

OPINION

The market is dictating evolution of college sports, but where will it go?

BY ROB DIGISI

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College sports has more elements of free market capitalism than professional sports. As of now, student athletes are not employees. Therefore, they cannot be members of a union and they are not tied to a scholarship in the same way that an NBA or MLB player is tied to a contract. If the student athlete doesn't like his place on the team or is lured away for more money, the athlete can transfer without restrictions to his/her eligibility. Financial incentive to transfer is not limited to more opportunity to monetize their NIL but includes compensation from "collectives" ... in other words, legal booster payments. There is no collectively bargained free agency system, no salary arbitration and no luxury tax systems in place to ensure competitive balance among the teams in a conference or on a national scale. There is a truly free market.

Universities want to put themselves in a position to maximize financial opportunity. They've learned that sports is the ultimate platform to build a national brand to attract students, prospective faculty, donors and the corporations who recruit employees on campus. Most importantly, major college sports fortifies the bond among alumni and their alma mater.

In order to pursue more revenue, universities have the freedom to change leagues. Pro teams do not. For example, if the Kansas City Chiefs don't like their arrangement with the NFL, where are they going to go? If Florida State is unhappy with the ACC, they can run the numbers and decide if it's worthwhile to join the SEC, if the SEC will have them. Where college sports departs from a free market structure is that universities are not for-profit entities who do not have shareholders that can reap the benefit of capital appreciation.

In the *Board of Regents v. The NCAA* (1984) Supreme Court Justice John Paul Stevens wrote that "the NCAA plays a critical role in maintenance of a revered tradition of amateurism in college sports." We, as sports fans, want to maintain this revered tradition. We want to remain enraptured by its premise and untarnished by the illusion of financial influence. We want to point fingers and blame various institutions that we believe are responsible for altering the college sports landscape. There is no one group, bureaucracy or individual that is dictating the evolution. It's the market. It may be hard to stomach the impact of free market capitalism woven through a community centered on student competition, campus venues and the support of energetic student bodies and loyal alumni. The pain of change has existed in every decade since games have been televised.

The new NCAA president, Charlie Baker, is challenged by trying to lead a diverse set of stakeholders with an assortment of disparate agendas toward a delicate balance. He wants to seize financial rewards while maintaining the revered traditions that have built the product's foundation. There are myriad competing forces

complicating the task: 350+ Division I athletic programs, the broader priorities of university presidents and trustees, an increasingly powerful College Football Playoff organization and media partners paying billions for production and distribution rights. He also needs to navigate through legal obstacles, most prominently the protections offered by antitrust laws. He is faced with a patchwork of various state NIL laws and gaining support among a fractious political community in order to advance a federal legislative solution. Underlying the widespread agendas and approaches, he represents a university community that is committed to maintaining the innocence of college athletics as an extracurricular activity.

Critics of the rapidly changing world of college athletics are crying for new structure and new rules. However, such changes are exceedingly difficult to implement. Pro sports leaders have the luxury of players unions to form collective-bargaining agreements that provide their own set of rules and regulations. Without such an agreement, the leagues would be in violation of antitrust laws. College presidents, athletics directors and conference commissioners are constrained by such laws in crafting a structure that allows for individual incentive, provides competitive balance and maintains the so called “amateur ideal.” The current court has certainly departed from Justice Stevens' remarks in 1984 about the “revered tradition of amateurism in college sports.” In *NCAA v. Alston* (2021), Justice Brett Kavanaugh wrote in the concurring opinion: “Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate.”

There is no simple solution, and without federal regulation, we’re headed to a situation where we do away with the charade that the athlete is an enrolled student, at least for revenue-generating sports. Perhaps we will transition to a model for football and basketball where a university simply licenses its intellectual property and leases its facilities to a professional organization. There could be two distinct segments of D-I college athletics and college football is structured like minor league baseball with AAA, AA and A designations.

Maybe that’s what the market demands?

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