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NCAA v. Alston: Five Key Takeaways

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On June 21, 2021, the U.S. Supreme Court issued a unanimous decision in *National Collegiate Athletic Association v. Alston et al* that affirmed the U.S. Court of Appeals for the Ninth Circuit and U.S. District Court for the Northern District of California's determinations that certain NCAA rules limiting education-related benefits schools may make available to student-athletes violated Section 1 of the Sherman Antitrust Act. The following are five key takeaways from the decision:

1. The NCAA is not special. The Court concluded that there were no special characteristics of the collegiate sports industry (e.g., the NCAA industry) that exempt it from the usual operation of antitrust laws. Or, as Justice Kavanaugh put it in his concurring opinion, "The NCAA is not above the law." Therefore, any possible antitrust exemption for NCAA compensation rules would have to come from Congress.

2. *Board of Regents* does not win the day. The dicta from the *NCAA v. Board of Regents of the University of Oklahoma* (1984) that commented on the critical role in maintaining the revered tradition of amateurism in college sports as one "entirely consistent with the goals of the Sherman Act" is not binding on the Court, nor dispositive on the antitrust issue. The "rule of reason" applies to scrutiny under antitrust laws.

3. The Court's decision is limited. The Court noted that the District Court did not disturb the NCAA's rules limiting undergraduate athletic scholarships and other compensation related to athletic performance. The Court's decision did not wade into the national debate related to amateurism in college sports or so-called "pay-for-play."

4. There are other ways to regulate college athletics that do not run afoul of antitrust laws. The Court emphasized that the injunction at issue applied only to the NCAA and multi-conference agreements involving education-related benefits that schools may make available to student-athletes. The

NCAA and member schools remain free to propose a definition of compensation or benefits "related to education." Further, individual conferences and institutions are free to impose their own restrictions.

5. Justice Kavanaugh would go further. Justice Kavanaugh's concurring opinion stated his view that "the NCAA's current compensation regime raises serious questions under antitrust laws." However, the concurring opinion also recognized the complexity of policy and practical questions should remaining compensation rules be deemed to violate antitrust laws including the effect on nonrevenue sports and how institutions would comply with Title IX under a different compensation model, among other issues. Legislation or collective bargaining were presented as alternatives to further litigation.

Finally, while saying nothing about name, image and likeness (NIL), the Court's decision will significantly influence the regulatory model chosen by the NCAA related to NIL. The NCAA will most likely choose a deregulation approach as opposed to more robust rules that would have created a national standard for how student-athletes can receive compensation for their NIL.

What this means to you

This decision will impact every NCAA member institution's planning for the future. Universities and colleges should consider how the decision impacts their ability to regulate the commercial activities of student-athletes.

Contact us

If you have questions regarding NCAA compliance, please contact Jason Montgomery, Wendy Arends or your Husch Blackwell attorney. We also encourage you to download and review our 2021 NCAA Compliance Report, published in March 2021.