

THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

<https://www.wsj.com/articles/ncaa-takes-another-court-hit-on-athlete-compensation-11589826409>

SPORTS

NCAA Takes Another Court Hit on Athlete Compensation

The Ninth Circuit ruled that the organization's restrictions violated federal antitrust law



The current case was filed by former West Virginia University running back Shawne Alston and other former Division I athletes who argued that the NCAA's rules violated U.S. antitrust law by artificially depressing their compensation.

PHOTO: JUSTIN K. ALLER/GETTY IMAGES

By [Brent Kendall](#), [Louise Radnofsky](#) and [Laine Higgins](#)

Updated May 18, 2020 4:05 pm ET

A federal appeals court dealt another blow to the National Collegiate Athletic Association's efforts to keep tight limits on compensating student-athletes, ruling that the organization's restrictions violated federal antitrust law.

"NCAA limits on education-related benefits do not play by the Sherman Act's rules," the Ninth U.S. Circuit Court of Appeals said in a ruling Monday.

The decision, by a unanimous three-judge panel, said the NCAA unlawfully limited competition for student athletes by adopting a cramped view of the kinds of compensation the athletes could receive related to their education.

Any immediate impact of the ruling may be short-lived because the NCAA, facing pressures from states, Congress and athletes, has committed to making broader changes to rules on athlete compensation starting in 2021, allowing players to sign endorsement deals for the first time.

But the opinion also highlights that the courts are likely to continue to play an active role in the highly charged fight over the definition of athlete amateurism.

The decision marks the latest instance in which judges have rejected the NCAA's antitrust defenses of its old ways of doing business. At the same time, the courts have declined to give the athletes unrestricted remuneration.

Courts previously struck a blow against NCAA amateurism rules in a case brought by former UCLA basketball player Ed O'Bannon over the use of his likeness in a videogame, a case that made it easier for athletes to be compensated for the full cost of attending school.

The current case was filed by former West Virginia University running back Shawne Alston and other former Division I athletes who argued that the NCAA's rules violated U.S. antitrust law by artificially depressing their compensation. The athletes won a decision from U.S. District Judge Claudia Wilken in 2019 that the NCAA could no longer limit compensation and benefits as tightly.

The appeals court's ruling, written by Chief Judge Sidney Thomas, affirmed Judge Wilken's decision and allows college athletes to receive compensation for the cost of educational materials, such as laptop computers or musical instruments, or be guaranteed access to paid-for graduate or vocational school. In a deposition, NCAA President Mark Emmert had likened promising high school recruits additional scholarships to giving the athletes Ferraris because they "cost the university the same amount" as a medical degree.

The Ninth Circuit, however, didn't go as far as the athletes wanted, declining to dismantle NCAA restrictions on compensation that aren't connected to education-related benefits.

One member of the panel, Judge Milan Smith, said the courts should do more to protect college athletes from an NCAA that he described as a "cartel" that makes billions of dollars from their labor.

The NCAA was eyeing an onslaught of legislation from states, led by California, when it announced a once unthinkable reversal of position last fall and said it would move to allow college players to make some money from name, image and likeness rights.

But in April, the implementation proposals rolled out by the association indicated that it wanted to keep some oversight over deals, to ensure they represented "fair market value" and were not masked payments for performance.

Those restrictions are unlikely to pacify some of the advocates for athletes' rights—and the NCAA has said that in order to implement the oversight system it has in mind and shield it from future lawsuits, it will look to the U.S. Congress to grant it an antitrust exemption.

The NCAA acknowledged Monday that it was disappointed by the opinion.

“We hoped for a different legal conclusion by the Ninth Circuit,” said Donald Remy, the association's chief legal officer, adding they believed the rulings were inconsistent with past legal precedent. “We will continue to review the opinion and determine our next steps.”

Jeffrey Kessler, a lawyer for the athlete plaintiffs, called Monday's decision “a great victory for the players.” He predicted that, pending a petition by the NCAA to the Supreme Court, college athletes could reap “hundreds of millions of dollars a year” in educational-related benefits.

“At a time when we are all looking for a little bit of good news in hard times this means that when college sports comes back it will be a much fairer system,” said Mr. Kessler.

Write to Brent Kendall at brent.kendall@wsj.com, Louise Radnofsky at louise.radnofsky@wsj.com and Laine Higgins at laine.higgins@wsj.com

Copyright © 2020 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.