

## Made It to The Ivy League, But at What Cost: Analyzing the Ivy Leagues' Policy Prohibiting Athletic Scholarships



Photo Source: ESerpaph, *Ivy League*, FLICKR (Dec. 30, 2006).

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### Overview

4.85%, that is the percentage of students the Ivy League admits on a yearly basis.<sup>1</sup> For many students an acceptance letter into one of these eight world renowned schools would be a dream, but for a student with Division I athletic abilities, accepting an Ivy League offer comes at a real cost.<sup>2</sup> The Ivy League has a long-standing policy of prohibiting athletic scholarships, this practice is better known as the (“Ivy League Agreement”).<sup>3</sup> In recent months both former and current Ivy League athletes have filed a federal antitrust suit against the Council of Ivy League Presidents and their respective institutions.<sup>4</sup> The suit alleges the Ivy League institutions are in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.<sup>5</sup> The plaintiffs are seeking (1) class certification of “all Ivy League athletes recruited to play sport from March 7, 2019 to when the Ivy League Agreement terminates, (2) monetary damages, and (3) a permanent injunction enjoining the Defendants from abiding by the Ivy League Agreement.<sup>6</sup>

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<sup>1</sup> See *Ivy League Acceptance Rates for the Class of 2027*, CRIMSON EDUCATION, (Jan. 1, 2023)

<https://www.crimsoneducation.org/us/blog/ivy-league-acceptance-rates/> (detailing acceptance rate for each of the eight Ivy League Schools); see also Welton Chang, *Affirmative Action Admissions Policy at Ivy League Schools*, 2 DARTMOUTH C. UNDERGRADUATE J.L. 56 (2004)(tallying the eight Ivy League institutions). They include, Cornell University, Columbia University, Dartmouth College, Harvard University, Princeton University, Brown University, Yale University and the University of Pennsylvania.

<sup>2</sup> See Lori Gottlieb, *Dear Therapist: I Staked My Identity on Attending an Ivy League School*, THE ATLANTIC (May 11, 2020) <https://www.theatlantic.com/family/archive/2020/05/dear-therapist-my-dream-college-rejected-me/611407/> (explaining students desire to attend an Ivy League Institution). One student explains how they lost their identity after getting rejected from the Ivy League. See also Eleanor Pringle, *Ivy League schools are closing in on an \$90,000-a-year price tag- but experts insist it's still worth it*, FORTUNE (Mar. 30, 2023 at 7:03 A.M.) <https://fortune.com/2023/03/30/ivy-league-schools-closing-in-90000-year-price-tag-tuition-experts-insist-worth-it/> (listing the various costs to attend Ivy League Institutions).

<sup>3</sup> See Arthur Austin, *Ivy League Price-Fixing: Conflict from the Intersection of Education and Commerce*, 21 ST. JOHN’S J. LEGAL COMMENT. 1,3 (2006)(outlining the Ivy League’s policy of need base financial aid).

<sup>4</sup> See Complaint at 1, *Choh et al. v. Brown University et al.*, Docket No. 3:23-cv-00305 (D. Conn. Mar 07, 2023) (detailing the suit brought against the Ivy League Institutions).

<sup>5</sup> See *id.* (highlighting the major complaints alleged by Plaintiffs).

<sup>6</sup> See Eddie Murray, *Extra! Extra! Read all about it!: Ivy League Scholarship Ban Faces Attack from Ivy League Ballers*, Moorad Sports Law Journal Blog (Sept. 26, 2022) [https://www1.villanova.edu/villanova/law/academics/sportslaw/commentary/mslj\\_blog/2023/ExtraExtraReadallaboutIvyLeagueScholarshipBanFacesAttackfromIvyLeagueBallers.html](https://www1.villanova.edu/villanova/law/academics/sportslaw/commentary/mslj_blog/2023/ExtraExtraReadallaboutIvyLeagueScholarshipBanFacesAttackfromIvyLeagueBallers.html) (explaining relief Plaintiffs are seeking).

## Background

### 1. Creation of the Ivy League

The Ivy League as we know it is a relatively new organization in the landscape of higher education, however the groundwork for their formation dates back to October 1933 when a sports writer for the *New York Herald Tribune*, Stanley Woodward, used the phrase “ivy colleges” to describe these schools with common athletic programs.<sup>7</sup> Most people do not immediately think of athletic prowess when they hear the term Ivy League, it would not be a stretch so say most immediately think of the academic rigor associated with the prestigious eight schools, ironically athletics is what solidified the group.<sup>8</sup> The administrators of the Ivy League were focused on growing interest in college athletics as a form of national entertainment, providing institutions for students who participated in sports to develop a holistic education, and not be just a recruit for their physical abilities.<sup>9</sup> In February 1954, the league was officially formed and grew into the programming we know of today.<sup>10</sup>

### 2. Ivy League Agreement & The Sherman Act Violation

#### i. *Ivy League Agreement*

The Ivy League Agreement is a long-standing policy followed by all member schools that:

Any financial aid for student-athletes will be award and renews on the sole basis of economic need with no differentiation in amount or kind backed on athletic ability or participation, provided that each school shall apply its own standard of economic need. The official award of aid may only be made at or subsequent to the time of admission.<sup>11</sup>

While widely publicized, this policy is both illegal under the Sherman Anti – Trust act, and immoral.<sup>12</sup> The Ivy League member schools know their position in the higher education market, yet higher education is a business, and they can leverage that position to attract the most

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<sup>7</sup> See April C. Armstrong, *The Origins of the “Ivy League”*, PRINCETON UNIVERSITY ARCHIVES, (July 1, 2015) <https://universityarchives.princeton.edu/2015/07/the-origins-of-the-ivy-league/> (explaining origins of the Ivy League). Amrstrong’s piece details the history surrounding the Ivy League, and conversations that began as early as 1993. Additionally, they have included graphics, one clipping from *New York Herald Tribune*, and another of the Cover of Franklin Field.

<sup>8</sup> See The Editors of Encyclopedia, *Ivy League*, ENCYCLOPEDIA BRITANNICA (Sept. 30, 2023) <https://www.britannica.com/topic/Ivy-League> (discussing the creation of the Ivy League and the ensuring associations with the term).

<sup>9</sup> See Armstrong *supra* note 7 (discussing motivation behind forming the Ivy League conference).

<sup>10</sup> See Jessica Spradling, *Origins of the term ‘Ivy League’ remain mysterious*, THE BADGER HERALD, (Mar 3, 2003) <https://badgerherald.com/news/2003/03/03/origins-of-the-term/> (highlighting the year many consider to be the ‘birthday’ of the Ivy League); see also Armstrong, *supra* note 7 (detailing February 1954 as the official beginning of the Ivy League).

<sup>11</sup> See *The Ivy League Agreement* (1954) (available at <https://admissions.dartmouth.edu/glossary-term/ivy-league-agreement>) (quoting the Ivy League Agreement).

<sup>12</sup> For a further discussion about the Sherman Anti – Trust Act, see *infra* notes 16 -23 and accompanying text.

intelligent athletes across the country, at a fraction of the cost.<sup>13</sup> These student athletes are then forced to decide between other offers that may be on the table, with the promise of athletic scholarships, or go through the recruiting process with an Ivy League school, and wait until their official acceptance to know if they are granted financial aid.<sup>14</sup> For a student athlete at Columbia who received no financial aid, that price tag is upwards of \$260,000, and for a student athlete on an athletic scholarship at Duke, that price tag can be as low as \$0.<sup>15</sup>

ii. *Sherman Act & Violation*

Antitrust regulations have been implemented throughout our country with the intention of preventing monopolies.<sup>16</sup> The Sherman Anti-Trust act was passed by Congress in 1890 to authorize the federal government to institute proceedings against trusts.<sup>17</sup> There was a general understanding that monopolies could lead to disastrous consequences for economic growth.<sup>18</sup> Today there are both civil and criminal penalties in place for violations of the Sherman Act.<sup>19</sup> The Act aims to promote economic fairness and competitiveness.<sup>20</sup> In the case of the Ivy League, their practice of restricting scholarship for students operates in the same way large corporations are able to price fix.<sup>21</sup> The schools that make up the conference have a collective endowment of more than \$170 billion, these are some of the wealthiest schools in the country, and have the ability to effectively price fix, by restricting access to athletic scholarships.<sup>22</sup>

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<sup>13</sup> See Eric Stoller, *The Business of Higher Education*, INSIDER HIGHER ED, (June 5, 2014) <https://www.insidehighered.com/blogs/student-affairs-and-technology/business-higher-education> (detailing the ways in which higher education institutions operate similar to large corporations).

<sup>14</sup> See Jonathan Lund, *The College Athlete Protection Guarantee Another Flawed Fix for the Broken System of Athletic Recruitment*, 7 ARIZ. ST. U. SPORTS & ENT. L. J. 385 (2018)(explaining recruitment process for college athletes).

<sup>15</sup> See *Cost & Aid*, Columbia Undergraduate Admissions, <https://undergrad.admissions.columbia.edu/affordability/cost> (breaking down costs associated with attending Columbia University); see also *2022 Iron Dukes Scholarship and Endowment Celebration*, Duke Athletics, (Mar. 9, 2022 at 1:50 P.M) <https://goduke.com/news/2022/3/9/athletics-2022-iron-dukes-scholarship-and-endowment-celebration.aspx> (detailing over 400 of Duke's student athletes receive athletic scholarship).

<sup>16</sup> See M. S. Hottenstein, *The Sherman Anti-Trust Law*, 44 AM. L. REV. 827 (1910)(detailing original intentions behind The Sherman Anti-Trust act). Reviewing the history behind the bill's introduction in the 51<sup>st</sup> Congress and the lengthy discussions that have followed since its enactment.

<sup>17</sup> See *id.* (reviewing the history of the Act).

<sup>18</sup> See *id.* (explain the federal governments authorization to dissolve trusts (monopolies)). The Act was passed as a response to the public concern in the growth of crops controlling transportation, industry and commerce.

<sup>19</sup> See 33 MINN. L. REV. 525,544 (1949)(laying out various penalties for violations of the Sherman Act).

<sup>20</sup> See Jeffrey Gordon, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move*, 26 FORDHAM URB. L.J. 1201 (1999)(postulating if professional sports have fostered a monopoly surrounding ticket sales).

<sup>21</sup> See Mike Scarcella, *Ivy leaguers blast schools' bid to dismiss lawsuit over athletic scholarship bans*, REUTERS, June 30, 2023 <https://www.reuters.com/legal/litigation/ivy-leaguers-blast-schools-bid-dismiss-lawsuit-over-athletic-scholarship-bans-2023-06-30/> (comparing way Ivy League schools are restricting athletic scholarship with the way large corporations price fix); see also THE DAILY, *Amazon's Most Beloved Features May Turn Out to be Illegal* (Oct. 2, 2023) <https://www.nytimes.com/2023/10/02/podcasts/the-daily/amazon-ftc.html> (discussing prevalent anti-trust violations throughout our society).

<sup>22</sup> See Mike Scarcella, *Ivy leaguers blast schools' bid to dismiss lawsuit over athletic scholarship bans*, REUTERS, June 30, 2023 <https://www.reuters.com/legal/litigation/ivy-leaguers-blast-schools-bid-dismiss-lawsuit-over-athletic-scholarship-bans-2023-06-30/> (highlighting the staggering endowment associated with Ivy League institutions).

## Current Status

Currently, the Ivy League schools have denied they are in violation of the Sherman Anti-Trust Act and have asked a Connecticut federal judge to dismiss the prospective class action lawsuit.<sup>23</sup> The Defendants in a jointly submitted court filing argued that as a league they have the authority to set rules for financial aid and compensation for student athletes.<sup>24</sup> Their argument includes the desire to foster an environment on campus that does not prioritize athletics.<sup>25</sup> Additionally, the schools have argued that they do not form a “market” as is a necessary element of an antitrust suit since they account for just eight of the more than 350 schools competing in NCAA Division I athletics.<sup>26</sup>

## Prediction

No matter how hard the Ivy League tries this conversation will not abate until a court decides to proceed with the suit, or a judge dismisses the case.<sup>27</sup> Given the reputation and prestige of the Ivy institutions they will always be able to field a team, however it is likely their rosters will continue to thin, and their athletic caliber dwindle.<sup>28</sup>

Unless the Ivy League adjusts their policies to adapt in the rapidly changing college athletic landscape they will lose out on top talent to schools such as Duke, Vanderbilt, Stanford, and Northwestern.<sup>29</sup> All of these schools are known for having exceptional academic prestige. They also have a distinguishing factor compared to the Ivy League, they provide student athletes with scholarship’s, and those scholarship figures are presented beforehand so the student can make an informed decision for not only themselves, but for their families financial future.<sup>30</sup>

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<sup>23</sup> See Mike Scarcella, *Ivy League defends ban on athletic scholarships in antitrust lawsuit*, REUTERS, May 15, 2023 <https://www.reuters.com/legal/litigation/ivy-league-defends-ban-athletic-scholarships-antitrust-lawsuit-2023-05-16/> (updating *Choh et al v. Brown University et al.*, as it works through the court).

<sup>24</sup> See *id.* (detailing court filing submitted on behalf of Defendants).

<sup>25</sup> See *id.* (discussing argument Defendants make in contention with Plaintiffs assertions).

<sup>26</sup> See *id.* (arguing market for college athletics is much greater than the eight Ivy League institutions).

<sup>27</sup> See generally, Complaint at 1, *Choh et al. v. Brown University et al.*, Docket No. 3:23-cv-00305 (D. Conn. Mar 07, 2023) (indicating passion Plaintiffs have for matter).

<sup>28</sup> See David Arkow, *Ivy League All – Around Power Rankings*, HSAC (Dec. 6, 2021) <https://harvardsportsanalysis.org/2021/12/ivy-league-all-around-power-rankings/> (charting number of NCAA titles each Ivy League school has accumulated through 2021). Yale University tops the list at 29, followed closely behind by Princeton University. The University of Pennsylvania and Dartmouth College are tied with four titles respectively.

<sup>29</sup> See Heidi Lovette, *What Are The “Ivy Plus” Schools?*, TOP TIER ADMISSIONS (May 19, 2023) (explaining how schools such as Duke, and Stanford are sometimes referred to as “Ivy Plus” schools, known for their academic rigor). The schools mentioned also happen to compete in Division I college athletics, and provide students with athletic scholarships.

<sup>30</sup> See *id.* (explaining student athletes can get both academic prestige, and athletic scholarship at other universities).