Supreme Court Strikes Down NCAA Rule Prohibiting Student-Athletes from Receiving Education-Related Benefits

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The United States Supreme Court today released its opinion in *NCAA v. Alston*, holding unanimously that the National Collegiate Athletic Association's (NCAA) prohibition on providing student-athletes with "education-related benefits" — things like laptops that could be used for furthering a student's studies — constitutes an antitrust violation. While *Alston* did not address the question of whether the NCAA's prohibition on financial compensation of student-athletes also constitutes an antitrust violation, a concurrence by Justice Kavanaugh all but invites such a challenge in the future. As such, *Alston* is unlikely to be the last word on the intersection of what Justice Gorsuch termed "the intersection of higher education, sports, and money."

Alston reached the Supreme Court because of a "circuit split" on the question of whether the NCAA's eligibility rules (limiting the provision of education-related benefits to student-athletes) violated the Sherman Anti-Trust Act. Several circuit courts had previously upheld the NCAA's rules against antitrust challenges; in contrast, the Ninth Circuit affirmed an injunction against the rules (and in favor of the student-athletes) entered by the federal District Court.

Today's 9-0 decision by Justice Neil Gorsuch affirmed the Ninth Circuit's position, thereby allowing all student-athletes nationwide to receive education-related benefits without compromising their NCAA eligibility. Justice Gorsuch's opinion was highly skeptical of the NCAA's various defenses, observing that "[t]he NCAA accepts that its members collectively enjoy monopsony power in the market for student-athlete services, such that its restraints can (and in fact do) harm competition." As such, the Court observed that

> "To the extent [the NCAA] means to propose a sort of judicially ordained immunity from the terms of the Sherman Act for its restraints of trade—that we should overlook its restrictions because they happen to fall at the intersection of higher education, sports, and money—we cannot agree. This Court has regularly refused materially identical requests from litigants seeking special dispensation from the Sherman Act on the ground that their restraints of trade serve uniquely important social objectives beyond enhancing competition."

However, the Court emphasized repeatedly that the Court had not been asked in *Alston* to review whether the NCAA prohibition of non-education-related benefits was an antitrust violation, and that today's decision is limited solely to education-related benefits. Indeed, acknowledging the NCAA's concern that schools might exploit today's decision to give student-athletes luxury cars "to get to class," the Court noted that *Alston* should not be considered judicial authorization for creative classification of "education-related benefits":

> "the NCAA is free to forbid in-kind benefits unrelated to a student's actual education; nothing stops it from enforcing a "no Lamborghini" rule. And, again, the district court invited the NCAA to specify and later enforce rules delineating which benefits it considers legitimately related to education. To the extent the NCAA believes meaningful ambiguity really exists about the scope of its authority— regarding internships, academic awards, in-kind benefits, or anything else—it has been free to seek clarification from the district court since the court issued its injunction three years ago."

Yet the most important aspect of *Alston* may ultimately be Justice Kavanaugh's concurrence, which all but encouraged a subsequent legal challenge to the elephant in the room: the NCAA's broader prohibition on student-athlete compensation generally. While *Alston*'s majority opinion studiously limited its scope to education-related benefits, Justice Kavanaugh's concurrence noted that there appeared to be little reason why the legal reasoning articulated by the Court would not be equally applicable more broadly. "There are serious questions whether the NCAA's remaining compensation rules can pass muster under ordinary rule of reason scrutiny," wrote Kavanaugh. Under the logic of *Alston*, "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." While *Alston* may be the latest word on student-athlete compensation, it appears unlikely to be the last.

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