

Courting Controversy: The Pac-12's Battle for Control Takes Legal Twist



Photo Source: Young Kwak, *A Washington State fan holds a “Pac-2” sign during the second half of their Sept. 23 game*, ASSOCIATED PRESS (Oct. 3 2023)

By: Zack Slogoff

October 11, 2023

Introduction

As the recent conference realignment movement in collegiate athletics has gained traction, certain universities have been left in the dust.¹ This has raised very important questions regarding how abandoned conferences should decide on their futures.² More specifically, if departing schools should retain decision making power when they have elected to leave.³ Washington State and Oregon State, the only two remaining colleges in the Pacific-12 (Pac-12) Conference, have taken this question to the courts of law in order to gain clarity.⁴

Background

On September 4, the two lone Pac-12 member universities filed a lawsuit against the conference and commissioner George Kilavkoff asking a Washington State Court to affirm that they have

¹ See generally Laine Higgins, *The Hottest Conference in College Football Might Not Exist Next Year*, THE WALL STREET JOURNAL (Sept. 17, 2023), <https://www.wsj.com/sports/football/pac-12-college-deion-sanders-colorado-b29fb722?page=1> (explaining and giving background to the recent college football conference realignment movement).

² See Doug Lederman, *Oregon State, Washington State Sue Over Control of Pac-12*, INSIDE HIGHER ED (Sept. 11, 2023), <https://www.insidehighered.com/news/students/athletics/2023/09/11/oregon-state-washington-state-sue-over-future-pac-12-league> (observing how an issue remains as to how conferences with departing schools should decide on their futures).

³ See Jon Wilner, *Pac-12 Chaos: Judge Sides with WSU and OSU, Brings Board Business to Temporary Halt*, THE MERCURY NEWS (Sept. 11, 2023), <https://www.mercurynews.com/2023/09/11/pac-12-chaos-judge-sides-with-wsu-and-osu-brings-board-business-to-temporary-halt/> (explaining the relevant legal issues mentioned in the filings)

⁴ See *id.* (stating that there has been a legal proceeding started).

control of the conference after the most recent round of realignment.⁵ As it stands, Washington State and Oregon State will be the Pac-12's only two members starting in 2024, as the rest of the schools have left to join either the Big-10 or ACC.⁶ Consequently, they believe that their presidents Kirk Schulz (WSU) and Jayathi Murthy (OSU) now constitute the entirety of the Pac-12's board of directors, which holds voting authority over vital issues ranging from distribution of financial assets to membership composition.⁷ The schools sought a temporary restraining order to prevent departing member universities from meeting until it could be determined who has the right to chart the future of the collapsing conference.⁸ They believe that since the other colleges have willfully abandoned the conference, they should not retain any voting power over what the Pac-12's best course of action may be going forward.⁹

Additionally, the schools noted in a release that Pac-12 bylaws state that any future departing members immediately cease voting power on the Pac-12's Board of Directors — suggesting that Oregon State and Washington State would assume immediate control over the conference.¹⁰ The lawsuit claims Kliavkoff ignored that rule, calling a board meeting for September 13 that includes representatives from departing schools.¹¹ To “circumvent” the rule, according to the court filings, Kliavkoff called it a meeting of “CEOs” rather than a meeting of the “Pac-12 Board of Directors.”¹²

The Legal Proceedings

A Whitman County Judge in Washington granted their request for a temporary restraining order on September 11.¹³ Now, the schools are seeking a preliminary injunction to gain more clarity from the court on the makeup of the conference's governing body.¹⁴ More specifically, whether

⁵ See Ralph D. Russo, *Judge Rules for Oregon State and Washington State, Says Departing Pac-12 Schools Can't Hold Meeting*, ASSOCIATED PRESS NEWS (Sept. 11, 2023), <https://apnews.com/article/oregon-state-washington-state-kliavkoff-pac12-34acf803402e3c5bf99d16d7ee398c67> (confirming the date the proceeding was filed and giving context to which court it was filed in).

⁶ See Higgins, *supra* note 1 (explaining which schools have left and where they are moving to).

⁷ See Jon Wilner, *Pac-12 Legal FAQs: Updates on the Lawsuit Filed by Washington State and Oregon State*, THE MERCURY NEWS (Oct. 3, 2023), <https://www.mercurynews.com/2023/10/03/pac-12-legal-faqs-updating-the-lawsuit-filed-by-washington-state-and-oregon-state/?clearUserState=true> (giving context to the legal issue presented).

⁸ See *id.* (explaining what legal action has been taking by Washington State and Oregon State).

⁹ See Amanda Christovich, *Oregon State and Washington State Take the Pac-12 to Court*, FRONT OFFICE SPORTS (Sept. 8, 2023), https://frontofficesports.com/oregon-state-and-washington-state-take-the-pac-12-to-court/?utm_medium=email&utm_campaign=The%20Big%20Problem%20With%20Realignment&utm_content=The%20Big%20Problem%20With%20Realignment+CID_d82a5b7ee8a2abf9e61209745590f33f&utm_source=FOS%20Daily%20Newsletter&utm_term=Oregon%20State%20And%20Washington%20State%20Take%20the%20Pac-12%20To%20Court (giving context to Washington State and Oregon State's position).

¹⁰ See *id.* (explaining what the conference bylaws say on this matter and how the schools interpret them).

¹¹ See *id.* (explaining how the commissioner violated the bylaws).

¹² Motion for Temporary Restraining Order at 2, *Washington State University v. George Kliavkoff*, (No. 23-2-00273-38) (Wash. Super. Ct. Whitman County) (Sept. 8, 2023).

¹³ See Victoria Alves, *Pac-12 Lawsuit Dispute Continues After Judge Grants Temporary Restraining Order*, ESPN WRUF (Sept. 12, 2023), <https://www.wruf.com/headlines/2023/09/12/pac-12-lawsuit-dispute-continues-after-judge-grants-temporary-restraining-order/> (confirming the Judge's ruling on the Motion for Temporary Restraining Order).

¹⁴ See Wilner *supra* note 7 (explaining the next steps in the litigation process and why they are seeking this injunction).

the outbound 10 presidents are still entitled to board seats.¹⁵ The central legal question hinges on whether the departing schools have issued a formal "notice of withdrawal," as stipulated in the bylaws, which would lead to their removal from the board.¹⁶ If all 10 are deemed to have given notice, control of the conference would fall to WSU and OSU exclusively.¹⁷ However, the bylaws do not specify how a notice of withdrawal should be delivered, which is why the matter has been taken to court.¹⁸

There appears to be very little to no legal precedent for an issue of this sort.¹⁹ The conference realignment movement in college athletics began relatively recently.²⁰ However, OSU and WSU believe that the Pac-12 set the precedent itself when they removed USC, UCLA, and Colorado, from the board after they were the first three to announce their departure.²¹ Weeks after the August 4 departure of the rest of the schools, Kliavkoff tried to assemble all 12 presidents, which WSU and OSU believed to contradict the Pac-12's previous stance on outbound schools.²² The attorney representing WSU and OSU, Eric MacMichael, noted that "The meaning of the bylaws hasn't changed just because more members have decided to leave."²³

Additionally, The University of Washington, one of the more recent departing schools, has attempted to intervene in the lawsuit.²⁴ They filed a motion signed by the other nine other departing schools in Whitman County Superior Court on October 9 seeking to dismiss WSU and OSU's original complaint.²⁵ They believe that board participation and voting power affects the experience of their universities' athletics teams and student-athletes for the 2023-24 academic year, as well as their bargained-for contractual rights and financial interests.²⁶ The Court has yet to rule on this motion.²⁷

Each Party's Interests

The ten departing schools have a clear financial incentive for the dissolution of the Pac-12.²⁸ If the Conference is dissolved, its remaining assets and property would be distributed to all twelve

¹⁵ See *id.* (clarifying what the injunction is targeted at).

¹⁶ See *id.* (explaining what the main legal issue is and what proof and standard will be needed to trigger the bylaw stipulation).

¹⁷ See *id.* (confirming what will happen if a notice of withdrawal has been deemed to be given).

¹⁸ See Lederman *supra* note 2 (explaining that the bylaws do not specify when a notice of withdrawal has been officially given and how that is the center of the legal issue).

¹⁹ See Wilner *supra* note 7 (explaining how there is very little legal precedent for this kind of issue).

²⁰ See Higgins *supra* note 1 (breaking down the timeline of the college conference realignment movement).

²¹ See Wilner *supra* note 7 (explaining what Oregon State and Washington State believe the precedent to be).

²² See Lederman *supra* note 2 (laying out the course of events).

²³ See Wilner *supra* note 7 (providing a quote from the attorney representing Oregon State and Washington State).

²⁴ See Cameron Salerno, *University of Washington Seeks to Dismiss Lawsuit Filed by Oregon State, Washington State Against Pac-12*, CBS SPORTS (Oct. 9, 2023) <https://www.cbssports.com/college-football/news/university-of-washington-seeks-to-dismiss-lawsuit-filed-by-oregon-state-washington-state-against-pac-12/> (explaining how University of Washington and the rest of the departing schools have responded in Court).

²⁵ See *id.* (providing information on what kind of action Washington took).

²⁶ See *id.* (explaining the departing schools' position on why they should retain some voting power).

²⁷ See Wilner *supra* note 7 (confirming the court has not yet ruled on Washington's response motion).

²⁸ See Christovich *supra* note 9 (demonstrating what the financial interests of the departing schools are).

members of the Conference.²⁹ On the other hand, OSU and WSU are striving to secure exclusive control over the conference's financial resources, encompassing future NCAA distributions, emergency funds, and Pac-12 Networks revenue.³⁰ Excluding the Pac-12 Networks, court documents reveal that the conference boasted \$43 million in net total assets and generated \$581 million in revenue last year.³¹ The networks, on their own, amassed \$117 million in revenue while incurring \$77 million in operating expenses.³² It is in the departing schools' interest for the Pac-12 to cease operations so they can obtain some of this revenue.³³ However, OSU and WSU may decide that adding new schools to replace the ones that left is their best course of action, in which case some of this revenue would stay in conference.³⁴ Their unwavering belief that the departing schools should not hold the decision-making authority remains consistent, regardless of whether they choose to pursue this course of action or explore alternatives like joining the Mountain West Conference.³⁵

The hearing for the motion filed by University of Washington is scheduled for November 14.³⁶ Until then, the Pac-12 will continue to operate as it has all season, and OSU and WSU will continue to ponder their best course of action going forward.³⁷ It is clear that the departing schools will have strong bias over the future of the conference, and although their decision to leave the Pac-12 for a brighter future in larger conferences, they will potentially have to deal with the foreseeable consequences of that decision: losing their board privileges.³⁸

²⁹ *See id.* (explaining what will occur if the Pac-12 is dissolved).

³⁰ *See id.* (explaining what Oregon State and Washington State's interests are).

³¹ *See id.* (providing figures for the revenue of the Pac-12).

³² *See id.* (providing more figures for the TV revenue of the Pac-12 network).

³³ *See Wilner supra* note 7 (giving context to what the departing schools interests are in relation to finances).

³⁴ *See id.* (explaining that Oregon State and Washington State have multiple courses of action they could possibly take).

³⁵ *See Christovich supra* note 9 (giving more context into the multitude of courses of action that the conference could take).

³⁶ *See Salerno supra* note 24 (providing the date for when the Court will hear Washington's new motion).

³⁷ *See Higgins supra* note 1 (explaining how the Pac-12 will operate for this academic year before the moves occur).

³⁸ *See Wilner supra* note 7 (summing up the potential bias of each party and explaining what the consequences of the schools' departures will potentially be if the Court rules again for Washington State and Oregon State).

