



# Crisis and Reform of Intercollegiate Athletics in the United States

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# Many Aspects to the Crisis

- ▶ Jordan McNair, lineman at Maryland dies after summer practice
- ▶ FBI uncovering of new networking and payoff scandal
- ▶ Urban Meyer at Ohio State covering up domestic violence (3 game suspension)
- ▶ Jameis Winston – Florida State U. covers up for him in rape accusation, pays \$950,000 settlement
- ▶ UNC academic scandal
- ▶ To name a few, but I will focus on economic aspects of the crisis

# FBS Financial Challenges -- Top 129 Athletic Programs

- ▶ Median Operating Deficit over \$14 million annually
- ▶ Including Capital and Indirect Costs adds another \$10-20 million to deficit. Maybe half dozen programs with true surplus each year.
- ▶ **What's Going On?** Unpaid athletes. Cross subsidies. Stakeholders not shareholders. Revenue doesn't go to bottom line, nor to athletes, instead schools compete by spending on coaches' salaries, facilities, recruitment, travel and tutoring

# Escalating Coaches' Salaries, 2017

- ▶ Power Five head football coaches, all 65 have base salary > \$1.1 million
- ▶ Median salary = \$3.3 million
- ▶ Twenty coaches' salary > \$4 million
- ▶ Three coaches > \$7 million
- ▶ Assistant coaches at Ohio State total pay = \$7.1 million
- ▶ **What's going on?** Artificial market; NBA/NFL Salaries; Bear Bryant Rule; Rent

# Coaches' Compensation



# Special Tax Treatment

- ▶ no payroll tax payments
- ▶ tax-exempt debt issuance for facility construction
- ▶ favorable unrelated business income tax IRS interpretations
- ▶ the categorization of purchase of seat tickets as “donations,” deductible up to 80 percent of the amount paid. This was ended on Jan 1, 2018, as per tax cut legislation of 2017. (Legislation also ends 50% deduction for seats for business entertainment.)
- ▶ Excise tax of 21% on top five salaries over \$1 million. So Urban Meyer salary for 2018 is \$7.6 million; OSU pay 21% on \$6.6 million or \$1.39 million. Schools may be able to circumvent by using different payors.

# Effective Options for 110 plus FBS schools in deficit

- ▶ **Increase Student Athletic Fees (U. of Va. Collects \$13.9M, \$657 per student)**
- ▶ **Decrease Financial Aid to Needy Students**
- ▶ **Decrease Educational Budget**
- ▶ **Drop Out of Competitive Athletic Race**
- ▶ **Some Schools Irrationally Double Down (e.g., CSU, UMASS)**

# Pressure to Share Growing Revenues with Athletes

- ▶ **2006 White v. NCAA over COA, settled in 2008**
- ▶ **O'Bannon for COA and NIL, 2014-16**
- ▶ **NW Football Players Attempt to Unionize**
- ▶ **Kessler/Jenkins Suit for Open Players' Market**
- ▶ **Missouri African-American Football Players Force Resignation of President (Nov '15)**



# Legal Challenges 2018

- ▶ Jenkins/Alston – claims that limits on athlete compensation violate antitrust law, seeks system where conferences determine compensation or, alternatively, seeks a system where limits on educationally-related comp (e.g., restrictions of schools reimbursing for athletes' laptops) be invalidated. In essence, the NCAA must establish that it is *amateurism* driving consumer interest in college athletics, or that athletes being compensated without restriction would harm the cohesion of a school's educational and athletic functions. But, even if the NCAA were to prove these, the players could still prevail if they established that the NCAA's goals of preserving the current ideal of amateurism and the integration of academics and athletics could be met through less restrictive means. Plaintiff LRAs: (1) expand tethered to education; (2) conference policy
- ▶ FBI – basketball recruitment fraud by coaches, apparel cos, agents
- ▶ Sup Ct invalidating of PASPA, allows states to permit sports gambling
- ▶ Fair Labor Standards Act – athletes as employees. Have lost, but judge in Berger v. NCAA left open question for scholarship athletes
- ▶ Transfer student, one year sit out rule challenge. Deppe v. NCAA
- ▶ Over 100 individual concussion cases

# NCAA Response in 2014-15

- ▶ **Allow COA**
- ▶ **Allow increased food service for athletes**
- ▶ **Allow multi-year scholarships (banned since 1974)**

# Two Broad Paths for Reform

- ▶ **Pay for Play**
- ▶ **Reinforce Academic Mission**
  - ▶ **Rice Commission**
  - ▶ **Conditional Limited Antitrust Exemption**

# Pay for Play

- ▶ Athletes already paid: GIA, Under the Table, Pell Grants & NCAA approved gifts
- ▶ How will it function and who will make the rules?
  - ▶ Recruiting of high school athletes?
  - ▶ Non-stars' value
- ▶ How will it affect student culture at the school?
  - ▶ Create two classes of students
  - ▶ Mercantilizing of resource allocation
- ▶ Where will the money come from?
- ▶ Impact on Olympic Sports and Title IX?
- ▶ **Alternatively, create minor league basketball and football leagues**

# Rice Commission

- ▶ Rice Commission:
  - ▶ Allow players to return to college sports if enter draft – enacted (only if undrafted)
  - ▶ Get professional advice prior to draft -- enacted
  - ▶ Receive funding to complete college degree later in life -- enacted
  - ▶ NCAA certify and regulate agents & summer camps -- enacted
  - ▶ Put more resources into enforcement – enacted
  - ▶ End “One and Done” –onus put on NBA, not NCAA
  - ▶ Passes on elephant in room: athlete compensation – courts may take decades to resolve
  - ▶ Also sidesteps issues of:
    - ▶ coaches' salaries,
    - ▶ special admissions standards for athletes,
    - ▶ phony curricula,
    - ▶ \$265K for win for men in March Madness and \$0 for women,
    - ▶ potential role of public policy

# Reinforcement of Educationally-Centered Athletics

- ▶ Undo 1984 Supreme Court Decision – **Partial, Conditional Antitrust Exemption**
- ▶ Would clean up ambiguity between commercial and educational activities, and, thereby, reduce or eliminate threat of extremely costly litigation with dubious, impermanent outcomes

# Exemption Allows NCAA to

- ▶ **Control Coaches' Compensation and Other Costs**
- ▶ **Impose Restrictions on length of practices, squad sizes and playing season**
- ▶ **Avoid costly litigation. O'Bannon cost exceeds \$100 million**

# Conditions for Exemption

- ▶ **Promotion of academic integrity around eligibility, scheduling, etc.**
- ▶ **Promote fair treatment of athletes:**
  - ▶ **Granting Due Process for infraction claims**
  - ▶ **Providing adequate and appropriate health and injury reimbursement insurance**
  - ▶ **Legislate practices in medical handbook at national (NCAA) level. Avoid future McNair (U. Maryland) tragedies**
  - ▶ **Put tutoring under academic authority**
- ▶ **Put national football playoff under NCAA control (over \$600 million) with more equal distribution of revenues, blunting drive to win at all costs**



# Prospects for Reform

- ▶ **Not strong for self reform. Efforts since 1890s at piecemeal reform. At best slightly slowed pace of commercialization and corruption**
- ▶ **Outside reform. ACE, AGB, Congress**