

## Student Athletes Oppose Motion to Dismiss FLSA Claims in Light of Supreme Court's Alston Opinion

In October 2019, Ralph "Trey" Johnson filed a putative class action lawsuit in the United States District Court for the Eastern District of Pennsylvania against the National Collegiate Athletic Association (NCAA) and a number of universities alleging that college student-athletes are employees who are entitled to pay under the Fair Labor Standards Act (FLSA). Judge John R. Padova ordered the parties to submit supplemental briefing on the Defendants' Motions to Dismiss in light of the Supreme Court's June 21, 2021 opinion in *National Collegiate Athletic Association v. Alston*. The *Alston* decision held that the NCAA could not bar certain education-related benefits (such as tutors or computers) and left open the door for a direct challenge to the NCAA's prohibition on paying athletes. In their supplemental briefing, Plaintiffs in the *Johnson v. NCAA* action argued that "although *Alston* ruled on whether a fact-specific test should be used in determining whether the NCAA's compensation rules violated the Sherman Act, the Court's reasoning applies with equal force to whether similar tests should be used under the FLSA to determine whether student-athletes are employees." Plaintiffs asserted that "Justice Kavanaugh's concurrence makes clear that the foundational tenet of college sports—that student-athletes should not be paid at all despite generating billions of dollars in revenue for the NCAA and its member schools—is legally untenable..." By contrast, Defendants contend in their supplemental submission that *Alston* "has no implications" for the *Johnson v. NCAA* litigation, and *Alston* "is solely concerned with whether the lower courts properly "struck down NCAA rules limiting the education-related benefits schools may offer student-athletes." Defendants argued that the case is not related to the "education-related benefits" that *Alston* addressed, but rather concerns "'compensation related to athletic performance'—a subject of NCAA rules that the lower courts in *Alston* 'refused to disturb,' and which rulings 'the student-athletes [did] not challenge' before the Supreme Court." While Defendants' Motions to Dismiss remain pending in the Eastern District of Pennsylvania, the *Alston* ruling, and Justice Kavanaugh's concurring opinion, are likely to spawn additional challenges to the NCAA's regulations. Click here to read the Supreme Court's June 21, 2021 [Alston](#) opinion.

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