### IN THE

# Supreme Court of the United States

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, Petitioner,

v.

SHAWNE ALSTON, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

### PETITION FOR A WRIT OF CERTIORARI

JEFFREY A. MISHKIN
KAREN HOFFMAN LENT
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
4 Times Square
New York, N.Y. 10036

BETH A. WILKINSON WILKINSON WALSH LLP 2001 M St. N.W., 10th Floor Washington, D.C. 20036

Counsel of Record
LEON B. GREENFIELD
DANIEL S. VOLCHOK
DAVID M. LEHN
DEREK A. WOODMAN
SPENCER L. TODD
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. N.W.
Washington, D.C. 20006
(202) 663-6000
seth.waxman@wilmerhale.com



# **QUESTION PRESENTED**

Whether the Ninth Circuit erroneously held, in conflict with decisions of other circuits and general antitrust principles, that the National Collegiate Athletic Association eligibility rules regarding compensation of student-athletes violate federal antitrust law.



### PARTIES TO THE PROCEEDINGS

Petitioner, defendant-appellant below, is the National Collegiate Athletic Association.

Respondents, plaintiffs-appellees below, are Shawne Alston; Don Banks; Duane Bennett; John Bohannon; Barry Brunetti; India Chaney; Chris Davenport; Dax Dellenbach; Sharrif Floyd; Kendall Gregory-McGhee; Justine Hartman; Nigel Hayes; Ashley Holliday; Dalenta Jameral Stephens; Alec James; Afure Jemerigbe; Martin Jenkins; Kenyata Johnson; Nicholas Kindler; Alex Lauricella; Johnathan Moore; Kevin Perry; Anfornee Stewart; Chris Stone; Kyle Theret; Michel'le Thomas; Kendall Timmons; and William Tyndall.

Other defendants-appellants below were the American Athletic Conference; the Atlantic Coast Conference; The Big Ten Conference, Inc.; The Big 12 Conference, Inc.; Conference USA; the Mid-American Conference; the Mountain West Conference; the Pac-12 Conference; the Southeastern Conference; the Sun Belt Conference; and the Western Athletic Conference.

### CORPORATE DISCLOSURE STATEMENT

The National Collegiate Athletic Association is an unincorporated, non-profit membership association composed of over 1,200 member schools and conferences. It has no corporate parent, and no publicly held corporation owns 10 percent or more of its stock.

### RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

- A. House et al. v. NCAA et al., No. 4:20-cv-3919.
- B. Jenkins et al. v. National Collegiate Athletic Association et al., No. 4:14-cv-2758 (dismissed).



(ii)

# TABLE OF CONTENTS

				Page
QU	ES	ГЮ	N PRESENTED	i
PΑ	RTI	ES	TO THE PROCEEDINGS	ii
СО	RP	ORA	TE DISCLOSURE STATEMENT	ii
			PROCEEDINGS	
ΤА	BLI	E OI	F AUTHORITIES	V
			SBELOW	
			TION	
			RY PROVISION INVOLVED	
			CTION	
			NT	
~	Α.	The	e NCAA And Amateurism In College orts	
		1.	The NCAA administers intercollegiate athletics as an integral component of higher education	6
		2.	Board of Regents	9
		3.	O'Bannon	
	В.	Pro	ocedural History	12
		1.	District Court	12
		2.	Ninth Circuit	14
RE	ASO	ONS	FOR GRANTING THE PETITION	16
I.	Imi		NINTH CIRCUIT'S DECISION ATES AN ESTABLISHED AND WLEDGED CIRCUIT CONFLICT	16

(iii)



# **TABLE OF CONTENTS—Continued**

		Page		
A.	Consistent With This Court's Broader Joint-Venture Law, Board Of Regents Recognized That NCAA Amateurism Rules Are Presumptively Procompetitive And That The NCAA Needs Leeway To Adopt Such Rules	17		
В.	Most Circuits Have Understood Board Of Regents And American Needle To Require That NCAA Amateurism Rules Be Upheld Without Fact- Intensive Rule-Of-Reason Analysis	19		
С.	The Ninth Circuit Takes A Starkly Different Approach	22		
II. TH	E DECISION BELOW IS WRONG	24		
	E QUESTION PRESENTED IS RECURRING TO IMPORTANT	29		
CONCI	LUSION	33		
Cor	NDIX A: Opinion of the United States urt of Appeals for the Ninth Circuit, and May 18, 2020	1a		
APPENDIX B: Findings of Fact and Conclusions of Law of the United States District Court for the Northern District of California, March 8, 2019				
Un No	NDIX C: Permanent Junction of the ited States District Court for the rthern District of California, March 8,	167a		



# DOCKET

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

# **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

# **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

# **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

