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PRYOR V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 153 F. Supp. 2D 710 (E. D. PA. 2001)*

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FACTS

Plaintiffs, Kelly Pryor ("Pryor") and Warren Spivey, Jr. ("Spivey"), are African-American student-athletes.[1] San Jose State University ("SJSU") recruited Pryor to play soccer and she signed a National Letter of Intent ("NLI") finalizing her decision to attend SJSU beginning in the fall of 1999.[2] Spivey signed a NLI with the University of Connecticut to play football beginning in the fall of 1999.[3] The NLIs required the students to satisfy the freshman eligibility requirements of the National Collegiate Athletic Association's ("NCAA") Proposition 16 ("Prop 16") in order to receive athletic scholarships and participate in intercollegiate athletics.[4] Both Pryor and Spivey failed to meet the requirements of Prop 16 and the NCAA denied them full qualifier status.[5]

In 1992 the NCAA passed Prop 16, which took effect in 1996.[6] Prop 16 sets forth an "initial-eligibility index" for student-athletes who seek to participate in intercollegiate athletics at a NCAA-affiliated college or university.[7] Prior to Prop 16, athletic eligibility requirements focused primarily on standardized test scores provided by the Scholastic Aptitude Test ("SAT") and the American College Test ("ACT").[8] The "initial-eligibility index," set forth in NCAA Bylaw § 14.3.1.1.1,[9] creates a sliding scale based on standardized test performance and grade point average ("GPA").[10] A student-athlete may establish eligibility as a full qualifier with a 2.0 GPA in thirteen core courses, provided he or she also obtains SAT scores of 1010 (or

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* At the time of writing, plaintiffs had appealed this case. On May 6, 2002, the Third Circuit Court of Appeals affirmed in part, reversed in part, and remanded in Pryor v. National Collegiate Athletic Association, 2002 U.S. App. LEXIS 8745. The Third Circuit reversed the District Court and held that plaintiffs had sufficiently stated a claim for purposeful racial discrimination under Title VI of the Civil Rights Act of 1964. The court affirmed the District Court's holding that Pryor lacked standing to prosecute her discrimination claims under the ADA. Although this case note has been largely overturned, we publish this for its cogent analysis of the District Court's opinion and its criticisms of Proposition 16.

1. Pryor v. National Collegiate Athletic Association, 153 F. Supp. 2d 710,712 (E.D. Pa. 2001).
2. *Pryor*, 153 F. Supp. 2d at 712.
3. *Id.*
4. *Id.*
5. *Id.*
6. Lee J. Rosen, *Proposition 16 and the NCAA Initial-Eligibility Standards: Putting the Student back in the Student-Athlete*, 50 CATH. U. L. REV. 175, 182 (2000).
7. *Id.* at 182-83.
8. *Id.* at 180.
9. National Collegiate Athletic Association, *Bylaw Article 14, Eligibility: Academic and General Requirements*, § 14.3.1.1.1 (August 1, 2001).
10. *Id.*

a combined ACT score of 86).[11] Alternatively, a student-athlete who received a SAT score of 820 (or 68 ACT) is eligible provided he maintained a GPA of at least 2.5.[12]

Due to Pryor's learning disability, the NCAA qualified her as a learning-disabled student-athlete and allowed her to seek a waiver of its decision.[13] On review, the NCAA deemed Pryor to be a partial qualifier.[14] A partial qualifier is a student who does not meet the requirements for a full qualifier but who, at the time of graduation from high school, has scored at least a 720 on the SAT (or a combined ACT score of 59) combined with a GPA of 2.750; or, alternatively, a student-athlete who received a SAT score of 810 provided he maintained a GPA of 2.525.[15] As a partial qualifier, Pryor kept her athletic scholarship and could practice with the soccer team, but could not compete during her freshman year.[16] The University of Connecticut applied for a waiver on Spivey's behalf on the grounds that he was also a learning-disabled student-athlete, but the NCAA denied the application.[17] Therefore, Spivey could not receive athletic financial aid or participate in intercollegiate athletics during his freshman year.[18]

Prop 16 permitted Pryor and Spivey to participate in college athletics in their second year if their academic performance during their first year met specified standards.[19] The NCAA allows member-schools to set the minimum standards for qualification to compete after the first year, with each school setting its own definition for "satisfactory academic progress."[20] Also, the NCAA passed Bylaw 14.3.3.2 in August 1999 that granted learning disabled student-athletes, nonqualifiers and partial qualifiers five years to use their four years of college athletic eligibility.[21] Plaintiffs have not, as of yet, sought to obtain this additional year in which to use their eligibility.[22]

After finishing their freshman years, plaintiffs filed claims with the District Court for the Eastern District of Pennsylvania.[23] They alleged racial

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11. *Id.*
12. *Id.*
13. *Pryor*, 153 F. Supp. 2d at 712.
14. *Id.*
15. National Collegiate Athletic Association, *Bylaw Article 14, Eligibility: Academic and General Requirements*, § 14.3.2.1 (August 1, 2001).
16. *Pryor*, 153 F. Supp. 2d at 712.
17. *Id.*
18. *Id.*
19. *Id.*
20. National Collegiate Athletic Association, *Bylaw Article 14, Eligibility: Academic and General Requirements*, § 14.4.1 (August 1, 2001).
21. *Pryor*, 153 F. Supp. 2d at 712 (referring to National Collegiate Athletic Association, *Bylaw Article 14, Eligibility: Academic and General Requirements*, § 14.3.3.2 (August 1, 2001)).
22. *Id.*
23. *Id.*

discrimination under Title VI of the Civil Rights Act of 1964[24] asserting that the NCAA purposefully discriminated against them by intentionally designing and implementing eligibility criteria that have a disparate impact on racial minorities.[25] Plaintiffs also claimed that the NCAA's indifference to the effects of Prop 16 constituted purposeful discrimination.[26]

Pryor also filed separate claims alleging discrimination on the basis of her learning disability under Section 504 of the Rehabilitation Act of 1973 and Title III of the Americans With Disabilities Act.[27] She alleged that the NCAA discriminates against learning-disabled athletes by denying them the opportunity to participate in athletics at Division I schools.[28]

The NCAA moved for summary judgment.[29] The Court treated the NCAA's motion as a motion to dismiss in accordance with Fed. R. Civ. P. 12(b)(6).[30] Because the plaintiffs' claims did not survive the Court's review under 12(b)(6), the Court did not reach the question of whether a motion for summary judgment under Fed. R. Civ. P. 56 would be appropriate.[31]

The language of Rule 12(b)(6) provides that, in response to a pleading, a defendant may raise the defense of "failure to state a claim upon which relief can be granted" by motion.[32] In considering such a motion, the court must only consider the facts alleged in the complaint.[33] Additionally, the court must take all well-pled facts in the complaint as true and view them in a light most favorable to the plaintiff.[34] The plaintiff must "provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist."[35] Ultimately, a complaint will be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations."[36]

HOLDING

The United States District Court for the Eastern District of Pennsylvania

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24. 42 U.S.C. § 1983 (1994); 42 U.S.C. § 2000(d) (1994).
25. *Pryor*, 153 F. Supp. 2d at 712.
26. *Id.*
27. *Id. See also* 29 U.S.C. § 794 *et seq.* (1999); 42 U.S.C. § 12101 *et seq.* (1995).
28. *Pryor*, 153 F. Sup. 2d at 713.
29. *Id.* at 711.
30. *Id.* at 712.
31. *Id.*
32. FED. R. CIV. P. 12(b)(6).
33. *Pryor*, 153 F. Supp. 2d at 712 (citing ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994)).
34. *Id.* at 713 (citing Jenkins v. McKeithen, 395 U.S. 411, 421 (1969)).
35. *Id.* (citing Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993)).
36. *Id.* (citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

granted the NCAA's motion to dismiss, or, in the alternative, for the NCAA's motion for summary judgment in its entirety.[37] The Court dismissed Pryor's claims under the American's With Disabilities Act,[38] the Rehabilitation Act,[39] and Title VI[40] with prejudice.[41] The Court also dismissed with prejudice Pryor and Spivey's § 1981[42] claims of race discrimination.[43]

ANALYSIS

The Court evaluated Pryor's claims under the Americans with Disabilities Act and the Rehabilitation Act together.[44] The NCAA argued that Pryor lacked standing to bring these claims and the Court agreed.[45]

In order to have standing, a plaintiff must allege an actual case or controversy for which the Court can grant relief.[46] Pryor had to satisfy three prongs: (1) injury in fact (a concrete harm suffered by plaintiff that is actual or imminent), (2) causation, and (3) redressibility.[47]

Pryor argued that the NCAA's process for evaluating the eligibility of learning disabled students weighs academic indicators such as standardized achievement tests too heavily.[48] She claimed that these tests did not accurately represent the abilities of learning-disabled individuals.[49] She also argued that the NCAA unjustly denied her full qualifier status.[50] As a partial qualifier she was unable to compete in athletic events during her freshman year, although she still received scholarship money.[51] In addition, Pryor claimed that the waiver process in Prop 16 is itself inadequate to accommodate learning disabled students.[52] The court determined that these allegations were sufficient for Pryor to meet the first two prongs of the test for standing analysis.[53]

The Court, however, determined that Pryor failed to show redressibility, the third prong of the standing analysis.[54] Before Pryor filed her claim, the

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37. *Id.* at 718.
38. 42 U.S.C. § 12101 *et seq.* (2002).
39. 29 U.S.C. § 794 *et seq.*
40. 42 U.S.C. § 2000(d).
41. *Pryor*, 153 F. Supp. 2d at 718.
42. 42 U.S.C. § 1981
43. *Pryor*, 153 F. Supp. 2d at 718.
44. *Id. See also* 29 U.S.C. § 794 *et seq.*; 42 U.S.C. § 12101 *et seq.*
45. *Pryor*, 153 F. Supp. 2d at 718.
46. *Id.*
47. *Id.* (citing Doe v. National Bd. Of Med. Examiners, 199 F.3d 146, 152 (3d Cir. 1999)).
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 714.

NCAA had passed Bylaw § 14.3.3.2,[55] that provided Pryor with another year of eligibility.[56] Therefore, Pryor still had four years of athletic eligibility and did not suffer an injury by being unable to compete during her freshman year.[57] Pryor argued that even under Bylaw § 14.3.3.2 the procedures that learning disabled students must follow to obtain their fourth year of eligibility are different from the procedures that non-disabled students must follow.[58] Pryor claimed that she must "earn back" her fourth year whereas a physically-injured athlete, for instance, would automatically recover the year.[59] Pryor argued that this discrepancy is evidence of the continuing adverse effects of Prop 16.[60] The court held that even if this description was true, Pryor did not raise any of these concerns in her complaint.[61] The court concluded that she had no injury to be redressed, and she therefore failed to establish the third prong of the standing analysis.[62] For the same reasons, the court granted the NCAA's motion to dismiss Pryor's claims under the Americans with Disabilities Act and the Rehabilitation Act.[63]

Plaintiffs' claims under Title VI of the Civil Rights Act of 1964 were that the NCAA purposefully discriminated against them by intentionally designing and implementing the eligibility criteria in Prop 16 to have a disparate impact on racial minorities.[64] They further alleged that the NCAA's deliberate indifference to Prop 16's effects constitutes purposeful discrimination.[65]

In order to invoke Title VI, a plaintiff must show that a defendant receives federal funds.[66] The plaintiffs described the NCAA's relationship with the National Youth Sports Program (NYSP) and the National Youth Sports Program Fund.[67] Before its recent reorganization, the NCAA controlled a part of NYSP which received federal funds from the United States Department of Health and Human Services.[68] The Third Circuit, in *Cureton v. NCAA*,[69] found this relationship to be insufficient to establish the NCAA as a recipient of

55. National Collegiate Athletic Association, *Bylaw Article 14, Eligibility: Academic and General Requirements*, § 14.3.3.2 (August 1, 2001).
56. *Pryor*, 153 F. Supp. 2d at 714.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.* at 715.
63. *Id. See also* 29 U.S.C. § 794 *et seq.*; 42 U.S.C. § 12101 *et seq.*
64. *Pryor*, 153 F. Supp. 2d at 715. *See also* 42 U.S.C. § 2000(d).
65. *Pryor*, 153 F. Supp. 2d at 715.
66. *Id.* (citing Guardian Ass'n v. Civil Service, Comm'n, 463 U.S. 582 (1983)).
67. *Id.*
68. *Id.*
69. Cureton v. NCAA, 198 F.3d 107, 114-15 (3d Cir. 1999).

federal funding.[70] In *Cureton*, the Third Circuit held that only programs directly receiving federal funding could be held liable for disparate impact under Title VI.[71] The Court in the present case distinguished *Cureton*, noting that where there is a claim of intentional discrimination, an organization can be considered a recipient of federal funds on an institution-wide basis.[72] If plaintiffs prove their claims of intentional discrimination, the NCAA may be held liable due to the indirect receipt of federal funding from the NYSP.[73]

The Court then addressed the next prong of the Title VI analysis looking at whether the plaintiffs' basis for alleging intentional discrimination was sufficient to survive a motion to dismiss.[74] The Plaintiffs argued that they could prove intentional discrimination: (1) by showing that discriminatory purpose was a motivating factor in the development and adoption of Prop 16, and (2) by showing that the NCAA was deliberately indifferent to the disparate impact of Prop 16.[75] The Court held that Title VI does not provide a basis for a claim where a federally funded entity knowingly implements regulations which create a racially or ethnically disparate impact, therefore, plaintiffs' argument that they can show the NCAA was deliberately indifferent to a disparate impact fails.[76] With respect to plaintiffs' discriminatory motive argument, the Court stated that the standard for measuring discriminatory motive is that the policy must be adopted "'because of' not merely 'in spite of' its adverse effects upon an identifiable group."[77]

The Court did not find that the NCAA created Prop 16 with the intent to achieve a racially disparate impact, but perhaps created one incidentally.[78] Even so, the Court held that the NCAA's awareness of an effect does not raise its conduct to the level of purposeful discrimination.[79] The Third Circuit had addressed the same issue in *Cureton* where it found that simply monitoring the effects its rules have upon black student-athletes does not suggest that the NCAA improperly considered race either in the promulgation or continued enforcement of Prop 16.[80] The Court found the plaintiffs' allegations of intentional discrimination failed to state a claim under Title VI and granted the NCAA's motion to dismiss.[81]

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70. *Pryor*, 153 F. Supp. 2d at 715.
71. *Id.* (referring to Cureton v. NCAA, 198 F.3d 107 (3d Cir. 1999)).
72. *Id.*
73. *Id.*
74. *Id.* at 716.
75. *Id.*
76. *Id.* (citing Alexander v. Sandoval, 531 U.S. 1049 (2001)).
77. *Id.* (citing Stehney v. Perry, 101 F.3d 925, 937-38 (3d Cir. 1996)).
78. *Id.*
79. *Id.* at 717.
80. *Id.*
81. *Id.*

With regard to the plaintiffs' claim for racial discrimination under § 1981, the court found that the plaintiffs were the cause of any breach of contract that may have occurred because they failed to satisfy conditions they knowingly accepted when they signed their NLIs.[82] Plaintiffs had alleged that Prop 16 denied them the opportunity to make and perform contracts, NLIs, and hence the ability to participate in college athletics and receive related financial aid.[83] To bring a claim under § 1981 the plaintiffs would have had to: (1) establish that they were members of a racial minority, (2) establish that the NCAA intended to discriminate against them on the basis of race, and (3) establish that the NCAA's discrimination concerned an activity protected under the statute such as the right to enter into a contract and enjoy its benefits.[84] The plaintiffs satisfied the first prong.[85] They failed the second prong which required a showing of intentional discrimination.[86] As to the third prong, the Court found that the plaintiffs were able to make contracts by signing the letters of intent.[87] Therefore, the remaining question was whether Prop 16 interfered with their ability to enjoy the benefits of these contracts.[88] The Court held that the plaintiffs knew the conditions of signing the NLIs (the GPA and ACT/SAT requirements), and could not now, after failing to meet the conditions, argue that the contracts were invalid.[89]

CONCLUSION

The plaintiffs' opportunity to mount a challenge against Prop 16 fell when the district court deferred to precedent. The court determined that Title VI offers no private cause of action for regulations that create a racially or ethnically disparate impact unless there is a showing of intentional discrimination. On this point, plaintiffs' argument that the NCAA intentionally discriminated by showing deliberate indifference to a disparate impact, their strongest argument, was effectively eliminated. They were left with trying to claim the NCAA instituted Prop 16 with the specific purpose of discriminating against minorities, an argument for which they had no factual support. Though the Court correctly analyzed the case with respect to NCAA regulations, applicable statutes, and precedent, they failed to forge any new ground with respect to racial equality. Unless future plaintiffs find a cause of

82. *Id.* at 718.
83. *Id.* at 717.
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.* at 718.
88. *Id.*
89. *Id.*

action or a court that will find intent in the NCAA's indifference to the disparate impact that Prop 16 has, the courts will continue to find in favor of the NCAA, and minority student-athletes will need to find other channels to change the standards of Prop 16.

Critics of Prop 16 say it is unfair because of its disparate impact on minorities and athletes from lower-income families.[90] In fact, there has been so much criticism that the NCAA's academic cabinet is considering implement changes to Prop 16 as early as 2003.[91] Some critics are not so sure the NCAA rules should be redrawn.[92] The NCAA cabinet is looking at adjustments that would weight a student-athlete's grade point average more heavily.[93] Prop 16 was enacted to improve athletes' graduation rates, and it may have accomplished this objective, but the athletic community needs a better method for accomplishing this goal.[94] The graduation rate may be higher since the institution of Prop 16 because they have simply weeded out poor students who brought the rate down. Prop 16 has done nothing to help more students graduate, but has instead excluded students with lower test scores, creating the appearance of a higher graduation rate. If athlete graduation is the concern, schools could use stricter requirements for performance after an athlete begins college. Prop 16 may produce better first year college academic performance, but the accompanying discrimination is too great.

The NCAA is the most likely source of change. If the NCAA were to revise Prop 16 with the purpose of effectuating racial equality, the inequality of standardized tests should be taken into account. The discrepancy between standardized test scores for African-Americans and for whites is notable.[95] African-Americans, on average, score over 4 points lower than whites on the ACT, and about 100 points lower on the SAT.[96] Studies have sought to explain these gaps in test scores. The most prominent finding is the tie between the quality of education and the test result.[97] Because so many African-Americans live in urban areas and attend inner-city schools where the quality of education is lower, they are not trained to test well on national

90. J.M. Porter, *Judge dismisses Prop 16 Challenge*, USA TODAY, July 10, 2001, at C9.

91. Steve Weiberg, *NCAA is ready to revise academic eligibility statute*, USA TODAY, July 5, 2001, at C1.

92. Steve Vedder, *Local officials against changing NCAA rules*, THE GRAND RAPIDS PRESS, July 12, 2001, at (no page reference available).

93. *Id.*

94. *Id.*

95. MEASURING UP: CHALLENGES MINORITIES FACE IN EDUCATIONAL ASSESSMENT 4-5 (Arie L. Nettles & Michael T. Nettles, eds., Kluwer Academic Publishers 1999).

96. *Id.*

97. PETER SACKS, STANDARDIZED MINDS: THE HIGH PRICE OF AMERICA'S TESTING CULTURE AND WHAT WE CAN DO TO CHANGE IT 8-9 (Perseus Books 1999).

standardized tests such as the SAT and ACT.[98] One study suggested that African-Americans use the right side of the brain in thinking about the world, while whites use the left side of the brain, which is more apt to "process information sequentially and computer-like," similar to what is required on a standardized test.[99]

In legislating Prop 16 the NCAA may not have sought to purposefully discriminate against African-Americans, but they failed to answer the discrepancies that exist when using standardized test scores. In the future, when revising the propositions the NCAA should look at these studies and use their lawmaking power as a tool for social equality. They have hinted at taking more emphasis off standardized tests and putting more emphasis on GPA.[100] Why not remove the role of standardized tests altogether, and use GPA as the sole standard? This has been done in school admission processes with noted success.[101]

The District Court's distinction between regulations "intended" to have a racially disparate impact and regulations that "incidentally create one" is the main obstacle for plaintiffs challenging Prop 16's requirements. Though the Court has offered little hope, those seeking to challenge Prop 16 in the courts are not giving up. Following the court's second dismissal of a legal challenge to the eligibility criteria of Prop 16, Pryor and Spivey's attorney, Andre Dennis, who also represented the plaintiff in *Cureton* said, "We still believe in this action. We still believe in this case."[102]

Summary and Analysis Prepared By:
Justin E. Pingel

98. *Id.*
99. *Id.* at 218-219.
100. Weiberg, *supra* note 92, at C1.
101. SACKS, *supra* note 98, at 306-307.
102. Porter, *suspra* note 91, at C9.