

Collegiate Athletics Reform: A Call for Federal Intervention

a CLIPS Guest Commentary

By Frank G. Spitt, 01-10-12

It's obvious from the abuses we see that there's been no check on charities; big money, tax free, and no oversight have created a cesspool in too many cases.—Senator Charles Grassley, 2004

Our guest author believes that intervention by the federal government is the only way to bring about what he sees as desperately needed reform of big-time football and men's basketball.

A recent message to the Chief Democratic and Republican Tax Counsels for the Senate Finance Committee (SFC) concluded with an appeal to have its Chairman, Max Baucus, and its Ranking Member, Orrin Hatch, give thoughtful consideration to having the SFC follow up on the 2006 efforts of House Committee on Ways & Means (then) Chairman Bill Thomas and (then) SFC Chairman Senator Chuck Grassley. Their efforts focused on getting the NCAA to provide justification for the tax-exempt status of its big-time football and men's basketball programs.

This appeal was similar to previous appeals via open letters to President Barack Obama¹ and to Education Secretary Arne Duncan² that respectfully asked for support to help clean up the mess in collegiate athletics. Here was the message:

The American public's seemingly unbounded love of college sports entertainment at any cost can be readily exploited by skilled marketing professionals to the long-term detriment of the integrity and health of higher education in America.

The incremental cost of such exploitation to build an ever bigger college sports entertainment enterprise amounts to the cost of expanding a heretofore eminently successful business model, that is, the cost of further prostitution of America's compliant colleges and universities without any requirements for transparency and accountability, as well as with apparently acceptable artifacts of this prostitution—huge tax-free revenues, unbridled greed, manifold corruption, and blatant hypocrisy.

Based on over eight years of research on college sports reform, my experience indicates that intervention by the federal government is the only way to bring about desperately needed reform to help restrain the uncontrolled growth of big-time football and men's basketball programs with its potentially devastating impact on America's colleges and universities.

The time has come for a major overhaul. And whether the powers that be like it or not, big changes are coming. Threats loom on multiple fronts: in Congress, the courts, breakaway athletic conferences, student rebellion, and public disgust. Swaddled in gauzy cliches, the NCAA presides over a vast, teetering glory.—Taylor Branch, 2011

There follows a short list of authors and links to recent articles that could prove of value to members of the Senate Finance Committee for a bipartisan effort to end the subsidization of collegiate athletics via unjustified tax breaks that have provided huge amounts of easy tax-free money to help fuel said uncontrolled growth.

1. Karl Taro Greenfeld³

"Since taking over the Pac-12 Conference, PAC 12, Conference Commissioner Larry Scott has brokered a multibillion-dollar TV deal and launched a revolution in the business of college sports. Now he's out to make college football as lucrative as the NFL," says Greenfeld. He then asks: How much bigger can college football get? He answers by quoting Scott and Chris Bevilacqua, a sports media consultant and co-founder of the College Sports Television network. Scott points out that

"there are a hundred million households in the U.S. with cable or satellite subscriptions, paying an average of \$120 a month." "We are fishing in a \$100 billion-a-year pond that is essentially held together by live sports, must-carry programming is largely live sports," says Bevilacqua.

2. Steve Wieberg⁴

Wieberg provides a list of the top 10 football and basketball coaches' compensation for 2010-2011. He also quotes Miami (Fla.) President Donna Shalala as saying "I think everybody is doing a reassessment." Here, via an email exchange, is a statement Shalala might want to reassess:

I have used the 2004 Willie Williams situation as an example of the incredible pressure that athletic departments, trustees, and others can put on school presidents to get their way.

—Frank Splitt, February 11, 2010

Too bad you are dead wrong.

—Donna Shalala, February 11, 2010

Members of the NCAA cartel will most likely remain in their tried and proven hunker-down mode of behavior with talk of reassessment and serious reform by presidents and various other cartel supporters.

3. Christine Brennan⁵

Brennan writes: "The week after the Penn State news hit, why didn't 25 or so of the nation's top university presidents call a "crisis conference" to debate drastic changes in the way coaches and top athletic programs do business? They had just held a retreat in August; this was reason to meet again, immediately. They could have discussed common-sense payment for head coaches, a reduction in football scholarships, unprecedented academic reform, the works. An agenda that far-reaching — that's impossible, most would say — would have been taken seriously only after a news event of this magnitude. Instead, what did we hear from academia across the nation at this watershed moment? Silence for about three weeks, then finally, some news. Disgraced Ohio State had hired a new football coach — for three times the amount the university president makes."

4. Joe Nocera⁶

"The N.C.A.A. would have you believe that it is the great protector of amateur athletics, preventing college athletes from being tainted by the river of money pouring over college sports. In fact, the N.C.A.A.'s real role is to oversee the collusion of university athletic departments, whose goal is to maximize revenue and suppress the wages of its captive labor force, a k a the players. Rarely, however, will the cartel nature of the N.C.A.A. be so nakedly on display as at this year's (NCAA) convention," says Nocera.

5. Shaun Assael⁷

Assael asks: "How did these guys (the bowl-game CEOs) get so rich and powerful without anyone knowing their names?" Here's his answer: "Like good party hosts, they fly under the radar while making sure everyone had a drink in their hand. The Orange Bowl holds cruises for athletic directors and conference execs. The Sugar Bowl holds parties. But in Phoenix, the Fiesta Bowl's former CEO John Junker may have gotten a little greedy. He is accused of reimbursing employees for donations they made to political candidates who could keep the gravy train rolling. A series of articles by Craig Harris of The Arizona Republic exposed that and more: lavish parties, bloated salaries and, inevitably, strip club bills. The feds are looking into the deposed Junker's reign, his former chief operating officer is under indictment, and a lobbying group known as Playoff PAC is asking the IRS to look at all of the bowls, alleging a pattern of frivolous spending, undisclosed lobbying payments and bloated salaries.... Marcus Owens, a former high-ranking IRS official who ran its Exempt Organizations Division, says unrelated business income "has always been a playground for tax lawyers." It appears to him that the bowls have gone too far in writing off advertising and sponsorship revenues. He is advising Playoff PAC, which plans to file a complaint with the IRS later this month alleging the BCS bowls serially under report taxable income."

6. Rachel Bachman⁸ and Darren Everson⁹ (not part of original message)

Bachman focuses on much football matters in the nation's top programs. To find out how much football matters at these so-called football schools, *The Wall Street Journal* reviewed total campus revenues reported by 45 major conference schools to determine the percentage generated by football. A related piece by Everson tabulates the value in \$-millions of college football's major conference teams, plus Notre Dame.

It is of significance that the outrageous Penn State scandal has not triggered a meaningful government action such as those discussed in "Collegiate Athletics Reform: Lessons from Penn State."¹⁰

It is my view that the probability of an academic body emerging to rein in the runaway college sports entertainment industry is extremely low. Academic officials will most likely avoid taking on the powerful NCAA cartel and their governing boards so will continue to deal with related problems by looking the other way—muddling through will likely be their preferred option for safeguarding their vested self interests.

Outside the U.S Judicial system, the only hope for real reform appears to be in the U.S. Congress' Senate Finance Committee. Hope will become a reality if the SFC follows up on the 2006 efforts of House Committee on Ways & Means (then) Chairman Bill Thomas and (then) SFC Chairman Senator Chuck Grassley. Their efforts focused on getting the NCAA to provide justification for the tax-exempt status of its big-time football and men's basketball programs.¹¹

I respectfully requested that the SFC's Chief Democratic and Republican Tax Counsels bring this e-mail message to the personal attention of SFC Chairman Max Baucus and SFC Ranking Member Orrin Hatch with the hope that thoughtful consideration will be given to all of the above.

Needless to say, pessimism abounds re: the ability of the government to enforce compliance to its requirements for tax-exempt status. However, as Doug Lederman notes: "In a restructured college sports landscape in which the "haves" and the "have-nots" are much more clearly and formally separated, it is not too farfetched to envision a group of angry members of Congress looking very differently than they historically have at the question of whether big-time sports is truly an amateur enterprise that warrants tax exemption as an educational activity. And a "No" answer to that question -- forcing colleges to pay taxes on their sports revenues, to pay athletes market wages and workmen's compensation, etc. -- would truly transform college sports in a way that nothing being discussed now can."¹²

We will see what we will see.

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A complete listing of links to his essays and commentaries on college sports reform can be found at <http://thedrakegroup.org/splittessays.html>

NOTES

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2. Splitt, Frank G. "'Football's dangerous and for what," page 5 of "Collegiate Athletics Reform: A Lesson Learned," http://www.thedrakegroup.org/Splitt_A_Lesson_Learned.pdf

3. Greenfeld, Karl Taro, "Head of the PAC," *Bloomberg Businessweek*, Dec. 15, 2011, <http://www.businessweek.com/magazine/head-of-the-pac-12152011.html>

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6. Nocera, Joe, "The College Sports Cartel," *New York Times*, Dec. 30, 2011 http://www.nytimes.com/2011/12/31/opinion/nocera-the-college-sports-cartel.html?_r=1todayspaper.
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8. Bachman, Rachel, "When Football Is an Economic Strategy," *The Wall Street Journal*, Jan. 6, 2012, <http://online.wsj.com/article/SB10001424052970203513604577143250385056524.html>
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11. _____, "The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics." *Montana Professor*, Spring 2007, <http://mtprof.msun.edu/Spr2007/splitt.html>, Also see "Comments by The Drake Group on the Draft of a Redesigned IRS Form 990," September 12, 2007, http://thedrakegroup.org/Splitt_TDG_IRS_Commentary_091207.pdf This paper was written at the behest of Dean Zerbe, the Chief Republican Tax Counsel for the SFC when it was chaired by Senator Chuck Grassley. He resigned in 2007, shortly after the Republicans lost control of Senate committees after the 2006 elections.
12. Lederman, Doug, "Calls for major reform of college sports unlikely to produce meaningful change," *Inside Higher Ed*, Jan. 10, 2012, <http://www.insidehighered.com/news/2012/01/10/calls-major-reform-college-sports-unlikely-produce-meaningful-change>