NCAA v. Alston: A 'Buzzer-Beater' Victory for College Athletes as Name, Image and Likeness Shot Clock Counts Down to July 1

Jun 24 2021

Posted By: Megan L.W. Jerabek

Practice Area: Sports Law

In a decision that appears to have provided the beginnings of a roadmap to the future of student athlete compensation, the Supreme Court issued a unanimous 9-0 ruling in favor of the players in *NCAA v. Alston*. Following the ruling, the NCAA may no longer restrict schools from offering education-related compensation and benefits, which include cash awards for academic achievement, graduate degree and vocational school scholarships, computers, and laptops. While the Court only considered the narrow issue of restricting education-related benefits, the Justice Gorsuch opinion and concurrence by Justice Kavanaugh make clear the NCAA's strong-handed restrictions on market competition for student athlete compensation are set to unravel.

A group of former NCAA Division I football and basketball athletes, including former University of Wisconsin basketball player Nigel Hayes, filed a class-action lawsuit in 2014 against the NCAA for antitrust violations in restricting competitive compensation. A California District Court found restrictions on education-related compensation and benefits unlawful and the Ninth Circuit affirmed. On appeal, the Supreme Court considered the issue only of the education-related rules enjoined by the district court. The Court held the NCAA restrictions on education-related benefits violated antitrust law and that the NCAA possesses no special exemption from antitrust law under the "rule of reason analysis". The opinion and concurrence provide a roadmap for future challenges to NCAA compensation restrictions in disbanding the NCAA's interpretation of previous case law providing an "amateurism" shield. Kavanaugh directly confronts potential antitrust problems in the remaining NCAA compensation restrictions stating "price-fixing labor is price-fixing labor":

> *There are serious questions whether the NCAA's remaining compensation rules can pass muster under ordinary rule of reason scrutiny. Under the rule of reason, the NCAA must supply a legally valid procompetitive justification for its remaining compensation rules. As I see it, however, the NCAA may lack such a justification.*

The NCAA does maintain significant authority over compensation, which the opinion details. The Court specifically cites the NCAA's authority to "forbid in-kind benefits unrelated to a student's actual education" and calls out the ability of individual athletic conferences to impose rules of their choosing. The affirmed underlying district court injunction only barred the NCAA from their restrictions on education-related compensation or benefits for Division I football and basketball players. However, following the Supreme Court in *Alston*, the ball appears firmly on the NCAA's defensive half as standard rule of reason antitrust analysis will now apply to any challenged restraint on compensation.

The decision comes down just as the NCAA Division I Council was set to consider a Name, Image and Likeness (NIL) policy ahead of a series of state NIL laws taking effect on July 1. NIL restrictions contained within the NCAA's 30-page proposal are now in legal question prompting the council to delay a vote to the week of June 28. Per a *USA TODAY* report, an alternative, scaled-back proposal would allow schools to regulate their own NIL policy in the absence of state law, provided such policies contain prohibitions against "any booster, or any person or entity acting on behalf" of the school. The alternative model would mostly remove the NCAA from NIL regulation in allowing schools to draft policies more in line with states that have passed laws more permissive than the original, expansive NCAA policy proposal—a seemingly better option to level the playing field between schools until Congress is able to pass its own bill to govern the issue. The NCAA is now effectively operating on a one week deadline to approve its NIL policy as student athletes in New Mexico, Texas, Mississippi, Alabama, Georgia and Florida are poised to be the first to capitalize on NIL providing an incredible recruiting advantage for colleges in those states. Colleges in states without NIL laws appear headed for a quick pivot to draft NIL policies in the absence of NCAA policy.

Change has arrived. New state laws, the *Alston* decision, pending NCAA policy and likely Congressional action will set a new course for college athletics. The relationship between the NCAA athlete and school will no longer be as simple as a scholarship offer. Both sides will need to carefully contemplate a new contractual and compliance based engagement covering education-related benefits, NIL policy and more.

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.