Pace Intellectual Property, Sports & Entertainment Law Forum

Volume 7
Issue 1 *Spring 2017*

Article 3

June 2017

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Recommended Citation

Kelsey Pincket, *Expanding the Sports Broadcasting Act of 1961 to College Athletics*, 7 Pace. Intell. Prop. Sports & Ent. L.F. 93 (2017).
Available at: http://digitalcommons.pace.edu/pipself/vol7/iss1/3

Expanding the Sports Broadcasting Act of 1961 to College Athletics

Abstract
This Note will begin by exploring the history and evolution of antitrust law surrounding sport including the limited application of the Sports Broadcasting Act. An introduction of the Sports Broadcasting Act and a discussion of the portions of the act that are in need of more inclusive language will follow. This Note will then examine the current competitive imbalance in collegiate athletics and emphasize the Supreme Court's recognition as to the importance of maintaining competitiveness in the NCAA. Finally, the expansion of Sports Broadcasting Act through explicit regulation to immunize the NCAA, as one league with a single unity of interest, will be articulated as the solution to the competitive imbalance in college sports and the sports industry.

Keywords
sports broadcasting, college sports, college athletics, NCAA

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ENTERTAINMENT LAW FORUM

VOLUME 7 SPRING 2017 NUMBER 1

EXPANDING THE SPORTS BROADCASTING ACT OF 1961 TO COLLEGE ATHLETICS

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INTRODUCTION

An eighteen-year-old high school football player is one of the nation's few five-star national recruits. Scouts have continuously described him as one of the elite college prospects in the country with excellent pro potential. He arrives at the University of Michigan for his first official visit and is awe-struck. The state of the art locker rooms and best indoor practice facilities in the nation overwhelm him. He is torn. His heart has always been with Rutgers. His destiny was to play as a Scarlet Knight; his grandfather played for the 11-0 undefeated Scarlet Knights in 1976, and regularly divulged in anecdotes about "The Birthplace of College Football" growing up. Even so, he steps onto the Big-Ten campus, lying in the heart of Ann Arbor, Michigan, and is astounded. Next on his list of official visits sits Ohio State, and he knows the Buckeyes also have the total package. These astonishing multi-million dollar facilities are any nationally ranked recruit's dream. It is clear to him that Rutgers University just will not be able to live up to Big-Ten conference standards. Although recently introduced into the Big-Ten, one of the power-five conferences, Rutgers will not receive full conference revenue share until the 2020-2021 season and they won't be able to afford to upgrade the playing facilities during his playing career.[1]

[1] Kevin McGuire, *Rutgers has Massive Athletics Facility Upgrades Planned, Including Football Stadium*, NBC Sports (Jun. 19, 2015, 10:32 AM), http://collegefootballtalk.nbcsports.com/2015/06/19/rutgers-has-massive-athletics-facility-upgrades-planned-including-football-stadium/.

Growing up attending games at High Point Solutions Stadium, Rutgers' home-field, the young recruit realizes his legacy is slipping away as an unrealistic option for the sought-after player he has grown up to be.

In the last sixty years, professional sports have evolved into a multi-billion-dollar industry.[2] Collegiate athletics closely match their professional counterparts in total fan base and revenue. In many ways universities are forced to compete with professional sports.[3] Television rights are, by far, the largest component of revenues for major professional and college sports.[4] Today, universities are in direct competition with professional sports for television air-time. The current bounds that exist in exerting fan-ship for a college sport team parallel those that surrounded professional sports in the pre-Sports Broadcasting Act era.[5] The larger market teams breed the most attention and generate the most revenue. This allows those big market schools to maintain their facilities and offer luxuries to players, enticing the best talent; while smaller market schools are left out of this

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[2] Cork Gaines, *The NFL Makes $6 Billion Annually Just from National Television Contracts*, (Sept. 11, 2015, 4:36 PM), http:// www.businessinsider.com/chart-national-tv-contracts-nfl-mlb-nba-nhl-2014-9.

[3] Mark Tracy & Tim Rohan, *What Made College Football More Like the Pros? $7.3 Billion, for a Start,* (Dec. 30. 2014), http://www.nytimes.com/2014/12/31/sports/ncaafootball/what-made-college-ball-more-like-the-pros-73-billion-for-a-start.html?_r=0.

[4] Gaines, *supra* note 2.

[5] See Matthew J. Mitten & Aaron Hernandez, *The Sports Broadcasting Act of 1961: A Comparative Analysis of its Effects on Competitive Balance in the NFL and NCAA Division I FBS Football*, 39 Ohio N. U. L. Rev. 745, 762-63 (2014) (discussing the professional sport competitive imbalance in Professional Sport before the enactment of the Sports Broadcasting Act).

cycle and continue to suffer in generating revenues, leaving them unable to offer state of the art facilities to the nation's most desirable players. This cyclic performance creates a competitive imbalance within the National Collegiate Athletic Association ("NCAA"). The National Football League ("NFL"), along with other professional sports, are able to pool broadcasting rights pursuant to the Sports Broadcasting Act.[6] The results of on-field competitions at the university level have become predictable and championships and bowl appearances are not distributed among the majority of teams, exhibiting the lack of competitive balance in collegiate athletics.[7] A comparison of the AP Top 25 final college football season rankings and national championships with NFL clubs' playoff appearances and Super Bowl championships during the same period shows there is currently significantly less competitive balance among universities than among NFL teams.[8] Because professional sport leagues such as the NFL and Major League Baseball (MLB) are able to pool their broadcasting rights of member teams together, college sports teams are left as a competitive disadvantage in the market of live sporting entertainment. Universities

[6] 15 U.S.C. §§1291-1295 (2006) (codifying the antitrust exemption in sport, even though antitrust exemption had been enjoyed; major NCAA conferences have been able to pool their telecast rights without such statutory benefit, however threat of litigation still exists).

[7] Mitten & Hernandez, *supra,* note 5, at 762-63.

[8] *Id.* (displaying an exhibit showing the season rankings of teams from 1985 through 2012. Data shows that 100% of the NFL's member teams held records qualifying for the playoffs from 1985-2012; whereas, only 69% of Division I FBS teams finished in the AP Top 25 Poll even once).

must sell their rights as individual entities or within their respective conference,[9] if they are fortunate enough to hold membership within a powerful conference.[10] College teams are forced to fight against one another for broadcasting rights, rather than compete against the true market competition, other forms of live entertainment.

Very few pieces of legislation are aimed at protecting the special interest of sport.[11] However, the federal district court ruling in an antitrust suit brought by United States Department of Justice against the NFL resulted in the Sports Broadcasting Act of 1961 ("SBA").[12] The Act permits only professional sport leagues to collectively and exclusively sell all of their teams' television rights.[13] The Sports Broadcasting Act does not, however, protect the NCAA from antitrust scrutiny.[14] This gap in the Sports Broadcasting Act bars the NCAA from collectively selling the television rights of universities due to the increasing threat of antitrust

[9] *See infra* Part IV.

[10] The "Power-Five" conferences include the Atlantic Coast Conference (ACC), Big Ten Conference, Big 12 Conference, Pacific-12 Conference (Pac-12), and Southeastern Conference (SEC).

[11] Mitten & Hernandez, *supra*, note 5, at 745 n.1 (describing the few sport-specific federal statutes; for example, the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §220501, et seq.; Sports Agent Responsibility Trust Act, 15 U.S.C. §§7801 *et. seq.; Sports Broadcasting Act of 1961, 15 U.S.C. §§ 1291 et seq.; Equity in Athletics Disclosure Act, 20 U.S.C. § 1092; Professional and Amateur Sports Protection Act ("PASPA"), 28 U.S.C. § 3701 et seq.; The Bribery in Sporting Contests Act, 18 U.S.C § 224; Professional Boxing Safety Act of 1996, 15 U.S.C. §§ 6301 et seq.; Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307(a)-(h); and The Curt Flood Act of 1998, 15 U.S.C. § 26(b)).*

[12] United States v. Nat'l Football League, 116 F. Supp. 319 (E.D. Pa. 1953).

[13] 15 U.S.C. § 1291.

[14] *Id.*

litigation.[15]

This Note will begin by exploring the history and evolution of antitrust law surrounding sport including the limited application of the Sports Broadcasting Act.[16] An introduction of the Sports Broadcasting Act and a discussion of the portions of the act that are in need of more inclusive language will follow.[17] This Note will then examine the current competitive imbalance in collegiate athletics and emphasize the Supreme Court's recognition as to the importance of maintaining competitiveness in the NCAA.[18] Finally, the expansion of Sports Broadcasting Act through explicit regulation to immunize the NCAA, as one league with a single unity of interest, will be articulated as the solution to the competitive imbalance in college sports and the sports industry.[19]

A. Antitrust Overview

Antitrust law, at its most rudimentary level, is designed to protect consumers.[20] This area of the law works to field economic competition across all private industries by responding to anticompetitive conduct once

[15] *See generally Nat'l Collegiate Athletics Ass'n v. Bd. Of Regents of the Univ. of Oklahoma*, 468 U.S. 85 (1984) (where the NCAA's collective and exclusive sale of college football television rights were invalidated).

[16] *See infra* Part II.

[17] *See infra* Part III.

[18] *See infra* Part IV.

[19] *See infra* Part V.

[20] *See* John B. Kirkwood & Robert H. Lande, *The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency*, 84 Notre Dame L Rev. 191 (2008), http:// ssrn.com/abstract=1113927.

it occurs.[21] With its creation in 1890, the Sherman Act[22] formed the basis for most antitrust litigation pursued by the Department of Justice. The Act in its original form simply prohibited any restraint of trade in order to "preserv[e] free . . . competition . . . ."[23] Although the Sherman Act, in plain terms, applies only to commercial transaction, the Court has held the statute was intended to encompass a very wide range of restrictive conduct in the free market.[24] Specifically, Section One of the Sherman Act provides "[e]very contract, combination . . . , or conspiracy, in restraint of trade or commerce . . . , is declared to be illegal."[25] This section of the Sherman Act is eminently over-broad in its application.[26] It can be said every contract would be considered a restraint of open trade of some kind. In 1911, the Supreme Court developed an updated standard for Section One of the Sherman Act. This reconsideration required an act to be an "unreasonable" restraint on trade to be considered a violation of Section One.[27] The narrowing of Section One both encourages the creation of deal contracts in

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[21] *See* John B. Kirkwood & Robert H. Lande, *The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency,* 84 Notre Dame L Rev. 191 (2008), http:// ssrn.com/abstract=1113927.

[22] 15 U.S.C. §§ 1-7 (2006).

[23] N. Pac. Ry. Co. v. United States, 356 U.S. 1, 4 (1958) (articulating the purpose of the Sherman Act).

[24] *See* 15 U.S.C. §§ 1-2 (2006); Goldfarb v. Va. State Bar, 421 U.S. 773, 787-88 (1975) (describing Congress' intention of Section One of the Sherman Act to strike broadly).

[25] 15 U.S.C. § 1 (2006).

[26] *See generally* Standard Oil Co. v. United States, 221 U.S. 1 (1911) (the Court's refusal to accept the government's argument that Section One of the Sherman Act embraces every contract in restraint of trade).

[27] *Id.*

a free market while also "prevent[ing] competitors from combining their economic power in ways that unduly impair competition or harm consumers, be it in terms of increased prices, diminished quality, limited choices, or impaired technological progress."[28]

A well-established Section One, Sherman Act defense to antitrust claims brought against members of a single entity arises out of the Supreme Court decision of *Copperweld Corp. v. Independence Tube Corp.*.[29] The Court based this ruling on the fact that a parent-subsidiary relationship did not yield the anti-competitive risks the Sherman Act was enacted to combat.[30] The Court concluded a corporation cannot form a combination or conspiracy in violation of Section One of the Sherman Act with its subsidiary.[31] With the understanding that a corporation and its subsidiaries have a "complete unity of interest," the Court established affiliated entities serving the single economic interest of the parent corporation are like a single entity and cannot unlawfully conspire or combine together in an antitrust violation.[32]

Recently, a landmark case was decided by the United States Court of Appeals for the Seventh Circuit regarding the ability of teams in the NFL to

[28] Michael A. McCann, *American Needle v. NFL: An Opportunity to Reshape Sports Law*, 119 Yale L.J. 726, 735-36 (2010).
[29] Copperweld Corp. v. Independence Tube Corp., 466 U.S. 752 (1984).
[30] *Independence Tube Corp*., 466 U.S. at 772.
[31] *Id*. at 773.
[32] *Copperweld Corp*., 466 U.S at 771.

conspire for purposes of violating Section One of the Sherman Act in *American Needle v. NFL.*[33] Following law established by the Supreme Court in *Copperweld,* a parent corporation like the NFL, and its wholly owned subsidiaries area single entity for antitrust purposes. The plaintiffs had argued because the individual NFL teams separately owned and operated their team logos and trademarks, their collective agreement to authorize a licensor the rights to the exclusive headwear of the NFL was a violation of antitrust laws.[34] The Court however found the NFL teams were a single entity for purposes of antitrust laws, and thus could not have conspired to restrict trade as competitors.[35] The final judgment, in allowing the NFL teams to collectively authorize a licensor the rights to NFL exclusive headwear would not deprive the marketplace of the independent sources of economic control that competition assumes.[36] Agreements, such as the one disputed in *American Needle* encourage cooperation within the league so the NFL can compete against other entertainment providers.

Contemporary sport, as a business, has appeared at the forefront of

[33] American Needle v. Nat'l Football League, 538 F. 3d 736 (7th Cir. 2008).

[34] *Id.*

[35] *Id.* (the Court expresses skepticism to applying a definitive single-entity determination for all sports leagues, and states that the question of whether a sports league is a single entity should be addressed one league at a time as well as in one facet of a league at a time).

[36] *Id.* (the Zen riddle of "who wins when a football team plays itself?" showing that although there are many competing interests, there is only one source of economic power which controls the promotion of football, creating a complete unity of interest. The licensing agreement shows cooperation).

antitrust litigation.[37] Early on, the Supreme Court recognized sport to be a muddled area of antitrust law. A Supreme Court ruling in 1922 specifically provided for a blanket antitrust exemption for Major League Baseball.[38] In *Federal Baseball Club*, the Federal League declared itself to be a third major league in competition with the National and American Leagues and filed an antitrust lawsuit against the existing leagues.[39] The Federal League asserted the National Leagues of Professional Baseball Clubs has conspired to monopolize the baseball business after the established leagues bought out owners with competing clubs in major league cities.[40] For the first time in judicial history, the Supreme Court distinguished baseball as a sport from other business structures and provided for an antitrust exemption for the major baseball leagues.[41] As a result of *Federal Baseball Club*, sport generally had been deemed to not fall within the restraints of the antitrust

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[37] Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922).

[38] *Id.*; Flood v. Kuhn, 407 U.S. 258, 285 (1972) (the Court affirms Major League Baseball's antitrust exemption, finding that "Congress has no intention of including the business of baseball within the scope of federal antitrust laws"); *Toolson v. New York Yankees*, 346 U.S. 356 (1953) (upholding Major League Baseball's antitrust exemption where frequent travel across state lines is deemed to be merely incidental to the baseball competitions. The sporting competitions are not deemed to be commerce, and thus, is purely a state affair. Due to the interstate nature of sport, the Supreme Court continuously finds that the business is not subject to federal antitrust law).

[39] *Fed. Baseball Club of Balt., Inc*., 259 U.S. 200.

[40] *Fed. Baseball Club of Balt., Inc*., 259 U.S. at 200.

[41] *Id.* (affirming the ruling of the District of Columbia Court of Appeals National League of *Professional Baseball Clubs v. Fed. Baseball Club of Balt*., 50 App. D.C. 165, 269 (1920) (finding that baseball as a sport was not trade because it was "spontaneous output of human activity . . . not in its nature commerce.") (The court also finds that the sport of baseball "affects no exchange of things."); Roger I. Abrams, *Legal Bases: Baseball and the Law* 56 (1998) (legal counsel in the case of *Federal Baseball* argues before the Supreme Court that "the very existence of baseball depend[s] upon its exemption from antitrust laws.")).

acts under a blanket exemption.[42] Thirty years later, the Court upheld baseball's antitrust exemption in *Toolson v. New York Yankees.*[43] In a one paragraph per curium, the Supreme Court reaffirmed the ruling of *Federal Baseball*.[44] This judicially produced antitrust exemption for sport generally was first challenged in the 1950s. The 1955 Supreme Court decision of *International Boxing Club* reversed the antitrust exemptions enjoyed generally by sport in previous years through the blanket exemptions achieved in the previous baseball rulings.[45] The federal government's assertion the International Boxing Club has committed antitrust violations through a conspiracy to exclude competition in the boxing promotion market was accepted by the Supreme Court.[46] The Court found the boxing business as well as sport generally, to fall within the scope of the Sherman Act.[47] *International Boxing Club* was the first instance in which a professional sporting agency, outside of baseball, has argued it should be covered by the same blanket exemption afforded to professional baseball.[48] The district court in *Boxing Club* had initially dismissed the antitrust suit

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[42] *Fed. Baseball Club of Balt., Inc*., 259 U.S. at 200; Roger I. Abrams, *Legal Bases: Baseball and the Law* 56 (1998).

[43] Toolson v. New York Yankees, 346 U.S. 356 (1953) (where a minor league baseball player asserts that his reassignment to another club team is a violation of antitrust law).

[44] *Id.* (finding that "[t]he business [of baseball] has . . . been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation.").

[45] United States v. International Boxing Club, 348 U.S. 236 (1955) (overruling previous decision providing for an exemption for NLB (Fed. Baseball Club v. Nat'l League, 259 U.S. 2000 (1922)).

[46] *United States*, 348 U.S. at 236.

[47] *Id*.

[48] *Id.*

brought by the government on the Supreme Court's presiding authority of *Federal Baseball Club*; however, the Supreme Court found the previous rulings of *Federal Baseball Club* and *Toolson* to be narrowly limited to the business of baseball.[49] The Supreme Court found the boxing business, although a sport, subject to antitrust litigation, despite its parallel structure to the exempted professional baseball league.[50] The Court noted professional boxing shared the "live presentation of local exhibition" characteristics of baseball; yet, no judicially created exemption existed.[51] This discrepancy in the courts' application of antitrust law to sport, marked the beginning of an ambiguous area of antitrust law, making the dealings of sport business amongst competitors unclear. Although "[t]he business [of sport] ha[d] . . . been left . . . to develop, on the understanding that is was not subject to existing antitrust legislation," the Court has made the legal effects of regulatory practices within the industry unpredictable.[52]

B. The Sports Broadcasting Act

Sport has a very unique business structure, as applied to antitrust law. Each sporting team is competing against other teams within a single league through on-field competition; however, the goal of one team is not to run another team out of business. The teams of one particular league are not in free-market competition with each other. The benefits of on-field

[49] *United States*, 348 U.S. at 236.
[50] *Id.*
[51] *Id.*
[52] *Quoting*, *Toolson*, 346 U.S. 356.

competition are shared throughout any given league, which is in competition with other forms of live-entertainment. Each league forms a "unity of interest"[53] across all the member teams. It is essential to the existence of each member team of the National Football League that on-field competition exists to protect the league's interest of preserving the sport of professional football. It would not be accurate to say the Dallas Cowboys are in open-market competition with the Green Bay Packers even though they meet in the form of on-field competition, because they reside under the umbrella of the national professional league. The National Football League however, should be considered to be in open-market competition with the National Hockey League or Major League Baseball; they are completely separate entities, with their own interest of furthering their given sport. Additionally, each member team of the National Football League must do more than merely exist, the playing field must be comparatively even so the product created by a league will promote viewership and compete with other entertainment sources. If the New England Patriots win the Super Bowl World Championship in an obvious and predicted victory year after year, the entire professional football league would suffer as a result. Fans would begin to lose interest and total revenue would be diminished. Relatedly, the competitors in the market of leisure

[53] McCann, *supra* note 28.

activities and live entertainment would benefit from the turmoil of professional football, as the major competitors to the NFL. More directly, other sport leagues would immediately realize the benefit of a loss of interest in the professional football league through increased viewership and revenue.

Professional sporting leagues, along with Congress have discovered leagues succeed when the on-field competition among teams is more balanced.[54] Often times, ensuring this desired result of even competition requires an equal distribution of revenue among the teams in the league.[55] Because of the Sherman Act's explicit prohibition against collusion among competitors that unreasonably restrains trade, agreements amongst teams to share revenue often raises antitrust concerns with the Department of Justice and major competitors.[56] Specifically, Section One of the Sherman Act has plagued the NFL in recent years.[57]

1. United States v. National Football League, 1953 (NFL I)

In the early 1950s, each NFL team contracted individually with local

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[54] McCann, *supra* note 28 at 732 (citing to David Harris, *Pete Rozelle: The Man Who Made Football an American Obsession,* N.Y. Times, Jan. 15, 1984, § 6 (Magazine), at 12) (arguing that the key to marketing professional football is maintaining a consistently high level of competition among all of the member teams, a goal that could be reached by limiting the competition off the field. By forcing each franchise to work for itself financially a division into rich and poor teams would inevitably provide enormous advantages to few teams. In creating a corresponding imbalance on the field, the attractiveness of the league as a whole is greatly diminished).

[55] *Id.*

[56] 15 U.S.C. § 1 (2006).

[57] McCann, *supra* note 28 at 732.

television stations to broadcast their games.[58] Out of fear the smaller market teams may face eventual bankruptcy, the NFL prohibited the teams from broadcasting games into the market of another team unless permission was granted by the home team in order to regulate the member teams financially.[59] The NFL believed this regulation would enhance the popularity of the league.[60] Subsequently, the United States Department of Justice filed an antitrust suit against the NFL in 1953 ("*NFL I*"), alleging violations of the Sherman Act.[61] The government alleged the provision in the NFL bylaws restricting where teams telecast their games had unreasonable restrained trade in the market for broadcasting in the NFL in violation of Section One of the Sherman Act.[62] The federal district court determined this bylaw constituted an unreasonable restriction placed among NFL teams affected interstate trade, making it subject to judicial scrutiny.[63] The court characterized the NFL's restriction on broadcasting to be "a clear case of allocating marketing territories among competitors, which is a practice generally held illegal under the anti-trust laws;" however, the court also recognized the NFL to be "a unique type of business."[64]

[58]United States v. Nat'l Football League (NFL I), 116 F. Supp. 319, 321 (E.D. Pa. 1953), *superseded by statute,* Sports Broadcasting Act of 1961, Pub. L. No. 87-331, 75 Stat. 732.

[59] *United States*, 116 F. Supp. at 321.

[60] *Id.*

[61] *Id.* at 326.

[62] *Id.*

[63] *Id.*

[64] *United States*, 116 F. Supp. at 326-27.

The court explained:

> Professional teams in a league, however, must not compete too well with each other in a business way. On the playing field, of course, they must compete as hard as they can all the time. But it is not necessary and indeed it is unwise for all the teams to compete as hard as they can against each other . . . . If all the teams should compete as hard as they can in a business way, the stronger teams would be likely to drive the weaker ones into financial failure. If this should happen not only would the weaker teams fail, but eventually the whole league, both the weaker and the stronger teams, would fail, because without a league no team can operate profitably.
>
> It is particularly true in the National Football League that the teams should not compete too strongly with each other in a business way . . . .
>
> . . . it is both wise and essential that rules be passed to help the weaker clubs in their competition with the stronger ones and to keep the League in fairly even balance . . . .
>
> . . . the net effects of allowing unrestricted business competition among the clubs are likely to be, first, the creation of greater and greater inequalities in the strength of the teams; second, the weaker teams being driven out of business; and, third, the destruction of the entire League.[65]

The restriction on broadcasting within another team's home territory was deemed a reasonable restriction with the procompetitive effect of preserving the individual teams as well as the league itself.[66] However, the court found the restriction to be unreasonable in the event of a team's away

[65] *United States*, 116 F. Supp. at 326-27.
[66] *Id.* at 326.

game.[67] The NFL was enjoined from restricting the sale of television rights.[68]

2. United States v. National Football, 1961 (NFL II)

Despite the restrictions on the league imposed by the court in *NFL I*, the NFL grew in popularity following the court's ruling. The NFL continued to anticipate teams in larger television markets would be far more profitable than the weaker, smaller market teams, which would destroy the competitive balance of the league.[69] In 1961, television revenues had skyrocketed from a previous $1,239,000 in 1953, to a staggering $3,510,000 following the execution of a telecast agreement with a major broadcasting company.[70] The NFL gave the telecaster the exclusive right to broadcast all NFL regular season games.[71] This was the first time the NFL collectively sold its member teams' television rights.[72] Due to the unclear nature of the ruling of *NFL I*, the NFL petitioned the court for an interpretation of the final judgment resolving the 1953 antitrust litigation to determine whether the previous ruling barred the exclusive broadcasting agreement.[73] In 1961, the same federal district court of *NFL I* prohibited the NFL from

[67] *United States*, 116 F. Supp. at 326.
[68] *Id.*
[69] U.S. Football League v. Nat'l Football League, 842 F.2d 1335, 1346 (2d Cir. 1988).
[70] Mitten & Hernandez, *supra*, note **Error! Bookmark not defined.**, at 749-50 (citing ABA Section of Antitrust Law, *Federal Statutory Exemptions From Antitrust Law* at 219 (2007)).
[71] *U.S. Football League*, 842 F.2d at 1346.
[72] *Id.*
[73] *I U.S. Football League*, 842 F.2d at 1346.

collectively selling the television rights of the member teams to the major broadcaster ("*NFL II*").[74] The court found the agreement worked to eliminate economic competition among the individual NFL teams because it allowed the broadcaster to determine which games would be telecast in which areas[75] and violated the previous injunction prohibiting them from agreeing to restrict the geographical areas the games would be broadcasted except within a team's home territory during a home game.[76] The Court's ruling banned the execution and performance of the contract with the broadcasting company.[77] The pooling of rights by all of the teams to achieve an exclusive contract between the NFL and the broadcasting entity was deemed illegal.[78] The league had also been enjoined from collecting revenue and distributing it across the league through revenue sharing.[79] This ruling imposed risk of diminishing the on-field competition within the NFL and threatened to financially weaken the younger teams as well as teams located in smaller markets without a huge fan-base. These threats, recognized by the court in *NFL I* were now glaring the professional football league in the face, with the ruling of *NFL II*.

In a swift, 60-day response to the court's rulings in *NFL I* and

[74] United States v. Nat'l Football League (NFL II), 196 F. Supp. 445, 446 (E.D. Pa. 1961).
[75] *Id.*
[76] *United States* 196 F. Supp. at 447.
[77] *Id.* at 446.
[78] *Id.*
[79] *Id.*

NFL II, the Sports Broadcasting Act[80] was enacted.[81] The Sports Broadcasting Act overruled the federal district court's decisions and permitted joint broadcasting agreements among the major professional sports.[82] The Act called for an exemption for the collective sale of broadcasting rights by professional sports from antitrust challenges.[83] The Act provides for a limited antitrust exemption, narrowly construing the blanket rule afforded to professional baseball in *Federal Baseball.*[84] The Sports Broadcasting Act states that antitrust law:

> shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports . . . by which any league of clubs participating in professional [sporting] contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of [professional sports], as the case may be, engaged in or conducted by such clubs.[85]

In essence, the Act enables member teams of a professional sports league to pool their separate rights to broadcast their games and to share the revenue from the pooled sale of those rights, without threat of antitrust litigation. The Act provides for antitrust exemption for the professional

[80] 15 U.S.C. §§ 1291-1295 (2006) (titled "Telecasting of Professional Sports Contest").

[81] Lacie L. Kaiser, *Revisiting the Sports Broadcasting Act of 1961: A Call for Equitable Antitrust Immunity from Section One of the Sherman Act for All Professional Sports Leagues*, 54 DePaul L. Rev. 1237, 1245 (2005).

[82] 15 U.S.C. § 1291 (2006).

[83] 15 U.S.C. § 1291 (2006).

[84] *Fed. Baseball Club of Balt., Inc.*, 259 U.S. 200.

[85] 15 U.S.C. § 1291 (2006).

sports of: football, baseball, basketball, and hockey; however, the act fails to provide an exemption for televised collegiate athletics.[86]

The Sports Broadcasting Act was principled on the concept of free market trade regulation in sport.[87] The purpose of the Act was to "enable the member clubs . . . to pool their separate rights in the sponsored broadcasting of their games and to permit the league to sell the resulting package of pooled rights to a purchaser . . . without violating the antitrust laws."[88] Although they act as competitors, in a business sense, the teams are interdependent partners, whose success as enterprises is intertwined. Although not required by the Sports Broadcasting Act, collective pooling of broadcasting rights has allowed for the revenues to be shared across all teams and has equalized the widely disparate value of each team's television contract. As recognized early on by the federal district court in *NFL I*, maintaining a competitive balance between the teams is necessary for any of them to remain viable enterprises.[89] As a result of this unique revenue sharing opportunity afforded by the Act, the competitive balance among teams in the NFL was unprecedented until other major professional sports leagues including Major League Baseball, the National Basketball Association, and the National Hockey League accepted the revenue sharing

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[86] 15 U.S.C. § 1291 (2006).
[87] S. Rep. No 1087, 87th Cong., 1st Sess. 3042 (1961).
[88] S. Rep. No 1087, 87th Cong., 1st Sess. 3042 (1961).
[89] *United States v. Nat'l Football League* (*NFL I)*, at 321.

model.

The rest of the provisions of the Sports Broadcasting Act work to both expand and limit the television power of professional sports. Section 1293 states the antitrust immunity provided by the Sports Broadcasting Act does not apply to the broadcast of professional football games on Fridays and Saturdays.[90] This section of the Act helps to protect the telecast of college football games from having to compete against professional football games.[91] This provision was designed to protect college football from the potentially devastating effects of competing for crowds against televised professional games. Although Section 1293 does not directly prohibit a Friday or Saturday professional broadcast, the danger of losing the antitrust immunity is enough to keep the professional football league from broadcasting at the stipulated college broadcasts times. Section 1294 of the Act clarifies that the antitrust immunity granted by the Act only applies to collective broadcast agreements made by professional sports leagues and not any other "act, contract, agreement, rule, course of conduct, or other activity.[92]

C. NCAA Does Not Receive Basic Antitrust Exemption

A conspicuous gap in the provisions of the Sports Broadcasting Act lies in the realm of college sport. As a huge competitor in the live sport

[90] 15 U.S.C. § 1293, *supra* note 86.
[91] *U.S. Football League*, 842 F.2d at 1347.
[92] 15 U.S.C. § 1294.

entertainment industry, it does not receive the same immunities afforded to professional sporting leagues. The NCAA was founded in 1905 by the presidents of sixty-two colleges and universities in order to create a set of uniform rules to regulate intercollegiate football. Today, over one-thousand athletic institutions are regulated by the NCAA. Based on the quantity and quality of the athletic programs at a university, the athletic departments are organized into three divisions: Division I, Division II, and Division III. Division I schools provide the greatest number and highest quality of opportunities to student athletes. At the Division I level, universities are constantly recruiting athletes to play with their athletic departments. For 2011-12, the most recent year for which audited numbers are available, NCAA total revenue was $871.6 million.[93] 81% percent of this revenue came from television and marketing rights fees in an agreement for exclusive broadcast rights of the NCAA men's basketball championship with Turner/CBS Sports.[94] 96% is distributed directly to the Division I membership.[95] The television rights to intercollegiate football have been controlled by the NCAA since 1951.[96]

The NCAA is the dominant force in the presentation and regulation

[93] *NCAA Revenue Breakdown*, http://www.ncaa.org/about/resources/finances/revenue (last visited Dec. 15, 2015).

[94] *Id.*; *CBS Sports, Turner Broadcasting, NCAA Reach 14-Year Agreement* (Jan. 12, 2011), http://www.ncaa.com/news/basketball-men/2010-04-21/cbs-sports-turner-broadcasting-ncaa-reach-14-year-agreement.

[95] *NCAA Revenue*, *supra*, note 93.

[96] *NCAA v. Board of Regents*, 104 S. Ct. at 2955.

of intercollegiate athletics. The NCAA Division I Manual contains numerous provisions designed to prevent universities from bribing prospective student-athletes too early. The NCAA regulates the timing of official visits and scholarship offers; however, these regulations do not put university athletic departments on a level playing field. Such large market power has brought on much federal antitrust litigation.[97] In less than forty years, the NCAA has had thirty-one cases filed against it. Of those thirty-one claims against the NCAA, courts have overwhelmingly held in setting and regulating eligibility standards, the NCAA is acting "outside the scope" of antitrust law and is therefore not subject to antitrust review.[98] However, the courts are split when the NCAA balances universities' receipt of telecast revenues by regulating the output of televised football games; meanwhile college sports conferences are less assignable than the NCAA.[99] College sports conferences, as organized by the universities themselves, share the uniform interest of attracting attention and increasing broadcast revenues in

[97] *See e.g.*, NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1985); Law v. NCAA, 134 F.3d 1010 (10th Cir. 1998); Smith v. NCAA, 139 F.3d 180 (3d Cir 1998); Banks v. NCAA, 977 F.2d 1081 (7th Cir. 1992); McCormack v. NCAA, 845 F.2d 1338 (5th Cir. 1988); Pocono Invitational Sports Camp, Inc. v. NCAA, 317 F. Supp. 2d 569 (E.D. Pa. 2004); Gaines v. NCAA, 746 F. Supp. 738 (M.D. Tenn. 1990); Jones v. NCAA, 392 F. Supp., 295 (D. Mass. 1975).

[98] *See* Bassett v. NCAA, 528 F.3d 426, 433 (6th Cir. 2008) (holding NCAA's recruitment provisions not commercial and therefore outside reach of antitrust); Bowers v. NCAA, 9 F. Supp. 2d 460, 497 (D.N.J. 1998) (stating the "Sherman Act does not apply to the NCAA's promulgation of eligibility requirements."); Gaines v. NCAA, 746 F. Supp. 738, 744 (M.D. Tenn. 1990) (holding NCAA eligibility rules not subject to antitrust analysis).

[99] *See* e.g. *Bd. Of Regents*, 468 U.S. 85.

striking telecast deals with major broadcasters.[100] Courts have concluded that restrictions imposed by the NCAA have promoted a much needed competitive balance within college sport; while other Courts have been unable to justify NCAA restraints on telecasts and have concluded the Sherman Act is violated in regulated broadcast situations. In determining whether the NCAA serves a unity of interest under an *American Needle* analysis, the independent centers of decision-making must come together in support of a core activity.[101]

1. NCAA v. Board of Regents of the University of Oklahoma

The Supreme Court has previously found the core activity of schools that participate under the NCAA umbrella is the production of education, not the production of college sporting events.[102] In the early 1950s, a study had been conducted indicating that television had an adverse effect on college football game attendance.[103] Subsequently, the NCAA came up with a broadcasting scheme that allowed one game per week to be broadcast in each area and limited each university to two television appearances per season.[104] The NCAA entered into agreements according to the broadcasting restrictions with ABC, CBS, and TBS, allowing each network

[100] *See* e.g. *Bd. Of Regents*, 468 U.S. 85.
[101] *Am. Needle, Inc.*, 560 U.S. at 190.
[102] *NCAA*, 468 U.S. at 121-22.
[103] *Id.* at 90.
[104] *Id*.

to broadcast a limited number of games per season.[105] These agreements expressly barred all universities from selling its own team's broadcast rights.[106] However, the University of Oklahoma and the University of Georgia entered into an agreement with NBC for more than the allotted television appearances, and for more money than the NCAA agreements.[107] The universities sought an injunction against the NCAA from interfering with their NBC agreement.[108] In 1984, the Supreme Court found the NCAA was in violation of the Sherman Act because the NCAA's actions were a horizontal restraint in trade which limited the Universities' freedom to negotiate.[109] Such a restraint placed by the NCAA on universities, limiting the number of games to be televised, created a limit on the quantity of televised football to be available to broadcasters and fans.[110] It had been well settled that limitations on output are frowned upon by antitrust laws; thus the NCAA was deemed to have solely controlled televised football and held a monopoly.[111] The court noted that the NCAA's actions were not per se illegal because the NCAA, through their actions, fostered competition in other sports, but not for televised football.[112] The court stated:

> What the NCAA and its member institutions

[105] *NCAA*, 468 U.S. at 90.
[106] *Id*.
[107] *Id.* at 95.
[108] *Id*.
[109] *Id.* at 99.
[110] *Id.*
[111] *Id.* at 112.
[112] *Id.* at 101.

> market in this case is competition itself -- contests between competing institutions. Of course, this would be completely ineffective if there were no rules on which the competitors agreed to create and define the competition to be marketed. A myriad of rules affecting such matters as the size of the field, the number of players on a team, and the extent to which physical violence is encouraged or proscribed, all must be agreed upon, and all restrain the manner in which institutions compete. . . . In order to preserve the character and quality of the "product," athletes must not be paid, must be required to attend class, and the like. And the integrity of the "product" cannot be preserved except by mutual agreement; if an institution adopted such restrictions unilaterally, its effectiveness as a competitor on the playing field might soon be destroyed. Thus, the NCAA plays a vital role in enabling college football to preserve its character, and as a result enables a product to be marketed which might otherwise be unavailable. In performing this role, its actions widen consumer choice -- not only the choices available to sports fans but also those available to athletes -- and hence can be viewed as procompetitive.[113]

Even so, the court made a final determination that the focus of the NCAA was to market the product of college football.[114]

In his dissent, Justice White noted the NCAA had further preserved the associations goal of promoting amateur college athletics by spreading revenues among multiple universities.[115] The NCAA had ensured the economic viability of athletic programs and promoted competitive college

[113] *NCAA*, 468 U.S. at 101-02.
[114] *Id.* at 112.
[115] *NCAA*, 468 U.S. at 124.

football.[116] White balanced these contributions against the minimal anticompetitive effects of the NCAA's restrictions and found the overall preservation of the association as a whole to far outweigh any antitrust concerns created by the broadcast restrictions.[117]

2. Rock v. NCAA

More recently, the court has noted the competitive imbalance that exists among Division I universities in *Rock v. NCAA*.[118] In *Rock*, the plaintiffs challenged restraints imposed by the NCAA.[119] The court dismissed the complaint on the grounds that the Sherman Act did not apply as a matter of law.[120] The Court emphasized the importance of regulations enacted by the NCAA that work to preserve the character and quality of the association. The Court, in recognition of a lack of competitive balance, proposed that "[i]t [would be] implausible to suggest that lower-tier Division I football schools offer the same level of in-kind benefits (premier coaching, facilities, and national publicity)."[121]

In finding the NCAA to be imposing regulations with pro-competitive effect, the Courts have acknowledged the necessity of NCAA involvement in protecting the unity of interest of the member universities,

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[116] *NCAA*, 468 U.S. at 136.
[117] *Id.* at 135.
[118] Rock v. NCAA, 928 F. Supp. 2d 1010, 1021-22 (S.D. Ind. 2013) (dismissing with prejudice the plaintiff's allegations regarding the Division III scholarships with leave to file an amended complaint).
[119] *Id.* at 1014.
[120] *Id.*
[121] *NCAA*, 928 F. Supp. 2d at 1021-22.

yet the NCAA has not received antitrust protection in regulating the broadcasting arrangements of its subsidiaries. Professional sports, as direct competitors to collegiate athletics, continuously reap the benefits of the immunity built into the Sports Broadcasting Act; while institutions are left to squander without similar benefits.

D. The NCAA is Deserving of the Same Protection

NCAA broadcast packages are not subject to the antitrust exemption and it has suffered as an association for it. Using the antitrust exemption granted under the Sports Broadcasting Act, the NFL made its first pooled-rights contract in 1962 and 1963 for $4.65 million with an exclusive broadcaster.[122] The 1964 and 1965 seasons produced a collective broadcast agreement for $14.1 million.[123] The NFL's largest competitor, the American Football League ("AFL"), pooled the rights of its member teams, and entered into a $36 million five-year agreement in 1964.[124] When the NFL and AFL merged in 1966, Congress amended the Sports Broadcasting Act to provide antitrust immunity on the merger on the condition that the NFL would have broadcast contracts with at least two networks.[125] Today, the NFL has four major broadcast agreements totaling over $4 billion per

[122] *U.S. Football League*, 842 F.2d at 1347.
[123] *Id*.
[124] *Id*.
[125] *Id*.

year.[126] In 2013, each NFL member team received $131 million in national television money; that number is expecting to increase to at least $181 million per team by 2016.[127] Under a "League Think" mentality, by pooling their resources and sharing their profits, the NFL is able to provide a product that, as a whole, is much more valuable than the sum of its individual parts.[128]

In its enactment of the Sports Broadcasting Act, Congress imposed a condition of Section 1294 eliminating antitrust immunity for professional football leagues if any television contract allowed the NFL to broadcast games "on any Friday after [6PM] or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December."[129] This stipulation bars the NFL from televising games that directly compete with college football, maintaining the integrity of college football as a sport. Not bound by the narrow case precedent of *NFL II*, the National Football League and the National Basketball Association (NBA) have continued to collectively sell their television rights in increasing overall revenue for their respective sports. While the NCAA is

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[126] *See*, *TV Money up 20 percent for NFL Clubs*, SportsBusiness Daily (July 21, 2014), available at http://www.sportsbusinessdaily.com/Journal/Issues/2014/07/21/Finance/NFL-revenue.aspx (NFL had broadcast licenses with three network partners; CBS, NBC, and Fox, as well as ESPN and DirecTV)

[127] *Id.*

[128] Clay Moorhead, *Revenue Sharing and the Salary Cap in the NFL: Perfecting the Balance Between NFL Socialism and Unrestrained Free-Trade,* 8 Vand. J. Ent. & Tech. L 641, 642 (2005-2006).

[129] 15 U.S.C § 1294.

left to compete against professional sport without the same protection.

In 1961, the NCAA passed up the chance to apply for an exemption piggybacking off of the Sports Broadcasting Act under the impression their ties to higher education would shield its rules and regulations from antitrust scrutiny.[130] In 1991, after ascertaining the benefits enjoyed by professional sports who were able to pool collective television rights without feared antitrust litigation, U.S. Representative and former professional basketball player, Tom McMillen introduced legislation entitled the "Collegiate Athletic Reform Act." The proposed bill granted the NCAA temporary antitrust exemption in exchange for NCAA reform regarding revenue sharing.[131] Similarly, in 2008 congress was introduced with the "College Sports Leal Reform Act."[132] The proposal called for antitrust exemption for any NCAA commercial activity with at least one educational principal purpose.[133] Andrew Zimbalist, a noted sports economist previously advocated a partial antitrust exemption in the NCAA, while Len Elmore, former NBA player and college basketball commentator has suggested the NCAA receive a broad antitrust exemption so it can mandate revenues be

[130] Daniel E. Lazaroff, *An Antitrust Exemption for the NCAA: Sound Policy of Letting the Fox Loose in the Henhouse?* 41 Issue 2 Pepperdine Law Review 229, 237 *citing to*, Brian L. Porto, *The Supreme Court and the NCAA* 19 (2012) Welch Suggs, Football, Television, and the Supreme Court, Chron. Higher Educ., July 9, 2004, at A32-A33.
[131] *Id.* at 237 n.51 (where the proposed bill failed to become law).
[132] *Id.* at 237.
[133] *Id.*

utilized to “benefit the [institutions] as a whole . . . .”[134] Most recently, a group of professors collectively titled “The Coalition On Intercollegiate Athletics” crafted a five part recommendation to explore the possibility of an antitrust exemption for college institutions.[135] The group recommended: (1) creating an exemption, (2) lessening commercialism in college sport, (3) advocating policies to keep big football conferences under the umbrella of the NCAA, (4) increasing efforts to respond to “reputational risks” derived from the “market driven model of sports,” and (5) cooperating with the NCAA to effect change.[136] The decisions of antitrust litigation and proposed antitrust legislation have always remained in the spirit of competition. Antitrust law has historically encouraged cooperation inside a business organization to help it compete with those working outside of the business. As a general notion, if the questionable actions of the parties have the potential to lessen economic competition, then the activities are likely Sherman Antitrust Act Violations. Under modern antitrust law – and post-Sports Broadcasting Act enactment, leagues such as the NCAA, should be permitted to enter into agreements based on the rationale the individual teams share a unity of interest, furthering the NCAA’s economic viability against outsiders such as, professional sports.[137]

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[134] Lazaroff, *supra* note 130 at 238.
[135] *Id*.
[136] *Id*.
[137] Chi. Prof’l Sports Ltd. Pshp. v. NBA, 95 F. 3d 593 (7th Cir. 1996) (*see* majority

The Supreme Court in *NCAA v. Board of Regents of the University of Oklahoma* concluded a collective television broadcast agreement within the NCAA constituted horizontal price fixing, yet not illegal per se because the NCAA, through a collective agreement, worked to regulate college football where "horizontal restraints on competition [were] essential if the product [were] to be available at all.[138] In spite of the Supreme Court's ruling against major competition policy considerations, more college football games were televised; however, a survey of the economic impact of the Supreme Court's decision revealed total television revenue received by the nation's colleges and universities from broadcasts of college football was less than those received in 1983.[139] At the University of Oklahoma for example, total television revenues received during the 1984-85 season were $753,000 as compared to the $1,000,000 received during the 1983-84 season.[140] As universities negotiated and signed their own contracts, the market became saturated. Now, institutions were forced to compete with each other for television coverage, while also competing with entertainment

and concurrence stating that although each NB team was under separate ownership and management the league functions as a single entity, creating a single product that competes with other amateur and professional sports and other entertainment choices. Justice Cudahy's concurrence dives into making the determination of whether a sports league is a single entity. Cudahy states it is the cooperation among teams to create league basketball. It does not matter that each team has different and independent economic interest).

[138] *NCAA v. Board of Regents,* 104 S. Ct. at 2960.

[139] James S Arico, *NCAA v. Board of Regents of the University of Oklahoma: Has the Supreme Court Abrogated the Per Se Rule of Antitrust Analysis* 19 Issue 2 Loy. L. A. L. R. 437, 463 (1986).

[140] *Id. citing* a telephone interview with Carol Barnes, University of Oklahoma Accounting Manager (Sept. 19, 1985).

sources outside of the NCAA umbrella.

Big schools have an obvious competitive advantage over the smaller schools, in terms of revenue, television exposure, recruiting, and access to major bowl games. During the 2012-13 season, the Big 12's 10 schools shared $196 million in revenue; similarly, the SEC distributed $289.4 million to 14 schools, and the Big Ten teams took in $308 million.[141] Collectively, the big five conferences collected over $1.4 billion in revenue, while the bottom five conferences collected a total of $175 million. This skewed revenue distribution results in disproportionate athletic programs across the nation. Television money has allowed a select few universities to provide state of the art facilities and amenities to college football teams and over the years, college sport has become a spend to win business. Revenue sharing now is more important in the success of sport leagues, including the NCAA, than ever before. A major college belonging to one of the five major "Power" conferences[142] who participate in revenue sharing, can earn $50 million[143] per year in regular-season broadcast rights, up from about

[141]Larry Atkins, *NCAA Needs to Protect Small Conferences from Major Conferences' Latest Power Grab* (Mar. 17, 2014) http://www.huffingtonpost.com/larry-atkins/ncaa-needs-to-protect-smaller-conferences_b_4598694.html.

[142] The Power Five Conferences include (1) Atlantic Coast Conference (ACC), (2) Big Ten Conference, (3) Big 12 Conference, (4) Pacific-12 Conference (Pacific-12 Conference (Pac-12), and (5) the Southeastern Conference (SEC).

[143] Brett McMurphy, *SEC Schools to Each Receive Record $31.2 Million Payout* (May 29, 2015) http://espn.go.com/college-sports/story/_/id/12974161/southeastern-conference-distribute-record-435m-revenue-member-schools.

$28 million during the 2013 season;[144] while a strong and attractive independent like Boise State brings in roughly $15 million[145] and Tulane, another independent team, brings in $6 million.[146] It is argued individual institutions should be able to take advantage of their marketability, and should not be forced to carry the burden of less marketable universities.[147] Although a justified concern, one of the main purposes of NCAA regulation of college football is to preserve a competitive environment.[148] The redistribution of television revenue across all Division One programs is pivotal in furthering the economic success of the NCAA as a league of its own; especially considering the current economic inequality in college football has reached such critical levels that the future viability of lower-revenue schools is a serious concern.[149]

E. Updating the Sports Broadcasting Act to Encompass Collegiate Athletics

Congress has already recognized a competitive imbalance, like the

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[144] Wednell Marnhouse, *Big 12 Announces Record Revenue Distribution* (May 30, 2014) http://www.big12sports.com/ViewArticle.dbml?ATCLID=209513755; Mac Tracy & Tim Rohan, *What Made College Football More Like the Pros? 7.3 Billion, for a Start* (Dec. 30, 2014) http://www.nytimes.com/2014/12/31/sports/ncaafootball/whay-made-college-ball-more-like-the-pros-73-billion-for-a-start.html?_r=0.

[145] Alicia Jessop, *The Economics of College Football: A Look at the Top-25 Teams' Revenues and Expenses* (Aug. 31, 2013, 10:32 AM) http://www.forbes.com/sites/aliciajessop/2013/08/31/the-economics-of-college-football-a-look-at-the-top-25-teams-revenues-and-expenses/.

[146] Chris Smith, *The Most Valuable Conferences in College Sports 2014* (Apr. 15, 2014, 2:49 PM) http://www.forbes.com/sites/chrissmith/2014/04/15/the-most-valuable-conferences-in-college-sports-2014/.

[147] McCann, *supra* note 28.

[148] *Id.*

[149] *Id.*

one that exists in NCAA, should be remedied.[150] The legislative history of the Sports Broadcasting Act depicts congressional recognition that "a league needs the power to make package sales of the television rights of its member clubs to assure the weaker clubs of the league continuing television income and television coverage on a basis of substantial equality with the stronger clubs. Such income and coverage . . . often mark the difference between profitable and losing operations."[151] The commissioner of the AFL testified during the hearings, before the Antitrust Subcommittee, that television revenues are such a significant part of the overall financial success of a professional football team that it is necessary to prevent too great disparity in the television income of the various clubs through the pooling of revenues and package agreements.[152] It can only be reasoned the same principals would apply for collegiate athletics as well, thus calling for the pooling of television rights by the NCAA.

The Sports Broadcasting Act, in its current effectiveness, provides antitrust immunity only for the collective sale of sponsored telecasting rights of professional sports leagues.[153] The interest in distributing revenues across all teams as a means of leveling competitive balance and promoting on field competition in professional sport does not cease to exist at the

[150] H. R. Rep. No. 1178, 87th Cong., 1st Sess., at 1 (1961) ("H. R. Rep.").
[151] H. R. Rep. No. 1178, 87th Cong., 1st Sess., at 1. (Arguing the SBA lacks procompetitive economic justifications from the perspective of consumers).
[152] H. R. Rep. No. 1178, 87th Cong., 1st Sess., at 1 (1961) ("H. R. Rep.").
[153] 15 U.S.C. § 1291.

college level. In order to provide viewers with a competitive product with an uncertain champion, it is necessary to ensure competitive balance among the opposing teams at all levels of competition.[154] The Act enabled professional sports leagues to share national television broadcasting revenues preserving each member team of a league, both financially and competitively.[155] As the law stands, the current competitive imbalance among Division I College Football Teams cannot be fixed through a revenue distribution similar to the one achieved in professional sports. Current case law precedent disallows such an arrangement. However, in expanding the Sports Broadcasting Act to the NCAA, the Act will work to provide antitrust immunity for NCAA universities, enabling weaker universities to become financially stable and to build more competitive athletic programs. An expansion of the Sports Broadcasting Act to the NCAA college football will enhance the product of collegiate athletics and the NCAA's long-term survival as a quasi-league.

F. Conclusion

The Sports Broadcasting Act allowed a limited number of professional sports leagues to achieve a competitive balance among the individual teams and to preserve the leagues as a whole by permitting them to share television broadcasting revenues. This type of balance is lacking in

[154] McCann, *supra* note 28.
[155] 15 U.S.C § 1291.

collegiate sports and under current law, the NCAA cannot solve the competitive imbalance through a pooling of broadcasting rights similar to the competitive imbalance solution utilized by professional leagues. This Note does not call for blanket antitrust immunity for the NCAA; instead, it provides the rationale for the same exemption granted to the NCAA's professional counterparts for broadcasting regulations to be extended to the athletic departments of all Division I programs. The NCAA has been successful in defending some of its regulatory practices; however, it has also been defeated in preserving many of its governing restrictions. The Sports Broadcasting Act does not provide antitrust litigation immunity for the NCAA; although, the same issues and fears the Act was designed to resolve for the success of professional sporting leagues exist in today's modern, college sport. This Note proposes a solution to the challenges the NCAA has faced in achieving the same level of competition as the professional leagues as well as a product that can compete with professional sports for many years to come. With the cooperation of individual universities, the NCAA, the government, and television networks, the wealth of collegiate athletics will be shared across the entire institutional industry under an expanded Sports Broadcasting Act. Allowing the NCAA to pool the college football broadcast rights will result in higher average broadcast revenues for the overwhelming majority of universities.

The goal of competitive balance has justified the pooling of broadcast rights in a professional setting and must be transferred to college football broadcast rights as well. Through the codification of antitrust exemption in the Sports Broadcasting Act, the product of college football will be able to better compete with other forms of entertainment, including professional sports. This change will achieve the higher broadcast revenues for college football teams that has been achieved on a smaller conference level through pooling and will act as an equilibrium for on-field competition.