

Statement of

The Honorable Orrin Hatch.

United States Senator
Utah
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Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on

"BCS or Bust: Competitive and Economic Effects

of the Bowl Championship Series On and Off the Field"

Welcome to today's Judiciary Committee hearing on the competitive and economic effects of the Bowl Championship Series.

Many of you may not be aware that when I was in high school, I had a promising future in football. But things didn't work out. BYU already had a half-back, and I couldn't seem to go to my left. Well, some things never change. I still don't go to the left.

But on a serious note, I am pleased that the Judiciary Committee is examining the competitive effects of the BCS because the notion of basic fairness is called into question by the current BCS system. I believe there is value to ensuring fairness in our society whenever we can. And while life may not be fair, the moment that we stop caring that it isn't, we chip away at the American dream.

Let me just say that many sports fans in Utah and all across the nation have strong feelings about the BCS. Almost without exception, these fans make the same two points: First, the current system is unfair. Second, they care deeply that it isn't. And I think it is worth a couple hours of this Committee's time to consider the matter.

In my opinion, the current manner in which teams are chosen to play in the four major bowl games - and the way in which a national champion is determined - are fundamentally unfair to non-BCS teams. The first problem is one of access. There are only four BCS bowls, limiting participation to eight teams. Six of the available slots are guaranteed to the champions of the BCS conferences, leaving only two slots for all the remaining 111 teams in both the BCS and non-BCS conferences. And these two slots are filled using a ranking system that many claim is biased against non-BCS teams. Under these circumstances, it is hardly surprising that not a single non-BCS football team has played in a BCS bowl since its inception in 1997.

The second problem is that non-BCS teams are placed at a financial and competitive disadvantage because the BCS conferences retain most of the tens of millions of dollars of bowl revenue. The financial disparities that result from the current system translate into a competitive disadvantage for non-BCS teams. Combined, the revenues of the four major bowls in the upcoming year are projected to be \$89.9 million. According to the revenue distribution information on the BCS web page, the BCS will "contribute \$6 million to other Division I-A and I-AA conferences to be used in support of the overall health of college football."

Under this system, the minimum payout for the BCS conferences will be \$13.9 million. And if - as will probably be the case - no non-BCS team plays in a major bowl, approximately \$17 million will be paid to each BCS conference that has one member team invited to a BCS bowl and \$21.5 million to the BCS conferences lucky enough to have two member teams invited. This is compared to the \$1 million that most of the non-BCS conferences will receive. Where BCS conferences stand to receive more than twenty times what the non-BCS conferences get, the resulting competitive disadvantages are unmistakable.

A third concern is that the combination of extremely limited access and enormous financial disparities may severely disadvantage non-BCS teams in the area of recruiting. As I believe Coach LaVell Edwards will emphasize in a few minutes, one of the biggest recruiting hurdles for non-BCS teams is that coaches from the BCS conferences are able to tell potential recruits that, if they attended a non-BCS school, they will never play in a national championship game (or, probably, even in a major bowl). The financial disparities that I have mentioned also affect recruiting for obvious reasons.

According to the title, today's hearing will examine the effects of the BCS both on and off the field. I have outlined my principal concerns about how non-BCS teams may be disadvantaged on the field. But what about off the football field? I would like to briefly highlight three issues of particular concern. First, because football revenues are often used to fund other college sports, I am concerned about the impact that the financial disparities caused by the BCS may have on these other sports. Second, I am concerned that the financial disparities resulting from the BCS may make it more difficult for non-BCS schools to provide fair and equal opportunities for female athletes as required by Title IX. Third, and perhaps most importantly, I - and many others - are concerned that all this college football money is turning college sports into nothing more than a minor league for pro football rather than a legitimate educational activity for student athletes. Unfortunately, Chancellor Gordon Gee of Vanderbilt University could not be here with us today. Vanderbilt recently took steps to de-emphasize its athletic program, and I would have enjoyed having his perspective on all this.

Of course, just because something is unfair doesn't make it unlawful. However, the principle of fairness - and in particular fair competition - is to a certain extent reflected in our antitrust laws. For example, it is generally unlawful for two competitors in any particular market to agree to exclude a third. Some would argue that that is effectively what the BCS does. But, while the antitrust implications of the BCS will be part of what we discuss here today, I think it is unclear how a court would rule on an antitrust challenge to the BCS.

I, for one, hope that we don't find out. It is my sincere hope that the BCS system will be improved through negotiation rather than litigation. I note that representatives of BCS and non-BCS schools met in September and will meet again on November 16th to discuss how the current system might be changed to be more inclusive. In closing, I urge the participants in these meetings to work toward a mutually acceptable solution that will answer the criticisms of the BCS that we discuss today. If nothing else, I would admonish the participants simply to do what is fair.

I look forward to hearing testimony from our witnesses.