Preservation Of Amateurism And The Commercial Regulation Of NCAA Sports

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Currently, no issue is more important to the multi-billion dollar industry of college athletics than the legal preservation of the NCAA's unique form of "amateurism." The NCAA's version of "amateurism" refers to regulations that restrict student-athlete compensation to the full cost-of-attendance, an amount set by each school that covers tuition, books, room and board, fees, and some miscellaneous cost-of-living expenses. The NCAA and its media partners push the position that amateurism is vital to the continued commercial success of college football and college basketball because consumers would lose interest in those products if athletes were to be compensated with amounts higher than what they are compensated with currently. This notion stems from Justice Stevens' seminal statements in the Supreme Court decision, NCAA v. Board of Regents (1984); statements which a progeny of district and appellate circuit courts have relied upon in protecting, from judicial scrutiny, all regulations that the NCAA deemed necessary to preserve the "revered tradition of amateur athletics" (Baker & Brison, 2016: p. 346; quoting Board of Regents, 1984, p. 120).

For the better part of three decades, judicial respect for preserving amateurism within college sports provided the NCAA with fortification from a barrage of legal challenges brought by student-athletes (Baker, Maxcy, & Thomas, 2011). Relatively recent legal losses in commercial litigations like O'Bannon v. NCAA (2015) and In Re NCAA Student-Athlete Name & Likeness (Keller, 2013) from the Ninth Circuit, and Hart v. EA Sports, Inc. (2013) from the Third Circuit, however, demonstrate a decrease in the judicial deference that fortified the NCAA, and its business partners, from antitrust law for most of its existence. The NCAA now appears vulnerable to legal challenge. Two pending antitrust actions (Jenkins v. NCAA and Alston v. NCAA) exacerbate the need for research aimed at guiding the courts in the resolution of legal issues which potentially could change the way the NCAA regulates the business of college athletics.

The central purpose of this presentation is to examine the legal issues currently pending against the NCAA based on the current status of the "procompetitive presumption" that consumer interest in the NCAA's intercollegiate sport products depends on the preservation of amateurism. The presentation will include a doctrinal legal research review of the antitrust theories and applications that were central to the most recently-resolved, and currently pending, cases filed by college athletes against the NCAA. Our review of those cases and the literature revealed that the Ninth Circuit in O'Bannon (2015) interpreted Justice Stevens' presumption of validity for the NCAA as a procompetitive justification rather than a quasi-exemption and this change in legal treatment has left NCAA regulations vulnerable to antitrust challenges. The NCAA continues to caution that the success of intercollegiate athletics depends on amateurism and this insistence is similar to concerns asserted by some within the International Olympic Committee prior to its shift in policy on amateurism. This presentation will use the pending actions in the US involving the NCAA to address the legal value courts, arbitrators, and international sport organizations have placed on amateurism. As sport continues to evolve as a commercial industry, the concept of amateurism will continue to generate legal interest and studies are needed to address its importance and legal validity.

References

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