

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
OVERSIGHT HEARING ON “COMPETITION IN  
COLLEGE ATHLETIC CONFERENCES AND ANTITRUST ASPECTS OF  
THE BOWL CHAMPIONSHIP SERIES”**

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**TESTIMONY OF SCOTT S. COWEN  
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**September 4, 2003**

Mr. Chairman, Representative Conyers, and members of the Committee: Thank you for the opportunity to speak to you today regarding the Bowl Championship Series and its impact on NCAA Division I-A athletics. It is my sincere hope that this hearing, and any ensuing discussions it might engender, will cast new light on an issue that has far-reaching consequences for not only those universities that are not part of the Bowl Championship Series alliance but for college athletics as a whole.

As a university president, I am concerned with four issues impacting intercollegiate athletics: the welfare and academic performances of student-athletes; the impact of the BCS alliance on Division I-A athletics; the increasing cost of competition; and the widening gulf between intercollegiate athletics and the basic missions of our universities.

However, given the focus of this committee hearing, I will restrict my comments today to the BCS alliance and its impact on Division I-A intercollegiate athletics in terms of inequities and restricted access.

**A PERSONAL AND INSTITUTIONAL VIEW OF THE BCS**

I am not a lawyer, so I must leave discussions of technical antitrust issues to those whose training provides expertise in that area. However, in the last year Tulane University has conferred with outside legal counsel about a possible antitrust suit. We choose not to go in that direction at this time even though we have been advised that the BCS alliance is fraught with potential antitrust issues.

So I do not come to you today advocating an antitrust lawsuit but as the president of a non-BCS university, living daily with the impact the BCS alliance has on Tulane University and the 52 other higher education institutions like us.

I also can talk to you as president of a university whose football team enjoyed a perfect 11-0 season in 1998 yet had no practical access to a major bowl game or opportunity to compete for a national title.

And I can talk to you as president of a university whose board of administrators very recently made a difficult decision to remain in Division I-A athletics despite the inequities and lack of access inherent in the current two-tiered system created by the BCS to govern postseason play in football. For more information on the Tulane athletics study and decision, I refer you to our university magazine, which is available here in print and can be found online at <http://www2.tulane.edu/tulanian.cfm>.

Tulane University is certainly not the only school suffering from this inequitable system, but let me use some names we all know to put a face on the issues we're talking about today. While you're hearing about the limits and restrictions faced by the young men playing football at non-BCS schools today, think of Patrick Ramsey, a Tulane graduate, first-round draft pick and starting quarterback of the Washington Redskins, or of Steve Young, who is here with us today, a graduate of Brigham Young University and one of the all-time greatest NFL quarterbacks. These are the faces of football at non-BCS schools.

Each fall, I have the opportunity to address the Tulane Green Wave football team. I look out over the faces of young men who are continuing the university's century-old football tradition, who are hopeful and excited and enthusiastic, and who come into a program that is among the highest-ranked academically in the nation.

I always tell them several things. First, I remind them they are in college to get an education that will help them become productive citizens and future leaders. Second, I tell them they are at Tulane to grow and develop as people, to cross that bridge from adolescence to adulthood. Third, I remind them that as athletes they are at Tulane to be as competitive as they can be.

There also are things I cannot tell them, however, and it both saddens and angers me to the core. I cannot tell them that, should they have a terrific season and play with all their heart and soul, they will have a realistic chance to play for a national title. I cannot tell them that the reward for the end of a long and successful season could be an appearance in a major bowl game. Because the truth is, when it comes to Division I-A football in a non-BCS school, no matter how well these young men play, no matter what kind of season they have—they will have virtually no realistic access to major bowls or championship play.

So when Tulane had a perfect football season in 1998, we had no practical chance for a major bowl or a championship run despite being one of only two undefeated teams in the country. The other undefeated team was the University of Tennessee, which won the

national championship for which we did not get the chance to compete. When Brigham Young University was at 12-0 in 2001, the team went into its 13<sup>th</sup> game of the season knowing it had no shot at a title or even a major bowl game. It finished the regular season 12-1, still with a better win-loss percentage than eight of the top-10 schools in the BCS rankings that season. Marshall University's football team went 11-2 the past two years, and it also had a better record than eight of the top-10 BCS-ranked teams. But Marshall was unable to compete for a championship or play in a major bowl because Marshall is not a BCS school.

Football is the only NCAA sport where this inequity exists; not coincidentally, Division I-A postseason play in football is exclusively controlled by the BCS. In other sports, all of which have a playoff system in place, all Division I-A teams start out on a level playing field. Therefore, you can have Rice University, the smallest Division I-A school in the country, rising to win the College World Series in baseball in 2003. You have Kent State University, who made it to the Elite 8 in the NCAA basketball playoffs in 2002 after a storybook season. And you have Marquette, who reached the coveted Final Four in basketball in 2003.

Do the non-BCS schools win a lot of championships in these other sports? Not necessarily. But the opportunity is there; the access is there. And when the underdog wins, it is a glorious thing.

My stance against the BCS alliance is based on four arguments, as follows.

### **UNFAIRNESS AND INCONSISTENCY**

Our country is based on the idea of equal opportunity for all, and our educational institutions are dedicated today to the principles of access, inclusiveness, fairness and consistency. It goes against everything we hold dear to allow—even encourage—a system that showers financial and reputational rewards on one member while unnecessarily denying or limiting the opportunity for another member to earn the same rewards.

The BCS system governing postseason play is inconsistent with all other NCAA-sanctioned sports, as well as the values and principles that guide our system of higher education. The BCS conferences define the ranking system that determines participation in the BCS bowls and national championship game, and automatically qualify their own members for six of the eight available major bowl slots, regardless of their BCS ranking.

One of the great ironies of this discussion of “haves” and “have-nots,” as the BCS and non-BCS schools are commonly referred to, is that the requirements of Division I-A membership are the same regardless of the group to which you belong. Both BCS and non-

BCS schools must meet the same NCAA requirements. It seems we can have consistency, fairness and a level playing field when it comes to membership requirements for Division I-A, but not when it comes to access and equity in Division I-A football.

### **UNNECESSARY RESTRICTIONS LIMITING ACCESS**

The BCS has created a system of limited access that does not offer a level playing field or means of fair play, and it is a system that lies outside the boundaries of what intercollegiate athletics has traditionally considered a right and just means of determining a national champion.

Limited access results from the fact that six of the eight BCS bowl slots are automatically given to the champions of each of the BCS conferences. The two remaining slots are filled based on the results of a ranking system developed by the BCS conferences. A careful analysis of the components of this ranking as well as the overall rules for BCS eligibility make it virtually impossible for a non-BCS school to ever qualify for a BCS bowl, much less the national championship.

One of the most frustrating aspects of these limitations is that they are unnecessary if, in fact, determining a definitive college football champion is the primary goal, as the BCS claims. There are other ways to accomplish this without excluding or limiting access to half of the Division I-A schools—the half who do not belong to BCS conferences.

In fact, I would contend that the only true reasons for the restrictions and limited access in the BCS arrangement are financial ones—namely, ensuring that the lion's share of the TV revenues and the scheduling benefits remain only with BCS schools.

In short, this is an arrangement that is restrictive, limits access to postseason play in football, and is unnecessarily causing a widening financial gap between BCS and non-BCS schools that is having a cumulative negative effect on all college sports, not just football.

### **ADVERSE IMPACTS ON NON-BCS PROGRAMS**

The BCS alliance has led to an ever-increasing financial gap between the BCS and non-BCS institutions. The financial disparity caused by the BCS can be described by merely stating that the 63 BCS schools earned approximately \$500 million since they began their first contract five years ago, while the 53 Division I-A non-BCS schools shared earnings of \$17 million.

This gap exists despite the fact that the BCS and non-BCS schools need each other in order for intercollegiate football to succeed, and when given a fair opportunity for BCS and non-BCS schools to play against one another, they are quite competitive.

Ironically, some BCS schools have suggested that they might consider leaving the NCAA to form their own association if the non-BCS schools push too hard on this issue. This is anathema to the values of higher education and is not a practical solution for any of us.

The BCS arrangement and its negative impact extends far beyond this disparity in financial distributions, however. Let me give you a few practical examples.

- **Student Recruitment.** BCS schools have an obvious advantage over non-BCS schools in terms of recruiting the top student-athletes, who obviously want to play at schools where they have the best chance at success both on and off the field. On the field, that means having access to competition for a national championship and playing in the most attractive postseason bowls.

Non-BCS schools can sell their prospective student-athletes on a good education, but they can hold out little practical hope of a national championship or even the reward of playing in one of the four biggest bowl games. Thus, many of the top student-athletes continue to choose BCS schools, while the non-BCS schools suffer because they do not have greater access, much less the same access. The strong get stronger, and the rest of us try to keep up.

- **Recruitment and Retention of Coaches.** Just as the top student-athletes want to go where they can perform consistently at the highest level of competition, so do coaches. Success for any coach is measured not only in the win-loss column and the dollar figure on a contract but also in terms of competitiveness and the ability to achieve recognition at the highest level.

Because of the artificial barriers the BCS has erected to limit access to bowl games and championship competition, our non-BCS schools have become virtual training grounds for future BCS coaches. Once a talented football coach achieves any level of success in a non-BCS school, he will inevitably take the first opportunity to move into a BCS setting, and each season we see such a migration. After Tulane's 11-0 season, our football coach, Tommy Bowden, went to Clemson, a BCS school. In 2001, Bobby Johnson left a successful team at Furman College to take the reins at Vanderbilt, also a BCS school.

(Ironically, Vanderbilt University, an excellent academic institution, is often at the bottom of the football rankings in the Southeastern Conference and not always competitive with many of the non-BCS Division I-A football programs. Yet because the BCS conferences believe in revenue sharing among their own members regardless of on-field

performance, Vanderbilt receives a full share of the money received by the SEC. This brings up another inconsistency in BCS logic: through their revenue-sharing practice, they recognize that the strength of a conference depends on the strength of each individual member school. Does it not follow, then, that the strength of Division I-A football would benefit from the strength of all Division I-A football programs, and not just the half of them that belong to the BCS?)

- **Facility Improvements.** I talked earlier about the revenue-sharing among BCS schools that brought those schools \$500 million in the past five years as opposed to the \$17 million received by non-BCS schools. \$500 million will help build a lot more stadiums, create more state-of-the-art practice facilities, purchase more top-of-the-line equipment, and fund more upgrades to existing facilities and services for 63 BCS schools than will \$17 million for 53 non-BCS schools. Non-BCS schools must scramble within their own limited budgets to fund these improvements without that revenue, or allow their facilities to be outpaced and fall behind the competition.

If the non-BCS schools do fund the improvements themselves, what suffers as a result? Do academic programs get slashed to pay for athletics? Should faculty salaries be frozen and our non-BCS schools risk an exodus of their best faculty to other schools? Do tuition costs have to go even higher? Do they have to eliminate the so-called “Olympic sports” so dollars can be reallocated to football? These are the difficult, yet realistic, tradeoffs we must consider. Obviously, these options are not in keeping with the mission of any institution of higher education.

The other option is for the non-BCS schools to allow our facilities to stay the same year after year, the result being an even greater erosion in the number of student-athletes who want to play for us and the coaches who want to stay. It’s a vicious cycle, and one in which the non-BCS school comes out a loser no matter what option is chosen.

- **Scheduling.** The BCS system also reinforces the two-tiered system in Division I-A football in terms of scheduling. Few BCS schools are willing to play straightforward home-and-home series with non-BCS teams. So in order for a non-BCS school such as Central Florida to play a BCS school, they would have to play several times at the other school’s home field in order for the BCS team to play once at theirs. To illustrate further, over the last four regular football seasons (1999-2002), the top 10 BCS teams played 65 home games against non-BCS schools, but only 11 road games—a ratio of 6 to 1. Obviously, this not only creates scheduling issues for the non-BCS schools but also gives the BCS schools undue home-field advantage and denies the non-BCS schools the revenue that would be earned and the competitive advantage of playing higher-profile games on their own home fields.

• **Public Perception.** The cumulative negative effects of the BCS and its two-tiered system in Division I-A football can be seen very clearly when it comes to the court of public opinion. Non-BCS schools are, quite frankly, seen as inferior and less competitive than BCS schools. Because they never get to play in the “big games” and are hindered by scheduling, recruiting and coaching limitations, non-BCS schools are viewed by the public, the TV networks and by prospective student-athletes as being less competitive and, thus, less desirable. Even Jim Delany, commissioner of the Big 10 and one of the architects of the Bowl Championship Series, was quoted in a July 22 Knight-Ridder news service article that an unintended consequence of the BCS was the media’s repeated use of the term “BCS” to refer to the conferences affiliated with the four major bowls and to all Division I-A sports programs, not just football. In that article, Mr. Delany acknowledged that the concerns of the non-BCS schools constituted a valid complaint.

Despite these obstacles created by the BCS arrangement, data indicate that the non-BCS schools are increasingly competitive with many BCS schools. Given this, can you imagine the competitive parity possible in the absence of these BCS-generated obstacles?

• **Impact on Bowl System.** As a two-tiered system of programs has resulted from the presence of the BCS alliance, so, too has there grown an even larger two-tiered system of football bowl games. The Rose, Sugar, Orange and Fiesta bowls are affiliated with the BCS and, as such, rotate the right to host the national championship game each year. These four bowls, because they feature the championship contenders as determined by the BCS, attract the most attention, draw the biggest TV revenues, and grow in size and power. (Ironically, even three of the four BCS bowls have been devalued over the past five years, as indicated by viewer ratings, because people do not see the three bowls that are not hosting the national championship game as being meaningful.)

At the same time, in a desperate bid to draw a share of the wealth and visibility, more bowl games are being formed—six new ones in the past five years—but most do not generate much net income for the participating schools. In fact, though revenue from all bowl games grew more than \$22 million in the past five years, 95 percent of the net revenue went to the BCS schools.

These are just a few of the major negative impacts of the BCS on non-BCS schools: student-athlete recruitment, coaching recruitment and retention, facilities funding, scheduling, public perception and bowl impact. The cumulative effect of these impacts are to hinder the competitiveness of non-BCS schools, limit their access to equal and fair competition, and create a perception of athletic inferiority—all of which feed upon each other in a classic “Catch-22” situation.

## **LESS RESTRICTIVE, VALUE-CREATING ALTERNATIVE APPROACHES**

My last, and perhaps most important, issue with the BCS arrangement is that there are better approaches clearly available to guide postseason play in football—approaches that would create greater value for all Division I-A schools, the networks and the fans while being less restrictive, more competitive and consistent with how we handle all other NCAA sports.

One of the reasons the BCS was formed five years ago was to provide a way for a national championship game to take place in Division I-A football, with a decisive national champion at the end of each season. How could that goal still be achieved, yet within a setting formally sanctioned and operated by the NCAA?

I would argue that a playoff system is one option that should be seriously considered in college football just as it is in all other NCAA Division I-A sports. An eight- or 16-team playoff system could open access to all contenders, generate excitement and could incorporate the current bowl games into its structure.

I realize that many of my colleagues on both sides of the BCS fence oppose a playoff system in football for various reasons.

Some, for example, believe a football playoff system would lengthen the season too much and impinge on student-athlete welfare. Student-athlete welfare is an issue across all sports, but somehow it never becomes an issue when talking about baseball or basketball, where the seasons are longer and the sport is more intrusive on the lives of the student-athletes, but only in football. This logic is inconsistent. This argument also does not take into account that until recent years, football seasons only had 10 or 11 games where we now play 12 or 13. By shortening our regular season, we could devise an effective playoff system without undue hardship on our student-athletes. Any revenue lost from a shortened season would be more than offset by the incremental value inherent in a playoff system.

Others argue that a playoff system would disrupt the historical relationship between college football and the traditional bowl games. In the past two months since Tulane underwent its athletics review and I began looking at the problems inherent with the BCS system, I have received more than 30 proposals for how to set up a workable playoff system for college football. Virtually all of them incorporated the existing bowls.

Some opposed to a playoff argue that a playoff system would be too commercialized for college football, often characterizing this commercialization as “NFL-like.” But in a day when all bowls carry the name of a corporate sponsor and come attached to highly priced network affiliations, I fail to see how a playoff system would increase the commercialization of college football. In fact, the big college bowls are already extremely

commercialized, much more so than the NCAA basketball playoff system. If football had a similar system sanctioned and run by the NCAA, I suspect the football championships would be less commercial than they are today.

Finally, the pro-BCS, anti-playoff proponents present an argument we've heard before: that the networks don't have an interest in a playoff that could end up featuring two non-BCS schools playing for a championship. Not only would they be interested—they would be vying for the opportunity to air it. In fact, in a recent interview, former CBS Sports director Neal Pilson estimated in a recent CNN commentary that a playoff system would spark a bidding competition between at least two networks and be much more profitable than the current BCS arrangement with ABC Sports.

### **THE COUNTER-ARGUMENTS**

Obviously, the fact that we are here today looking at the issues surrounding the BCS alliance means that there is disagreement within Division I-A schools as to this system's efficacy and fairness. Those who support the BCS system, including, of course, BCS schools, have a number of arguments and questions they present to make their case.

• **Why now?** BCS supporters want to know why, all of a sudden, the system is coming under such scrutiny. The current dissatisfaction with the system, however, has been building since the BCS was organized five years ago. It has taken five years to see the direction the BCS was going to be taking college football and now, clearly, it is not a direction that is healthy either for college football or Division I-A athletics in general.

Many will argue that the same teams were already going to the big bowl games prior to the formation of the BCS, and that all the BCS did was to set up a system whereby a definitive national championship game could be played.

This is not quite true, however. It is true that prior to the formation of the BCS there were always so-called "Big Football Schools," perennial champions where success fostered continued prosperity. And it is true that most of these schools are in the BCS conferences and continue to compete very successfully.

The difference is that each year prior to the formation of the BCS, the Big Football Schools began their seasons on the same footing as every other school—at 0-0, with no built-in advantages beyond their own potential. Once the BCS and its ranking system were developed, that equity disappeared. Now, all schools start their seasons at 0-0, but 63 have more opportunities and access than the other 53.

The gap is continuing to widen between the BCS and non-BCS schools because of the significant increase in available revenues since the BCS formed, because a national

championship is involved, because most of that revenue is going to BCS schools, and because the BCS conferences defined the rules of engagement with virtually no consultation with other Division I-A presidents.

Bottom line: The BCS is quite different than the old bowl system!

• **Who wants to see Tulane vs. BYU in a national championship game?** The implication behind this question is, of course, that non-BCS schools such as Tulane and BYU do not generate any interest outside their own ranks. Beyond the arrogance of this question, I would answer, “You might be surprised.” Look at the excitement generated by underdog Rice University in this year’s College World Series or Marquette in the NCAA Final Four and the fallacy of such logic becomes clear. Related to this argument is another:

• **The networks would not want to broadcast a championship game featuring a Tulane or a BYU.** This, of course, is nonsense. The networks will always be interested in a national championship game if there is a level playing field and the participants have earned the right to be there. Nothing sells better on TV than a good underdog story, and the networks know how to tell that story very well.

• **Non-BCS schools already have access to the BCS bowls, so what is the problem?** As I have previously suggested, this is a case of the theoretical versus the practical. In theory, yes, non-BCS schools do have potential access to the BCS bowl games and the national championship. According to BCS rules, six of the eight slots in the four major bowl games automatically go to BCS members. Theoretically, then, the other two slots would be available to non-BCS schools. But the two slots also must be filled with schools ranked in the top six nationally according to the BCS’ own rankings. In practicality, the top six has never included a non-BCS school, nor is it likely to do so. The BCS ranking formula has an inherent, built-in bias, which makes it virtually impossible for a non-BCS school to be ranked in the top six. Add on top of all of this the special treatment given to Notre Dame in the BCS system, and you will never see a non-BCS team play for a national championship and perhaps never even qualify for a BCS bowl.

• **Non-BCS schools cannot compete with BCS schools.** My answer to that is, how can we know until we are given a fair chance to compete? If, in 1998, both Tulane and Tennessee had perfect records, who is to say that a game between the two might not have been extremely competitive? In fact, in the past five years, there have been 16 instances where BCS and non-BCS teams have met in postseason bowl games, albeit not the major bowls. The BCS teams won eight of those games; eight were won by non-BCS teams. That sounds competitive to me.

These are just a few of the counter-arguments often posed by those associated with the BCS. However, I can virtually guarantee that if you are willing to scratch the surface of the BCS' counter-arguments, they are without merit.

## **THE FUTURE**

So, what of the future? I did not come here today to talk about the technicalities of antitrust matters, but to put a human story and face behind the non-BCS schools and their experiences. This is a story about access issues, about the creation of wide financial gaps that create cumulative negative effects and complex problems. It is a system that is unnecessarily restrictive, and one that creates artificial barriers to limit access and, from where I sit, that feels like a real problem whether you call it an antitrust issue or anything else. Tulane University's consultations with antitrust lawyers lead us to believe that there are significant antitrust issues in the BCS agreement. But I sincerely hope this does not have to be settled in the courts.

The non-BCS schools are not asking for a handout. We're not looking to take anything away from the BCS schools. We are not asking for revenue to be given to us that has not been rightfully earned.

What we are asking for is the right to compete. We are seeking the opportunity to try and earn a larger share of the pie. We are asking for greater access to the most lucrative bowl games and the national championship. We are asking for a level playing field. We are asking for every college football team in Division I-A to begin their seasons at 0-0 with realistic opportunities to play for a championship and have practical access to the same postseason bowls.

I do not think we are asking for too much.

A group of 45 non-BCS university presidents already has started a constructive and promising dialog, and in four days a meeting of 11 Division I-A presidents with Dr. Myles Brand of the NCAA will be held in Chicago to start making headway toward the resolution of our differences.

However, if we cannot reach such a resolution, I hope that this committee will hold additional hearings toward taking substantive action that will resolve the matter.

Resolution of these inequities in intercollegiate football will lead to a stronger and healthier system of Division I-A athletics throughout the country as we again open the gates of access to all schools and all teams—equally and without bias.

It also will provide a crucial first step in overall athletics reform that will bring our priorities and systems of operation back in line with the original mission upon which the American system of intercollegiate athletics was founded.