

NCAA Student-Athletes May Receive Increased Education-Related Compensation under New Supreme Court Ruling

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On June 21, 2021, the U.S. Supreme Court issued a highly anticipated opinion holding unanimously that the National Collegiate Athletic Association (the "NCAA") may not withhold modest payments to student athletes related to education expenses. This holding, though narrowly tailored to the underlying injunction at issue, opens the door to increased scrutiny the NCAA may face with respect to its amateurism rules.

What the Court Said

The plaintiffs, a group of current and former NCAA Division I football players and basketball players, alleged in the lower court that the NCAA's rules prohibiting student-athlete compensation violate federal antitrust law by prohibiting fair-market compensation payments to student-athletes. After a trial, the lower court declined to invalidate NCAA rules limiting broad compensation (like a salary) to student-athletes for athletic performance. The court did, however, find unlawful and enjoin enforcement of NCAA rules limiting compensation for education-related benefits, such as scholarships for graduate or vocational school, payments for academic tutoring, or paid post-eligibility internships. The U.S. Court of Appeals for the Ninth Circuit affirmed the lower court's decision in full and upheld the injunction. Importantly, this injunction applies only to student-athletes playing Division I basketball and Football Bowl Subdivision ("FBS") football.

In upholding the injunction limited to education-related benefits, the Court acknowledged that relaxing these restrictions would not blur the distinction between college and professional sports, unlike "professional-level cash payments" may. The Court agreed with lower courts that enjoining enforcement of these rules would not negatively affect consumer demand for these sports. The Court recognized the contentious nature of the lower court's decision. In doing so, the Court agreed with the Ninth Circuit when it said: "The national debate about amateurism in college sports is important. But our task as appellate judges is not to resolve it. Nor could we. Our task is simply to review the district court judgment through the appropriate lens of antitrust law."

A concurring opinion by Justice Kavanaugh went further, calling the Court's decision that the NCAA violated antitrust laws "an important and overdue course correction." Justice Kavanaugh acknowledged the narrow scope of the Court's holding and noted that most of the NCAA's compensation rules remain in effect. In a searing rebuke, however, he made clear that the NCAA's remaining compensation rules "also raise serious questions under antitrust laws," providing a virtual roadmap for future challenges to NCAA

compensation rules and even hinting at potential labor law violations. He concluded his concurrence by admonishing the NCAA for building a “massive money-raising enterprise on the backs of student athletes who are not fairly compensated.” The NCAA, he said, “is not above the law.”

The Current Amateurism Landscape

College athletes have long attempted to challenge what they believe are unlawful restrictions on their ability to obtain a portion of the money-making enterprise of college athletics. This opinion comes just days before six states are set to enact laws that expressly allow student-athletes to profit off of their name, image, and likeness, a practice that is prohibited by current NCAA amateurism rules. On July 1, 2021, so-called “NIL” laws in Alabama, Florida, Georgia, Mississippi, and New Mexico will go into effect. Arkansas’ NIL law, the Arkansas Student-Athlete Publicity Rights Act, will take effect on January 1, 2022. The NCAA has advocated for a federal NIL law, arguing that state laws impede the NCAA’s ability to regulate sports at a national level and create a patchwork of differing laws for NCAA student-athletes. It is yet to be seen if and how state NIL laws will fare in the face of challenges from the NCAA.

What Happens Next

Schools with Division I basketball and FBS football programs may now offer education-related compensation to these college athletes. Schools should decide whether to offer such compensation as part of recruitment or retention efforts, for example. Under the current injunction, schools may offer post-eligibility scholarships to complete undergraduate or graduate degrees at any school, scholarships to attend vocational school, tutoring, expenses related to studying abroad, and paid post-eligibility internships. Further guidance from the NCAA or individual athletic conferences may be forthcoming. The NCAA may also ask the Court to approve a definition of compensation and benefits that are “related to education” if it chooses to adopt one. In the meantime, colleges should consider the impact of offering such benefits on the athletic department’s budget and Title IX compliance.

Though narrow in application, the Court’s opinion suggests that the NCAA’s model of amateurism is a changing landscape. Still, the NCAA maintains its power to make and enforce its own rules and to restrict compensation related to athletics. Those in the world of college sports will have to wait and see what, if any, additional challenges to the NCAA’s rules are to come.