Big Changes in Collegiate Athletics, and Bigger Ones Looming
By Jon Y. Vanderpool, 7/5/2021

The past two weeks have profoundly changed collegiate athletics. If you are one or know one, best to get some legal advice soon to maximize rights and interests to expanding forms of compensation available now and to come.

First came the Supreme Court's decision and NCAA vs. Alston issued June 21, holding that the long-standing label of amateur student-athletes no longer shields the NCAA from antitrust scrutiny. While the unanimous decision did not lift the prohibition on schools paying their athletes to play, it did lift strict limits on monopolistic-exploitative NCAA rules limiting "education-related benefits" schools may make available to athletes. Essentially, NCAA member schools are no longer limited to covering only athletes' undergraduate tuition, housing, and meals. Now, athletes can flex their student status, requesting if not expecting scholarships for post-eligibility graduate school, paid tutoring, post-graduate internships and/or placement services. But beyond the fairly limited applications of this ruling, which affirmed the decision by U.S. District Court (N.D. CA) Senior Judge Claudia Wilken (UC Berkeley and Stanford School of Law graduate) who conducted a 10-day bench trial before issuing a well-constructed, interests-balanced decision which the 9th Circuit Court of Appeals also upheld, the concurring decision of SCOTUS Justice Brett Kavanaugh signals that further erosion of NCAA rules limiting compensation for the time and effort college athletes expend to generate ever-increasing revenues for their schools.

Second came the July 1 effective date of laws passed in eight states permitting college athletes to monetize their renown by signing endorsement deals, licensing use of their likeness, and harnessing their expansive social media followings. Not surprisingly, the states enacting these rights — Alabama, Florida, Georgia, Kentucky, Mississippi, New Mexico, Ohio, Texas and California — are home to many NCAA powerhouse schools. No doubt these states rightly view these laws as providing lucrative financial incentives as a key decision factor for blue-chip recruits considering signing with schools in states that don't offer these rights. Importantly, enacting these rights is not new to amateur athletics. State Senator Nancy Skinner (UC Berkeley B.S. with a Masters in Education) who sponsored California's SB 206 "Fair Pay to Play Act" in 2019 with near unanimous support (the law is not scheduled to take effect until January 2023) noted that allowing college athletes to earn money from the use of their name, image, and likeness affords them the same rights as Olympic athletes.

The Supreme Court's decision in NCAA vs. Alston is worth the read, in part for its recounting the history of collegiate athletics, which for over 50 years increasingly paid players like mercenaries. One coach estimated that a rival team in the early 1900s spent over $200,000 a year on players. In the 1940s, University of Washington's halfback reportedly said: "Hell, I can't afford to graduate." The decision also tracks the emergence of the NCAA initially as a bastion of amateurism to keep money out of college sports, a circumstance that not only rewarded the wealthiest schools but also resulted in deaths of amateur athletes literally run over by the 'flying wedge' and other

methods carried out by bigger, stronger, faster players using superior equipment and incentivized by money. But over time, particularly with the advent of broadcasting rights from cable TV in the 1980s to more recent streaming services now, the NCAA and its member schools have reaped huge sums of money “behaving as an effective cartel.” The NCAA’s current March Madness broadcast contract is worth $1.1 billion annually. The Football Bowl Subdivision conference’s College Football Playoff is worth approximately $470 million per year. SCOTUS noted that these vast sums derive from players who don’t earn a penny for their talents, time and efforts.

Together, the NCAA vs. Alston decision and now-in-effect state laws mean that college athletes are now in a vastly improved position to leverage their talents and notoriety to their economic benefit. Tellingly, terms like compensation, wages, and labor are used throughout the Supreme Court’s decision, presaging the long overdue recognition that college athletes — while certainly deserving of “free” tuition, room and board as students – also deserve some fair and reasonable measure of compensation for the time and work they put into their ‘jobs’ far-exceeding the every-day responsibilities of fellow students not enrolled on a sport scholarship. Presently, that “compensation” will come in the form of more and better education-related benefits and monetizing the notoriety athletes cultivate among their loyal student and alumni followings.

Our firm has represented the rights and interests private and public sector employees going on 38 years, and we welcome the opportunity to expand upon our experience representing just about every occupation to guide college athletes and their families into this developing new frontier.