA (last visited July 21, 2021), <http://www.ncaa.org/about/resources/finances/distributions>.

²⁷⁵ See Where the Money Goes Presentation, NCAA Budget FY 2020-21. Division II and Division III each get a set percentage of the NCAA’s annual revenue. In 2019, \$53.3 million (or 4.37%) went to Division II conferences and institutions, and \$35.2 million (or 3.23%) to Division III; in 2021, Division II is set to receive approximately \$45 million, and Division III \$33 million. *Id.* All three divisions received significantly less revenue in 2020 due to the canceled 2020 championships and a decreased rights fee received from CBS/Turner. 2020 NCAA Financial FAQs, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about/resources/finances/2020-ncaa-financial-faqs>.

²⁷⁶ See generally NCAA 2021 Division I Revenue Distribution Plan, https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2021D1Fin_RevenueD1FintributionPlan.pdf.

²⁷⁷ *Id.* at 7, 12.

In total, revenue distributed based on participation in and performance at the men’s basketball tournament accounts for more than a third of the distribution to the Division I membership.²⁷⁸ The Equal Conference Fund distributes revenue equally to all of the Division I conferences that automatically qualify for the men’s basketball tournament—that is, all active Division I basketball-playing conferences, of which there are currently 32.²⁷⁹ As reflected in the above pie chart, 9% of the total funds distributed to Division I conferences goes into this Equal Conference Fund. In 2021, that 9% was close to \$54 million, or approximately \$1,685,700 per conference.

In addition, the Basketball Performance Fund rewards conferences based on their relative performance at the Division I Men’s Basketball Tournament by awarding each conference “units” based on how far its member schools progress at that tournament.²⁸⁰ Funds are then allocated to the conferences based on the number of units earned by each conference over the prior six-year period.²⁸¹ The longstanding justification for the Basketball Performance Fund, which has existed in some form since at least the 1980s, is that because men’s basketball generates most of the NCAA’s annual revenue through the CBS/Turner contract, the NCAA should reward and incentivize those conferences that support men’s basketball and create competitive, successful men’s basketball programs. As reflected in the above pie chart, 28% of the total funds distributed to Division I conferences comes from this Basketball Performance Fund. In 2021, over \$168 million was distributed to Division I conferences through the Basketball Performance Fund, with conferences receiving distributions ranging from \$0 to \$33.7 million.

In our view, a model that distributes funds in this way, based only on the performance of men and not women, does not reflect or advance the value of gender equity. To the contrary, it sends a clear and disturbing message to female student-athletes that they are not as valuable as their male counterparts—quite literally, in monetary terms that can translate into millions of dollars. And it has a concrete impact on the experience of women’s basketball players: as currently structured, the Basketball Performance Fund incentivizes member institutions and conferences to put more support and resources toward men’s basketball, over women’s basketball and other sports, in an effort to reap “rewards” from the Fund. Without a similar system to benefit or reward investment in women’s basketball, the Basketball Performance Fund perpetuates and exacerbates existing gender inequities and disincentives schools from investing in and developing their women’s basketball programs.

²⁷⁸ *Id.* at 3.

²⁷⁹ *Id.* at 12.

²⁸⁰ One unit is awarded to each school participating in each game; units are not awarded for the first round for schools that were automatic qualifiers for their particular conference, and are not awarded for the championship game. *See Id.* at 7; Division I Revenue Distribution Governance Policy.

²⁸¹ For example, in 2019, the Basketball Performance Fund awarded funds based on units earned at the men’s tournament from 2013 to 2018. *See* NCAA 2021 Division I Revenue Distribution Plan at 7, https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2021D1Fin_RevenueD1FintributionPlan.pdf.

No one disputes, and the NCAA community acknowledges and appreciates, that the Division I Men’s Basketball Championship is currently the most significant revenue generator for the NCAA. But it is inconsistent with Title IX principles,²⁸² and with the NCAA’s own stated commitment to gender equity, for the NCAA and its membership to reward the success of men’s basketball through its revenue distribution model, without providing comparable opportunities and benefits to women’s basketball. After all, the NCAA is a not-for-profit membership organization, not an “eat what you kill” business enterprise.

2. Recommendation

Recommendation 4

Apply gender equity values to revenue distribution.

On its face, distributing funds for (or effectively rewarding) performance in the Division I Men’s Basketball Championship, but not the women’s, is not consistent with fundamental gender equity principles. At the same time, we understand the significant degree to which the NCAA’s member institutions rely upon their NCAA funding distributions—and the accompanying budget certainty—in operating their athletics programs, and that the Basketball Performance Fund accounts for a substantial portion of those distributions. Accordingly, any alteration to the Division I revenue distribution model to account for gender equity must be balanced against the membership’s need for advanced planning in order to run their athletics programs smoothly and effectively.

We think that this can best be accomplished by phasing in any change over time in a way that will minimize any immediate, deleterious impact. For example, with respect to the Basketball Performance Fund, one way to achieve gender equity would be to reallocate 5% of that Fund every year for the next 10 years (thereby reaching an equitable 50:50 split in year 10) and to distribute that reallocated amount based on performance in the NCAA women’s basketball tournament. Phasing in this modification over 10 years would minimize any drastic change in the amount of funds any one conference or school might receive from year to year, giving member conferences and schools time to adjust accordingly.

In addition, including women’s basketball in the calculation of Basketball Performance Fund payouts would incentivize member institutions to develop and support their women’s basketball programs since schools and conferences that do so successfully would be financially rewarded. The end result would be greater investment in women’s basketball, increased parity and competitiveness in the sport, and the potential for conferences and schools not already in the

²⁸² By way of illustration, it would almost certainly violate Title IX if a co-ed NCAA member institution agreed to accept a large sum of money from an alumnus-donor to build a new state-of-the-art gymnasium and the donor sought to condition payment of the funds on only male athletes having access to the gym. See 34 C.F.R. § 6.41(c)(7) (requiring under Title IX the “equal athletic opportunity for members of both sexes” in the “[p]rovision of locker rooms, practice and competitive facilities”).

picture to gain financially. Most importantly, changing the funding model in this way would send the strong message to student-athletes and the broader NCAA community that women's basketball is valued and treated equitably.

Exhibit B to this report contains a table for illustration purposes only that demonstrates what a hypothetical revised distribution might look like. The projections in Exhibit B are based on the performance of the Division I conferences from 2013 to 2018, and assume that performance remains constant over the proposed 10-year implementation period (as there is no way to accurately predict future performance).²⁸³ The calculations used the following methodology: KHF received the NCAA's calculation for revenue distribution from the Basketball Performance Fund for 2019, which is based on performance at the men's tournament from 2013 to 2018 (the "Men's Distribution"). KHF then used the same formula that the NCAA employs to calculate units allocated to each conference based on performance in the men's tournament to calculate the units that would have been allocated to each conference in 2019 based on performance in the women's tournament from 2013 to 2018 (the "Women's Distribution").²⁸⁴ Thus, for Year 1, 95% of the total funds available would be distributed among the conferences using the Men's Distribution, and 5% would be distributed using the Women's Distribution. For Year 2, 90% of the total funds available would be distributed among the conferences using the Men's Distribution, and 10% would be distributed using the Women's Distribution, and so on through Year 10.

These calculations show that, based on the above assumptions, nine conferences stand to gain revenue by accounting for women's performance in the Division I championship: the American Athletic Conference, the Atlantic Coast Conference, the Big 12 Conference, the Colonial Athletic Association, the Metro Atlantic Athletic Conference, the Mid-American Conference, the Pacific-12 Conference, the Southeastern Conference, and the Summit League. Five conferences would see no change at all, earning no units for either men's or women's basketball. The remainder would see decreases in their Basketball Performance Fund distribution due to historical success at the men's tournament, but fewer wins at past women's tournaments. Yet, for each year, at most 10 out of 32 conferences would experience a loss of more than 5% of their distribution from the prior year, and no conference would ever experience a loss of more than 9.1% from the prior year. With the incremental 5% per year allocated to women's performance, the median change per year never exceeds a 2.3% loss. This all assumes no future change in performance at either tournament, which is highly unlikely. Indeed, if the conferences that have historically had few schools participate or progress in the women's tournament increase their focus on and improve the performance of their women's basketball programs, then these numbers could

²⁸³ The 2013-18 period was used for our analysis because pandemic-related budgetary shortfalls significantly impacted the total distributions made based on performance in the 2014-19 period, and because the pandemic-driven cancellation of the 2020 championships render the 2015-20 period an atypical one.

²⁸⁴ In other words, KHF assigned one unit per member institution for each round a women's basketball team played in, excluding the automatic qualifiers and the final game. In so doing, KHF did not discount the units or the value thereof based on the fact that the women's tournament currently only has 64 teams, whereas the men's tournament has 68 teams.

change significantly, and those conferences would stand to gain additional revenue under this revised model.

Of course, a 5% phase-in over 10 years is just one possible approach to adjusting the Basketball Performance Fund consistent with gender equity principles; there are certainly other ways to achieve the same end, with potentially different costs and benefits. For example, another option would be to do away with the practice of rewarding performance in any one sport altogether, and to instead distribute these funds in a way that adheres to the principle of gender equity and also satisfies other NCAA goals and values.

Finally in this regard, taking participation in the women's championship into account should in no way change the financial distribution of the Equal Conference Fund. For purposes of advancing the value of gender equity, however, the NCAA should no longer describe the Fund as based solely on having an automatic qualifier in the men's basketball tournament, but should make it clear that the Fund is based on qualifying for both the Division I Men's and Women's Basketball Tournaments.

DISPARITIES IN PARTICIPATION OPPORTUNITIES

In addition to the disparities that women’s basketball players experience when they attend the Division I tournament, there are also differences in the overall number of participation opportunities made available by the NCAA to both current and prospective student-athletes. Put simply, male student-athletes are afforded more opportunities to play competitive basketball by the NCAA than are female student-athletes. These are objective differences in the student-athlete experience that can be readily discerned and fixed.

1. Unequal Size of the Division I Tournaments

Although there are roughly the same number of men’s and women’s Division I basketball teams,²⁸⁵ only 64 teams participate in the women’s tournament, compared to the 68 teams that participate in the men’s. The additional four teams on the men’s side compete in a series of “play-in” games, known as the First Four, which take place prior to the first and second rounds.²⁸⁶

The decision to expand the men’s basketball bracket to 68 teams occurred in 2010, the same year that the NCAA entered into the 2010 CBS/Turner Multi-Media Agreement.²⁸⁷ The expansion of the men’s bracket was influenced, in part, by a desire to maximize the value of the men’s broadcasting rights, and the CBS/Turner contract specifically provides for the broadcast of the First Four games.²⁸⁸

That the women’s tournament did not also expand to a 68-team bracket appears to be, in part, a function of the silos in which men’s and women’s basketball have operated, as discussed above. The NCAA decided to expand the men’s basketball bracket in parallel with its negotiation of the 2010 CBS/Turner contract, while discussions about whether to expand the women’s basketball bracket remained separate and ongoing.²⁸⁹ Moreover, there has been no historical consensus among stakeholders on whether expanding the bracket would be good for the game of women’s basketball, due to concern that the lack of parity among Division I women’s basketball

²⁸⁵ Composition and Sport Sponsorship of the NCAA Membership, NCAA (Sept. 1, 2020) <https://www.ncaa.org/about/who-we-are/membership/composition-and-sport-sponsorship-ncaa-membership>.

²⁸⁶ Daniel Wilco, *The First Four of The NCAA Tournament, Explained*, NCAA (Mar. 19, 2021), <https://www.ncaa.com/news/basketball-men/bracketiq/2021-02-25/first-four-ncaa-tournament-ultimate-guide>.

²⁸⁷ 2010 CBS/Turner Multi-Media Agreement; Ben Klayman, *NCAA Signs \$10.8 Billion Basketball Tourney TV Deal*, Reuters (Apr. 22, 2010), <https://www.reuters.com/article/us-basketball-ncaa-cbturner/ncaa-signs-10-8-billion-basketball-tourney-tv-deal-idUSTRE63L4FP20100422>.

²⁸⁸ 2010 CBS/Turner Multi-Media Agreement § 5.3(d).

²⁸⁹ *CBS, Turner Win TV Rights to Tourney*, ESPN (Apr. 22, 2010), <https://www.espn.com/mens-college-basketball/news/story?id=5125307> (“[T]he Division I Men’s Basketball Committee unanimously passed the proposal [to expand the bracket] and it will be reviewed by the Board of Directors next Thursday. . . . Another NCAA committee is looking at whether to expand the women’s tournament or keep it in the current format.”).

teams would make an expanded women’s tournament less competitive overall.²⁹⁰ At present, however, the women’s basketball community appears to largely favor moving to a 68-team bracket for women’s basketball for reasons of gender equity.²⁹¹

2. National Invitation Tournaments

The men’s NIT is a 32-team post-season tournament comprised of the top Division I men’s basketball teams that are not selected for the Division I Men’s Basketball Championship. The NIT was founded in 1938, but the NCAA did not begin running the NIT until 2005, when it purchased the NIT as part of a \$56.5 million settlement of a lawsuit.²⁹²

While a similar post-season event exists for women’s basketball—the 64-team WNIT—the WNIT is owned by Triple Crown Sports, Inc., not the NCAA. The NCAA therefore provides no financial support for the WNIT or the teams competing in it. Triple Crown Sports, for example, requires teams to pay the first \$12,000 in travel expenses (including air, hotel, bus, and food) for the entire tournament for a travel party of up to 20, and all travel expenses for any additional travel party members.²⁹³ This means that either a team’s school needs to provide funding for participation in the WNIT, or the team needs to raise the money itself in order to be able to participate. The NCAA, by contrast, covers all travel expenses—including air and bus travel—and provides a per diem to cover lodging and meals for travel parties of up to 25 for those teams participating in the NIT.

²⁹⁰ In fact, Val Ackerman noted in her 2013 White Paper that some stakeholders actually favored reducing the number of women’s basketball teams in the tournament due to the “gap in program quality between the top and bottom halves of the championship bracket and the prevalence of lopsided games in the early rounds.” Ackerman White Paper at 42-43.

²⁹¹ See, e.g., Meghan Durham, *Women’s Basketball Oversight Committee Sets Priorities Amid Gender Equity Review*, NCAA (June 8, 2021), <https://www.ncaa.org/about/resources/media-center/news/women-s-basketball-oversight-committee-sets-priorities-amid-gender-equity-review> (noting that the Women’s Basketball Oversight Committee plans to evaluate “the expansion of the tournament field to 68 teams”); Letter from Commissioner Richard J. Ensor, Metro Atlantic Athletic Conference, to Kaplan Hecker & Fink LLP (June 3, 2021) (recommending “[e]xpansion to 68 teams for the women’s tournament bracket”); Letter from Commissioner James J. Phillips, Atlantic Coast Conference, to Kaplan Hecker & Fink LLP (May 28, 2021) (“For several years, women’s basketball coaches and administrators believe the interest surrounding the NCAA Division I Women’s Basketball Tournament more than justifies increasing the field from 64 to 68 teams.”); Letter from Select NCAA Division I Commissioners to Kaplan Hecker & Fink LLP (May 14, 2021) (“Opportunities for participation in NCAA championships must be equitable, including other postseason opportunities the NCAA controls.”); Andrea Adelson, *WBCA to Discuss Inequities Between Men’s and Women’s Tournament with NCAA*, ESPN (Apr. 12, 2021), https://www.espn.com/womens-college-basketball/story/_id/31244763/wbca-discuss-inequities-men-women-tournament-ncaa (noting that WBCA requested the Division I Women’s Basketball Oversight Committee consider “[e]xpand[ing] the women’s championship field from 64 to 68 teams to match the current men’s tournament format”); Steve Berkowitz, Lindsay Schnell, & Dan Wolken, *‘I Assumed They Were Treating Us Fairly:’ Why Can’t NCAA Get Women’s Basketball Right*, USA Today: Sports (Mar. 27, 2021), <https://www.usatoday.com/in-depth/sports/ncaaw/2021/03/27/march-madness-why-cant-ncaa-get-womens-basketball-right/7012017002/> (“West Coast Conference commissioner Gloria Nevarez said: ‘It’s not just event management. The tournament has quite a few visual issues, but at a bigger level we have 68 teams on men’s side, 64 on women’s.’”).

²⁹² Frank Litsky, *NCAA Buys NIT for \$56.5 Million*, N.Y. Times (Aug. 18, 2005), <https://www.nytimes.com/2005/08/18/sports/ncaabasketball/ncaa-buys-nit-for-565-million.html>.

²⁹³ There are also costs associated with hosting part of the tournament.

In addition, those schools whose teams participate in the men’s NIT receive a financial distribution from the NCAA for participating in the NIT—similar to the distribution from the Basketball Performance Fund discussed above. Just as with the Basketball Performance Fund, monetary “units” are awarded to universities and colleges based on the number of NIT rounds in which their men’s Division I basketball teams play in the tournament. The value of individual units is determined based on the financial performance of the event. In 2019, each unit was worth \$5,220 for a total distribution to schools of about \$330,000.²⁹⁴ No such monetary units are awarded to the teams playing in the WNIT.

3. College Basketball Academy

The NCAA College Basketball Academy is a developmental academy for prospective men’s basketball student-athletes. In 2019, the NCAA created the College Basketball Academy when implementing recommendations from the Commission on College Basketball.²⁹⁵ In response to a federal investigation into college basketball recruiting, the Commission on College Basketball recommended that “the NCAA work with USA Basketball, the NBA and the NBPA and others to establish and administer new youth basketball programs.”²⁹⁶ The NCAA does not run a similar program for prospective women’s basketball student-athletes.

The College Basketball Academy is administered and funded by the NCAA—including travel, expenses, and apparel. The College Basketball Academy has run once, in 2019, and was cancelled in 2020 and 2021 due to the pandemic.²⁹⁷ The program is currently under review—both for financial reasons and gender equity reasons—at the request of the Division I conference commissioners.

4. Other Differences in Participation Opportunities

The NCAA also provides support for events like all-star games that are organized and largely sponsored by non-NCAA entities, but that further widen the gap between the number of competitive playing opportunities available in Division I men’s and women’s basketball. The NCAA’s support often includes promoting the event and providing the venue, in-game support such as refereeing and game equipment, and funding to the National Association of Basketball Coaches (“NABC”) that helps support the event.

²⁹⁴ 2019 NIT Distribution Listing. By way of comparison, in 2019, Basketball Performance Fund units were worth \$280,367.45.

²⁹⁵ What Is the NCAA College Basketball Academy?, NCAA (last visited July 21, 2021), <https://www.ncaa.com/collegebasketballacademy/about>.

²⁹⁶ Commission on College Basketball, Report and Recommendations to Address the Issues Facing Collegiate Basketball (Apr. 2018).

²⁹⁷ Greg Johnson, *NCAA Cancels College Basketball Academy*, NCAA (May 12, 2020), <https://www.ncaa.org/about/resources/media-center/news/ncaa-cancels-college-basketball-academy>; NCAA College Basketball Academy (last visited July 19, 2021), <https://theccbacademy.com/>. The NCAA spent approximately \$5 million in 2019 on NCAA College Basketball Academy events.

For example, men’s basketball has the Reese’s College All-Star Game, which features the top senior student-athletes from Division I men’s teams that do not make it to the Final Four.²⁹⁸ The game, originally operated by the NABC without corporate sponsorship, has been held during the Final Four weekend since 1978; it was played on the Final Four floor for the first time at the Alamodome in San Antonio in 2008.²⁹⁹ The game is typically played as part of Final Four Friday, when the men’s Final Four teams have open practices. The event is free to the general public.³⁰⁰ There is no similar all-star game for women’s basketball.

Next year, there will also be an additional men’s all-star game for student-athletes from historically Black colleges and universities. The game will take place during the Final Four in New Orleans and will be broadcast on CBS.³⁰¹ There is currently no similar women’s all-star game scheduled.

5. Recommendation

Recommendation 5

Provide an equitable number of participation opportunities.

The NCAA should increase the bracket for the Division I Women’s Basketball Championship from 64 teams to 68 teams. In light of the approximately equal number of men’s and women’s basketball teams in Division I,³⁰² there is no justification for the disparity in tournament participation opportunities. Going forward, the relevant committees should discuss any future bracket expansion with a view toward equal participation opportunities in the men’s and women’s tournaments.

As is mentioned above, at this time the women’s basketball community appears to largely favor moving to a 68-team bracket for women’s basketball for reasons of gender equity. However, some stakeholders were either indifferent to or opposed to expanding the women’s tournament to include 68 teams. The primary reason for this opposition was a concern that there is a larger gap between the top and bottom teams at the women’s tournament as compared to the men’s and, therefore, adding four more women’s basketball teams would have an outsized negative impact on

²⁹⁸ Reese’s College All-Star Game, NABC (last visited July 21, 2021), https://www.nabc.com/events/college_all-star_game.

²⁹⁹ Key Dates in NABC History, NABC (last visited July 21, 2021), <https://www.nabc.com/about/history/index>.

³⁰⁰ Reese’s College All-Star Game, NABC (last visited July 21, 2021), https://www.nabc.com/events/college_all-star_game.

³⁰¹ HBCU All-Star Game (last visited July 21, 2021), <https://hbcuallstargame.com>; Chris Bengel, *CBS Sports Announces Multi-Year Agreement to Broadcast HBCU All-Star Game*, CBS (Mar. 4, 2021), <https://www.cbssports.com/college-basketball/news/cbs-sports-announces-multi-year-agreement-to-broadcast-hbcu-all-star-game/>.

³⁰² There are just over 350 teams in both Division I men’s and women’s basketball. *See* Your Complete List of Men’s Division I Basketball Colleges, NCSA (last visited July 21, 2021), <https://www.ncsasports.org/mens-basketball/division-1-colleges>; Your Complete List of Women’s Division I Basketball Colleges, NCSA (last visited July 21, 2021), <https://www.ncsasports.org/womens-basketball/division-1-colleges>.

the competitiveness of the women's tournament. Even if that were true, looking at this issue through a Title IX lens, the number of participation opportunities for men and women should be substantially proportionate. Moreover, if the NCAA implements Recommendation 4 above and begins distributing revenue based on performance in both the men's and women's tournaments, then there is even more reason to make the number of teams in each of the tournaments the same, so as to make equivalent the opportunity for women's teams to "win" revenue for their conferences.

There is an additional disparity in participation opportunities in connection with the NIT as compared with the WNIT. While our recommendation prioritizes the NCAA Division I championships, the difference between the NIT and the WNIT is a gender disparity that the NCAA should also remedy, including through the possible award of a grant or stipend to schools to help offset the cost of participating in the WNIT. Similarly, if the NCAA decides to continue with the College Basketball Academy, then there should be academies for both girls and boys. The NCAA should also ensure that when it is offered opportunities to support events sponsored by third parties (*e.g.*, all-star games), it strives to offer financial, promotional, and other support for such opportunities on an equitable basis.

DIVISIONS II & III'S INFRASTRUCTURE FOR ADDRESSING GENDER EQUITY

Divisions II and III have managed to avoid many of the systemic problems facing Division I basketball, in large part due to the absence of the financial dynamic that exists in Division I, as discussed above. Since neither men's nor women's basketball in Divisions II and III is viewed as revenue-generating, neither receives any different or preferential treatment.³⁰³ In addition, Divisions II and III plan their championships through a different organizational structure than Division I, and there is an explicit prioritization of gender equity at multiple levels of Division II and III leadership.

1. Background

Division II and III institutions are, for the most part, smaller schools that devote fewer financial resources to their athletic programs than their Division I counterparts.³⁰⁴ The Division II and III men's and women's basketball championships fall under the oversight of both the SVP of Basketball and SVP of Championships at the NCAA. Although there is overlap in their responsibilities, the SVP of Basketball (or, through delegation, the Vice President of Women's Basketball or the Managing Director of Men's Basketball) is generally in charge of play-related matters such as rule changes and court markings, whereas the SVP of Championships oversees everything else, including budgets and the divisional policies and procedures for the championships.

Each of these four championships is managed and run by a championships staff member. Running the Division II and III basketball championships is only a fraction of each of these staffers' jobs, as each has responsibility for planning other NCAA championships. As in Division I, the four championships are also planned by the Division II and III Men's and Women's Basketball Committees. Unlike Division I, however, the Division II and III Men's and Women's Basketball Committees each report to the Division II or III Championships Committee.³⁰⁵ Each Championships Committee has responsibility for all of the division's championships, and oversees the budget and conduct of these championships.³⁰⁶

³⁰³ NCAA Comparison of Game Expense for Division III Men's and Women's Basketball 2017 to 2019; NCAA Comparison of Game Expense for Division II Men's and Women's Basketball 2017 to 2019; NCAA Revenue Analysis of Division III Men's and Women's Basketball 2015 to 2019; NCAA Revenue Analysis of Division II Men's and Women's Basketball 2015 to 2019.

³⁰⁴ About NCAA Division II, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about?division=d2>; About Division III, NCAA (last visited July 21, 2021), <https://www.ncaa.org/about?division=d3>.

³⁰⁵ Division II Championships Committee, NCAA (last visited July 21, 2021), <https://www.ncaa.org/governance/committees/division-ii-championships-committee>; Division III Championships Committee, NCAA (last visited July 21, 2021), <https://www.ncaa.org/governance/committees/division-iii-championships-committee>.

³⁰⁶ *Id.*

The Division II and III championships take place every March (although both were cancelled in 2020, and the Division III championships were also cancelled in 2021).³⁰⁷ The budgets for these championships are significantly less than the budgets for the Division I basketball tournaments. In 2019, the Division II Men’s and Women’s Basketball Championship budgets were approximately \$1.6 million and \$1.9 million, respectively, and the Division III Men’s and Women’s Basketball Championship budgets were both approximately \$1.2 million and \$1.3 million, respectively.³⁰⁸ The Division II and III championships also generate significantly less revenue than the Division I basketball championships. In 2019, NCAA revenue from the Division II men’s and women’s basketball championships was approximately \$110,000 and \$60,000, respectively, and approximately \$125,000 and \$30,000 from the Division III men’s and women’s basketball championships, respectively.³⁰⁹

2. Gender Equity Infrastructure

For the most part, the gender disparities in Division I exist to a far lesser extent, if at all, in Divisions II and III. Unlike Division I, budgets and participation opportunities are roughly the same for Division II and III men’s and women’s basketball. In fact, in certain years, team travel expenses make the women’s budgets slightly higher than the men’s.³¹⁰ Moreover, the bracket sizes for the men’s and women’s basketball championships in both divisions are identical.

This is attributable in large part to the fact that a central Championships Committee in Division II and III oversees both men’s and women’s basketball and serves as an important check on gender inequity. The chairs of these committees said they view it as their responsibility to ensure that gender equity is considered when decisions are being made—from how they spend their budgets to whether a specific sport can expand its bracket. The committees consider gender equity within each sport and across the divisions generally.

Because there is a single committee overseeing both the men’s and women’s basketball championships—*i.e.*, the Division II or III Championships Committee—that committee can and does actively facilitate coordination between the men’s and women’s championships by ensuring that requests made on the men’s side are also considered for the women, and vice versa. For example, in 2019, Division III men’s basketball requested a new video replay review system. The

³⁰⁷ Jeremy Villanueva, *Division III Cancels 2021 Winter Championships*, NCAA (Feb. 3, 2021), <https://www.ncaa.com/news/ncaa/article/2021-02-03/division-iii-cancels-2021-winter-championships>; *NCAA Cancels Remaining Winter and Spring Championships* (Mar. 12, 2020), <https://www.ncaa.org/about/resources/media-center/news/ncaa-cancels-remaining-winter-and-spring-championships>.

³⁰⁸ NCAA Comparison of Game Expense for Division III Men’s and Women’s Basketball 2017 to 2019; NCAA Comparison of Game Expense for Division II Men’s and Women’s Basketball 2017 to 2019.

³⁰⁹ NCAA Revenue Analysis of Division III Men’s and Women’s Basketball 2015 to 2019; NCAA Revenue Analysis of Division II Men’s and Women’s Basketball 2015 to 2019.

³¹⁰ See Division III 2018-19 Facts and Figures, NCAA (last visited July 21, 2013) https://ncaaorg.s3.amazonaws.com/about/d3/2018-19D3_FactandFigures.pdf; NCAA Comparison of Game Expense for Division III Men’s and Women’s Basketball 2017 to 2019; NCAA Comparison of Game Expense for Division II Men’s and Women’s Basketball 2017 to 2019.

Championships Committee flagged this request for the championships staff member for Division III women's basketball, who had been unaware that men's basketball was planning to request the technology. The staff member noted that women's basketball would likely support the request if the technology was considered for both women's and men's basketball. Ultimately, the request was denied, but the structural check worked effectively to ensure that the men and women had the same opportunities.

The Division II and III Championships Committees also regularly run participation numbers across like sports as well as all sports in each division to ensure that opportunities are equal for male and female student-athletes and that any differences in participation opportunities correspond to differences in the number of schools sponsoring a particular sport. As one Division II leader explained, Division II takes pride in working to ensure that the participation opportunities across men's and women's sports are 50-50.

Divisions II and III's commitment to gender equity is also embodied by the Divisions' leadership. Committee members and NCAA staff stated that the NCAA leadership and staff in these Divisions, including SVP of Championships Joni Comstock, Vice President of Division II Terri Gronau, and interim Vice President of Division III, Louise McCleary, focus on gender equity and take steps to correct any disparities of which they become aware. For example, when CBS/Turner contracted to broadcast only the Division II men's championship game on CBS or a CBS-affiliated channel,³¹¹ the NCAA paid CBS approximately \$150,000 to broadcast the women's semifinals and championship game, as well as \$84,000 to broadcast the men's semifinals, on CBS Sports Network.

3. Gender Disparities

Despite these commendable efforts to actively address gender equity, there are still some gender disparities in connection with the Division II and III basketball championships. One notable disparity concerns competition venues. The venues used for the Division II and III women's tournaments are consistently smaller, and of a lesser caliber, than the men's venues. Men's basketball often uses larger, off-campus facilities with more amenities, whereas women's basketball, particularly in Division III, often relies on campus facilities. In addition, men's basketball in Divisions II and III more often uses the same venues for several years in a row, which helps to grow the fan base and ensure that an already proven venue is hosting the championship.³¹²

The differences between the men's and women's venues were particularly pronounced at this year's Division II basketball championships. While the men's championship took place at the Ford Center in Evansville, Indiana (where the final rounds of the tournament were held in 2014, 2015, and 2019), the women's basketball championship took place at the Greater Columbus

³¹¹ 2016 CBS/Turner Multi-Media Agreement § 7.4(d).

³¹² Division II Gender Equity Championship Data (2021); Division III Gender Equity Championship Data (2021).

Convention Center in Columbus, Ohio.³¹³ Shortly before the event, the original venue for this year's Division II women's basketball championship decided against hosting the tournament due to the pandemic. The Greater Columbus Sports Commission, who was cosponsoring the tournament, worked with the NCAA to help them stay in Columbus at the Convention Center.³¹⁴ Due to space and public safety restrictions at the Convention Center, however, only approximately 72 family members of the women's basketball players were permitted to attend each game, and no tickets were available to the public.³¹⁵ The Convention Center also is not a basketball arena, and while a basketball court was set up, it did not have the look and feel of an NCAA championship.³¹⁶ By comparison, the Ford Center, where the men's championship was held, is a large venue and able to seat thousands of fans, even with public safety restrictions on crowd size.³¹⁷

While this year's venue issues were due in part to the pandemic, they were by no means unique. In fact, even the women's original venue would have been smaller and of lesser quality than the men's. Venue selection is driven to a large degree by who bids on the tournament; while the Division II and III Men's and Women's Basketball Committees ultimately choose the venues, they can only pick among the bids that have been submitted. And hosting a men's tournament may have greater appeal to potential host sites due to the greater revenue from ticket sales that has historically been received from Division II and III men's basketball.³¹⁸

Although these external factors contribute to venue disparities, the Division II and III Women's and Men's Basketball Committees do not take steps to coordinate with one another on venue selection to strive for greater equity. Moreover, differences in priorities between the men's and women's committees can also enhance disparities in venue size and quality. For example, one Division III Women's Basketball Committee member noted that their committee focuses on

³¹³ Wayne Cayadi, *DII Men's Basketball Championship: How to Watch the DII Men's Elite Eight*, NCAA (Mar. 29, 2019), <https://www.ncaa.com/news/basketball-men/article/2019-03-28/dii-mens-basketball-championship-how-watch-dii-mens-elite>; Hendrix Magley, *NCAA D2 Men's Basketball Elite Eight, Other Postseason Events Staying in Evansville*, Courier & Press (Oct. 15, 2020), <https://www.courierpress.com/story/sports/college/2020/10/15/ncaa-division-ii-mens-basketball-elite-eight-return-evansville-2024/3654751001/>; Jacob Myers, *How Columbus Will Host NCAA Division II Women's Basketball Championship During a Pandemic*, Dispatch (Mar. 23, 2021), <https://www.dispatch.com/story/sports/2021/03/23/how-columbus-host-ncaa-d-2-womens-basketball-title-during-pandemic/4769478001/>.

³¹⁴ Jacob Myers, *How Columbus Will Host NCAA Division II Women's Basketball Championship During a Pandemic*, Dispatch (Mar. 23, 2021), <https://www.dispatch.com/story/sports/2021/03/23/how-columbus-host-ncaa-d-2-womens-basketball-title-during-pandemic/4769478001/>.

³¹⁵ *Id.*

³¹⁶ Sarah Wynn, *Preparations Underway in Columbus for NCAA Division II Women's Basketball Tournament*, ABC 6 (Mar. 10, 2021), <https://abc6onyourside.com/sports/content/preparations-underway-in-columbus-for-ncaa-division-ii-womens-basketball-tournament>.

³¹⁷ *Safety Protocols of NCAA Basketball Championships at Ford Center*, City County Observer (Mar. 3, 2021), <https://city-countyobserver.com/safety-protocols-of-ncaa-basketball-championships-at-ford-center/> ("Spectator seating for the events will be limited to 2,500 fans and will be divided into socially-distanced pods.").

³¹⁸ NCAA Revenue Analysis of Division III Men's and Women's Basketball 2015 to 2019; NCAA Revenue Analysis of Division II Men's and Women's Basketball 2015 to 2019.

finding a venue that fits the expected crowd size, whereas the men’s committee often purposefully chooses larger venues.

Divisions II and III risk other small disparities occurring at the men’s and women’s championships because, as in Division I, there is no formal system for ensuring staff communication and coordination while planning the tournaments. Individual staff members have discretion in decision-making, which can result in disparities between the tournaments if the staff members do not coordinate. The fact that budgets are modest and largely the same helps to minimize any unintentional disparities, but does not prevent such disparities entirely. Small differences can also result from amenities being provided by host institutions and localities.³¹⁹

4. Recommendations

Recommendation 6.1

Establish regular communications between the Division II and III Men’s and Women’s Basketball Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

While Divisions II and III largely do not have the same gender equity issues as Division I, those gender equity issues that do arise—such as issues related to venues and site selection—largely stem from lack of coordination and communication between the basketball staff and committees. Accordingly, consistent with Recommendation 1.4 above, the Division II and III Men’s and Women’s Basketball Committees should regularly communicate, with a focus on coordinating strategic decisions and achieving gender equity in the student-athlete experience.

This enhanced communication and coordination should include site selection and the quality of venues, including coordinating on the timing of selecting venues and developing a considered list of priorities for site selection. While differences in the quality of venues is largely dependent on who bids to host the tournaments, the lack of coordination on site selection and differing priorities between the Division II and III Men’s and Women’s Basketball Committees has led to an inability to identify and address these venue-related issues during the site selection process. For example, if the timing for site selection were coordinated and the venues bidding for the women’s events happened to be disparate from the men’s, the Basketball Committees could consider combining the tournaments in one location or making other changes to improve venue options.

³¹⁹ Division II Gender Equity Championship Data (2021).

Recommendation 6.2

Ensure that items impacting the student-athlete experience at the Division II and III Men's and Women's Basketball Championships are gender-equitable.

The championships staff for Division II and III men's and women's basketball should coordinate with one another to ensure that those items that impact the student-athlete experience (as detailed in Recommendation 3.2 above) are substantially the same.

ENSURING PROGRESS ON GENDER EQUITY

Many of the recommendations made in this report are not new. Indeed, some will be all too familiar to those who have been involved with women's collegiate basketball over the last 30 years or more. But the events that occurred at this year's NCAA Division I Men's and Women's Basketball Championships—and which led to this review—have provided the NCAA, its membership, and its corporate and media partners with a unique opportunity to work together to implement these recommendations now, effectuating real change to achieve gender equity and improve the student-athlete experience at the championships going forward. Having spoken to literally hundreds of conference commissioners, athletic directors, SWAs, coaches, student-athletes, sports groups and institutes, and many, many others, we are confident that the college sports community and its supporters are ready, willing, and able to help improve gender equity at the NCAA championships; in fact, they expect nothing less.

Recommendation 7

For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report.

To keep the collegiate sports community informed and engaged in this process, and to ensure that the best possible use is made of this opportunity to make change at the NCAA, there should be an annual assessment of the NCAA's progress in implementing this report's recommendations. The assessment should be made public on the NCAA website, and also provided to the Board of Governors, the Board of Governors Committee to Promote Cultural Diversity and Equity, the Gender Equity Task Force, the Committee on Women's Athletics, the Division I Board of Directors, the Division II and III Presidents Councils, the Division II and III Championships Committees, and the Men's and Women's Basketball and Basketball Oversight Committees for all divisions.

LIST OF RECOMMENDATIONS

The gender equity challenges that the NCAA faces are significant and systemic. But there are concrete steps that the NCAA can take to address them. The recommendations outlined above, and listed again below, provide a comprehensive roadmap for advancing the gender equity principles to which the NCAA and its members have committed.

Providing Structural Support for and Improving Transparency and Accountability Around Gender Equity (see pp. 61-66 for details)

Recommendation 1.1: Change the leadership structure of Division I basketball to prioritize gender equity and coordination between the men’s and women’s tournaments.

Recommendation 1.2: Before the next budget cycle, conduct a “zero-based” budget for Division I men’s and women’s basketball to ensure that any gender differences are necessary, appropriate, and equitable.

Recommendation 1.3: Develop equity in staffing for Division I men’s and women’s basketball.

Recommendation 1.4: Establish regular communications between the Division I Men’s and Women’s Basketball Committees and Basketball Oversight Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

Recommendation 1.5: Perform a real-time gender equity audit of the Division I Men’s and Women’s Basketball Championships as they are being planned and executed each year.

Recommendation 1.6: Prepare an annual report on the results of the real-time gender equity audit, including issues identified, how those issues were resolved, and lessons learned.

Recommendation 1.7: Conduct an external gender equity assessment of the Division I Men’s and Women’s Basketball Championships in five years.

Recommendation 1.8: Complete a gender equity impact statement in connection with significant actions taken outside of the annual championship planning process.

Recommendation 1.9: Evaluate and reward performance for contributions to gender equity.

Recommendation 1.10: Increase NCAA staff with expertise in Title IX and gender equity.

Maximizing Value Through Gender Equity in Marketing, Promotion, and Sponsorships (see pp. 78-84 for details)

Recommendation 2.1: Market the rights to the Division I Women’s Basketball Championship as a stand-alone property.

Recommendation 2.2: Use “March Madness” for both the Division I Men’s and Women’s Basketball Championships.

Recommendation 2.3: Negotiate for a new tier of corporate sponsors for the Division I Women's Basketball Championship (and other NCAA championships).

Recommendation 2.4: Create a new senior position of Chief Business Officer to implement a strategy in the marketing, promotion, and sponsorship of the championships that both prioritizes gender equity and ensures the long-term sustainability of the NCAA.

Recommendation 2.5: Implement an overall strategy to realize the value of the Division I Women's Basketball Championship (and other championships across the NCAA).

Recommendation 2.6: Establish a system for tracking sponsorship activations across the Division I Men's and Women's Basketball Championships (and all other championships across the NCAA).

Recommendation 2.7: Pursue marketing and promotional opportunities that will benefit both the Men's and Women's Division I Basketball Championships.

Recommendation 2.8: Increase cross-promotion of the Division I Men's and Women's Basketball Championships.

Improving Gender Equity at Future Championships (see pp. 86-90 for details)

Recommendation 3.1: Hold the men's and women's Final Fours together in one city.

Recommendation 3.2: Ensure that items impacting the student-athlete experience at the Division I Men's and Women's Basketball Championships are gender-equitable.

Recognizing Gender Equity in Revenue Distribution (see pp. 93-95 for details)

Recommendation 4: Apply gender equity values to revenue distribution.

Ensuring Gender Equity in Participation Opportunities (see pp. 99-100 for details)

Recommendation 5: Provide an equitable number of participation opportunities.

Enhancing Gender Equity in Division II and III Basketball (see p. 105-06 for details)

Recommendation 6.1: Establish regular communications between the Division II and III Men's and Women's Basketball Committees that focus on coordinating on strategic decisions and achieving gender equity in the student-athlete experience.

Recommendation 6.2: Ensure that items impacting the student-athlete experience at the Division II and III Men's and Women's Basketball Championships are gender-equitable.

Ensuring Progress on Gender Equity (see p. 107 for details)

Recommendation 7: For the next five years, conduct an annual public assessment of the NCAA's progress in implementing the recommendations set forth in this report.

EXHIBIT A: SCOPE OF REVIEW

EXTERNAL STAKEHOLDER CONNECTIONS	
Stakeholder Interviews	110
Discussion Forums	21
BREAKDOWN OF EXTERNAL STAKEHOLDERS BY ROLE	
Student-Athletes	78
Commissioners	37
Coaches	66
Athletic Directors	25
SWAs	27
Sports Organizations and Institutes	17
Other	30
TOTAL	280
KHF GENDER EQUITY WEBSITE ³²⁰	
Unique Visitors	12,125
Submissions	1,762

³²⁰ As of August 2, 2021.

NCAA INTERVIEWS	
NCAA Staff	75
NCAA Committee Members	63
Contractors, Local Organizing Committees, and Others	6
TOTAL	144
KEY NCAA INTERVIEWEES	
NCAA Senior Leadership	<ul style="list-style-type: none"> ▪ President Mark Emmert ▪ Former Chief Operating Officer/Chief Legal Officer Donald Remy ▪ Executive Vice President of Regulatory Affairs Stan Wilcox ▪ SVP of Basketball Dan Gavitt ▪ Vice President of Women’s Basketball Lynn Holzman ▪ SVP of Administration and Chief Financial Officer Kathleen McNeely ▪ SVP and Chief Medical Officer Dr. Brian Hainline ▪ SVP of Communications Bob Williams ▪ Interim SVP of Legal Affairs and General Counsel Scott Bearby ▪ SVP of Championships Dr. Joni Comstock ▪ Interim SVP of Policy and Governance Chief of Staff Cari Van Senus ▪ Vice President of Division I Kevin Lennon ▪ Vice President of Enforcement Jon Duncan ▪ Vice President of Division II Terri Steeb Gronau

	<ul style="list-style-type: none"> ▪ Interim Vice President of Division III Louise McCreary ▪ Vice President of Academic and Membership Affairs Dave Schnase ▪ Managing Director of Inclusion Amy Wilson
<p>Members of NCAA Committees</p>	<ul style="list-style-type: none"> ▪ Division I Women’s Basketball Committee ▪ Division I Women’s Basketball Oversight Committee ▪ Division I Men’s Basketball Committee ▪ Division I Men’s Basketball Oversight Committee ▪ Division II Women’s Basketball Committee ▪ Division II Men’s Basketball Committee ▪ Division III Women’s Basketball Committee ▪ Division III Men’s Basketball Committee ▪ Division I Board of Directors Finance Committee ▪ Division II Planning and Finance Committee ▪ Division II Championships Committee ▪ Division III Championships Committee ▪ Division II Management Council ▪ Division III Management Council ▪ Division III Administrative Committee ▪ Board of Governors Committee to Promote Cultural Diversity and Equity ▪ Committee on Women’s Athletics ▪ Minority Opportunities and Interests Committee ▪ Gender Equity Task Force
<p>DOCUMENTS</p>	
<p>Documents from the NCAA</p>	<p>4,086</p>

EXHIBIT B: ANALYSIS OF BASKETBALL PERFORMANCE FUND DISTRIBUTION

Conference	Men's-Only Payment	Year 1: 95/5	Year 2: 90/10	Year 3: 85/15	Year 4: 80/20	Year 5: 75/25	Year 6: 70/30	Year 7: 65/35	Year 8: 60/40	Year 9: 55/45	Year 10: 50/50
America East Conference	\$560,734	\$547,932	\$535,131	\$522,329	\$509,528	\$496,726	\$483,925	\$471,123	\$458,322	\$445,520	\$432,719
American Athletic Conference	\$11,214,696	\$11,446,189	\$11,677,683	\$11,909,176	\$12,140,669	\$12,372,162	\$12,603,656	\$12,835,149	\$13,066,642	\$13,298,135	\$13,529,629
Atlantic Sun Conference	\$1,121,469	\$1,095,866	\$1,070,263	\$1,044,660	\$1,019,056	\$993,453	\$967,850	\$942,247	\$916,644	\$891,041	\$865,438
Atlantic 10 Conference	\$9,812,859	\$9,535,508	\$9,258,157	\$8,980,807	\$8,703,456	\$8,426,105	\$8,148,754	\$7,871,404	\$7,594,053	\$7,316,702	\$7,039,351
Atlantic Coast Conference	\$28,317,111	\$28,531,417	\$28,745,723	\$28,960,029	\$29,174,335	\$29,388,641	\$29,602,947	\$29,817,253	\$30,031,559	\$30,245,865	\$30,460,172
Big 12 Conference	\$21,588,293	\$21,590,574	\$21,592,856	\$21,595,137	\$21,597,418	\$21,599,700	\$21,601,981	\$21,604,263	\$21,606,544	\$21,608,825	\$21,611,107
Big East Conference	\$14,018,371	\$13,637,391	\$13,256,410	\$12,875,430	\$12,494,450	\$12,113,470	\$11,732,489	\$11,351,509	\$10,970,529	\$10,589,548	\$10,208,568
Big Sky Conference	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Big South Conference	\$280,367	\$266,349	\$252,330	\$238,312	\$224,294	\$210,275	\$196,257	\$182,239	\$168,220	\$154,202	\$140,184
Big Ten Conference	\$25,233,070	\$24,915,996	\$24,598,922	\$24,281,848	\$23,964,774	\$23,647,701	\$23,330,627	\$23,013,553	\$22,696,479	\$22,379,405	\$22,062,331
Big West Conference	\$841,101	\$799,046	\$756,991	\$714,936	\$672,881	\$630,826	\$588,771	\$546,716	\$504,661	\$462,606	\$420,551
Colonial Athletic Association	\$280,367	\$312,054	\$343,741	\$375,428	\$407,115	\$438,803	\$470,490	\$502,177	\$533,864	\$565,551	\$597,238
Conference USA	\$1,401,836	\$1,331,744	\$1,261,652	\$1,191,561	\$1,121,469	\$1,051,377	\$981,285	\$911,193	\$841,102	\$771,010	\$700,918
Horizon League	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Metro Atlantic Athletic Conference	\$0	\$45,705	\$91,411	\$137,116	\$182,822	\$228,527	\$274,233	\$319,938	\$365,644	\$411,349	\$457,055

NCAA External Gender Equity Review

Phase I: Basketball Championships

Conference	Men's-Only Payment	Year 1: 95/5	Year 2: 90/10	Year 3: 85/15	Year 4: 80/20	Year 5: 75/25	Year 6: 70/30	Year 7: 65/35	Year 8: 60/40	Year 9: 55/45	Year 10: 50/50
Mid-American Conference	\$280,367	\$342,524	\$404,682	\$466,839	\$528,997	\$591,154	\$653,312	\$715,469	\$777,626	\$839,784	\$901,941
Mid-Eastern Athletic Conference	\$560,734	\$532,697	\$504,661	\$476,624	\$448,587	\$420,551	\$392,514	\$364,477	\$336,440	\$308,404	\$280,367
Missouri Valley Conference	\$5,607,349	\$5,372,687	\$5,138,025	\$4,903,363	\$4,668,701	\$4,434,039	\$4,199,377	\$3,964,715	\$3,730,053	\$3,495,391	\$3,260,729
Mountain West Conference	\$4,205,511	\$3,995,235	\$3,784,960	\$3,574,684	\$3,364,409	\$3,154,133	\$2,943,858	\$2,733,582	\$2,523,307	\$2,313,031	\$2,102,756
Northeast Conference	\$560,734	\$532,697	\$504,661	\$476,624	\$448,587	\$420,551	\$392,514	\$364,477	\$336,440	\$308,404	\$280,367
Ohio Valley Conference	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Pacific-12 Conference	\$16,261,310	\$16,773,703	\$17,286,096	\$17,798,489	\$18,310,882	\$18,823,275	\$19,335,668	\$19,848,061	\$20,360,454	\$20,872,847	\$21,385,240
Patriot League	\$280,367	\$266,349	\$252,330	\$238,312	\$224,294	\$210,275	\$196,257	\$182,239	\$168,220	\$154,202	\$140,184
Southeastern Conference	\$17,943,516	\$18,737,442	\$19,531,369	\$20,325,295	\$21,119,222	\$21,913,148	\$22,707,075	\$23,501,001	\$24,294,927	\$25,088,854	\$25,882,780
Southern Conference	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Southland Conference	\$560,735	\$532,698	\$504,662	\$476,625	\$448,588	\$420,551	\$392,515	\$364,478	\$336,441	\$308,404	\$280,368
Southwestern Athletic Conference	\$280,367	\$266,349	\$252,330	\$238,312	\$224,294	\$210,275	\$196,257	\$182,239	\$168,220	\$154,202	\$140,184
Sun Belt Conference	\$841,101	\$814,281	\$787,461	\$760,641	\$733,821	\$707,002	\$680,182	\$653,362	\$626,542	\$599,722	\$572,902
The Ivy League	\$841,102	\$829,517	\$817,932	\$806,348	\$794,763	\$783,178	\$771,593	\$760,008	\$748,424	\$736,839	\$725,254
The Summit League	\$280,367	\$281,584	\$282,801	\$284,017	\$285,234	\$286,451	\$287,668	\$288,885	\$290,101	\$291,318	\$292,535
West Coast Conference	\$5,326,982	\$5,167,279	\$5,007,576	\$4,847,873	\$4,688,170	\$4,528,467	\$4,368,764	\$4,209,061	\$4,049,358	\$3,889,655	\$3,729,952
Western Athletic Conference	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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