

Blank Checks: The Ivy League Scholarship Rule and the Consolidation of Conference Power

J. Scott White and Ryan Rodenberg

Conference governance is the next frontier in antitrust litigation in college athletics. Conferences have their own bylaws, compliance staff, and power to negotiate broadcasting rights. In this article, we address the background, arguments, and implications of the lead test case in this space: *Choh v. Brown University*. Tamenang Choh, the lead plaintiff, filed this lawsuit against the Ivy League and its member institutions. The Ivy League has one of the most unique—and restrictive—rules in college athletics, and this will be a significant test case for conference governance in the post-*Alston* landscape. The language in the original Ivy League agreement, which is still effective today, states that institutions may not offer athletically related financial assistance to athletes at their institutions. *Choh's* complaint alleged the Ivy League rule violates the Sherman Act's prohibition of conspiracies in restraint of trade. The U.S. District Court for the District of Connecticut dismissed *Choh's* complaint, holding the plaintiffs failed to allege a relevant market.

In this article, we argue the district court's approach essentially provides conferences a "blank check" to coordinate horizontal restraints on athlete compensation and rights. This approach is flawed for a few reasons: it disregards the distinction between functional and economic substitutes, it ignores geographical restraints surrounding college decision-making for talented students, and it effectively exempts conference agreements from antitrust law. This approach contradicts precedent from the Supreme Court's decision in *Alston*, which emphasized the importance of assessing restraints in college athletics based on market realities. Courts should assume a conference may constitute a relevant market and apply the rule of reason, allowing fact-intensive inquiry into market realities and procompetitive justifications. Ultimately, the *Choh* case will have significant implications for the future of governance in college sports.

Keywords: antitrust law, labor law, college athletics, athletic scholarship, Alston

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Part I. Introduction

The Supreme Court’s opinion in *NCAA v. Alston*¹ foreshadowed a replacement for the NCAA as enforcer of rules that govern college athlete compensation: the athletic conference.² The terms of the *House* settlement³ accelerated this power shift, and athletic conferences now oversee the non-NCAA private enforcement arm responsible for promulgating and enforcing restraints on athlete compensation. When discussing the *House* settlement, NCAA President Charlie Baker explicitly referenced the increased role athletic conferences will play in enforcing restraints on athlete compensation:

With the defendant conferences leading administration and enforcement of the now approved settlement terms related to financial benefits, we will increasingly shift our focus at the NCAA away from enforcing rules prohibiting and limiting financial benefits in college sports, which has been the source of many of the recent challenges.⁴

Conference bylaws are inextricably connected with the revenue distribution systems shaping college sports. Institutions rely on conferences to negotiate media deals,⁵ enact rules defining roster sizes,⁶ and impose recruiting restrictions.⁷ Conferences also have the power to implement meaningful penalties in a timely manner. One of the most prominent examples of this was the Big Ten’s suspension of Michigan football head coach Jim Harbaugh during the 2023 season. NCAA investigators notified the Big Ten conference in October of 2023 that a Michigan staffer was directing a sign-stealing scheme.⁸ The NCAA’s investigation of the Wolverines did not result in immediate NCAA suspensions during the 2023 season, even though Michigan eventually won a National Championship with a head coach who, under

¹ 141 S. Ct. 2141 (2021).

² *Id.* at 2165. (“Individual conferences remain free to reimpose every single enjoined restraint tomorrow—or more restrictive ones still.”)

³ *In re Coll. Athlete NIL Litig.* (colloquially referred to as “House v. NCAA”), 545 F.Supp.3d 804 (N.D. Cal. June 15, 2020) (No. 20-cv-03919).

⁴ Charlie Baker, *A Letter From NCAA President Charlie Baker*, NCAA. <https://www.ncaa.org/news/2025/6/6/media-center-a-letter-from-ncaa-president-charlie-baker.aspx> (June 6, 2025).

⁵ See, for example, Wagner, B. (2019). *Report: ESPN, American Athletic Conference agree to \$1 billion media rights deal*. TCA Regional News, Chicago.

⁶ See, for example, 2023-24 Southeastern Conference Bylaws, <https://www.secsports.com/sec-by-laws> (last visited Jul 16, 2024).

⁷ *Id.*

⁸ Nick Bromberg, *Timeline: How the Michigan Sign-Stealing Scandal and Jim Harbaugh’s Suspension Unfolded* – Yahoo Sports, <https://sports.yahoo.com/timeline-how-the-michigan-sign-stealing-scandal-and-jim-harbaughs-suspension-unfolded-202315375.html> (last visited Jul 16, 2024).



NCAA bylaws,⁹ was responsible for the conduct of his staff members at the time of the alleged violation. Instead, it was Michigan's conference, the Big Ten, who suspended Jim Harbaugh for three games during the 2023 season for his alleged role in the sign-stealing scandal.¹⁰

Courts provide athletic conferences with substantial leeway under antitrust law.¹¹ In this article, we explore the frontiers of antitrust law as applied to conferences through the lens of one of the most restrictive conference rules in NCAA Division I athletics: The Ivy League's scholarship rule.

The Ivy League exists as one of the most unique – and restrictive – conferences in college athletics. The original Ivy League agreement formed in 1954 states: “The members of the Group reaffirm their prohibition of athletic scholarships. Athletes shall be admitted as students and shall be awarded financial aid only on the basis of economic need.”¹² This agreement was challenged on March 7, 2023, when a group of plaintiffs filed an antitrust complaint against the Ivy League in a federal district court in Connecticut.¹³ On October 9, 2024, Judge Thompson, sitting for the District Court of Connecticut, granted the Ivy League's motion to dismiss the complaint, holding that the plaintiffs failed to allege a properly defined market, amongst other defects.¹⁴ The plaintiffs filed an appeal to the Second Circuit Court of Appeals.¹⁵

Choh raises important questions for all antitrust cases involving conferences: Can a conference constitute a market for the purposes of antitrust analysis? If so, how should a court assess conference-level restraints? Our purpose is to question and explore what limits, if any, courts will impose on conference-wide agreements in a post-House and Alston landscape. If courts adopt the approach that a conference is not a market, this provides institutions with a blank check to coordinate horizontal

⁹ See NCAA Bylaw 11.1.1.1 (last revised July 16, 2014) (“Responsibility of Head Coach. An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within the program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach.”)

¹⁰ Heather Dinich, *Harbaugh Accepts Big Ten's 3-Game Suspension*, ESPN (2023), https://www.espn.com/college-football/story/_/id/38914714/michigan-jim-harbaugh-accepts-big-ten-3-game-suspension (last visited July 16, 2024).

¹¹ See *Tanaka v. University of Southern California*, 252 F. 3d 1059 (9th Cir. 2001).

¹² IVY MANUAL (2022) at 39 (quoting the 1954 Ivy League Agreement).

¹³ See Complaint, *Choh v. Brown Univ.*, No. 3:23-cv-00305-AWT. (D. Conn. March 7, 2023).

¹⁴ See Ruling on Motion to Dismiss, *Choh v. Brown Univ.*, No. 3:23-cv-00305-AWT. (D. Conn. Oct. 9, 2024).

¹⁵ See Appellant's Opening Brief, *Choh v. Brown Univ.*, No. 24-2826, (2nd. Cir. Jan. 2., 2025).



restraints on wages and athlete rights at the conference level. The outcome in *Choh* shows how current antitrust frameworks are ill-equipped to consider conference-level restraints in a system where revenue sharing is now available to institutions.

In Part II, we explore the history of the Ivy League and explain how the legal doctrine surrounding compensation restraints in college athletics has evolved. In Part III, we consider the arguments raised in *Choh v. Brown University* and review the district court's opinion in the case. In Part IV, we discuss the implications of the district court's decision in *Choh*. Specifically, we argue that if other courts adopt the market definition approach used by the district court, there will be little meaningful regulation of horizontal restraints between institutions in the same athletic conference. In Part V, we conclude the paper by summarizing our findings.

Part II. Background

Conference Governance and the Creation of the Ivy League

Conference governance existed before the creation of the NCAA and formed the basis of competition for college athletics in the late 1800s.¹⁶ The very beginning of intercollegiate sports in America traces back to Ivy institutions: a rowing meet between Harvard and Yale in 1852 was the first widely reported intercollegiate competition in America.¹⁷ In 1855, Harvard's rowing team fielded a coxswain who was not a student, giving the future Ivy League institution the distinguished accomplishment of having the first genuine eligibility dispute in American intercollegiate athletics.¹⁸

For the next century, Ivy League schools continued to pioneer intercollegiate athletics governance and cooperation, even though they were not formerly known as the Ivy League until 1954.¹⁹ As athletics became a way to distinguish institutions and compete for prospective students, institutions formed alliances to facilitate consistent scheduling and rules for competition. Harvard, Princeton, and Columbia formed the first intercollegiate football association in 1876, facilitating widespread competition

¹⁶ Guy Lewis, *The Beginning of Organized Collegiate Sport*, 22 AM. Q. 222, 223–24 (1970); Andrew Zimbalist, *Inequality in Intercollegiate Athletics: Origins, Trends and Policies*, 6 J. INTERCOLLEGIATE SPORT 5, 6 (2013).

¹⁷ Lewis, *supra* note 16, at 224.

¹⁸ See Zimbalist, *supra* note 16, at 5.

¹⁹ See generally Mark F Bernstein, *Football: The Ivy League Origins of an American Obsession* (2001).



amongst collegiate institutions.²⁰ The original goal of this cooperation—to facilitate competition for the purposes of recruiting a competitive student body—was accomplished. To this day, Ivy League schools maintain their reputation as the most competitive schools for prospective students.²¹ Preserving the nature and character of this competition then became the priority for these elite institutions.

The current iteration of the Ivy League (and the formal naming of the group as the “Ivy League”) was formed in 1954 in response to what the founding institutions viewed as a disturbing trend in intercollegiate athletics: the use of “ringers,” booster groups, and under the table payments to players that undermined what administrators coined as the amateur nature of intercollegiate athletics. The Ivy League responded to this trend by adapting the scholarship rule, which, nearly 70 years later, formed the basis of the complaint in *Choh*.

The Scholarship Rule

The scholarship rule was promulgated in the original Ivy League agreement of 1954 and became a core piece of Ivy League governance. Harvard Athletic Director Bill Bingham described the basis for the scholarship rule and similar restrictions: “Those of us who believe in amateur athletics want our college teams to be represented by students who are incidentally taking part in our sports rather than athletes incidentally going to college.”²² The Ivy League continues to rely on this theme, stating that competition should be “kept in harmony with the essential educational purposes of the institution.”²³

The Ivy League manual prohibits institutions from offering athletically-related financial aid to varsity athletes. Ivy League institutions may offer need-based aid to prospective students but may not offer scholarships based on athletic ability in excess of students’ needs. The Ivy League rule does not prohibit institutions from offering benefits incidental to participation in college athletics, such as nutritional assistance, travel expenses, gear, and, more recently, team entertainment.²⁴

²⁰ Lewis, *supra* note 16 at 229.

²¹ See *Ivy League Schools*, US News and World Reports, <https://www.usnews.com/education/best-colleges/ivy-league-schools> (last visited Aug 6, 2024) (discussing how “Ivy League schools are considered the most sought-after institutions of higher learning in the country and around the world”).

²² John Powers, *The Formation of the Ivy League*, Harvard University, <https://gocrimson.com/sports/2020/5/5/General-Core-Values-20151110.aspx?id=131> (last visited Apr 3, 2023).

²³ Ivy League Conference Website, “About the Ivy League”, https://ivyleague.com/sports/2017/8/13/HISTORY_0813173057.aspx (last visited April 3, 2023)

²⁴ See Ivy League Manual, 2022, at 54.



The full text of the rule in the 2022 Ivy League manual contains much of the original language from the original Ivy League agreement:

PART IV ELIGIBILITY: AMATEURISM

A. Principles

1. 1954 Ivy Agreement IV A-6, 7, 8

The members of the Group reaffirm their prohibition of athletic scholarships. Athletes shall be admitted as students and shall be awarded financial aid only on the basis of economic need.

7. No student-athlete shall be eligible who has received financial support from any source except (i) from personal or family resources; (ii) in return for services (other than of an athletic character) rendered through employment at normal wages; (iii) from financial aid awarded by or with the specific approval of the regular academic authority of the institution in which the player is a student; (iv) from Government grants to war service veterans or regularly enrolled members of ROTC units.

8. No student-athlete shall be eligible whose secondary education was subsidized or whose post-college education is promised by an institution or group of individuals not closely related to the family as a consideration for the student attending that particular institution.²⁵

The language of the agreement is notable for a few reasons. First, the mandate that “athletes shall be admitted as students” seems to discourage the use of special admission tracks for athletes to ensure that they are, in the words of Bill Bingham, “students who are incidentally taking part in our sports rather than athletes incidentally going to college.”²⁶ Next, not only does the Ivy agreement prohibit athletically-related aid, it also prohibits “financial support” from sources outside of those specifically exempted in section 7. Further, the terms “financial aid” and “financial support” are not defined in the original Ivy League agreement, which means that the interpretation of these terms likely changes in the same way the concept of amateurism has shifted for the NCAA.

²⁵ *Id.* at 41.

²⁶ See Powers, *supra* note 22. Despite this language, *The Harvard Crimson* noted that “recruited athletes often earn a boost in the admissions process.” Delano Franklin & Devin B. Srivastava. (2019, May 28). *The Athlete Advantage*, *The Harvard Crimson*. <https://www.thecrimson.com/article/2019/5/28/athlete-advantage-commencement-2019/>.



Courts historically afforded this and similar rules deference, but in 2022, the combination of the *Alston* ruling and the expiration of a statutory antitrust exemption that covered the scholarship rule.²⁷ The rule, which had existed for nearly 70 years prior to the *Choh* complaint, is now in uncharted territory.

The Rise and Fall of the “Ivy League” Antitrust Exemption

This uncharted territory is the result of the expiration of a little-known but highly impactful antitrust exemption that applied to the Ivy League schools’ scholarship policy. In 1994, Congress passed the “Improving America’s Schools” act, which, among many other changes, created a specific antitrust exemption for Ivy League institutions.²⁸ The language that protected the Ivy League was included deliberately after MIT and several other institutions were in the midst of litigation challenging their traditional practice of only applying need-based financial aid to their student population.²⁹ As part of the MIT settlement agreement, MIT agreed to provide need-blind admissions in exchange for the blessing from the federal government for the need-based aid program.³⁰ Senators Ted Kennedy and Howard Metzenbaum led the effort to extend this protection to other institutions, and, in 1994, Congress passed the “Section 568” exemption in the Improving America’s Schools Act, which would create immunity for Ivy League institutions over the next 28 years.³¹ The exemption included the following language:

(a) Exemption: It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree- (1) to award such students financial aid only on the basis of demonstrated financial need for such aid; (2) to

²⁷ For a discussion of the impact of recent court decisions on governance in the NCAA, *see generally* John T. Holden, Marc Edelman, Thomas A. Baker II. & Andrew G. Shuman, *Reimagining the Governance of College Sports after Alston*, 74 FLA L. REV. 427 (2022).

²⁸ 15 U.S.C. 568 (1994).

²⁹ For a more detailed discussion of the origins of the exemption, *see* Alan Cotler & Robert Litan, *Decision Time for the Ivy League: What the NCAA v. Alston Supreme Court Decision Means for the Ivy League’s Policy of Not Providing Athletic Scholarships*, Ivy Hoops Online (Jul. 25, 2021), <https://ivyhoopsonline.com/2021/07/25/decision-time-for-the-ivy-league-what-the-ncaa-v-alston-supreme-court-decision-means-for-the-ivy-leagues-policy-of-not-providing-athletic-scholarships/>. Litan served as deputy assistant attorney general during the Clinton administration and oversaw the settlement with MIT.

³⁰ *Id.* Ivy League admissions processes are also in a state of flux. The Supreme Court decided *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 US 181 (2023) in the 2022-23 term. This case challenged Harvard and University of North Carolina’s use of affirmative action in the admissions process, and the Court held that certain aspects of these processes were unconstitutional.

³¹ *See* Cotler & Litan, *supra* note 29.



use common principles of analysis for determining the need of such students for financial aid if the agreement to use such principles does not restrict financial aid officers at such institutions in their exercising independent professional judgment with respect to individual applicants for such financial aid.³²

The precise language of the exemption is interesting because, from a public policy perspective, it makes little sense to create an exemption for conduct that would be considered legal without an exemption. If agreements to limit financial aid awards to need-based aid were legal in the first place, why would an exemption be needed?

The exemption was renewed three times after 1994, but, after *Alston*, legislators were less willing to vote in favor of extending the exemption a fourth time.³³ The exemption expired in 2022, and by that point, public opinion regarding the exemption had turned, partially in response to the NCAA's losses in the *Alston* and *O'Bannon* cases. Senators Marco Rubio and Mike Lee authored a letter in opposition to the renewal of the exemption,³⁴ and, in light of the new tide of public opinion,³⁴ the exemption was not renewed by Congress. The Rubio and Lee letter criticized the exemption for restraining competition and facilitating a wealth transfer to these universities:

Whatever the case for granting the 568 Exemption in 1994 may have been, the facts now cause us to question whether it is still warranted. In effect, the 568 Exemption sanctions price-fixing agreements between competing universities and eliminates any incentive to reduce their cost of attendance through competitive financial awards to students. Unsurprisingly, the result has been artificially inflated costs of attendance, higher student debt, and a distorted higher-education market that is increasingly accessible only to the wealthy. In fact, since the Exemption was enacted in 1994, the endowments of 17 universities that utilized the Exemption have ballooned from approximately \$21 billion to \$233 billion.³⁵

The shield that protected the Ivy League was no longer law. Section 568's expiration opened the door for plaintiffs to challenge the Ivy League's financial aid rule, and a former Ivy League basketball player named Tamenang Choh accepted the invitation to sue the conference, which was now in uncharted territory.

³² 15 U.S.C. 568 (1994); *see also* Litan, *supra* note 29.

³³ Dan Murphy, *Ivy League Antitrust Exemption to Expire Friday*, ESPN (Sep. 30, 2022), https://www.espn.com/college-sports/story/_/id/34696671/congress-allows-ivy-league-antitrust-exemption-expire.

³⁴ Letter from Marco Rubio, United States Senator, Florida, and Mike Lee, United States Senator, Utah, to Jonathan Kanter, Assistant Attorney General, Antitrust Division, United States Attorney General's Office (August 22, 2022), <https://www.rubio.senate.gov/public/index.cfm/2022/8/rubio-lee-urge-doj-to-investigate-antitrust-compliance-restore-competition-in-higher-education>.

³⁵ *Id.*



Horizontal Restraints of Athlete Compensation: Alston and the Rule of Reason

Judicial approaches to horizontal restraints in college athletics have favored plaintiffs following the Supreme Court's decision in *NCAA v. Alston*.³⁶ In *Alston*, a group of athlete plaintiffs challenged the NCAA's restrictions on athlete compensation. The District Court applied the rule of reason to and made the following findings: First, NCAA member schools exercised market power in the market for athlete services and used this power to impose restraints on athlete compensation.³⁷ Second, the district court found the NCAA offered some plausible procompetitive justifications, such as integration and athletics and academics and consumer preference for a sporting product distinct from professional sports.³⁸ However, when applying the third prong of the rule of reason analysis, the court held these procompetitive outcomes could be achieved with less restrictive rules surrounding academic awards and expenses.³⁹

The *Alston* case eviscerated the defense that amateurism restraints should be given ample leeway, which was generally how courts approached the issue after the *Board of Regents* decision in 1984.⁴⁰ Justice Kavanaugh's concurrence in *Alston* signaled a growing skepticism of amateurism restrictions: "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate."⁴¹ If these same standards applied to a conference, conference rules restricting athlete compensation would be subject to the rule of reason analysis, which involves a careful assessment market realities. Yet, courts have been reluctant to impose this standard on conferences.

Conference Rules and Economic Power

One key point from *Alston* was that amateurism restrictions promulgated by a national governing association, like the NCAA, should be assessed under the rule of reason.

³⁶ 141 S. Ct. 2141 (2021).

³⁷ *Id.* at 2151-52.

³⁸ *Id.* at 2152-53.

³⁹ *Id.* at 2153-54.

⁴⁰ *NCAA v. Board of Regents of University of Oklahoma*, 468 U.S. 85 (1984). *See also Alston*, 141 S. Ct. 2141 (2021); Holden et al., *supra* note 27.

⁴¹ *Alston*, 141 S. Ct. at 2169 (Kavanaugh, J., concurring).



This aligns with other antitrust decisions from the Supreme Court which emphasize the importance of market realities. In *American Needle vs. NFL*,⁴² the Supreme Court assessed whether an apparel agreement among NFL was exempt from the Sherman Act because they characterized themselves as a single unit. The Supreme Court unanimously rejected the NFL's claim, emphasizing the role of careful scrutiny (as opposed to a focus on form) in antitrust analysis:

We have long held that concerted action under § 1 does not turn simply on whether the parties involved are legally distinct entities. Instead, we have eschewed such formalistic distinctions in favor of a functional consideration of how the parties involved in the alleged anticompetitive conduct actually operate.⁴³

Nearly a decade later, the *Alston* opinion indicated conferences could be a potential replacement for the NCAA as day-to-day enforcers of athlete compensation rules. The district court in *Alston* stated individual conferences could impose restrictions on education-related benefits even if the NCAA is prohibited from doing so.⁴⁴ Similarly, the Supreme Court's opinion in *Alston* makes numerous references to the idea that "conferences may adopt even stricter [restrictions]."⁴⁵ The majority declined to delineate how restrictive conferences may be, and potential plaintiffs will be keen to point out that a total ban on athletic scholarships is one of the most restrictive constraints on compensation a group of institutions can agree to.

Precedent from other circuits suggest courts provide leniency to conferences based on a belief that conferences do not constitute a market for the purposes of antitrust analysis. In *Tanaka v. University of Southern California*,⁴⁶ the Ninth Circuit considered soccer player Rhiannon Tanaka's challenge to the PAC-10s intra-conference transfer policy, which required athletes who sought to transfer within the conference to forfeit a season of eligibility.⁴⁷ Tanaka argued the transfer rule was an illegal restraint of trade under the Sherman Act, and she advocated for courts to use

⁴² 560 U.S. 183 (2010)

⁴³ *Id.* at 191.

⁴⁴ *Id.*

⁴⁵ *Id.* at 2165.

⁴⁶ 252 F.3d 1059 (9th Cir. 2001).

⁴⁷ *Id.* at 1061-1062.



the rule of reason to assess the merits of the transfer policy.⁴⁸ The Ninth Circuit upheld the district court dismissal of Tanaka’s complaint, claiming she failed to demonstrate the transfer policy had any anticompetitive effects in a relevant market.⁴⁹

The legality of conference-level restraints remains an open question following the *House*⁵⁰ settlement.⁵¹ Scholars have questioned the preclusive effect of any settlement agreement on future litigation involving the NCAA,⁵² and the *Choh* plaintiffs intervened to specifically exclude the Ivy League restraint from the releases included in the *House* settlement.⁵³ The plaintiff’s attorneys agreed to this exclusion and it was included in subse The lack of clarity surrounding the potential application of antitrust law to conference-level restraints led one commentator addressing the *Choh* case to conclude:

Antitrust litigation and the current methods of antitrust scrutiny are extremely confusing. Without better clarification, this area of law strays far from the Rule of Law, which requires all parties and lawyers to ‘be able to rely on what the law is, rather than what readers of tea-leaves predict that it might be in the future.’⁵⁴

In this commentator’s eyes, the only certainty in the *Choh* case would be that the outcome would be unpredictable, and “instead wholly dependent on the perceptions of the judge hearing the case.”⁵⁵

⁴⁸ *Id.* at 1062.

⁴⁹ *Id.* at 1065.

⁵⁰ 545 F.Supp. 3d 804 (N.D. Cal. 2021).

⁵¹ See Ryan Moore, *Poison Ivies: Price-Fixing In The Upper Echelon Of College Sports*, 26 TRANSACTIONS: THE TENNESSEE JOURNAL OF BUSINESS LAW 6 (2024); see also Kamron Cox, *Exploring Key Antitrust Implications of Conference Consolidation in College Football*, 89 Mo. L. Rev. 567 (2024)(explaining how conflicting language in *Alston* “makes it difficult to determine where the law sits on this point. One could reasonably take the Court’s ambiguous words to mean that *Alston* explicitly permits conferences, but not the NCAA, to limit student-athlete benefits of any type. Alternatively, it is reasonable to believe that *Alston* only permits conferences to add further limits on those specific types of student-athlete benefits that the NCAA may otherwise limit.”)

⁵² See generally Scott White, Ryan Rodenberg & Sam Ehrlich, *Regulating College Sports and Collateral Estoppel*, TEXAS L. REV. ONLINE, VOL. 103 (2025), <https://texaslawreview.org/regulating-college-sports-and-collateral-estoppel/>.

⁵³ Revised Long Form Notice at 5–6, *House v. NCAA*, 545 F.Supp.3d 804 (N.D. Cal. Aug. 28, 2024) (No. 20-CV-03919).

⁵⁴ See Moore, *supra* note 51, at 192, citing *Janus v. Am Fed’n of State*, 942 F.3d 352, 266 (7th Cir 2019).

⁵⁵ *Id.* at 238.



Part III. *Choh v. Brown*

The lead plaintiff, Tamenang Choh, attended Brown University from Fall 2017 through Spring 2022, where he graduated and competed on the men’s basketball team.⁵⁶ The complaint describes Choh as a standout during his high school basketball years and notes that *Choh* was recruited by multiple Division I colleges and “received a full athletic scholarship [offer] from at least three of them.”⁵⁷ Choh chose Brown University, which provided him with need-based financial aid, but “did not cover the full cost of his tuition, room, and board [sic], and incidental expenses.”⁵⁸ After leaving Brown, Choh played professional basketball in Europe.⁵⁹ The second named plaintiff, Grace Kirk, was a women’s basketball athlete who was a junior at Brown at the time the complaint was filed. Similar to Choh, Kirk also alleged that the need based financial fell short of covering the expenses that would be provided by a full athletic scholarship.⁶⁰

The plaintiffs filed this lawsuit against Brown and the other members of the Ivy League.⁶¹ The plaintiffs also included the Ivy League Council of Presidents as a party, alleging that “it has acted as an agent of the University Defendants with respect to the Ivy League Agreement.”⁶²

The plaintiffs claimed that the Ivy League Agreement constitutes an “ongoing price-fixing agreement in violation of Section 1 of the Sherman Act.”⁶³ The complaint alleges that the that the Agreement is per se illegal under the Sherman Act because “it is a naked restraint of trade among horizontal competitors.”⁶⁴ The plaintiffs further alleged that the Agreement would be unlawful under “Rule of Reason” analysis, citing *Alton* and other recent cases that challenged compensation restrictions promulgated by the NCAA.⁶⁵

The Rule of Reason analysis is described by the Supreme Court as “a fact-specific assessment of market power and market structure” aimed at assessing the challenged

⁵⁶ *Complaint*, *Choh v. Brown*, No. 3:23-cv-00305-AWT, (D. Conn. 2023), at 8.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 8-9.

⁶⁰ *Id.* at 9.

⁶¹ The Ivy League consisted of Brown University, Columbia University, Cornell University, Dartmouth College, Harvard University, the University of Pennsylvania, Princeton University, and Yale University at the time the complaint was filed. *Id.*

⁶² *Id.* at 14.

⁶³ 15 USC § 1.

⁶⁴ *Id.* at 2.

⁶⁵ *Id.* at 3-5.



restraint’s ‘actual effect on competition’—especially its capacity to reduce output and increase price.⁶⁶ The plaintiffs argue that there are two relevant markets, (1) “the market for educational services for athletically and academically high-achieving (‘AAHA’) students who seek to graduate from college and play Division 1 sports in the National Collegiate Athletic Association (‘NCAA’), and (2) the market for the athletic services of the AAHA students who seek to play for the University Defendants.”⁶⁷ In other words, the plaintiffs argue that the Ivy League rule affects the market for high performing college athletes generally, in addition to the effect it has specifically on AAHA students who choose to enroll in Ivy League schools.

The plaintiffs used *Alston* to bolster their claim that the Ivy League’s rule is overly restrictive under the rule of reason. Specifically, the plaintiffs argued that the agreement “lacks any procompetitive justification”⁶⁸ and rejected the notion that the Agreement is necessary “to maintain or enhance the academic excellence of the University Defendants.”⁶⁹ The plaintiffs made other arguments that attacked potential procompetitive justifications of the rule, arguing that the rule does not promote competitive balance and that the purported procompetitive benefits of the Ivy League agreement could be achieved through less restrictive means, such as offering athletic scholarships but maintaining minimum academic standards for all enrollees.

The Ivy League’s response vigorously defended the agreement:

In this case, Plaintiffs seek to reject those choices [of the Ivy League] and instead misuse the antitrust laws to force the Ivy League to change the policies that help define both the nature of Ivy League athletics and the broader undergraduate experiences available at the Ivy League’s member institutions. The antitrust laws cannot and should not be used to deny prospective varsity athletes and other students the very options these Plaintiffs had when making their college selections—indeed, to deny future students the choice that *these Plaintiffs knowingly made*.⁷⁰

The Ivy League’s attorneys rejected the notion that they were the exclusive provider of educational and athletic services for AAHA students. In their brief, they stated: “Common sense and precedent confirm that a single athletic conference in the NCAA is not an antitrust market.”⁷¹ The Ivy League identified a list of colleges

⁶⁶ *Alston*, 141 S. Ct. 2141 at 2155 (citing *American Express*, 138 S. Ct. 2274, 2282-83 (2018)).

⁶⁷ Complaint, *Choh v. Brown Univ.*, No. 3:23-cv-00305-AWT, (D. Conn. 2023), at 3.

⁶⁸ *Id.* at 50.

⁶⁹ *Id.*

⁷⁰ Ivy League Memorandum of Law, *Choh v. Brown Univ.*, No. 3:23-cv-00305-AWT, (D. Conn. May 15, 2023), at 1. Emphasis in original.

⁷¹ *Id.* at 3.



in their brief that they said competed in the same market that were not members of the conference, such as Stanford, Duke, Vanderbilt, and UVA. Accordingly, they characterized the plaintiff’s market definition as “implausibly narrow” and filed a motion to dismiss the complaint.

The Ivy League also argued that the Supreme Court’s decision in *Alston* provides conferences with ample latitude to enforce restrictions on scholarships and other matters. The Ivy League lawyers wrote “[*Alston*] both applied the rule of reason and recognized that individual conferences may write their own rules, including rules even more restrictive than the scholarship limitations at issue in *Alston* and certainly than those challenged here.”⁷²

District Court Opinion

On October 9, 2024, Judge Alvin Thompson, sitting for the District Court of Connecticut, granted the Ivy League Defendant’s rule 12(b)(6) motion to dismiss.⁷³ There were two components to this ruling. First, Judge Thompson held that Tamenang Choh’s claims were barred by the statute of limitations for federal antitrust litigation, which was four years since the cause of action occurred.⁷⁴ Other plaintiffs’ claims, however, plausibly fell within the statute of limitations, so those remained. Turning to the antitrust analysis for the other named plaintiffs, Judge Thompson stated: “The Complaint fails to allege a restraint that violates the rule of reason because it does not allege any properly defined market, and consequently, it also fails to allege market-wide anticompetitive effects.”⁷⁵

Judge Thompson began his antitrust analysis by noting the Ivy League’s compensation restrictions were not unreasonable per se because “Regulation of sports is a textbook example of when the rule of reason applies.”⁷⁶ Citing both *Alston* and *Board of Regents*, Judge Thompson held “assessing the plaintiffs’ claim under the rule-of-reason is consistent with this well-established precedent.”⁷⁷ He then turned to the substance of the rule-of-reason analysis: the three-step burden-shifting framework in which plaintiffs are first required to “prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market.”⁷⁸

Judge Thompson outlined his framework for assessing plaintiff’s alleged market

⁷² *Id.* at 2.

⁷³ Ruling on Motion to Dismiss, *Choh v. Brown Univ.*, No. 3:23-cv-00305-AWT (D. Conn. Oct. 9, 2024).

⁷⁴ *Id.*, slip op. at 31-32.

⁷⁵ *Id.* at 10.

⁷⁶ *Id.* at 11, quoting *N. Am. Soccer League*, 883 F.3d at 41.

⁷⁷ *Id.* at 15.

⁷⁸ *Id.* at 20.



definition. As a preliminary matter, he explained that a relevant market must include “all products ‘reasonably interchangeable by consumers for the same purposes’ because the ability of consumers to switch to a substitute restrains a firm’s ability to raise prices above the competitive level.”⁷⁹ In this regard, two key factors identified by the Second Circuit were (1) interchangeability of substitute products (i.e., the extent to which products are “roughly equivalent to another”⁸⁰) and (2) cross-elasticity of demand (the extent to which consumers “respond to a slight increase in price of a product by switching to another product”⁸¹). In 2008, the Second Circuit addressed how plaintiffs must incorporate these elements into their defined market definition in *Chapman v. N.Y. State Division for Youth*⁸²:

Though market definition is a deeply fact-intensive inquiry [and] courts [therefore] hesitate to grant motions to dismiss for failure to plead a relevant product market, [w]here the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross elasticity of demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff’s favor, the relevant market is legally insufficient and a motion to dismiss may be granted.⁸³

Applying these criteria, Judge Thompson held the plaintiffs failed to plead a legally sufficient market for a few reasons. First, Judge Thompson considered the plaintiff’s initial market definition: an AAHA market that *only* included the Ivy League defendants.⁸⁴ In his view, this market definition was insufficient because it did not address the questions of interchangeability and cross-elasticity of consumer demand between Ivy League schools and other academically elite institutions outside of the conference. The complaint itself mentioned schools like Stanford and Notre Dame, but the plaintiffs offered little to distinguish these institutions from the Ivy League defendants.

Second, Judge Thompson found that, since the first market definition failed, the court needed to assess the plaintiff’s second proposed market definition: schools that compete to attract AAHA students across the country. Judge Thompson accepted

⁷⁹ *Id.* at 22.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Chapman v. N.Y. State Div. for Youth*, 546 F. 3d 230 (2nd Cir. 2008).

⁸³ *Id.* at 238.

⁸⁴ Ruling on Motion to Dismiss, *Choh v. Brown Univ.*, No. 3:23-cv-00305-AWT, slip op. 25 (D. Conn. Oct. 9, 2024)



the defendants’ assertion that the plaintiffs failed to define the “contours” of this secondary AAHA market,⁸⁵ or, in other words, the market definition failed because the plaintiffs did not provide sufficiently distinct criteria for the court to assess the impact of any potentially anticompetitive conduct. Specifically, Judge Thompson discussed the difficulty of defining the relevant product market without knowing “the [competitors] involved, and their products and services,”⁸⁶ which meant that it was impossible to assess any potential anticompetitive effects in the relevant market. Later in the opinion, Judge Thompson stated: “At best, the plaintiffs’ allegations of anticompetitive effects relate to just some market participants, not effects in the market as a whole.”⁸⁷

Judge Thompson concluded his rule of reason analysis by addressing a potential counterargument from the plaintiffs:

The plaintiffs also argue that they “allege in detail how the University Defendants themselves define the Ivy League as a distinct market through the particular combination of the academic and athletic excellence of their collegiate athletes, and how industry participants view the Ivy League as singular. The court agrees with the defendants that “[t]hose allegations show no such thing.” These allegations merely show that the University Defendants define themselves as, and are viewed by industry participants as, an athletic conference, with a “unique brand.”⁸⁸

If other courts adopt this logic, this effectively provides athletic conferences with a blank check to impose horizontal restrictions between conference members. In Section IV, we discuss the potential pitfalls associated with this approach. However, to conclude the summary, it is worth noting the District Court did not engage in a substantive balancing of procompetitive justifications and anticompetitive harm, instead stopping at the determination that the pleadings failed to define a relevant market.

Choh on Appeal

The plaintiffs appealed to the Second Circuit. In their appellate briefs, they contested both of Judge Thompson’s findings.⁸⁹ The plaintiffs reiterated their assertion that the Ivy League scholarship rule caused direct and indirect anticompetitive harm in the

⁸⁵ *Id.* at 26

⁸⁶ *Id.* at 26 (citing *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 437 (6th Cir. 2008)).

⁸⁷ *Id.* at 29.

⁸⁸ *Id.* at 31.

⁸⁹ *Appellant’s Brief*, *Choh v. Brown Univ.*, No. 24-2826, (2nd. Cir. Jan. 2., 2025).



market for AAHA athletes, which, in their view, consisted solely of the Ivy League defendants. On appeal, the plaintiffs made a compelling argument surrounding the actual role of non-Ivy League elite academic institutions in the alleged market: functional substitutes are not always economic substitutes, and there are no economic substitutes for Ivy League institutions for athletes at an elite academic level.⁹⁰

An economic substitute is a product consumers would readily switch to in the event of a small but significant increase in price of another product. For example, if the price of one brand's pack of sparkling water increases, consumers may readily switch to another brand's sparkling water, or perhaps drink a similar product with a different label. For the purposes of antitrust law, if there are economic substitutes in a market, consumers are less likely to be harmed by any single price increase.

On the other hand, functional substitutes are products that can perform the same function as the original product. These may not be economic substitutes if consumers view a material difference between the two products. For example, some consumers view Coke and Pepsi as *functional* substitutes, in that they perform the same function (quenching thirst), but there are consumers who are unwilling to consume the other brand, even when it is the only choice at a food establishment. The same principle applies to Ivy League schools: there are consumers who simply do not—or cannot—accept the alternative.

The plaintiffs argued the non-Ivy Academic elite institutions may be functional substitutes of an Ivy League education (i.e., they perform the same function), but they are not economic substitutes. They hold direct economic power over any consumer who does not view Stanford, for example, as a reasonable substitute for Harvard. Horizontal restraints at a conference level would harm these consumers; they have no economic substitute because they believe there is a material difference between an Ivy League education and a non-Ivy education. For these consumers, there is harm.

The plaintiffs also claimed the district court failed to consider the direct economic harm: athletes were receiving less compensation because of the Ivy League rule. Absent this restraint, institutions would compete for recruits by offering them athletic grants-in-aid. If an institution received an advantage from *not* offering this aid, they could still make that decision and the market would come to an efficient outcome. Ultimately, the plaintiffs claimed the district court's findings failed to take into account the allegations as a whole.

In their briefs, the defendants defended the district court's findings and reiterated their arguments in favor of dismissal from the lower court level.⁹¹ The case currently sits with the Second Circuit, and scheduling motions indicate a hearing is

⁹⁰ *Id.* at 10-14.

⁹¹ Brief for Defendant-Appellees, *Choh v. Brown Univ.*, No. 24-2826 (2nd. Cir. Apr. 2., 2025).



likely to occur in the final months of 2025.⁹² The *Choh* plaintiffs also withdrew their objections to the *House* settlement after receiving assurances the *House* settlement would not preclude their litigation against the Ivy League.⁹³

The *Choh* appeal also coincides with a renewed skepticism of Ivy League practices from Congress. In the summer of 2025, the House Judiciary Committee issued subpoenas to Brown University, Harvard, and the University of Pennsylvania, requesting documentation related to their financial aid and tuition-setting practices.⁹⁴ The leadership of the House Judiciary Committee issued a statement on the subpoenas, claiming they had jurisdiction to assess “whether existing civil and criminal penalties and current antitrust law enforcement efforts are sufficient to deter anticompetitive practices among higher education institutions.”⁹⁵ This statement indicates the Ivy League’s scholarship practices may soon be scrutinized across the board, which means the Second Circuit’s decision in *Choh* may come at a critical time for the Ivy League.

Part IV. Analysis: Blank Checks and the Conference Antitrust Scrutiny

Market Definition in *Choh*: A Blank Check for Conference Governance

The district court’s opinion in *Choh* is emblematic of a wider problem surrounding antitrust doctrine applied to athletic conferences. Allowing conferences to impose horizontal restraints simply because judges do not believe a conference constitutes a relevant market leads to undesirable outcomes from a public policy perspective. In essence, if one accepts the premise that conferences are not markets, then the Sherman Act provides no substantive mechanism for plaintiffs to challenge horizontal restraints between conference members. Under this logic, the Sherman Act becomes a meaningless check on conference-level conduct. If conferences do not constitute markets, it will be nearly impossible for plaintiffs to demonstrate anticompetitive effects through a rule of reason analysis. This essentially provides institutions within a conference with a blank check to coordinate restrictions on athlete compensation.

⁹² Proposed Case Calendaring, *Choh v. Brown Univ.*, No. 24-2826 (2nd. Cir. July 8, 2025) (motion proposing hearing date of October 13, 2025).

⁹³ See Katie Arcieri, *Ivy League Athletes Withdraw Opposition to NCAA Payment Deal*, Bloomberg Law (Sep. 4, 2024), <https://news.bloomberglaw.com/antitrust/ivy-league-athletes-withdraw-bid-to-oppose-ncaa-payment-deal>.

⁹⁴ Hailey Fuchs, *House Judiciary Committee Subpoenas Penn, Brown in Price-Fixing Probe*, Politico (Jul. 1, 2025), <https://www.politico.com/live-updates/2025/07/01/congress/house-judiciary-penn-brown-00435108>.

⁹⁵ *Id.*



The notion that a conference cannot constitute a market is flawed for several reasons. First, consider the difference between functional and economic substitutes outlined by the plaintiffs in *Choh*. To put it simply, a product that performs the same function as another product may not be a viable economic substitute. A Harvard education and a Notre Dame education may perform the same function, but there are intangible aspects of both experiences that could make consumers unwilling to switch between the two. If there are consumers who accept no substitute for an Ivy League education, then the Ivy League exercises economic power over these individuals. Future research (and future expert witnesses in conference antitrust litigation) should consider the extent to which recruits and athletes are unwilling to change conference affiliation. This type of research could speak directly to the cross-elasticity of demand for conference athletics.

Second, the district court's ruling disregards geographical restraints on college choice, as some recruits may be unable to attend institutions outside of a conference's geographical footprint for either personal or financial reasons. Finally, if *per se* analysis never applies to conference level restraints, and the market definition approach means that it is impossible to apply rule of reason analysis to conference-level restraints, then conference-level agreements essentially become exempt from antitrust law. This runs counter to precedent from *Alston*: "Whether an antitrust violation exists necessarily depends on a careful analysis of market realities. If those market realities change, so may the legal analysis."⁹⁶

The rejection of a conference as a market ignores the economic realities surrounding the Ivy League. For these reasons, courts should be hesitant to apply the market definition approach used by the district court in *Choh*.

An Alternative Approach: Assume the Rule of Reason Applies within the Conference

There is an alternative to the market definition approach: apply the rule of reason assuming a conference may constitute the relevant market. Future research should examine the extent of conference loyalty amongst athlete recruits, and, since this is an unanswered question, plaintiffs should have the opportunity to demonstrate conferences have at least some market powers. This is likely the case in geographic markets where a conference's historical and cultural impact makes it more likely that recruits are pressured to play within the conference.

The background of the Ivy League case demonstrates the depth of analysis of market realities that courts could conduct using the rule of reason. As discussed in Part II, the Ivy League's scholarship rule has a longstanding history, and the

⁹⁶ *NCAA v. Alston*, 2141 S. Ct. at 2158.



conference makes some compelling arguments regarding the procompetitive justifications for the rule. These justifications should be assessed on their merits. On the other hand, the Ivy League rule is one of the most restrictive rules on athlete compensation remaining in Division I NCAA sports, and courts applying the Sherman Act should assess whether the Ivy League—and other conferences—could maintain those procompetitive effects with a less restrictive rule.

The *Alston* decision provided a template for courts to assess amateurism restrictions in college athletics according to the rule of reason. Adopting a similar analysis for conference-level restraints would provide judges and lawyers with clearer standards than what currently exists in this space. Applying the rule of reason can be a time-consuming and fact-intensive inquiry, and while that may be costly for potential plaintiffs, it has the clear advantage of following long-established precedent in antitrust law. Restraints should be judged on a “careful assessment”⁹⁷ of market realities rather than taking a defendant’s claim regarding market definition at face value. For these reasons, attorneys, judges, and other stakeholders should advocate for applying the rule of reason to conference level restraints, based on the assumption that a conference may function as a market. With this approach, it would still be possible to assess the impact of a restraint within the broader ecosystem of college sports. And, most importantly, it would allow plaintiffs who have clearly suffered injury (i.e., not received the full value of the services they furnish to universities because of a conference-wide restraint) to engage in the detailed antitrust analysis required by precedent.

Consequences of *Choh*

If the plaintiffs in *Choh* are unsuccessful, power would be consolidated even further in the hands of conferences and away from the NCAA. Theoretically, each conference could prohibit institutions from providing the benefits that were at issue in the *Alston* case as long as they act individually in doing so. Essentially, a ruling in favor of the defendants in *Choh* would create a line of precedent that would incentivize even more substantive governance at the conference level. Given the financial power already present at the conference level, a ruling in favor of the defendants would further weaken the NCAA’s ability to govern.

Conference rules define how institutions can recruit, how many athletes may travel with a team, and other regulations that ultimately determine roster size, scholarship allocation.⁹⁸ Conferences also draft uniform financial aid agreements and NIL

⁹⁷ *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 US 1, 16 (1979).

⁹⁸ See, for example, 2022-23 SEC Bylaws and Constitution, p. 25, available at: <https://a.espn.com/sec/media/2022/2022-23%20SEC%20Bylaws.pdf>.



waivers signed by every scholarship athlete who competes for a member institution.⁹⁹ In addition to this, the Supreme Court’s ruling in *Alston* indicated conference-level restrictions may be given more deference than restrictions promulgated by the NCAA. Justice Gorsuch summarized—and upheld—the District Court’s position on this issue, saying “the [district] court emphasized its injunction applies only to the NCAA and multiconference agreements; individual conferences remain free to reimpose every single enjoined restraint tomorrow—or more restrictive ones still.”¹⁰⁰ If individual conferences are given greater leeway to impose restraints, then it logically follows that future restraints will be promulgated by individual conferences rather than the NCAA. Therefore, this language from *Alston* may signify a shift in power from national athletics associations, such as the NCAA, to individual conferences such as the Ivy League.

The deference to conference governance that the majority in *Alston* alluded to has already impacted antitrust litigation in lower courts. One of the most significant antitrust claims facing the NCAA was posed by the plaintiffs in *House v. NCAA*.¹⁰¹ The terms of the *House* settlement agreement indicate that the roster limits that the parties agreed to on a national level may be reduced or otherwise legislated at the conference level:

Individual Conferences **each maintain the right to unilaterally reduce** the number of sports Member Institutions within their respective conferences are required to offer, the number of sports sponsored by the conference, and/or the roster limits within their conference [. . .] [emphasis added].¹⁰²

The assumption underlying both the *Alston* decision and the *House* settlement terms is that conferences have more leeway to implement restrictions on roster limits and financial aid than national organizations. The *Choh* plaintiffs are challenging this assumption and questioning whether conferences should have the power to limit roster sizes and scholarship caps.¹⁰³ If the plaintiffs are successful, then athletes will challenge other conference-level restrictions, including financial aid limits, travel

⁹⁹ See *id.* at 22-23 (describing how eligibility for financial aid in specific terms may be dependent on an athlete signing an “SEC Financial Aid Agreement”).

¹⁰⁰ *Alston*, 141 S. Ct. at 2164 (2021).

¹⁰¹ 545 F.Supp.3d 804 (N.D. Cal. 2021).

¹⁰² *Motion to Intervene*, *House v. NCAA*, 545 F.Supp.3d 804 (N.D. Cal. 2021) at 131 (filed August 6, 2024).

¹⁰³ The *Choh* plaintiffs filed a notice of appearance in the *House* litigation, indicating that these issues extend across the boundaries of the Ivy League. Stipulation and Settlement Agreement at 131, *House v. NCAA*, 545 F.Supp.3d 804 (N.D. Cal. July 26, 2024)



squad size limitations, and similar restraints. Conferences will then need to adjust their governance process to withstand challenges under the rule of reason analysis. This could include incorporating procompetitive justifications into the legislative process or, alternatively, tabling all proposals that could potentially be challenged after *Choh*.

If plaintiffs ultimately prevail in *Choh*, there would be immediate implications for all Ivy League institutions. The obvious implication is that Ivy League schools will be enjoined from enforcing the scholarship rule, which will create several challenges and opportunities for coaches, athletic directors, and administrators at these institutions. A ruling in favor of the plaintiffs would provide the opportunity for coaches to provide athletic scholarships to current and prospective college athletes, but this will also require coaches to immediately implement plans for staying under scholarship limits, signee limits, and other restrictions of athletics aid promulgated by the NCAA.¹⁰⁴ Coaches and administrators should already be planning on how they would implement an athletics aid program, including making the determination of which athletes should remain on need-based aid as “walk-ons” and which athletes will receive athletic scholarships.

Ultimately, the stakes in the *Choh* case are far from theoretical. Coaches, athletic directors, athletes, and attorneys concerned with compensation rules in college sports should keep a close eye on the case.

Athletes as Employees and The Ivy League Rule

The *Choh* case is also related to the efforts of a group of Dartmouth basketball players who sought certification from the National Labor Relations Board to be classified as employees of Dartmouth.¹⁰⁵ Although the Dartmouth athletes withdrew their labor complaint following the 2024 election,¹⁰⁶ the potential employment status of these athletes and their collective bargaining power may prove to be the end of some aspects of the Ivy League agreement. Recall the language of the agreement relating to outside income, which provides: “No student-athlete shall be eligible who has received financial support from any source except (i) from personal or family resources; (ii) in return for services (other than of an athletic character) rendered through employment at normal wages.” This seems like a particularly challenging

¹⁰⁴ See generally, Bylaw 15, NCAA Manual (2022).

¹⁰⁵ See Trustees of Dartmouth College, NLRB Case No. 01-RC-325633 (filed Sep. 13, 2023).

¹⁰⁶ Michael McCann, *Dartmouth Basketball Moves to Drop Unionization Push*, [Sportico.com](https://www.sportico.com) (Dec. 31, 2024), <https://www.sportico.com/law/analysis/2024/dartmouth-basketball-withdraws-nlrb-petition-1234822294/>.



rule to uphold if at least one institution in the conference is legally mandated to provide financial support to athletes through wages and other employee benefits.

The scholarship agreement may also face a substantial challenge from the collective bargaining process, as employee-athletes negotiate with managers at their institution regarding wages and conditions of employment. The purpose of this article is not to speculate on how the power balance between these employees and their institution will shake out. There are too many moving components, and many believe that the structure of the union itself will change in coming years.¹⁰⁷ Edelman and colleagues proposed that the line between employees and nonemployees in college athletics may be drawn depending on sport and the revenues generated by athletes;¹⁰⁸ in that case, the *Choh* litigation would still have a profound impact on athletes in Olympic sports and other sports that generate minimal revenue in the Ivy League.¹⁰⁹ It remains to be seen whether the scholarship rule would survive the collective bargaining process.

Part V. Conclusion

College athletics is in a period of transformation, and conferences will play a large role in how college athletes are treated in the coming years. The *Choh* case tests the limits of conference governance by challenging one of the most restrictive and unique conference regulations in contemporary intercollegiate athletics: the Ivy League scholarship rule.

In January 2025, the Ivy League opted out of revenue sharing made possible by the *House* settlement.¹¹⁰ In other words, the conference will continue to prohibit institutions from offering athletes a share of revenue generated from athletics. Rather than leaving this determination to individual institutions, Ivy League schools plan to maintain the scholarship rule. *Choh* raises thorny questions related to conference governance. Can conferences implement a blanket rule restricting institutions from providing athletic scholarships to athletes? Do conferences truly “remain free

¹⁰⁷ See generally Joseph Sabin et al., “Entertaining” a New College Athlete Unionization Structure, 34 JOURNAL OF LEGAL ASPECTS OF SPORT 26 (2024).

¹⁰⁸ Marc Edelman, Michael A. McCann & John T. Holden, *The Collegiate Employee-Athlete*, U. Ill. L. Rev. 1 (2024).

¹⁰⁹ See also *Johnson v. National Collegiate Athletic Association*, No. 22-1223, p. (3d Cir. July 11, 2024) (denying the NCAA’s motion to dismiss claims related to athlete employment status. The concurrences discuss how the “economic realities” test may result in a different outcome for athletes in nonrevenue sports).

¹¹⁰ Noah Henderson, Ivy League Declines NIL Revenue Sharing Amidst House Settlement Changes, NIL Daily On SI, <https://www.si.com/fannation/name-image-likeness/nil-news/ivy-league-declines-nil-revenue-sharing-amidst-house-settlement-changes> (last visited Jun. 15, 2025).



to impose every single enjoined restraint”¹¹¹ that were condemned in *Alston*? Or, alternatively, is “agreeing not to pay workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate”¹¹² unlawful regardless of the entity that imposes the restriction? If college athletes are deemed employees, can smaller conferences restrict the benefits that are provided to these employees simply because they are not the national association?

The answer to these questions may define how conferences operate in the future. Conferences are already consolidating the power to interpret rules, disburse funds, and conduct competition, and this ruling could dramatically affect the balance of power between conferences and the NCAA. *Choh* not only affects the future of the Ivy League; it could shape the future of governance in college athletics.

Courts should acknowledge the possibility conferences operate as a functional market for antitrust analysis. Plaintiffs should be given the opportunity to call experts and engage in discovery to determine whether consumers view alternative conferences or institutions as adequate substitutes. Any other approach would ignore the economic realities faced by recruits and athletes. If courts assume conferences are not markets, they essentially provide institutions with a blank check to further reduce athlete compensation. Such a result contradicts recent precedent surrounding amateurism restraints in the NCAA and will prove undesirable from a public policy perspective. Instead, courts should consider the pro-competitive justifications of conference-level restraints and weigh them against the potential anticompetitive effects. Antitrust law should be concerned with market realities rather than arbitrary classifications, and courts should avoid applying a doctrine that provides conferences with a blank check to impose whatever restraints they see fit.

¹¹¹ *Alston*, 141 S. Ct. at 2147.

¹¹² *Id.* at 2169 (Kavanaugh, J., concurring).

