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The Supreme Court strikes down the NCAA's restrictions on compensation to student athletes for education-related expenses—What happens now?

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The United States Supreme Court unanimously held on June 21 that the limits imposed by the National Collegiate Athletic Association ("NCAA") on the educational expenses that member schools may pay student athletes violated federal antitrust law.[1] Although the Court's decision concerns only a small portion of the NCAA's rules limiting compensation for student athletes, its effect could be far-reaching. Indeed, one justice, in a strongly worded concurring opinion, wrote that all of the NCAA's limits on compensation were likely unlawful.

The decision

Current and former student athletes sued the NCAA and 11 Division I conferences, contending that the NCAA's limits on undergraduate scholarships and the compensation that schools may pay student athletes violate Section 1 of the Sherman Act, 15 U.S.C. § 1. After a trial, the district court let most of the NCAA's rules stand, but held that the limits on education-related expenses—such as the prohibition on expenses for graduate education or vocational school—were unlawful. The Ninth Circuit affirmed. On certiorari, the NCAA appealed the decision, but the student athletes did not.

Writing for the Court, Justice Gorsuch noted that the parties did not dispute that the NCAA "enjoys monopoly (or, as it's called on the buyer side, monopsony) control" in the market for "student-athlete labor," and that the member schools "compete fiercely for student-athletes." As such, the NCAA's rules were "horizontal price fixing in a market where the defendants exercise monopoly control." And there was no dispute that the restraints resulted in student athletes receiving less compensation than they would without the restraints.

The Court then determined that the restrictions on education expenses should be evaluated under the rule of reason—the standard for most restrictions challenged under the Sherman Act, "including most joint venture restrictions." Even crediting the NCAA's argument that some

[1] *National Collegiate Athletic Association V. Alston et al.*, No. 20-512, June 21, 2021.

restrictions on the compensation that student athletes receive are necessary to provide the competition among amateur athletes that some consumers value, the NCAA's restrictions on education-related expenses failed because there were substantially less restrictive alternatives to achieve that goal. The Court flatly rejected the NCAA's argument that its rules should not be subject to ordinary antitrust scrutiny because its member schools are nonprofit educational institutions; the court could not "overlook" the rules just "because they happen to fall at the intersection of higher education, sports, and money."

Justice Kavanaugh, concurring, wrote that there are "serious questions" as to whether the remaining restrictions on student athlete compensation were lawful, and challenged the NCAA's consumers-prefer-amateurism justification. Restaurants could not agree to pay low wages to cooks because consumers prefer low-wage cooks, or hospitals agree to pay low wages to nurses to "create a 'purer' form of helping the sick." Justice Kavanaugh forecast that the evolving issues concerning the NCAA's compensation rules will present "some difficult policy and practical questions," including "[h]ow would any compensation regime comply with Title IX?"

What happens now?

Certainly opponents of the NCAA restrictions will argue, as Justice Kavanaugh suggests, that any NCAA restrictions on student-athlete compensation are unlawful. And a spate of new cases might join other pending cases challenging NCAA rules. But NCAA supporters will argue that the Court pointed out that the district court had found there were substantially less restrictive alternatives to the NCAA's educational expenses rule, and that therefore implicitly found that some restrictions to preserve the "amateurism" that the NCAA says consumers want are reasonable. Indeed, the Court noted that the district court's injunction did not preclude the NCAA from adopting a "no Lamborghini rule" to avoid having luxury cars being deemed educational expenses. Potentially important for colleges and universities, the injunction in the case applies only to NCAA rules and agreements among multiple athletic conferences; it does not bar an individual athletic conference from adopting its own compensation rules. An individual conference might contend, for example, that it lacks the "monopoly control" of the NCAA and its member schools, and that the decision therefore does not make a solely intra-conference rule unlawful; but opponents, of course, may take a different view.

Finally, and more broadly, the decision underscores that most restrictions undertaken by a joint venture, regardless of whether those profits are nonprofit enterprises, are neither automatically lawful nor automatically unlawful. Their impact must be evaluated under the rule of reason.

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