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Supreme Court's NCAA ruling puts athletes on legal path to getting paid

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Monday's Supreme Court decision backing athletes looking to loosen the NCAA's iron grip on a multibillion-dollar industry won't change the college sports business model overnight. But the ruling is expected to pave the way for more consequential legal challenges — including the rights of players to get paid.

The justices, in a 9-0 ruling, upheld a decision by the 9th U.S. Circuit Court of Appeals that said college athletes could receive unlimited compensation for their endeavors as long as the benefits are “related to education” — such as internships, laptops or payments for tutoring.

While Monday's ruling was limited to educational benefits, attorneys for the student-athletes said the justices' decision opens the door for further challenges to the NCAA's position that college athletes should not be paid.

“This historic 9-0 decision is about the athletes, especially those who will never join the pros. It is a chance to make a meaningful difference in their lives and their communities,” said Jeffrey Kessler, a partner at Winston & Strawn, which represented the student-athletes.

“Hopefully, it will also swing the doors open to further change, so that we can finally see a fair and competitive compensation system in which these incredible players get to benefit from the economic fruits of their labors and pursue their educational objectives,” he added.

In the 40-page ruling, Justice Neil M. Gorsuch wrote that the NCAA ran afoul of antitrust laws by putting a limit on the educational benefits an athlete is eligible to receive.

The high court noted that the NCAA earned \$1.1 billion in 2016 for television rights to March Madness, compared to the \$16 million per year that CBS paid to televise the annual basketball tournament from 1982 to 1984.

Compensation for coaches and executives has also soared in that span — with the court noting that the president of the NCAA earns nearly \$4 million per year and top conference commissioners earn between \$2 million to \$5 million. Alabama's Nick Saban, too, is the country's highest-paid college football coach at \$9.3 million.

“Those who run this enterprise profit in a different way than the student-athletes whose activities they oversee,” wrote Justice Gorsuch.

Justice Brett M. Kavanaugh further challenged the setup in a concurring opinion, suggesting that the NCAA’s restrictions on pay may be unconstitutional.

“The NCAA couches its arguments for not paying student-athletes in innocuous labels,” Justice Kavanaugh wrote. “But the labels cannot disguise the reality: The NCAA’s business model would be flatly illegal in almost any other industry in America.”

Justice Kavanaugh’s statement, legal experts said, may encourage additional legal action against the NCAA. Ilya Shapiro, vice president of the Cato Institute, called the court’s ruling “a revolution in college sports,” helping to ring in compensation for the athletes.

“For too long, sports grandees have profited off the labors of youngsters. There’s more than enough money to go around, so why not give some to the kids who generate it?” Mr. Shapiro said.

Marty Conway, a sports management professor at Georgetown University, said the ruling broadens the landscape for college athletics. He called the ruling “sort of the end of the beginning,” adding that the shift had been in the works for years.

“This has been opening up for some time, and the NCAA as an institution has been stuck frankly defending the status quo when many of their members thought, ‘Well, this would no longer be relevant,’” Mr. Conway said.

The changes to alter the NCAA’s model already have begun. Six states have laws to allow athletes to profit off their name, image and likeness (NIL) that go into effect July 1, while a dozen others have passed legislation that is scheduled to go into effect at a later date. NCAA leaders also requested Congress pass a federal NIL law to create a uniform standard.

This month, the NCAA’s Division I council is expected to vote on its own national framework — instituting a policy for its 1,268 members. Sports Illustrated reported in October the organization’s proposed NIL policy will permit student-athletes to make money off things such as autographs, endorsements, commercials, private lessons and crowdfunding.

NCAA President Mark Emmert said in a statement Monday that the organization “remains committed” to supporting NIL benefits for athletes.

“Additionally, we remain committed to working with Congress to chart a path forward, which is a point the Supreme Court expressly stated in its ruling,” Mr. Emmert said.

Still, the NCAA fought Monday’s case up until the justices made their ruling. The athletic association argued that its athletes are amateurs who don’t deserve compensation for their skills.

Division I football and basketball students initially had brought a case aiming to strike down the NCAA's compensation limitations. They received a partial win in the lower courts, saying the NCAA can't bar pay when it comes to school-related expenses.

According to the NCAA, the lower court ruling would allow student-athletes to obtain internships that pay them unlimited amounts, creating a loophole that would undermine the NCAA's control over its venture. The NCAA said this runs afoul of antitrust law, which protects consumers and promotes fair competition.

The athletic association claimed that student-athletes may be given "luxury cars" to go to class or "other unnecessary or inordinately valuable items" only 'nominally' related to education," according to the court's opinion.

But the court didn't buy the argument. Justice Gorsuch said the NCAA can forbid certain benefits unrelated to a student's education.

"Nothing stops it from enforcing a 'no Lamborghini' rule," he wrote.

Monday's ruling in *NCAA v Alston* also noted that student-athletes have been receiving benefits since 1852, when Harvard and Yale universities held a boat race in which lavish prizes were distributed. Over the years, certain rules and limits were created that limited student pay and prizes.

The high court recognized compensation unrelated to education would blur the line between college and professional athletes.

"The NCAA could develop its own definition of benefits that relate to education," the court ruled. "The NCAA may seek whatever limits on paid internships it thinks appropriate."

Monday marked the first time the Supreme Court weighed in on college athletics in more than 35 years, when the justices upheld a ruling that determined the NCAA was breaking antitrust laws by limiting the number of times an individual school could appear on television. Since then, the college landscape has transformed significantly and now looks poised to shift again.

Michael Rueda, head of the sports and entertainment practice at Withers, an international law firm, said the biggest impact of Monday's ruling is that the high court held the NCAA to the same standards as other businesses and industries.

"There is, theatrically now, competition created and schools can decide what they want to offer," he said. "The more significant implication long term is the Supreme Court has now stated that the NCAA is not special and will receive the same scrutiny as anyone else when it comes to antitrust review."

Andrew Zimbalist, an economics professor at Smith College in Massachusetts, said he expects the new arrangements to allow for a form of bidding between the top schools, increasing the costs of running a top-tier program. He estimates about 20 universities hold a surplus of funds in

their athletic departments. Those 20 or so Power 5 schools should have the easiest time adjusting to the heightened competition in recruiting, he said.

There could be an even larger gap between the haves and have-nots forming, though, brought out through the rising costs of attracting the best recruits. Some schools could diminish funding for football — a sport with by far the largest roster and most scholarship spots — to stay competitive in other sports, such as basketball.

“What you have basically seen in college sports over the last 30 or 40 years is the midlevel schools, who are not in the top half of the Power 5, they’re always trying to become the next Michigan, the next Ohio State, the next Alabama,” Mr. Zimbalist said. “They’re always pushing themselves to see if they can step up to the next rung. But this is going to create more distance. So some of the rungs in the ladder are going to disappear, and they’re going to see that they can’t step up.”

The Biden administration had argued on behalf of the college athletes before the justices. White House Press Secretary Jen Psaki said the athletes work hard on the field and in the classroom.

“Today’s decision recognizes that as with all Americans, their hard work should not be exploited. The president believes that everyone’s work should be compensated fairly for his or her labor,” she said.