

Jeffrey Kessler Tells Law360 NCAA Athlete Case is Part of Social Justice Push

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A recent Ninth Circuit decision striking down NCAA rules limiting education-related benefits for athletes could pave the way for more substantial changes to college sports amid a much broader push for racial “fairness and justice” in America. Jeffrey Kessler, Winston & Strawn co-executive chairman and sports law practice co-chair, recently discussed this decision with Law360.

Three classes of college athletes, representing FBS college football and Division I men’s and women’s basketball, sought to strike down all of the NCAA’s rules that prohibit schools from offering compensation and benefits that exceed the cost of attendance. They argued that such restrictions prevent athletes from realizing the full value they bring to schools, particularly as college sports has become a multi-billion-dollar business while many of the athletes and their families struggle to pay bills. If athletics conferences could make their own rules, the plaintiffs said, it would lead to fewer restrictions and more money for college athletes because the conferences would compete against each other to develop a fair system.

The NCAA argued that if athletes are allowed to receive greater benefits, it would destroy the purported “amateur” nature of college sports and reduce consumer demand. In April, the Ninth Circuit found that the lower court had appropriately held the restrictions to be unlawful and prohibited the NCAA from continuing its limits on benefits tied to education.

Commenting on the outcome, Jeffrey said the athletes’ expert expects that the ruling will open the door for at least \$200 million more in additional benefits for the class members each year than they currently receive. This could take various forms, including tuition for graduate schools and potential cash awards for academic achievements.

Jeffrey stated that the \$200M annual estimate in new benefits could turn out to be far greater, as the Power Conferences might determine to make the new benefits available to college athletes across various sports, beyond just football and men’s and women’s basketball. He further commented that “I am hopeful that, by three or four years down the line, the NCAA is entirely out of the business of regulating compensation of college athletes and that the conferences are competing against one another to set their own rules, which will result in a fairer system... for all colleges athletes.”

In a related development, attorneys at Winston & Strawn, together with Hagens Berman Sobol Shapiro LLP and Pearson Simon & Warshaw LLP, recently [sent a letter](#) to congressional leaders, on behalf of the college player

classes they represent, arguing against any federal legislation requested by the Power Conferences to provide them with any form of antitrust immunity. The letter said college athletes are “particularly vulnerable to exploitation and should not be deprived of their antitrust rights.”

You can read the full Law360 article [here](#) (subscription required).

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