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The impact on college sports programs if athletes are paid (opinion)

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Now that the football season is over, college sports fans have several options. They can argue about whether next year the University of Alabama will defend its 2018 College Football Playoff National Championship title. Or they can turn to watching some of the more than 50 National Collegiate Athletic Association basketball games televised each week.

These obvious choices do not exhaust the possibilities for excitement, because the real game is going to be played off the court and in court. That's because U.S. District Court judge Claudia Wilken will be holding a hearing on motions for summary judgment in the case of Jenkins v. NCAA, a class-action suit that challenges the NCAA's compensation limits on athletes. According to a recent article [1] in *Time* magazine by Sean Gregory, "This could be the last college football championship game with unpaid players." Representatives for college players are confident that, within the coming year, college athletes will be able to receive payment beyond the current limits of a grant in aid plus cost of living adjusted expenses. And even though almost 69 percent of respondents surveyed by the NCAA last year expressed opposition to paying college athletes, Gregory suggests that today avid college sports fans may have little problem with such an innovation.

Advocates for paying college players justify their cause and case on the grounds that since the NCAA, major conferences, big-time college sports programs and their high-profile coaches make millions of dollars from college sports, the amateur athletes who play the college games that attract spectators deserve to "share in the bounty."

That may be good news for student athletes who think they are financially exploited. Less clear is how the other principle participant -- the college athletics department -- will fare under the new arrangements. If college athletes are allowed to be paid salaries, what will the impact be on intercollegiate athletics programs' budgets and operations? How will college athletic directors pay for "play for pay"?

Most likely, no college athletics director will relish the new professionalization, because paying salaries to players will increase program expenditures without necessarily increasing revenues. But if the court does approve player payment, a handful of powerful programs will stand to gain in competition for athletic talent simply because they can afford to pay salaries. Others will mimic as they try to keep up but eventually will fall short in trying to outbid Auburn University, Florida State, the University of Southern California or the University of Texas in the college player arms race.

Even before factoring in the added expenses that might come from the anticipated court ruling, the important prequel is that now only about 20 [2] college athletics programs consistently operate in the black, even though the traditional justification for big-time football is that it serves as the golden goose to subsidize the other “nonrevenue” sports. More surprising is that many NCAA Division I football programs [3] lose money. With the added expense of paying some athletes salaries, most programs will go deeper in debt. The harsh reality is that they will still fall behind as the gap in the competition for star athletes will widen, with the Bowl Championship Series conference members gaining a pronounced edge.

This syndrome of the rich getting richer among big-time college sports programs is not surprising. Less obvious is that with player payroll expenses, even many of the high-profile, commercially successful college sports programs will face unexpected consequences that will strain their annual operating budgets.

For example, when an athletics department pays a salary instead of providing a grant in aid, it faces substantial new expenses for no gain in services. It must pay federal taxes for Medicare and Social Security, matching the dollar amount paid by the employee. If, for example, a player received a salary of about $140,000, the employer and employee each would pay about $9,100 per year for these two federal taxes.

Athletic departments pay another price if they shift from scholarships to salaries. When player compensation was in the form of a grant in aid, an athletics department could rely on the university financial aid to transfer a Pell Grant worth up to about $5,000 per year to a player’s package if the student athlete had demonstrated financial need. So if 100 grant-in-aid recipients were receiving Pell Grants, that might save the athletic department $500,000 per year in fulfilling their obligations on funding financial aid packages. Under the new rules, that potential subsidy would evaporate.

A crucial question is whether any of the court’s rulings that allow a college to pay players will jeopardize a college sports program’s status as a 501(c)3 nonprofit organization. Some prominent tax law scholars such as John D. Colombo of the University of Illinois have argued [4] that it would be difficult and unlikely for a college sports program to forfeit this legal status.

Perhaps so. But the recent trends in the court cases suggest one vulnerable point where paying salaries to student athletes could jeopardize the customary federal tax-exempt status. To qualify for 501(c)3 status, an educational activity must also be a *charitable* activity. As long as athletic programs and their host corporations such as the state university athletic association or the state university athletic foundation use their revenues to pay for scholarships, the charitable status of the overall athletics program probably is safe. Shifting, however, to paying salaries to student athletes goes counter to an essential condition because it would be hard to define a salary as a charitable expense.

Why is this important? If a college sports program department or athletics association forfeits its tax-exempt status, it may have new, big expenses from which it was spared under the student aid model. Those could include state and local categories of taxes, such as property taxes. There are already cases [5] whereby a local government has pressed a major state university to explain why a golf course or other real estate not used for educational purposes that the institution owned should qualify as an educational and charitable site. With professional athletes on the payroll, such local and state scrutiny of land used for sports entertainment provided by hired professionals will increase.

One possible strategy to reduce this potential tax exposure would be for athletic directors to decide to pay salaries only to student athletes for selected sports. Most likely, that would include football, men’s basketball, women’s basketball and a few others such as hockey at a handful of universities. All other sports might be left in their current, familiar grant-in-aid category. The risk is that paying salaries to student athletes in a few high-profile sports will open the door to Title IX compliance problems, especially if comparable compensation is not given regardless of gender. This concern is not outlandish, because a football squad with an allotment of 65 players is a large number, as already shown in the problems athletic directors have in gaining parity for women's sports in paying for grants in aid.

Those added expenses will take place just as the new federal tax reform bill passed in December 2017 takes effect, requiring colleges and other nonprofits to pay an excise tax for employee salaries surpassing $1 million per year. That measure will have disproportionate consequences for athletics programs where coach and athletic director salaries are high. The obvious targets are head coaches who can make as much as $7 million or more a year. Yet in recent years, the potential impact has extended to a wider group, as some assistant coaches make over $1 million [6] per year. The new tax legislation also places greater limits on tax deductions for donors who give to athletics programs and earn the right to purchase season tickets to games.

Furthermore, in some states, legislators are filing bills that would require university governing boards to review big sponsorship and endorsement deals [7] with Adidas or other sports merchandising companies, which can be as high as $165 million over 10 years.

College sports programs will still enjoy great exemptions and benefits but will face increasing scrutiny and constraints. Expenses will continue to rise, but revenues will be subject to more taxes. Courts and Congress are increasingly, albeit reluctantly, acknowledging the commercial character of the NCAA and its sponsored sports. On June 4, 2015 in the case of Javon Marshall, et al., v. ESPN, et al., federal district Judge Kevin H. Sharp wrote [6], "College basketball and football, particularly at the Division I and FBS [Football Bowl Subdivision] levels, is a big business. Of that there can be little doubt." Nor is there much doubt that the financing of big-time college sports is entering a new, problematic period of adjustment due to the pressures and precedents pointing toward increased student athlete compensation, combined with some signs of congressional concerns about commercialism and colleges.

If college players can be paid, how much will they be paid? Even though advocates of paying student athletes invoke the rhetoric of "fair market value," it's unlikely that new court rulings will open the floodgate to allow uncapped salaries for college athletes. A more probable scenario is that the courts will designate the conference as the crucial collective unit that works with its member universities to set ceilings and floors on player salaries. Conferences such as the Ivy League and the Patriot League, which play in NCAA Division I yet prohibit athletic grants in aid, obviously will not participate in the added commercialization of paying salaries to athletes. The Power Five Conferences will be likely participants.

Between those two extremes, for other Division I conferences, athletic directors will pay a heavy price if they opt to pay players. After the euphoria of achieving partial gains in financial equity by allowing salaries for hardworking student athletes passes, the sobering reality is that even big-time college sports programs will be stretched in their budgets and conflicted in reconciling payment of student athletes with their educational mission.

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[1] http://time.com/5088736/college-football-championship-2018-pay/?utm_source=time.com&utm_medium=email&utm_campaign=the-brief&utm_content=2018010812pm&xid=newsletter-brief
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