

## Collegiate Athletics Reform: Evermore Likely up to the Courts

### *Clips Guest Commentary*

*Hope for congressional action on collegiate sports reform has been dimmed by the lack of response from Congressman Roskam to the guest author's entreaties.*

*By Frank G. Splitt, 02-27-12*

*If America is to do well in the 21st Century's globalization game, then it needs to get its priorities right, especially at our universities and government institutions. However, according to Henry Kissinger, the entire government system "is now much more driven by short-term political calculations, the need to keep powerful and vocal constituencies happy, and an eye on the next election."—From "Sports in America 2007: Facing up to Global Realities," p 18, [http://thedrakegroup.org/Splitt\\_Sports\\_in\\_America\\_2009.pdf](http://thedrakegroup.org/Splitt_Sports_in_America_2009.pdf)*

Subsequent to the February 2, 2012, posting of the College Athletics Clips commentary, "Collegiate Athletics Reform: Most likely up to the courts," an open letter was sent to Congressman Peter Roskam, Subject: Federal tax-code reform and the tax-exempt status of big-time NCAA programs; see the Appendix for a copy of the letter.

The purpose of the letter was to attempt to determine just how serious the congressman is about his bipartisan approach to tax-code reform as well as to attempt to gauge his appreciation of tax-related issues surrounding big-time collegiate athletics.

To date there has been no response from the congressman or his staff. As a consequence, one is left to wonder if this silence is a reflection of his true beliefs. That is to say the congressman's remarks (during his visit with the Daily Herald editors) about his bipartisan approach to tax-code reform could very well have been typical congressional demagogic rhetoric in this presidential election year, when politicians of all stripes are clamoring for simplification of the tax code and closure of tax loopholes.

"To get comprehensive tax reform, you have to have tremendous presidential leadership. There's no way around that to be successful," said Douglas Holtz-Eakin, the director of the Congressional Budget Office from 2003 to 2005 and who now heads the American Action Forum, a conservative public policy institute.

"Washington should stop subsidizing millionaires," Obama said in his State of the Union address—no doubt unaware of tax subsidies for numerous millionaire coaches and NCAA cartel as well as conference officials.

Economist Bruce Bartlett, author of *The Benefit and the Burden: Tax Reform – Why We Need It and What It Will Take* (Simon & Schuster, January 2012) is not optimistic about major tax reform no matter who wins the election. "I think the most we can hope for is a modest improvement to fix some glaring problems in the code," he said.

Congressman Roskam's silence could also reflect political risk avoidance. Who would ever want to jeopardize a promising political career by doing the right thing? Revisiting former House Ways and Means Committee Chair Bill Thomas' and The Drake Group's 2006 effort to determine whether these sports programs are truly an amateur enterprise that warrants tax exemption as an educational activity or is a profit-making, tax-avoiding commercial enterprise structured to provide the illusion of an educational activity would be politically risky business.

*If political gridlock and partisanship continue to paralyze public policy, ...if they ignore the fact that America's standing in the global pecking order may be in jeopardy, the anxious prognosis of America's decline could become its historical diagnosis.—From Strategic Vision: America and the Crisis of Global Power, by Zbigniew Brzezinski, 2012, p. 64*

Concerning Congressman Thomas' sharply-worded, October 2, 2006, letter to the late Myles Brand who was then president of the NCAA, the highly-regarded sports commentator Frank Deford said "Representative Thomas' barbed inquiry was the first real evidence I had that the Republicans knew that they were going to lose the House. Would any politician dare take on the college football and basketball constituency if he knew he was staying in power?"

Not surprisingly, Congressman Charles Rangel, Thomas' successor as the chair of the House Ways and Means Committee, dropped the inquiry like the proverbial hot potato—notwithstanding his statement on January 7, 2007, This Week program when he said: "I will be taking a look at all tax exemptions. .... And that, certainly, I join with Bill Thomas on that in taking a hard look at that as well as many, many other tax-exempt organizations."

Congressman Roskam's issue-ducking silence has dimmed the faint glimmer of hope for congressional action on collegiate athletics reform. Perhaps, like the debt-crisis ducking by the 2010 congressional supercommittee, this might very well be another symptom of failed governance—where political gridlock and partisanship renders Congress incapable of acting responsibly no matter how dire the need.

The conclusion: collegiate athletics reform is ever more likely up to the courts that need only follow the money.

**Frank G. Splitt** is the former McCormick Faculty Fellow of Telecommunications, McCormick School of Engineering and Applied Science, Northwestern University, and Vice President Emeritus of Educational and Environmental Initiatives, Nortel Networks. He is a member of The Drake Group and the College Sport Research Institute's Advisory Committee, University of North Carolina at Chapel Hill, and recipient of The Drake Group's 2006 Robert Maynard Hutchins Award. A complete listing of links to his essays and commentaries on college sports reform can be found at <http://thedrakegroup.org/splittsays.html>.

## **APPENDIX: Open letter to Congressman Peter Roskam**

February 6, 2012

The Honorable Peter Roskam  
United States House of Representatives  
227 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Roskam:

**Subject:** Federal tax-code reform and the tax-exempt status of big-time NCAA programs

**Reference:** The College Athletics Clips commentary, "Collegiate Athletics Reform: Most likely up to the courts," [http://www.thedrakegroup.org/Splitt\\_Courts.pdf](http://www.thedrakegroup.org/Splitt_Courts.pdf).

The following excerpt from the referenced commentary relates to your discussions at the offices of the *Daily Herald* as reported in "Roskam: Time ripe for tax-code reform, building consensus," <http://www.dailyherald.com/article/20120130/news/701309738/>.

Also, although partisan infighting and pre-election-year politics have led to political paralysis that could continue to keep Congress from acting on substantive issues there is always some hope that things will change. House GOP Chief Deputy Whip Peter Roskam (IL, 6th) believes that change can be brought about by building consensus. He pointed to history to suggest that the time might be ripe for major changes, including tax-code reform as he outlined his legislative and political priorities for the year ahead to the Daily Herald. Those priorities include guiding House members to consensus.

Roskam also serves on the House Ways and Means Committee's Subcommittee on Select Revenue Measures—a position that allows him to focus effort on getting much-needed reform of the debilitating federal tax system. He said: "What we have right now is a tax code that nobody can defend. The whole concept is to make the tax code more competitive. There's a real opportunity to reform the tax code and that will create jobs and buoyancy."

Perhaps Congressman Roskam will see that everything is put on the agenda for tax-code reform—including the tax-exempt, nonprofit status for the NCAA and the sports entertainment businesses at colleges and universities supporting revenue-generating football and men's basketball programs, as well as for end-of-season bowl games and the NCAA's basketball tournaments.

The efforts of the Rutgers' faculty and Congressman Roskam provide a glimmer of hope beyond the courts for collegiate athletics reform.

As you must know, the questionable tax-exempt status of nonprofits was an abiding concern of Senator Chuck Grassley who has said: "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." That was back in 2004 when he was the chair of the Senate Finance Committee (SFC) and Dean Zerbe was his chief tax counsel.

Today there is growing concern that the tax-exempt status of the NCAA's big-time (revenue-generating) college sports programs has not only come to be treated as an entitlement—beyond the need for justification and congressional oversight—but also a contributing factor in the uncontrolled growth and corruption of these professionalized sports programs.

By addressing tax-reform in a comprehensive, bipartisan manner, you will create a window of opportunity to revisit former House Ways and Means Committee {HW&MC} Chair Bill Thomas' and The Drake Group's 2006 effort to determine whether these sports programs are truly an amateur enterprise that warrants tax exemption as an educational activity or a profit-making, tax-avoiding commercial enterprise structured to provide the illusion of an educational activity. No matter how justified the reason, an effort to build bipartisan consensus for this determination will evoke protests by many of your congressional colleagues and officials at the NCAA and affected schools, as well as football boosters and fans.

As you well know, overcoming partisan gridlock on entitlement issues will be a daunting task. The failure of the congressional Joint Select Committee on Deficit Reduction to come to bipartisan agreement speaks volumes about related difficulties. Illuminating as well is the troubling situation where vested money interests and the popularity of football-centered entertainment have prevented mitigating action commensurate with the seriousness of the reported threat by medical researchers of long-term mental and physical damage to football players. A good sense of this issue can be obtained from "Catholic silence on football risks" at <http://ncronline.org/news/people/catholics-silent-football-risks>.

Finally, as one of your constituents, it would be my pleasure to provide you with historical perspectives on this important but contentious subject as well as answer questions related to my work with Dean Zerbe and staffers for former HW&MC Chairman Bill Thomas.

I look forward to your response.

Respectfully submitted,

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McCormick School of Engineering and Applied Science  
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E-mail copies to: The Senate Finance Committee, Senator Dick Durbin, Senator Mark Kirk, Senator Chuck Grassley, Congresswoman Jan Schakowsky, Congressman Bobby Rush, The Daily Herald, The Chronicle of Higher Education, Inside Higher Ed, The New York Times, USA TODAY, The Chicago Sun Times, The Chicago Tribune, The National Catholic Reporter, The Wall Street Journal, The Washington Post, The Associated Press, The Christian Science Monitor, and College Athletics Clips among others.