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Congressional Intervention Req...

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There have been a number of calls for Congressional intervention to achieve intercollegiate athletics reform. In an August 15, 2014 'op ed' in the Chronicle of Higher Education, former Congressperson and NBA star Tom McMillen called for a Presidential Commission on Intercollegiate Athletics Reform. Representative Jim Moran (VA) actually filed such a bill (HR 5743) during the December 2014 "lame duck" session of Congress calling for establishment of a commission to identify and examine issues of national concern related to the conduct of intercollegiate athleticsand make recommendations for the resolution of the issues. The bill was referred to the House of Representatives Education and Workforce Committee. The Drake Group has chimed in supporting such a Commission. Many observers question whether a highly partisan and dysfunctional Congress would make matters worse.

Count me in as an ardent supporter of the Presidential Commission proposal and Congressional intervention for two primary reasons. First, there are numerous things that are wrong with the NCAA and any fix is going to require a careful study of these complex issues and a comprehensive solution that includes actions only the U.S. Congress can take. Second, it is obvious that because the Football Bowl Subdivision (FBS) (and the so-called "Big Five conferences" within this subdivision) has voting

control of the NCAA, the NCAA is not about to fix itself. The FBS is all about escalating rather than controlling the football and basketball “arms race”. Their lack of restraint and economic self-interest precludes reform.

I believe such a Presidential Commission would have both widespread and bipartisan support of Congress for the following reasons:

1. Economic Impact on Higher Education Institutions. Recent events pose grave threats to the financial stability of college athletics programs:

- A recent court decision (O’Bannon v. NCAA), mandates increases in the value of allowable athletics financial aid and the provision of group licensing revenue trust fund accounts for Division I Football Bowl Subdivision (FBS) football and Division I basketball players. This decision will cost Division I athletic departments $1-2 million more per year when only 20 of the over 300 institutions are currently generating more dollars than they spend.
- NCAA approval of further decision-making power to sixty-five of its most commercialized athletic programs (the "Big Five" conferences) will allow more expensive athletics practices and increase competitive imbalances among all Division I institutions.
- The Region 13 National Labor Relations Board classified Northwestern University football players as employees (appeal pending). if the appeal upholds the decision, athletes may bargain for compensation and other benefits increasing the cost of athletics programs.
- An alarming escalation of coaches’ salaries is taking place which is inappropriate for non-profit educational institutions provided with significant tax preferences.
- Multiple pending multimillion dollar antitrust and concussion lawsuits naming the NCAA, conferences and NCAA member institutions threaten the financial stability of athletic programs.

All of these events create pressure on institutions of higher education with Division I athletic programs to increase spending on athletics. This means that all of these institutions will consider one or more of the following means to raise new funds or shift existing funds:

- increase general fund and/or mandatory student fee athletic program subsidies at a time when student loans, high tuition rates and high student fees are causing great national concern;
- appeal to donors to increase their gifts to athletics at a time when such gifts are needed for the larger institution;
- eliminate or further reduce funding for Olympic sports;
- cease already insufficient efforts to achieve Title IX compliance for women’s athletics; and
- pressure state legislatures to utilize already stressed state education funds to supplement athletics budgets.

2. College Athlete Health and Safety. The NCAA and its member institutions are not using their power and resources to address the health and safety needs of college athletes with regard to athletics injury insurance and critical issues such as the prevention and treatment of concussion. All of us in athletics should be taken to task for this failure.

3. Academic Integrity. The academic integrity of higher education is threatened by increased incidences of academic fraud involving college athletes and the exploitation of academically unprepared athletes admitted to institutions without meeting regular admission standards. The University of North Carolina

debacle was huge. However, everyone in the business knows that athletic departments nationwide regularly push the selection of easy courses and easy majors for academically at-risk students specially admitted for their athletic talents. The NCAA is not about to mandate tenured faculty oversight of athletics program practices when it does not even require any external committee to play a watchdog function. The NCAA does not even prohibit retaliation against whistle-blowers or mandate that academic support programs be administered by academic authorities rather than athletic departments.

4. Lack of Presidential Control. The Knight Commission commissioned a Division I survey which revealed that eighty percent of Football Bowl Subdivision college presidents believe they are unable to control their commercialized athletic programs. Presidents are at the mercy of the political realities of doing battle with athletic programs – their jobs are at risk!

5. Need to Consider Solutions Only Congress May Grant. Most experts agree that only Congressional intervention has the potential of resulting in meaningful reform. The challenges are so complex and we need to consider a range of solutions which include actions that only Congress may take. Each of the following issues deserves careful and transparent study by a trusted "blue ribbon" panel of experts and Congressional representatives. For instance, only Congress has the power to: and exploration of how Congress can help.

a. Issue: the FBS and the Big Five Conferences to threaten to depart the national governance association if they aren't allowed to do exactly what they want. Congressional solution: Condition receipt of Higher Education Act funding on continued membership in a national governance association that requires such programs to demonstrate educationally sound practices and fiscal restraints.
b.Issue: The current College Football Play-Off is owned by FBS conferences. Itshould be an NCAA championship just like the Final Four, with media revenues benefitting all athletes, not just those at FBS institutions. Congressional solution: establish a federally chartered non-profit organization to replace the NCAA, granting such organization exclusivity in the conduct of national championships (similar to 1978 Amateur Sports Act action to establish the USOC as such an organization with the granting of exclusivity to use the Olympic rings and govern open amateur sports). Congress could then mandate the use of such proceeds to enable all member institutions to provide health protections, athletic injury insurance and educational benefits for all 480,000 collegiate athletes.

c. Issue: The NCAA and its member institutions and conference are facing a myriad of anti-trust lawsuits. The NCAA gets sued for trying to control coaches' salaries, sports operating expenses and athlete compensation. Congressional solution: Congress has the power to grant a limited antitrust exemption that will allow the national governance association and its member institutions to control costs without fear of Sherman Antitrust violations but only if such exemption is conditioned on:

- meeting education, health, and due process mandates
- governance by an independent board of expert directors with no member currently employed by any member institution and devoid of conflict of interest

The NCAA should be an organization committed to controlling costs.

d. Issue: The NCAA enforcement system is broken and needs to be fixed. Congressional solution: Congress has the power to grant subpoena and other powers to improve enforcement efforts for the purpose of adequately protecting student-athletes and NCAA member institutions from withdrawal of

participation, scholarship or other benefits.

If we hope to return intercollegiate athletics to a level of academic integrity and financial sanity appropriate for non-profit institutions of higher education, we need a blue ribbon group with no conflict of interest to examine all the issues and propose solutions - people that care more about the integrity of higher education and the education, health and welfare of college athletes than their own pocketbooks.

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