June 23, 2021

Supreme Court's 9-0 Ruling Allows Student-Athletes to Receive Education-Related Benefits

On June 21, 2021, in *NCAA v. Alston*, No. 20-512 (2021), the Supreme Court upheld a lower-court decision allowing student-athletes to receive education-related benefits such as scholarships for graduate school, payment for academic tutoring and paid post-eligibility internships. This decision, though only concerning benefits related to education, increases the likelihood that the Court will look favorably on the issue of student-athlete compensation and may also encourage future challenges to the NCAA's current amateurism business model.

While a step forward for student athletes, the Court's holding did not open the floodgates for non-educational benefits. Justice Gorsuch, in writing for the Court, upheld the decision on the narrow grounds that the NCAA's limits on education-related benefits violate antitrust laws without undercutting the NCAA's broader amateurism argument. Indeed, Justice Gorsuch limited the reach of the Court's holding by stating "the NCAA is free to forbid in-kind benefits unrelated to a student's actual education[.]"[1]

For context, this case was brought by former Division I football and basketball players who challenged the NCAA's restrictions on compensation. They alleged it violated Section 1 of the Sherman Act, which prohibits "contract[s], combination[s], or conspirac[ies] in restraint of trade or commerce."[2] The facts of the case were undisputed as it is well known that the NCAA and its members have agreed to compensation limits for student-athletes; the NCAA enforces these limits on its member schools; and these compensation limits affect interstate commerce. Throughout the case, the NCAA argued that by limiting student-athlete compensation it can provide consumers with a unique product distinct from professional sports (citing that business restraints of trade can be procompetitive if they benefit consumers). The former student-athletes, however, argued that consumer demand for the NCAA's product had increased despite its easing of rules on some types of compensation. Using these facts, the district court enjoined the NCAA from enforcing its rules limiting the education-related benefits that schools can provide to student-athletes. The Ninth Circuit affirmed this decision, holding that the district court "struck the right balance in crafting a remedy that both prevents anti-competitive harm to Student-Athletes while serving the procompetitive purpose of preserving the popularity of college sports."[3] Unsatisfied with this holding, the NCAA appealed on the grounds that all existing restraints on athlete compensation should survive antitrust scrutiny.

What makes the Supreme Court's 9-0 decision unique is that it could represent a major step toward compensation for student-athletes. The core of Justice Kavanaugh's concurring opinion makes clear that the remaining NCAA compensation rules (that were untouched by this decision) also raise serious questions under the antitrust laws. Justice Kavanaugh writes that there is question as to whether other NCAA compensation restriction will pass muster under the rule of reason outlined by the majority in this case. Under this level of scrutiny, the NCAA must provide a legally valid procompetitive justification for its remaining compensation rules. Moving forward, the NCAA may lack such a justification if it is challenged. For instance, the concurrence takes issue with the NCAA's argument that colleges may decline to pay student-athletes because the defining feature of college sports is that the student-athletes are not paid. Justice Kavanaugh makes clear that the NCAA's argument is circular and unpersuasive. He asserts that "[t]he NCAA is not above the law[,]" and that "[t]he NCAA couches its arguments for not paying student athletes in innocuous

[1] NCAA v. Alston, 594 US 1, 34 (2021)
[2] 15.U.S.C. §1.
[3] 958 F. 3d 1239, 1263

labels….But the labels cannot disguise the reality: The NCAA's business model would be flatly illegal in almost any other industry in America."[4]

In sum, while certainly a victory for student-athletes, the Court's decision to allow schools to offer education-related benefits did not include benefits unrelated to education such as name, image and likeness (NIL). Despite this, Justice Kavanaugh's concurrence may be an indicator of things to come. In the immediate future, the Court's holding means that colleges will begin to offer some student-athletes more educational benefits. Finally, with state legislators passing NIL bills across the country, and with Congress considering federal regulation, this may be a game that is played outside of the courtroom, by the legislators.

[4] 594 US 1, 3-5 (2021) (Kavanaugh, J., concurring)