

Transfer of Power: Federal Court Temporarily Blocks the NCAA's Transfer Eligibility Rules

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On December 13, a West Virginia federal judge placed a temporary hold on an NCAA rule (NCAA Division I Bylaw 14.5.5.1) requiring certain student-athletes who transferred schools to wait a year before competing in games. This decision in *Ohio, et al. v. NCAA* comes after seven state attorneys general (AG) sued the NCAA on December 7 in the U.S. District Court for the Northern District of West Virginia over the NCAA's transfer eligibility rule. Led by the Ohio AG, the lawsuit is the latest in a line of high-profile actions challenging the NCAA's grip over college sports. Ohio is joined by AGs from Colorado, Illinois, New York, North Carolina, Tennessee, and West Virginia.

At bottom, the court's ruling blocked the NCAA from enforcing its multiyear transfer restriction for 14 days and prohibited the NCAA from enforcing its Rule of Restitution^[1] (Bylaw 12.11.4.2) during these 14 days. However, on December 15, the seven AGs and the NCAA agreed to convert the 14-day temporary restraining order (TRO) into a preliminary injunction, with the NCAA agreeing to suspend enforcement of its transfer restrictions through the end of the 2023-2024 spring sports season.^[2]

The [complaints allege](#) the NCAA transfer rule violates U.S. antitrust laws. NCAA bylaws delay the eligibility of certain student-athletes when they transfer schools. The complaints claim the rule "unjustifiability restrains the ability of these college athletes to engage in the market for their labor as NCAA Division I college athletes." Namely, the rule often requires student-athletes to sit out a year after a transfer before competing in games with their new school.

The groundbreaking decision the U.S. Supreme Court handed down in 2021 in *NCAA v. Alston* struck down the NCAA rules restricting education-related compensation and benefits for college athletes. Notably, the Supreme Court said the NCAA should not get special treatment under antitrust laws. After the Supreme Court's decision in *Alston*, the NCAA changed its rules to allow student-athletes to accept name, image, likeness (NIL) compensation.

While the new AG lawsuit is not a direct challenge to NIL rules, it can be interpreted as an attempt to chip away at the NCAA's remaining power to restrict student-athletes, especially in light of NCAA President Charlie Baker's December 5 letter proposing [sweeping changes](#) to the current NIL rules and overall college athletics landscape. The NCAA claims its transfer eligibility rule helps protect the amateur model of college sports by restricting the poaching of athletes, while the complaint in *Ohio, et al. v. NCAA* alleges the rule is causing more harm than good.

At the crux of the lawsuit is the NCAA's "discretionary" waiver process for transfer student-athletes, which allows

some student-athletes to participate immediately with their new teams if they can meet certain criteria. The lawsuit sought a declaratory judgment that the transfer rule violates Section 1 of the Sherman Act and an injunction that would prevent the NCAA from denying waivers under this rule.

However, the court's decision and the agreement between the parties, now allow for any student-athlete who has transferred more than once and has not been granted a waiver by the NCAA to be immediately eligible to play. Notably, the NCAA would not be allowed to punish student-athletes for playing during this time because of the Rule of Restitution suspension.

While the AG lawsuit has grabbed headlines, earlier in December a group of athletes filed a second antitrust lawsuit in a California federal court naming the NCAA and the five major sports conferences (the Power 5 conferences) as defendants. The lawsuit alleges the NCAA and its Power 5 conferences have "exercised their monopoly power in the labor markets for Division I college sport[s] by fixing the prices of scholarships for college athletes." The lawsuit also alleges that the conferences are making billions while the athletes receive next to nothing in comparison. In early November, a California federal judge certified three classes of current and former student-athletes, allowing for the [NIL-related cases to proceed as a class action](#).^[3] As originally brought, these cases challenged the NCAA's rules restricting the compensation that student-athletes can receive from the commercial use of their NIL, claiming that these restrictions amount to anticompetitive conduct in violation of the Sherman Act.

A wave of private litigation is not surprising in wake of the *Alston* decision as college student-athletes, both current and former, want to be made whole for alleged violations of federal antitrust laws. However, a coordinated, multistate effort by increasingly powerful and aggressive state AG offices significantly raises the stakes for the NCAA. The issue of student-athlete compensation affects every state and hundreds of thousands of current and former student-athletes across the U.S.

Now that the TRO was converted to a preliminary injunction, *Ohio, et al. v. NCAA* is expected to proceed to trial. We will continue to monitor this and related cases in 2024, and expect continued scrutiny from state AG's, as well as additional lawsuits.

^[1] The NCAA's Rule of Restitution allows the NCAA to vacate wins or records for violations of its bylaws.

^[2] The NCAA had initially published a [letter](#) to its member-institutions explaining the impact of the TRO on student-athletes with pending transfer waiver request during the 14-day TRO.

^[3] This class action consolidated two separate actions: (1) *House v. NCAA*, which was brought by Sedona Prince, a current student-athlete on the University of Oregon's women's basketball team, and Grant House, a current student-athlete on Arizona State University's men's swimming and diving team; and (2) *Oliver v. NCAA*, which was brought by Tymir Oliver, a former student-athlete on the University of Illinois' men's football team.

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