JUDGE BLOWS THE WHISTLE ON THE COMPENSATION CAP: HOW THE NCAA’S FALSE CLAIM OF AMATEURISM IS BEGINNING TO CRUMBLE

Roben West
JUDGE BLOWS THE WHISTLE ON THE COMPENSATION CAP; HOW THE NCAA’S FALSE CLAIM OF AMATEURISM IS BEGINNING TO CRUMBLE

ROBEN S. WEST
INTRODUCTION

September; it is a month dominated by jam-packed stadiums, filled with prideful students and football fans, ready and willing to bear any and all elements, just to witness their beloved team kickoff the start of another football season. March Madness; a month that has been taken over, and even renamed, all because of loyal students and basketball fans filing into arenas night after night, day after day, to cheer on their favorite players just in time for tip off. What is really notable is the fact that these are just two examples (out of many different sports) that are able to capture the essence that is the college sports world. It is a growing industry that has the ability to reach almost any person. However, what is important to remember is that student athletes make that possible. Student athletes are the foundation of college sports. But for the continuous sacrifice of these student athletes’ minds, bodies, and time, the world of college sports as we know it today would not exist.

Given all that these student athletes do and the impact that they have on the world of college sports, have made people question whether or not they are adequately taken care of. Some of them are fortunate enough to receive free tuition, which is a huge benefit, but the question that still remains is whether that is truly enough. To answer that question, one must get acquainted with the most powerful organization in college sports—the National Collegiate Athletic Association (NCAA). This body manages almost every part of the money making-machine that is the college sports industry. As a multi-billion dollar industry, it is understandable that the NCAA has multiple regulations in place to make sure everything runs smoothly. However, there is a particular provision regarding student athlete compensation, known as a “no-pay” rule (which is essentially a compensation cap) that has been the subject of
controversy. There is a great debate about whether such a cap should exist, whether the rule has a legitimate justification, and whether the athletes are just being greedy. Supporters of the “no-pay” rule root their arguments in the concept of amateurism, and argue that the main focus is education. Conversely, those who oppose such regulations disagree and rebut the amateurism concept, and view these students as actual athletes. Of course, both arguments can be considered meritorious. This article, however, will not spend much time delving into the why. There are countless arguments that exist regarding why or why not student athletes should be compensated. What this article will, however, address is the how. The how takes into account a legal paradox that has been looming about the sports world. Does the law permit the “no pay” regulation as it functions now or does the law actually demand compensation for student athletes?

The complications arise when considering the intersectionality of the law, namely antitrust law, as it relates to compensating student athletes. The question on how compensation can be achieved is closely aligned with antitrust law and the Sherman Antitrust Act, codified at 15 U.S.C. § 1. To most, the legal aspect of this controversial social discussion may be lost in translation, but it is a crucial component to understand, and it is the primary focus of this article.

This article will begin with a brief overview of the NCAA and its system, by taking a look into its history, its evolvement, as well as its interesting relationship with the Sherman Act. Next, the article will further explore and illustrate the relationship between college sports and antitrust law by discussing two class action lawsuits filed against the NCAA. Both of these cases, albeit through different tactics, challenge the compensation cap regulation in an effort to give student athletes a chance at fair compensation, and the member institutions a chance to compete for them in a free market. Finally, the article will conclude by discussing what the future may
hold for college sports and the NCAA, given recent developments and court rulings on the subject.

I. A BRIEF LOOK INTO THE NCAA

The NCAA oversees an “$11 billion dollar college sports industry”.¹ It has many objectives and duties in an effort to keep control of things.² Some of those things include scheduling events, creating and entering into contracts and deals with outside organizations, and setting rules and regulations for the member institutions to follow.³ The NCAA’s ability to set rules and regulations, as well as punishments, is what makes it so powerful. This section will first delve into the NCAA’s role as a rule making authority and discuss a specific subsection of its bylaws. Lastly, this section will discuss how that subsection of the bylaws intersects with, and ultimately violates, antitrust laws, and section one of the Sherman Act.

A. The Almighty NCAA

The meager beginnings of the NCAA have since been shed, and the organization as we know it today has replaced it; transforming itself into an all-powerful body that oversees an $11 billion dollar industry.⁴ The NCAA may have started over 100 years ago as a way to keep up with sports related health risks, but now it is far more authoritative.⁵ As a collective body, it is responsible for imposing various rules and regulations against its member schools. Some of the rules and regulations enforced by the NCAA carry some harsh penalties—including the

² See id.
³ Id.
⁴ Id. at 63.
⁵ See id. at 65.
notorious “death penalty” which was levied on Southern Methodist University in the 1980’s. Such penalties have saved the NCAA from challenges by athletic programs for quite some time, because no one wants to face the consequences of breaking the rules. Yet, the reluctance to stand up to the big, bad NCAA is fading as some have grown tired with regulations that they feel are too restrictive.

The particular regulation that is most important in this article is the “no pay” regulation, also known as a compensation cap. Today, the NCAA bylaws require that a student athlete’s financial aid is limited to a set amount, which is ultimately determined by the board. Furthermore, the bylaws also forbid the student athletes from receiving any other form of payment based on their status as student athletes. This regulation is fairly broad, and thus covers any form of compensation. The regulation bans all extra compensation forms, ranging from giving student athletes a piece of the general profits made during games, to forbidding the student athletes from profiting from the use of their own likeness. For example, the NCAA makes millions of dollars from contracts and agreements with video game makers, like Electronic Arts (EA). These game makers, in cohorts with the NCAA, have produced two profitable college game series (a football series and a basketball series) by exploiting these student athletes and their likeness for money. The student athletes, whose images are the ones being used, however, will never be able to see a single cent of that money.

6 Id. at 67.
7 See id. at 68.
8 Id. at 66.
10 Id.
11 Id.
12 See id.
Some critics say the worst part about such a system is that the NCAA and its leadership support these regulations by relying on “moral and practical implications” embedded in its principle of amateurism. Mike Emmert, the NCAA’s president, explained that the rules aim to keep a “level playing field” when it comes to recruiting. Essentially, the purpose is to discourage the schools with more money from taking all the top recruits. However, the NCAA may not be untouchable in its economic holdout for long. A pair of recent lawsuits has successfully garnered enough attention to subject the NCAA and the power conferences to some scrutiny regarding the compensation cap. These cases aim to investigate the NCAA regulation, and its close and convoluted relationship with antitrust law. There is growing support for the scrutiny that the NCAA is facing. So much so, the NCAA system has been described by some as an “unlawful cartel, which is inconsistent with the most fundamental principles of antitrust law.” While critics are ready to witness the full demise of the compensation cap, that point is certainly not upon us yet. However, a recent ruling found that the compensation cap is a violation of the Sherman Act, and has shown that the end may be very near.

14 Id.
15 See id.
18 Weiss, *supra* note 16.
B. The NCAA and Section 1 of the Sherman Act

The college sports industry has not always been the commercial success that it is today. Therefore, it is fair to note that the actions of the NCAA were not always regarded as unjust, especially in its stages of infancy. Over time, however, the college sports industry grew drastically and became much more profitable, allowing for the overall focus of the NCAA to change. The shift moved from only focusing on health and safety concerns, to adding focus to other areas intended to expand the industry and create a profitable market.\footnote{Edelman, supra note 1, at 65.} However, given such a change, the NCAA did not believe that it should abandon its principles of amateurism in order to allow for the sharing of the profits with the student athletes who are ultimately responsible for generating such profits. This stagnancy left the NCAA in a dangerous crossroad as it welcomed vulnerability to legal scrutiny. It was only a matter of time before the NCAA could no longer escape the chance that legal woes may emerge at any moment, and eventually those legal woes did emerge. It seems as if the law has finally caught up to the NCAA, and its principles are now under a magnifying glass.

The “no pay” rules are under a vigorous attack and are argued to be in direct conflict with antitrust principles. More specifically, “[s]ection one of the Sherman Act prohibits contracts, combinations, or conspiracies in ‘restraint of trade or commerce.’”\footnote{Richard E. Kaye, J.D., Annotation, Application of Federal Antitrust Laws to Collegiate Sports, 87 A.L.R. FED. 2d 43 (2014).} The courts have further interpreted this to mean that it prohibits contracts that unreasonably burden trade.\footnote{Id.} Thus, this section of the Sherman Act relies on the notion of economic freedom and unrestricted
commercial activity. It is a notion that is contended to be absent from the NCAA system because it forbids compensation by not allowing true competition for the talents of these athletes.

Before diving into how the NCCA’s regulation is repugnant to antitrust principles, it would be helpful to briefly introduce the Sherman Act, and more specifically section 1. A successful challenge under section 1 of the Sherman Act requires the: (1) existence of a contract, combination or conspiracy; (2) such agreement unreasonably restrains trade; and (3) said restraint affects interstate commerce. Courts tend to focus on the last two requirements together. Courts have also analyzed the angle in terms of “threshold requirement[s]” that determine whether there is a hindrance of actual competition, and whether interstate commerce is affected in an economic way. Such analysis will be examined under one of three tests: “(1) per se, (2) rule of reason, or (3) quick-look” which vary depending on the level of scrutiny the claim will receive. These tests are viewed and discussed as if they were on a spectrum. The per se test, which lies on one end of the spectrum, is used when there is an egregious restraint on trade that is so obvious and restrictive, that it is per se wrong. Next, the rule of reason test lies on the other end of the spectrum, and is used when there can be justification for the restraint, and analyzes the true harm and effect of that restraint. Finally, the quick-look test, which mostly

---

22 Edelman, supra note 1, at 70.  
23 Id.  
24 Id. at 71.  
25 Id. at 72.  
26 Id.  
27 Id. at 73.  
28 Id.  
29 Id.  
30 Id. at 74.
favors the plaintiff, is utilized when there are anticompetitive effects at play.\textsuperscript{31} Courts have used both the rule of reason and quick-look tests to analyze these issues.\textsuperscript{32} These tests are important, as the context in which these issues are framed can define the outcome of a case.

After an analysis of the elements, it is fairly easy to conclude that the NCAA’s “no pay” policies, as they stand now, are in violation of antitrust laws; both in principle and in statute. Antitrust principles at their core are aimed to protect against unfair competition practices.\textsuperscript{33} The fact that the NCAA prohibits student athletes from being able to freely contract for deals which may yield economic advancement and prosperity is a clear example. In prohibiting the various NCAA institutions from attracting players through any means they have available, it not only inhibits competition, but it hinders them from getting the highest possible economic gain. The NCAA argues that amateur sports require a “level playing field” so everything is “fair”, and therefore prohibit player compensation as a control mechanism to achieve this.\textsuperscript{34} However, that kind of control is exactly what antitrust principles seek to prohibit.\textsuperscript{35} The NCAA, in its attempt to protect amateurism, has effectively created a body that promotes anti-competitive ideals, because it sets the rules regarding economics surrounding college sports.

Crafting a formidable argument to prove the existence of a contract, agreement, or conspiracy will not be difficult. The NCAA relies on ideals of amateurism for the reasons briefly discussed above.\textsuperscript{36} These ideals, however, are presented to the student athletes

\begin{footnotes}
\footnotetext[31]{Id.}
\footnotetext[32]{Id.}
\footnotetext[33]{Antitrust, CORNELL U. L. SCH., http://www.law.cornell.edu/wex/antitrust (last visited Jan. 6, 2015).}
\footnotetext[34]{Strauss, supra note 13.}
\footnotetext[35]{Wheel, supra note 9.}
\footnotetext[36]{Strauss, supra note 13.}
\end{footnotes}
formally.\textsuperscript{37} During an exciting tradition known as “signing day”, high school senior athletes sign a national letter of intent (NLI) which creates a “binding agreement” between the athlete and the prospective institution.\textsuperscript{38} The NLI is a NCAA managed program that prompts these athletes to sign on the dotted line.\textsuperscript{39} From the moment the student athletes sign, they are locked in for at least one year, making all NCAA rules applicable.\textsuperscript{40} When committing to play a sport at a NCAA school, student athletes sign their economic livelihoods away via agreements and contracts.\textsuperscript{41} Thus, the requirement for a contract or agreement is satisfied. For the purposes of a formidable suit, establishing the existence of a contract, conspiracy, or agreement should be able to be met without a hitch.

The “no pay” regulation is also an unreasonable restraint of trade, which affects interstate commerce as the NCAA has effectively engaged in wage-fixing regarding the pay of student athletes.\textsuperscript{42} When the NCAA agreed that student athletes would not be paid, they essentially set a predetermined wage at zero dollars.\textsuperscript{43} Thus, fixing the wage does not allow for competition to flow freely.\textsuperscript{44} Student athletes are to choose a member institution based on the program alone.\textsuperscript{45} Such a practice may seem to be in line with the NCAA’s amateurism ideal; but it is undoubtedly still an unreasonable restraint on trade under the rule of reason test. The NCAA is engaged in

\begin{flushright}
\textsuperscript{38} Id.
\textsuperscript{39} See id.
\textsuperscript{40} Id.
\textsuperscript{41} Edelman, supra note 1, at 66.
\textsuperscript{42} Id. at 76.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} Id. at 75.
\end{flushright}
countless practices that implicate interstate commerce and trade. Examples of such practices include negotiation and execution of ticket sales, interstate travel for games and events, equipment purchases, merchandise sales, and broadcasting agreements, just to name a few.

A notable issue that should be addressed when analyzing wage fixing is the classification of the student athlete. The courts have typically done a wage fixing analysis with employees, and unfortunately student athletes have not been classified as such. However, many strong arguments can, and have, been made to challenge this very notion. Many argue that the idea of “a student-athlete” is a myth, a legal fiction. Furthermore, the NCAA standard that purports to make student athletes’ education a priority is nothing more than an empty principle. It is a concept, pushed by the NCAA, to uphold its amateurism principles in order to get around antitrust violations. In reality, the student athlete is no less an employee than the coaches. One can go to almost any Division I school and ask a student athlete if they actually feel like a student; and more than likely his or her answer would be “no.” More often than not, the amount of time and energy the student athletes devote to their sport far outweighs the time devoted to their schooling. In fact, a study conducted by the NCAA found that Division I football players spend over 43 hours a week with their sport, while only spending 38 hours per week towards


\[\text{Id.}\]

\[\text{Edelman, supra note 1, at 77.}\]

\[\text{Id.}\]

\[\text{Id. at 78}\]


\[\text{Id.}\]

\[\text{Id. at 74.}\]

\[\text{Id. at 98-100, 106-107.}\]
schoolwork.\textsuperscript{55} There is no set number of hours per week defined by the Department of Labor or the Fair Labors and Standards Act which qualifies a person as full-time.\textsuperscript{56} However, it is required that a person be paid overtime once they reach 40 hours a week.\textsuperscript{57} This is typically why a person is considered full-time when they work 40 hours a week.\textsuperscript{58} It is clear that since each athlete spends more time on his or her respective sport than education, the time they spend on their sport can be equated to what most consider as a full-time job.\textsuperscript{59}

The NCAA claims its “no pay” rule is justified because of its dedication to promoting amateurism with student athletes. In reality, the rule is an exploitation of the time, efforts, and talents of young people. The rule allows the NCAA to realize massive gains in the billions, while student athletes receive a mere scholarship; there is no comparison. The restriction is a wage-fixing scheme that hinders trade. It does a disservice to member schools across the nation by making it difficult for them to freely and actively compete for the top athletes; and it causes harm to the student athletes themselves as they are deprived of fair and just compensation for their skills in their respective sports. The rule is in direct violation of section one of the Sherman Act, as the NCAA has an agreement with student athletes which is an unreasonable restraint on trade, and affects matters of interstate commerce. The Sherman Act commands that student athletes should be given the chance to bargain freely with schools across the country before signing away their talents for no outside compensation, other than a “sham” scholarship.

\textsuperscript{57} \textit{Id}.
\textsuperscript{58} \textit{Id}.
\textsuperscript{59} McCormick & McCormick, \textit{supra} note 51, at 100, 106.
II. THE GAME CHANGERS: ANTITRUST LAWS AND AMATEUR SPORTS

All of the pieces for an impressive, and possibly successful, challenge to the NCAA system have finally been placed together and put into action. The attack on NCAA compensation was mostly addressed *arguendo* up until recently. Two very efficacious lawsuits focused on football and basketball, the most profitable college sports, and have sought to bring these issues to court. Although they are not the first suits to challenge the NCAA, they are arguably the most influential.

In 2009, Ed O’Bannon led a group of plaintiffs in a class action lawsuit against the NCAA. 60 In short, the plaintiffs claim that the NCAA compensation cap, which includes a ban on profit share with student athletes from the use of their individual likenesses, is a violation of antitrust law. 61

More recently, in early 2014, a renowned sports lawyer, Jeffery Kessler, filed a class action antitrust lawsuit on behalf of several complainants against the NCAA. 62 With a slightly different focus than the O’Bannon case, this suit is an attempt to have compensation caps, in general, lifted for football and basketball players. 63

A. O’Bannon v. NCAA

The *O’Bannon v. NCAA* case is a strategic “strike at the delicate balancing act that the NCAA has long performed.” 64 Ed O’Bannon, the lead plaintiff, is a former University of California at Los Angeles (UCLA) basketball star, who challenges that the NCAA is still

61 *Id.*
63 *Id.*
64 Streeter, *supra* note 60.
profiting off of “DVDs and old reruns” with him, and people like him, yet the rules prohibit them from seeing any money.\textsuperscript{65} The suit plans to begin an assault on the unfair practices of an organization that reaps billions of dollars in revenue, while failing to allocate fair shares to student athletes who are responsible for such income.\textsuperscript{66} The case focuses on a particular facet of the compensation cap policy that denies these athletes a profit-share in sales of merchandise and paraphernalia, which uses or invokes their personal likeness.\textsuperscript{67}

The plaintiffs allege that the NCAA engaged in price-fixing regarding athletes’ images.\textsuperscript{68} This forbids them from being able to profit off of their own images, which are used in video games and other merchandise, essentially setting the price of their image to nothing.\textsuperscript{69} Such a practice is banned by the Sherman Act as repugnant to the concept of free trade. Therefore, the plaintiffs argue that according to the law, the wage fixing in which the NCAA is engaged is an illegal restraint on trade.\textsuperscript{70}

Recently, United States District Judge Claudia Wilken for the Northern District of California, issued a massive and pivotal ruling in the case, which prolonged over the course of five years.\textsuperscript{71} In a 99-page opinion, where she revealed the findings of fact from the bench trial, she issued an injunction preventing the enforcement of NCAA rules which allow for a drastic limitation of the profit shares student athletes can receive.\textsuperscript{72} While this ruling most likely will

\textsuperscript{65} Id.  
\textsuperscript{66} Id.  
\textsuperscript{67} Id.  
\textsuperscript{68} Id.  
\textsuperscript{69} Streeter, supra note 60.  
\textsuperscript{70} Id.  
not go into effect until the 2016 season, it is already causing frenzy.\textsuperscript{73} This, however, does not mandate that student athletes be compensated, and it certainly does not mean free reign for student athletes to make millions, but it will create a visible increase in benefits for them.\textsuperscript{74} It allows for these NCAA member institutions to share the profits with their athletes, which can be done multiple ways.\textsuperscript{75} Judge Wilken suggested that the NCAA could do so by raising athlete scholarship values to cover the full cost of attendance, including the cost of transportation and other incidentals, as well as by putting the money in trust funds for them to access after college.\textsuperscript{76} The Judge also suggested that the NCAA could cap this amount as well, and avoid more antitrust violations.\textsuperscript{77} If the school chooses to cap the amount, it may not “be less than $5,000.00 in 2014 dollars for every year the athletes remain academically eligible.”\textsuperscript{78} This may mean that some players could see thousands of dollars upon their departure from college sports.\textsuperscript{79} Some players who remain on a roster for four years could possibly earn up to $20,000.00 minimum.\textsuperscript{80}

While this ruling is by no means the “stone that breaks the glass house” that is the NCAA, it is a big first step in the direction of a fairer system that reflects the “economic reality” we all know to be true: that the college sports business is booming.\textsuperscript{81} It gives member institutions a certain level of autonomy to set scholarships and values while still giving the NCAA a chance to

\textsuperscript{73} Id.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Berkowitz, supra note 72.
\textsuperscript{80} Id.
regulate.\footnote{Strauss & Tracy, \textit{supra} note 74.} This ruling could not have come at a better time, as it is time for the NCAA to allow for their member institutions to be able to do more for the student athletes who make college sports possible.\footnote{See id.} As the Judge so eloquently stated, “[a]lthough this case raises questions about athletic competition on the football field and the basketball court, it is principally about the rules governing competition.”\footnote{Findings of Fact and Conclusions of Law at 1, O’Bannon v. NCAA, No. 4:09-cv-03329 (N.D. Cal. Aug. 8, 2014), available at \url{http://i.usatoday.net/sports/Investigations-and-enterprise/OBANNONRULING.pdf}.} Fortunately, for some athletes, these rules that govern competition could be changed, as Judge Wilkens’s ruling can prove to “be a major blow” to the NCAA.\footnote{New, \textit{supra} note 71.}

\textbf{B. Jenkins v. NCAA}

Coming off the heels of a notorious 99-page ruling in the O’Bannon case, \textit{Jenkins v. NCAA} has a different approach than its predecessor. It focuses on NCAA violations, in a broader sense, beyond the singular issue that is the prohibition of compensation from one’s own likeness.\footnote{Jon Solomon, \textit{Two current athletes join Kessler’s lawsuit vs. NCAA, conferences}, CBS SPORTS (Oct. 30, 2014), http://www.cbssports.com/collegefootball/writer/jon-solomon/24775854/two-current-athletes-join-kessler-lawsuit-vs-ncaa-conferences.} The complaint highlights the unfairness of the NCAA system.\footnote{Id.} It alleges that the restrictions imposed by the NCAA and the power conferences have created a ceiling on compensation that should be paid to athletes, thus exploiting them, and cheating them out of millions of dollars in profits which are made by these member institutions.\footnote{Complaint and Jury Demand – Class Action Seeking Injunction and Individual Damages at 2, Jenkins v. NCAA, No. 3:33-av-00001 (D. N.J. Mar. 17, 2014), \url{available at http://a.espncdn.com/pdf/2014/0317/NCAA_lawsuit.pdf}.} College sports are big businesses, and the numbers prove it. For example, in the Big Ten, when looking at only one sport, football, Penn State made roughly a $45 million dollar profit during the 2010-2011
season. The complaint further alleges that the NCAA system has no legitimate justification, and the commercialized system truly does not have the interests of the student athlete in mind, as it claims to. In more specific terms, the suit is an actual illustration of the theoretical arguments that have been made in the past for an overhaul of the NCAA.

The suit demonstrates how the NCAA conspired and agreed to use an unlawful price-fixing scheme, by pointing to nineteen specific bylaws in the NCAA’s rule book that include financial aid rules, and prohibited payment form rules. For example, as alleged by the complaint, bylaw 15 essentially caps the amount a student athlete may receive to a “full grant in aid”, in spite of the fact that a student athlete may bring in a significantly larger amount of money to the program and to the school. Bylaws 12 and 16 prohibit any payment or benefits to athletes based on athletic services that they provide. Bylaw 13 prohibits schools from any recruiting inducements. Thus, all of these bylaws are not only interrelated, but also purposefully construed to eliminate free competition between schools for the talents of these athletes. The demand for elite student athletes is high, given the big business that is college sports, specifically football and basketball, as addressed in this complaint. However, the NCAA constrains that demand by imposing rules that are aimed to keep the money from athletes and eliminate their ability to contract for their services and talent with no justification besides a weak

89 Leroy, supra note 55, at 1107 (chart 2).
91 Id. at 12.
92 Id. at 13.
93 Id. at 13-14.
94 Id. at 14.
95 See id.
amateurism point. Such systematic elimination of competition is a strain on free trade, and thus a violation of antitrust law.

III. CONCLUSION

For over 100 years, the NCAA has wielded control over the college sports world, with its control growing as it becomes more and more profitable. It has imposed numerous regulations that come with stiff penalties for violations, and regulated everything down to the pay requirements. In recent years, the “no pay” rule has been under “fire” as athletes are finally fighting back. Presently, a couple of court cases are currently calling for a rigorous scrutiny of the rule under an antitrust Sherman Act challenge, and from the looks of it, it is working. While these particular cases are narrowly tailored to address the concerns of college football and basketball players, a victory could mean the start of a victory for all student athletes everywhere. For now, this is a huge step in the right direction for a fairer system that acknowledges all of the hard work that student athletes put in each day.

What we can now discern and take from these cases is the notion that the NCAA will not be able to continue carrying out “business as usual.” The courts have begun to chip away at a “cartel like” system that is said to exploit countless young men and women across college sports. Often, these student athletes risk their bodies and their livelihoods for a school that makes millions of dollars off of their efforts and talents; all while their compensation is capped at a scholarship that may not cover the full cost of tuition. These court cases and the talk surrounding the issue is ushering in a new era. The courts are beginning to take a hard look at the NCAA and its possible violations of antitrust law. After some athletes were brave enough to push the envelope and challenge an organization that has held power over them for so long, their efforts
are beginning to pay off. The various regulations aimed at keeping student athletes from sharing in profits in the name of amateurism are being weakened with each complaint and each ruling. The law is starting to acknowledge that these rules create an unreasonable restraint on trade. The law is starting to acknowledge that these rules hinder competition, and it is starting to recognize the unfairness that has been built into the NCAA regulations which deprive student athletes of potentially life-changing opportunities. It is also important to note that with new findings comes new challenges. These new developments regarding the NCAA and antitrust law have a domino effect as new issues come into the light, such as what would happen if the NCAA would operate in a “pure[ly] free market”.96

The NCAA, however, could have done much worse than it actually did. The O’Bannon ruling allows for caps of some sort, and also rejects the idea that student athletes should be able to contract for paid endorsements.97 Still, however, the NCAA is quite unhappy with the ruling of the court.98 So much so, that they are appealing the ruling.99 For now, the ruling is out there, and adjustments must be made in order to comply with the law.100 This is most definitely a landmark ruling that has forever altered the world of college sports.101

96 New, supra note 71.
97 Id.
98 See id.
100 See id.
101 See id.