

# NCAA v. Alston

## What's the legal issue before the Supreme Court?

Do the National Collegiate Athletic Association's student-athlete eligibility rules restricting compensation of student-athletes violate federal antitrust law?

## What's at stake?

Allowing NCAA student-athletes to receive additional educational benefits such as post-eligibility paid internships, academic or graduation cash awards.

## What else is going on?

Amateurism rules, and their limits on athlete compensation, that distinguish college sports from professional sports.

The NCAA's special exemption from antitrust laws as necessary to protect amateurism and make college sports distinct from professional sports.

## How did we get here?

### NCAA v. Board of Regents

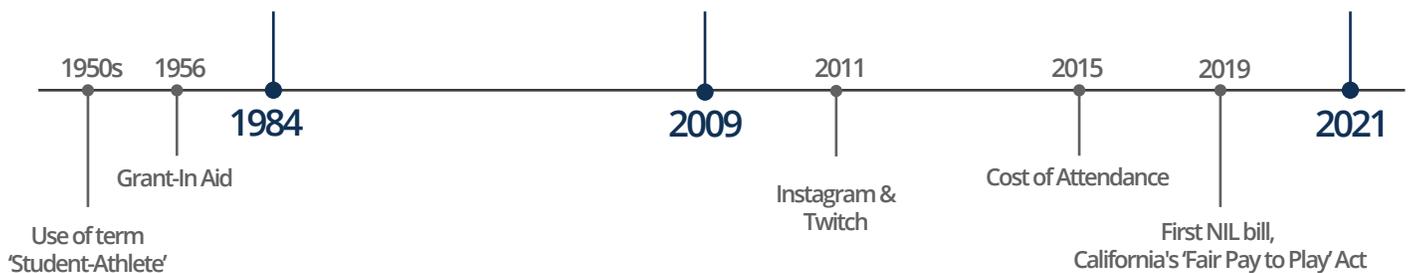
College athletes must not be paid. Amateurism increases consumer choice as a product different and distinct from professional sports.

### O'Bannon v. NCAA

Amateurism rules are pro-competitive but established full cost of attendance college attendance as pro-competitive under antitrust law

### NCAA v. Alston

Do the National Collegiate Athletic Association's student-athlete eligibility rules restricting compensation of student-athletes violate federal antitrust law?



## Understanding Antitrust Law

Antitrust laws condemn agreements or behavior by competitors in a market that reduce competition. If the agreement or behavior is procompetitive (increasing output, producing a new product, lowering prices, benefiting consumer welfare etc.) then it may not violate antitrust law. If, however, the behavior or agreement is anticompetitive (price fixing, reducing output, higher prices, more restrictive than necessary, etc.) then, without any procompetitive justifications, it could violate Section 1 of the Sherman Act.

### Antitrust Law and NCAA v. Alston

The court in *NCAA v. Alston* is trying to determine whether the NCAA's rules restricting student-athletes "education-related benefits" are procompetitive or anticompetitive.

*Are the NCAA's rules restricting education-related benefits anticompetitive by preventing schools from competing for student-athletes labor?*

*Are the NCAA's rules restricting education-related benefits a necessary procompetitive restraint to provide a unique product with high consumer demand?*

#### NCAA Argument Before the Court:

Quick Look or "abbreviated deferential review" is appropriate for this case.

The Supreme Court held in *Board of Regents* the NCAA's rules require judicial deference because it is necessary to produce amateur college sports as a product.

Amateur rules are procompetitive because they increase choice for consumers between college sports and professional sports.

#### Alston Argument Before the Court:

The District Court and Ninth Circuit below already applied a full rule of reason analysis and that should be upheld.

Some NCAA rules might be necessary for the product. But the rules at issue here—restricting education-related benefits—are not reasonably necessary to maintain consumer demand for college sports.

Instead, providing these benefits would increase competition among schools for student-athletes labor.

### Antitrust Standards of Review Refresher

To determine if the agreement or behavior is restraining trade, and therefore anticompetitive, courts utilize three different scales of review:

#### Quick Look

The court applies a deferential review because the facts, including the market and the agreement, lead to a confident conclusion the agreement or behavior is anti- or pro- competitive. Consumer welfare is an important consideration in this analysis.

#### Rule of Reason

The court does a deeper analysis into the specific factual context of the market, the power the competitor has in the market, and whether there are substantial anticompetitive effects on competition. If proven, the defendant must show a procompetitive rationale, and then the plaintiff must refute this by showing efficiencies could be accomplished through less anticompetitive means.

#### Per Se (*not at issue in NCAA v. Alston*)

The court determines the agreement or behavior of competitors is on its face anticompetitive and therefore violates federal antitrust laws.