

Intercollegiate Athletics: The Only Constant is Change

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Evolution of college sports (substantial changes from 19th to 21st century)

Post-Civil War origins

Local and regional internal governance

1906 NCAA (*amateur/education model*; unique to USA; one school, one vote)

Cf NFL (1922) NBA (1940s) WNBA (1990s)

For profit entertainment businesses w/ unionized players as employees
League commissioner “best interests” power

2025 NCAA

2022 Constitution (Divisional governance; schools-only educational benefits; S-A
NIL rights and deals w/ only 3d parties = *commercial/education model*)

Division I FBS (4 Autonomy, 6 Non-Autonomy), FCS, Basketball Subdivision

Division II

Division III

1,100 nonprofit member schools and 100 conferences collectively product 20+
men’s women’s sports; only 20-25 athletic departments net revenues; university
subsidies w/ declining enrollment of 18-year-old students

External Legal Regulation

No national sports minister or college sports-specific federal laws

1906-1984: K and LPA (judicial deference if “reasonable”)

Bd of Regents (1984) (output market restraint “unreasonable” and violates Sherman 1

Stevens dicta: “In order to preserve character and quality of product

Rehnquist & White: college sports different from pro sports

1984-2014: per se legality of S-A eligibility (e.g., amateurism) rules

O'Bannon (2014)

J. Wilken: COA + \$5K (i.e., pro rata revenue sharing)

9th Cir. majority: if “cash sums untethered to educational expenses . . . no defined stopping point”

Alston (2021)

Narrow application of LRA

Didn't consider “across-the-board challenge to [S-A] compensation restrictions”

Kavanaugh concurrence: limiting S-A compensation and benefits unrelated to education no different than pro league limits on employee compensation

Post-*Alston*:

Predictability (antitrust law)

Judicial use of LRA to invalidate NCAA and Division I rules

Proposed House settlement (past damages + future revenue sharing)

Uncertainty (application of other federal laws)

FLSA?

NLRA?

Title IX?

Tax?

Congressional action?

Commercial/educational model or commercial/minor league professional model for some intercollegiate sports?

Objective: equitable revenue sharing without professionalization and adverse effects on intercollegiate athletic participation opportunities and access to higher education