

## Why Congress has yet to curtail the NCAA cartel's tax breaks: Exemptions historically tied to amateur athletes

*Clips Guest Commentary*

*Our guest author schools us on tax exemptions, commercialism and the "you do what you got to do" corollary. Editor, College Athletics Clips*

*Frank G. Splitt, The Drake Group, 8-30-09*

*The only way America will be able to maintain its place as the world's premier economic power is to fully develop the potential of its people. Meeting this challenge will require an education system in which the primacy of achievement and excellence in all spheres of life is absolutely clear...Funding priorities for extracurricular programs as well as for core academics must be scrutinized, particularly our tendency to fund large sports programs that serve a small number of elite athletes at the expense of broad-based programs in music and the arts. — John Gerdy, Education Week, June 2009*

**Considering the many questions** relating to funding health-care-reform proposals and the billions of dollars in tax breaks enjoyed by the NCAA cartel and its wealthy supporters, one might ask why Senators and other members of the U.S. Congress working on health-care legislation<sup>1</sup> are not working on provisions to pare back the unjustified tax breaks that the cartel—the National Collegiate Athletic Association and its member colleges and universities<sup>2</sup>—as well as its supporters have come to accept as entitlements.

All of the cartel members are nonprofits that don't pay federal, state or local taxes, according to the U.S. Department of Revenue. The tax exemptions were historically tied to amateur athletes and were meant to help colleges and universities shoulder the cost of supporting programs that were part of the fabric of the postsecondary experience in America as well as to help to knit together the disparate supporters of these enterprises.

**O**ver the years the NCAA cartel's big-time sports programs have departed from amateurism in actual practice but the cartel claims otherwise. As a matter of fact, the cartel has partnered with the broadcast media and advertisers to create the college sports entertainment industry—a moneymaking colossus that has little, if anything, to do with the educational mission of the schools.

The unregulated commercialization of college athletics has undermined the academic integrity and the academic missions of the NCAA's member schools. Compromised academic integrity and distorted educational missions now characterize many of America's colleges and universities that have allowed them to be driven by a quest for fame and fortune via the college sports entertainment industry.

Mission warp and corruption not only serve to accommodate political-clout-backed applicants who may very well be academically unqualified,<sup>3</sup> but likewise, so-called student-athletes who make up the professional football and men's basketball teams that are part and parcel of the school's government-subsidized sports entertainment business.<sup>4</sup> Athletes at colleges and universities supporting big-time football and men's basketball programs are professional counterfeit amateurs rather than amateur 'student-athletes' as the cartel falsely claims.<sup>5</sup>

**W**hy isn't this big lie challenged by Congress? One obvious reason is that the cartel's clout is both deep and broad based, coming from all the beneficiaries of the commercialization of college sports—including wealthy donors who also have strong political connections at the federal and

state levels, especially those who want their school to field winning teams at any cost. However, there is much more to it than the obvious.

Many, if not most, members of Congress and the Obama Administration abide by the do-nothing corollary to former president Bill Clinton's statement that in politics, "you do what you got to do"—the corollary: you don't do what you don't got to do. These officials must believe that taking on the best monopoly in America would be political suicide—this, no matter the current and long-term harm to America resulting from the high-jacking and consequent erosion of its education system by the college sports entertainment industry.

Furthermore, the privacy provisions of FERPA—the Family Educational Rights and Privacy Act—are often used for a much different purpose. FERPA, designed to keep college students' grades private, is used to shield universities from potentially embarrassing situations.<sup>6</sup> It is used as the NCAA cartel's primary defense against congressional scrutiny of its claim that the athletes at colleges and universities supporting big-time football and men's basketball programs are amateur 'student-athletes' rather than professionals.

Here is a case in point: former Congressman William Thomas (R-CA), past chair of the House Committee on Ways and Means, addressed areas of concern with big-time college sports in his sharply-worded October 2, 2006 letter to NCAA President Myles Brand. The chairman's questions were aimed at ascertaining the justification for the tax-exempt status of the NCAA and its member schools. President Brand avoided answering questions related to the academic life of college athletes—abusing FERPA by taking unwarranted refuge in its privacy provisions.

Also, the many scandals related to the corruption in collegiate athletics and other issues surrounding the NCAA cartel and their detrimental effect on America's educational system, its youth, and its future position on the world stage, never seem to rise above the clutter on the national radar screen thanks to the U.S. Department of Education's hand's-off policy<sup>7</sup> as well as the cartel's cutting-edge PR and its flagrant abuse of FERPA to shield academic corruption and other crimes and misdemeanors in college athletics from public scrutiny.

Therefore, the challenge before Congress is to do something to get academics-over-athletics priorities re-established at America's colleges and universities that are held captive by the NCAA's commercial interests in their schools sports entertainment businesses.<sup>8</sup> Such interests appear to be first and foremost to the NCAA, not the interests of college athletes<sup>9</sup> and U.S. taxpayers. Simply stated, the NCAA has a stranglehold over schools that support big-time football and men's basketball programs as well as over America's sports captivated public.

Finally, if America is going to continue to maintain a position of leadership on the 21st century's world stage, then it not only needs to invest in its educational institutions to ensure our nation's continued competitiveness and security, but it also needs to get its educational priorities right—restoring academic primacy to higher education and to secondary education as well.

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## NOTES

1. Martinez, Barbara, "Senators Consider Curtailing Hospitals' Tax Breaks," *The Wall Street Journal*, July 10, 2009.

2. The NCAA has been described by the Supreme Court as a cartel; see "NCAA v. Board of Regents of the University of Oklahoma et al." Also see: *The National Collegiate Athletic Association: a study in cartel behavior*, University of Chicago Press, 1992. The authors, Arthur A. Fleisher, Brian L. Goff, and Robert D. Tollison, present a persuasive case that the NCAA is in fact

a cartel wherein members engage in classically defined restrictive practices for the sole purpose of jointly maximizing their profits.

3. A recent example of political clout comes from Illinois via its ousted governor, Rod Blagojevich, who was involved in an admission scandal exposed by the *Chicago Tribune*. The *Tribune* reported that the University of Illinois at Urbana-Champaign had bowed to political pressure in admitting unqualified applicants based on who, rather than what, they knew. Subsequent investigations prompted the resignations of two trustees, one of whom was the chairman of the board. For more, see the August 6, 2009, *Wall Street Journal* article, "Two Trustees Quit in Illinois Admissions Scandal," by Douglas Belkin and Carrie Porter.

4. Sanderson, Allen R., "3 yards and a clout of dust: What about the wealthy supporters of college athletic programs?," *The Chicago Tribune*, June 18, 2009; and, Splitt, Frank G., "Clout peddling has consequences," *The Daily Herald*, June 19, 2009.

5. Sack, Allen L., *Counterfeit Amateurs: An Athletes Journey Through the Sixties to the Age of Academic Capitalism*, Penn State University Press, University Park, PA, 2008. The author tells how the NCAA abandoned its central principle of amateurism in its pursuit of big money in the form of highly commercialized and professionalized big-time college athletics.

6. Herring, Chris, "A Privacy Law That Protects Students, and Colleges, Too," *The Wall Street Journal*, LAW JOURNAL, July 16, 2009; Salzwedel, Matt and Ericson, Jon, "Cleaning Up Buckley: How the Family Educational Rights and Privacy Act (FERPA) Shields Academic Corruption in College Athletics," *Wisconsin Law Review*, Vol. 2003, No. 6, [http://thedrakegroup.org/Salzwedel-Ericson\\_Buckley.pdf](http://thedrakegroup.org/Salzwedel-Ericson_Buckley.pdf).

7. The U.S. Department of Education (DoEdu) has taken a do-nothing position—claiming that Section 103(b) of the Department of Education Organization Act places significant limitations on the authority of the Secretary and other officers of the Department, specifically stating that such officers cannot exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution "except to the extent authorized by law." The extent authorized by law, in this context, has been viewed to be limited to specific provisions of the Higher Education Act—a view that avoids DoEdu responsibility for addressing the problems in collegiate athletics that were outlined in The Drake Group's March 18 and May 28, 2009, Open Letters to the President and His Administration (<http://thedrakegroup.org/Obama.pdf> and <http://thedrakegroup.org/Obama2.pdf>).

8. This challenge also applies to secondary education systems that deem participation in sports to be a legitimate part of a school's curriculum—raising the question of whether or not academics are really valued over athletics in these systems. For example, see Tom Benning's August 29-30, 2009, *Wall Street Journal* article, "Texas High-School Athletes Gain Ground in Class." Benning tells how a new Texas law could double the amount of academic credit high-school athletes receive for playing sports.

9. For example, the NCAA has cornered the \$4-billion-a-year college merchandise licensing market—using college athlete's images, numbered jerseys and the like—for its own benefit. However, this cartel moneymaker has been the focus of a number of recent legal suits, including the high-profile suit by former U.C.L.A. star Ed O'Bannon, as reported by William C. Rhoden in his July 23, 2009 *New York Times* article, "A Lasting Image: Standing Up to the NCAA," [http://www.nytimes.com/2009/07/23/sports/ncaabasketball/23rhoden.html?\\_r=1&ref=sports](http://www.nytimes.com/2009/07/23/sports/ncaabasketball/23rhoden.html?_r=1&ref=sports).

For additional insights, see Rhoden's 2006 book, *Forty Million Dollar Slaves: The Rise, Fall, and Redemption of the Black Athlete*, Three Rivers Press.