Cahill

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Supreme Court Rejects NCAA Athlete Compensation Restraints

Last month, the United States Supreme Court unanimously held that the National Collegiate Athletic Association's restrictions on education-related compensation for student-athletes violated Section 1 of the Sherman Antitrust Act (the "Sherman Act"). ***National Collegiate Athletic Association*** **v.** ***Alston*****, 2021 WL 2519036 (U.S. June 21, 2021). The Justices concluded that the district court properly utilized and applied the more in-depth rule of reason approach to condemn limits on undergraduate athletic scholarships and other athletic performance-related compensation. This unanimous opinion stands in contrast to many antitrust decisions that have been closely split in recent years.**

I. Background

The National Collegiate Athletic Association ("NCAA") was created in 1906 as a standard-setting body in response to a growing number of fatalities in college football. It consistently opposed the compensation of college athletes but eventually authorized schools to pay athletes' tuition. Over time, the compensation rules evolved to expand the scope of permissible scholarships and allow other forms of athletic and academic financial assistance.

Plaintiffs, current and former student-athletes in men's Division I FBS football and men's and women's Division I basketball, challenged two agreements between the NCAA and its members under Section 1 of the Sherman Act: (1) limits on undergraduate athletic scholarships and other athletic performance-related compensation, and (2) limits on education-related benefits schools may make available to student-athletes, such as graduate or vocational school scholarships.

Applying a rule of reason analysis, the U.S. District Court for the Northern District of California upheld the athletic performance-related restraints but enjoined the education-related restraints. *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 375 F. Supp. 3d 1058 (N.D. Cal. 2019). First, the district court determined that the NCAA exercises monopsony (dominant buyer) power in the market for "athletic services in men's and women's Division I basketball and FBS football, wherein each class member participates in his or her sport-specific market." The district court rejected the NCAA's procompetitive justifications for the restraints – namely that they increase output and maintain a competitive balance among teams. The district court also considered the NCAA's remaining defense that its rules preserve amateurism, which in turn widens consumer choice by providing the distinct product of amateur college sports; however, the trial court ultimately found that the NCAA's definition of amateurism has continuously shifted over time and found the evidence insufficient to connect the restraints to consumer demand. Finally, the district court held that the student-athletes met their burden of showing that "substantially less restrictive alternative rules" could achieve the same procompetitive objectives for the education-related limits but not the athletic-related limits.

The U.S. Court of Appeals for the Ninth Circuit affirmed the district court's opinion in full. *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 958 F.3d 1239 (9th Cir. 2020). The student-athletes did not renew their challenge to the upheld restraints, but the NCAA asked the Supreme Court to reverse the rulings on the enjoined restraints.

II. The Supreme Court's Opinion

The Court upheld both the district court's decision to apply the rule of reason and its application of the analysis. The NCAA unsuccessfully made three arguments for a more "deferential" abbreviated assessment, namely that: (1) the NCAA is a joint venture, and collaboration is necessary to produce intercollegiate athletic competition, (2) the Court's holding in *National Collegiate Athletic Association* v. *Board of Regents of University of Oklahoma*, 468 U.S. 85 (1984), permits restraints on student-athlete compensation, and (3) the NCAA and its member schools are not "commercial enterprises" and instead serve the goal of higher education. First, assuming that the NCAA is a joint venture, the Court concluded that it holds monopsony power that could harm competition. The Court then stated that while some coordination among its members could be procompetitive, this is not always the case. Next, the Court explained that its comments in favor of leeway for the NCAA in *Board of Regents* were an aside and not dispositive here, as that case did not assess compensation limits, and market realities have since evolved and shifted. Last, the Court found any non-commercial immunity from the antitrust laws inappropriate and cited other cases in which a restraint's social objectives were found insufficient to place it outside of the Sherman Act's reach. The Justices reasoned that the Sherman Act has already been applied to nonprofit organizations, the NCAA's own purpose is to maximize revenues, and the NCAA did not dispute that its restraints affect interstate trade and commerce.

The Court was also unpersuaded by the NCAA's arguments that (1) the district court erroneously required the NCAA to prove its rules were the least restrictive means of achieving a procompetitive purpose, (2) the district court should have deferred to the NCAA's definition of amateurism, and (3) the injunction micromanaged its business. The Court first determined that the district court properly applied the appropriate burden-shifting framework, in which the last step required plaintiffs to show that "substantially less restrictive alternative rules" would achieve the same procompetitive objectives, not that the NCAA's rules were the least restrictive means of doing so. The Court next refused to overturn the district court's factual findings that (1) the NCAA had not adopted a consistent definition of amateurism, and (2) that the restraints were not adopted with reference to consumer demand for amateur sports. Finally, the Court concluded that the district court's injunction was limited and flexible and thus presented no danger of substituting the district court's business judgment for that of the NCAA. The Court also suggested that the NCAA could seek clarification on the injunction from the district court.

In his concurring opinion, Justice Kavanaugh further argued that the NCAA's other compensation rules also raise serious antitrust issues and should be assessed without special treatment. He explained that the NCAA's business model "would be flatly illegal in almost any other industry in America" – for example, antitrust laws would prohibit restaurants from agreeing to cut cooks' wages, even if they argued that consumers have a preference to eat food made specifically by low-paid cooks.

III. Conclusion

This decision is likely to engender further discussion regarding how to properly compensate college athletes in such a lucrative industry. Already, after this decision was released, the NCAA has adopted a uniform interim policy allowing college athletes the opportunity to benefit from their name, image, and likeness. The opinion – especially Justice Kavanaugh's concurrence – may also embolden student-athletes and plaintiffs' lawyers to continue to challenge the NCAA's compensation rules. More broadly, practitioners and lower courts applying the rule of reason will likely scrutinize the Court's discussion of the three-step burden-shifting rule, including the explanation that defendants are not required to prove that the challenged arrangements are the "*least* restrictive means."

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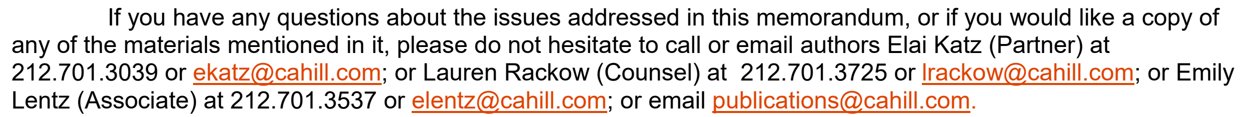

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