COLLEGIATE SPORTS
INFORMATION MEMO
JUNE 30, 2021

NCAA v. Alston Case: Supreme Court Strikes Down NCAA Rules Restricting Benefits to Student-Athletes

On June 21, 2021, in an opinion providing a very interesting historical overview of collegiate athletics going back to the 19th century and the founding of what is now the National Collegiate Athletic Association (NCAA), the U.S. Supreme Court released its decision in the *NCAA v. Alston* case. The Supreme Court affirmed the lower court's injunction of NCAA rules that restrict education-related benefits to Division I basketball and bowl subdivision football student-athletes.

Justice Gorsuch delivered the unanimous opinion of the Supreme Court and Justice Kavanaugh wrote a lone concurring opinion. The case ended up in the Supreme Court because the NCAA appealed the Ninth Circuit's affirmation of the district court decision and sought immunity from the normal application of anti-trust laws. It is important to note that the Supreme Court did not directly address issues related to use of a student-athlete's name, image or likeness and only considered the subset of NCAA rules restricting education-related benefits. The plaintiffs did not appeal, and the Supreme Court did not examine, NCAA rules limiting non-educational benefits or compensation.

In its appeal, the NCAA asked for deference to its concept of amateurism and argued that the district court sought to redefine its "product." The Supreme Court found that the lower court was not engaging in "product redesign," as the NCAA argued, rather a straightforward application of the "rule of reason" as applied in the anti-trust arena.

The rule of reason analysis requires "a fact-specific assessment of market power and market structure" to determine a challenged restraint's "actual effect on competition." The lower court observed that the NCAA and its member institutions have the ability to restrain student-athlete compensation without risking their hold on the market, as the "NCAA's Division I essentially is the relevant market for elite college football and basketball."

The NCAA represented that it maintains amateurism in college sports as a means to serve the non-commercial objective of higher education. The Supreme Court acknowledged that it has rejected similar requests from parties that sought exemption from the Sherman Anti-Trust Act on the ground that their respective restraint(s) served unique societal objectives beyond enhancing competition. Instead, the Supreme Court opined that any appeal by the NCAA for an exemption from anti-trust laws based on special characteristics of its industry should be addressed to Congress.

The lower court found, and the Supreme Court agreed, that the NCAA failed to establish a direct connection between the challenged compensation rules and consumer demand for its unique product (i.e., amateur college sports versus professional sports). Ultimately, the lower court determined that the NCAA could reap its same procompetitive benefits with substantially less restrictive restraints on education-related benefits for student-athletes. The Supreme Court acknowledged that the lower

court's injunction afforded the NCAA considerable flexibility to address its concerns related to the potential provision of impermissible benefits under the guise of permissible education-related expenses. Notably, in August 2020, the NCAA adopted emergency legislation (Proposal 2020-3) addressing the provision of educational benefits in a manner that complied with the injunction. Individual member institutions and conferences retain the ability to impose further restrictions related to the provision of education-related benefits.

Justice Kavanaugh added a concurring opinion to emphasize the narrow scope of the case and underscore the serious questions that the NCAA's remaining rules related to compensation raise under anti-trust laws. Justice Kavanaugh's concurring opinion is not binding precedent, rather it should be viewed as persuasive precedent.

Justice Kavanaugh noted that the Court does not address the legality of the remaining NCAA rules related to compensation; rather, the Court's decision in *Alston* established a framework for how NCAA rules related to compensation should be analyzed going forward – through ordinary "rule of reason" scrutiny under anti-trust laws. Justice Kavanaugh opined that the "NCAA's business model would be flatly illegal in almost any other industry in America" and that "price-fixing labor is ordinarily a textbook anti-trust problem because it extinguishes the free market in which individuals can otherwise obtain fair compensation for their work."

Further, Justice Kavanaugh acknowledged many of the policy and practical concerns that would undoubtably arise if some or all of the NCAA's remaining compensation rules were determined to violate anti-trust laws – namely, concerns related to equity and financial stability.

On its face, *Alston* did not drastically change the landscape of college athletics. However, court decisions, such as *Alston*, and legislative action by states are proving to be an impetus for the continued evolution of NCAA rules. Additional information related to the latest NCAA news, including updates related to name, image and likeness, can be found here.

If you have any questions about this information memo, please contact TaRonda Randall, any attorney in our Collegiate Sports practice or the attorney at the firm with whom you are regularly in contact.

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