

DOJ Fills in the Blank Spaces and Joins Several State AGs in Lawsuit Against the NCAA

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On January 18, the Department of Justice (DOJ) joined the multistate attorneys general (AG) lawsuit *Ohio, et al. v. NCAA*, challenging the National Collegiate Athletic Association’s (NCAA) Transfer Eligibility Rule. DOJ joins 10 states^[1] and the District of Columbia in the December 2023 civil antitrust lawsuit against the NCAA that was filed in the Northern District of West Virginia. Our December 19, 2023, [client alert](#) summarized this case.

The [amended complaint](#) alleges that the NCAA unreasonably restricts college athletes’ freedom to transfer between schools by limiting their eligibility to participate in intercollegiate sporting events if they transfer more than once during their college careers. Specifically, the lawsuit claims that the NCAA’s transfer rule unreasonably restrains competition in the markets for athletic services in men’s and women’s Division I basketball and Football Bowl Subdivision (FBS) football, as well as for athletic services in all other men’s and women’s Division I sports. The lawsuit further alleges that the transfer rule restriction limits college athletes’ bargaining power and harms both their educational and athletic experiences.

In response, the NCAA has argued that the lawsuit, if successful, will upend collegiate athletics by replacing the current transfer system with one of “perpetual and unchecked free agency.”^[2] The DOJ’s involvement in the lawsuit signifies a significant challenge to the NCAA’s efforts to uphold the status quo and its transfer restrictions. Notably, it is believed this is the first time the DOJ has signed on to a state-led antitrust lawsuit. Typically, the DOJ would first file a statement of interest in cases where the outcome is of significant concern. The DOJ opting to sign on to the suit here underscores just how significant this lawsuit is and can be for the future of college athletics.

In a January 18 press release, Assistant AG Jonathan Kanter of the DOJ’s Antitrust Division stated, “[w]e are proud to stand with our state law enforcement partners on behalf of college athletes across the nation.” He further remarked that, “NCAA Division I institutions compete with each other not just on the playing field or in the arena, but to recruit and retain college athletes. College athletes should be able to freely choose the institutions that best meet their academic, personal, and professional development needs without anticompetitive restrictions that limit their mobility by sacrificing a year of athletic competition.”^[3]

The DOJ’s involvement comes on the same day the House Innovation, Data and Commerce Subcommittee held a hearing titled, “NIL Playbook: Proposal to Protect Student Athletes’ Dealmaking Rights.” This hearing focused on the [FAIR College Sports Act](#), one of several bills in Congress aimed at governing name, image and likeness (NIL) at the federal level, which seeks to provide the NCAA with antitrust protections, codify that athletes are not employees, and prohibit schools from entering NIL deals with athletes. The hearing included witness testimony from NCAA President Charlie Baker, and other representatives from the collegiate sports community. The

NCAA's transfer eligibility rule was not part of this hearing.

We will continue to monitor this case, as well as any potential new lawsuits that may surface.

[1] The U.S., the states of Minnesota, Mississippi, Virginia, and the District of Columbia now join as co-plaintiff to the case against the NCAA, which included AGs from Ohio, Colorado, Illinois, New York, North Carolina, Tennessee, and West Virginia.

[2] *AP News*. "NCAA says a redshirt eligibility rule still applies, fears free agency if it loses transfer suit." Accessed January 27, 2024. <https://apnews.com/article/ncaa-transfer-rule-lawsuit-a590347ba720c287b477e8ef10c2f070>.

[3] See *Justice Department Joins Lawsuit Challenging National Collegiate Athletics Association's (NCAA) Transfer Eligibility Rule*, Office of Public Affairs (Jan. 17, 2024), available at <https://www.justice.gov/opa/pr/justice-department-joins-lawsuit-challenging-national-collegiate-athletics-associations-ncaa>.

Katie Condon also contributed to this article. She is not licensed to practice law in any jurisdiction; bar admission pending.

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