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Case of the Month

U.S. Supreme Court upholds order preventing the NCAA from limiting education-related benefits to student-athletes.

Student-athletes sued the National Collegiate Athletic Association (NCAA) in federal district court in California, alleging that the NCAA's rules limiting various benefits that conferences and school members may provide to football and basketball student-athletes violate antitrust law in the federal Sherman Act, [15 U.S.C. § 1](#). Analyzing the limits under the rule of reason developed for antitrust challenges, the court held that the limits on education-related benefits, such as computers and academic equipment, post-eligibility scholarships and paid internships, tutoring, and study-abroad expenses, violate antitrust law by limiting competition more than necessary to achieve the NCAA's stated procompetitive goal of increasing demand for sports played by student-athletes by maintaining their amateur nature. However, the court allowed the NCAA to limit benefits unrelated to education, such as athletic scholarships, and to set limits on cash awards for academic achievement that are no lower than cash awards for athletic achievement. The student-athletes and the NCAA both appealed.

The Ninth Circuit Court of Appeals agreed with the district court that the NCAA's limits on benefits had significant anticompetitive effects and that only the limits on benefits unrelated to education furthered the limits' purpose of increasing demand and competition. The appellate court also agreed with the district court that the injunction would not significantly increase the NCAA's costs and was not impermissibly vague in allowing the NCAA, subject to court approval, to determine the benefits that are related to education and affirmed the injunction. The NCAA appealed.

The U.S. Supreme Court began its review by explaining that a rule-of-reason analysis requires a factual assessment of a market restraint to determine its actual effects on competition and that the district court had appropriately held that the NCAA's limits on education-related benefits restricted competition more than necessary to achieve the goals of increasing demand and competition. The Court also rejected the NCAA's additional arguments, including that the district court was micromanaging its business, noting that the court did not require the NCAA to impose the least restrictive limits on benefits and allowed the NCAA to define the benefits that are education-related and to restrict benefits unrelated to education. The Court affirmed the injunction. [Nat'l Collegiate Athletic Ass'n v. Alston](#), 141 S. Ct. 2141 (June 21, 2021).

Why Is This Case Significant?

This is a narrow case directly affecting the NCAA, its conferences and member schools, and student-athletes competing in NCAA sports, but may serve as an example for future challenges to collegiate sports associations and their limits on benefits to student-athletes.

Highlights

[Update 41](#) is now available.

New or Updated on eLaw:

[Texas Governor Suspends Certain Provisions of OMA Due to Coronavirus \(COVID-19\)](#)

[End of OMA Suspension Order on September 1, 2021](#)

Resources

[Texas Higher Education Coordinating Board](#)

[Texas Legislature](#)

[Texas Statutes](#)

[Texas Attorney General](#)

[U.S. Department of Education](#)



From the Courts and the Attorney General

Governance

The Texas Attorney General considered the statutory requirement that a candidate for public office must have resided continuously in Texas for the previous 12 months and in the territory from which the office is elected for the previous 6 months. The attorney general concluded that a candidate's residency, which is defined by Texas Election Code section 1.015, is determined by both the candidate's intent and physical presence. Tex. Att'y Gen. Op. No. [KP-377](#) (July 14, 2021).

Business and Finance

University did not commit a taking under the Texas Constitution [takings clause](#) or the U.S. Constitution [Fifth Amendment](#) that would have required it to compensate a photographer whose copyrighted photograph the university downloaded from his website and displayed for university promotion without obtaining permission or providing compensation. The photographer could, however, seek an injunction to prevent the university from infringing on the copyright. [Jim Olive Photography v. Univ. of Houston Sys.](#), No. 19-0605, 2021 WL 2483766 (Tex. June 18, 2021).

Personnel

Community college did not terminate an employee because of her age in violation of the [Texas Commission on Human Rights Act](#) (TCHRA) or in retaliation for reporting concerns about the college's internal procedures to law enforcement in violation of the [Texas Whistleblower Act](#). [Houston Comm. Coll. v. Lewis](#), No. 01-19-00626-CV, 2021 WL 2654141 (Tex. App.—Houston [1st Dist.] June 29, 2021, no pet. h.).

University job applicant failed to show that university staff comments made during her interview revealed intentional age discrimination in denying her the job in violation of the [Age](#)

[Discrimination in Employment Act](#) (ADEA) and the TCHRA. A separate former employee failed to show the university terminated her in retaliation for opposing the comments or for other protected conduct in violation of the ADEA or TCHRA. [Oldenburg v. Univ. of Texas at Austin](#), No. 20-50648, 2021 WL 2549905 (5th Cir. June 21, 2021).

University professor who was disciplined for making sexually harassing comments to students failed to show that the discipline was retaliation in violation of [Title IX of the Education Amendments of 1972](#) for participating in the investigation. The professor failed to plausibly allege that his comments were protected under the U.S. Constitution [First Amendment](#) or show that the university failed to follow its investigation procedures in violation of his due process rights under the U.S. Constitution [Fourteenth Amendment](#). [Trudeau v. Univ. of N. Texas](#), No. 20-40532, 2021 WL 2908164 (5th Cir. July 9, 2021) (per curiam).

The Texas Attorney General opined that a county attorney may not appoint a natural person who is related to the attorney within three degrees by consanguinity or two degrees by affinity, such as the attorney's father-in-law, to a position compensated from public funds or fees of office under the nepotism law in Texas Government Code [section 573.041](#), which also applies to community college board members and other public officials. However, the law does not prohibit the appointment of a business entity, such as a law firm. Tex. Att'y Gen. Op. No. [KP-376](#) (July 12, 2021).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- A specified request for proposals. Tex. Att'y Gen. [OR2021-15211](#) (June 9, 2021);
- Information pertaining to a specified request for proposals. Tex. Att'y Gen. [OR2021-15413](#) (June 11, 2021);
- Evaluation or scoring information and the winning responses from a request for proposals. Tex. Att'y Gen. [OR2021-15895](#) (June 15, 2021);
- Information pertaining to a specified document and specified insurance coverages. Tex. Att'y Gen. [OR2021-16004](#) (June 16, 2021);
- A particular report involving a named individual. Tex. Att'y Gen. [OR2021-16693](#) (June 23, 2021);
- Communications sent to or from 7 district employees and officials pertaining to 12 specified terms during a specified time period. Tex. Att'y Gen. [OR2021-16951](#) (June 25, 2021); and
- A specified solicitation. Tex. Att'y Gen. [OR2021-17054](#) (June 28, 2021).



Recent Regulations and Guidance

The Texas Department of Insurance amended [regulations](#) concerning licenses for fire extinguishers, fire alarms, and fire sprinklers.

The Texas Comptroller amended a [regulation](#) concerning procedures for determining property tax exemptions for motor vehicles leased for personal use.

The Texas State Library and Archives Commission amended a [regulation](#) expanding TexShare Library Consortium affiliate membership to include libraries that are components of accredited institutions of higher education.

The Texas Ethics Commission amended a [regulation](#) defining political advertising to address communications made by text message.



In the News

The Texas Governor [renewed](#) the disaster proclamation issued for all counties in Texas due to the COVID-19 pandemic.

The Texas Governor [lifted](#) the suspensions of certain provisions of the Texas Open Meetings Act (OMA) that were enacted in response to the COVID-19 pandemic. All provisions of the OMA will be effective as of September 1, 2021.

The Statewide Health Coordinating Council has [updated](#) its Texas State Health Plan for 2021-2022.

The Texas Education Agency [announced](#) changes to procedures for school districts and charter schools to verify that contractors are fingerprinted in accordance with Texas Department of Public Safety requirements.

The U.S. Department of Education (DOE) [announced](#) it is accepting applications for grants under the Title VI Business and International Education Program until August 13, 2021. DOE [announced](#) temporary changes to the federal student aid verification process for the 2021-2022 award year in response to the COVID-19 pandemic.

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

DOE's Office for Civil Rights [published](#) a Q&A on the Title IX sexual harassment regulations.

DOE [announced](#) it is seeking written comments regarding the administration of the Public Service Loan Forgiveness Program by September 24, 2021.