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What Does the Future Hold for College Athletics after the Supreme Court Decision in *NCAA v. Alston*?

By W. Drew Kastner and Stephenie Wingyuen Yeung[1]

On June 21, 2021, the United States Supreme Court issued a unanimous decision in *National Collegiate Athletic Association v. Alston*. The long anticipated decision affirmed the injunction against NCAA rules that limited the education-related benefits schools may offer student-athletes. But perhaps equally as important as the majority decision is the concurring opinion by Justice Kavanaugh.

BACKGROUND

Current and former student-athletes in men's Division I FBS[2] football and men's and women's Division I basketball brought a class-action claim against the NCAA and eleven Division I conferences, alleging that their agreement to restrict the compensation colleges and universities may offer the student-athletes who play for their teams violated the Sherman Antitrust Act.

The District Court's March 2019 ruling enjoined the NCAA from enforcing "rules limiting the *education-related benefits* schools may offer student-athletes—such as rules that prohibit schools from offering graduate and vocational scholarships." However, the District Court decision also allowed the NCAA to maintain its rules limiting athletic scholarships to the full cost of attendance and restricting compensation and benefits unrelated to education. The Ninth Circuit affirmed, and the injunction took effect in August 2020.

SUPREME COURT DECISION

On appeal, the Supreme Court only considered the injunction's legality. The Court unanimously held that "[t]he district court's injunction is consistent with established anti-trust principles" and that the NCAA's compensation restrictions were "properly subjected to antitrust scrutiny under a 'rule of reason' analysis." The Court determined that:

- First, "the NCAA enjoys 'near complete dominance of, and exercise[s] [monopoly] power in, the relevant market'" of "athletic services in men's and women's Division I basketball and FBS football." As a result, the NCAA and its member schools are able to "restrain student-athlete compensation in any way and at any time they wish, without any meaningful risk of diminishing their market dominance."
- Second, while the NCAA was concerned that the injunction would result in "micromanagement" of its business, the Court noted that the injunction applies only to the NCAA's rules "limiting the *education-related benefits*" that conferences or schools may offer student-athletes. Relaxing these restrictions will not "blur the distinction between college and professional sports," and the NCAA can achieve the "same procompetitive benefits" by significantly less restrictive means than its current rules provide.
- Finally, because the injunction applies only to the NCAA and multi-conference agreements, the Court reasoned that the injunction both

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[2] Football Bowl Subdivision.

> leaves the NCAA with "considerable leeway" and leaves the individual conferences and their member schools "free to impose whatever rules they choose."

With this in mind, the Court upheld the injunction prohibiting the NCAA from enforcing its rules limiting education-related benefits that conferences and schools may provide to student-athletes, including those rules limiting scholarships for graduate or vocational school, payments for academic tutoring, and paid post-eligibility internships. These education-related benefits could not "be confused with a professional athlete's salary." The Court also held that the NCAA may continue to limit cash awards for academic achievement, but only if those limits are no lower than the cash awards currently allowed for athletic achievement (currently a maximum of $5,980 per year, but the NCAA is free to reduce the amount).

To the extent the NCAA is concerned that schools might exploit the injunction to give student-athletes "unnecessary or inordinately valuable items" that are only nominally related to education, the Court held that the NCAA can specify and enforce "rules delineating which benefits it considers legitimately related to education" and forbid questionable benefits. Finally, the NCAA and its member schools can propose a definition of "compensation or benefits related to education," and the NCAA is free to regulate how conferences and schools provide them.

TAKEAWAYS

Alston may bring student-athletes one step closer to receiving full benefits for their services. Looking forward, Justice Kavanaugh's concurring opinion may give hope to student-athletes that further ground can be gained on this issue. Justice Kavanaugh directed his attention to the NCAA's remaining compensation rules, and suggested that they also "raise serious questions under the antitrust laws." He found that these rules should also be scrutinized under "rule of reason" analysis, "absent legislation or a negotiated agreement between the NCAA and the student athletes." In such a case, Justice Kavanaugh leaves little doubt about how he would rule:

> The NCAA's business model would be flatly illegal in almost any other industry in America . . . Price-fixing labor is price-fixing labor . . . Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. And under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law.

Alston and the threat of potential future litigation may spur the NCAA to negotiate an agreement with conferences and schools, or even with student-athletes if they become unionized, out of concern that another court will use "rule of reason" analysis to dismantle its remaining compensation rules or otherwise "micromanage" its business. A negotiated agreement would at least allow the NCAA to maintain some control over whether any of its remaining compensation rules remain intact. The NCAA may also explore other options to achieve more robust compensation for student athletes, including further expansion of the rules on how student-athletes may use their name, image and likeness beyond the NCAA Board of Governors' proposed rules from April 2020.

Read the Court's ruling in *Alston* here: https://www.supremecourt.gov/opinions/20pdf/20-512_gfbh.pdf. ◆

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