

what we think is best for our country. Debate is good. We should encourage a vigorous exchange of ideas and not fear disagreement. But we ought always, always to strive for a common purpose.

I wish to express my deep thanks to my fell Coloradans who have given me the opportunity and honor to represent them here at this challenging and important time in our history.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. UDALL of Colorado.) Without objection, it is so ordered.

CONGRATULATING THE UNIVERSITY OF UTAH

Mr. HATCH. Mr. President, I rise today to speak about the recent college football season and the success enjoyed by our own University of Utah football team.

First, I want to mention that a while back, during last week's festivities, I had the opportunity to meet with members of the University of Utah Marching Band as they were in town to march and perform in the inauguration parade.

I want to publicly recognize the members of the Church of Jesus Christ of Latter Day Saints in Ashburn, VA, who offered their homes to these musicians and the band, allowing them the once-in-a-lifetime opportunity to perform for the President of the United States of America. The band would not have been able to make it to Washington had it not been for the generosity of these private citizens who housed them and took care of them and fed them. I appreciate their willingness to help some of my fellow Utahns.

My meeting with the band out in Ashburn reminded me of what a wonderful year it has been for sports fans in my State. I wish to once again publicly extend my congratulations to the Utah Utes on an outstanding season.

On January 2, the Utes capped an undefeated season with a 31-to-17 victory in the Sugar Bowl over a highly favored Alabama team. Under the scrutiny of the national spotlight, Utah played with poise and precision, silencing the naysayers who claimed they could not compete with a national powerhouse such as Alabama.

Alabama had been rated No. 1 much of the season. This was Utah's second undefeated season in 5 years, demonstrating that school's football team deserves to be considered among the country's elite college football programs.

In particular, I want to congratulate Coach Kyle Whittingham, who, on January 13, was named National Coach of the Year by the American Football Coaches Association. What an honor.

Coach Whittingham took over the head coaching job at Utah 4 years ago, following what was, at that time, the most successful season in school history. The Whittingham family is sort of a football institution in the State of Utah. So fans and alumni had high expectations about the future of the program, and Coach Whittingham has not disappointed them. In each of his four seasons, the Utes have finished with a winning record and have won a bowl game. In fact, the University of Utah has won a bowl game in six consecutive seasons and, overall, they have been victorious in their last eight bowl appearances—the longest current streak in college football. Coach Whittingham has been on the staff that entire time, first as defensive coordinator and now as the head coach.

The Utes have been lead on the field by quarterback Brian Johnson. He capped an outstanding college career this past season by winning the Mountain West Conference's Offensive Player of the Year Award. He was also a finalist for numerous national quarterback awards. Brian's story is actually a very inspirational one. Late in the 2005 season, he suffered what is, in many cases, a career-ending injury when he tore his ACL. This injury forced him to sit out the entire 2006 season. Then, in the first game of the 2007 season, he was injured again and missed two more games. But he was able to finish the season, leading the Utes to a winning record and an impressive victory over Navy in the Poinsettia Bowl. He returned for his senior season, fully healed and ready to take the team on his shoulders for what proved to be a historic season.

One of the most popular members of the Ute squad has been kicker and punter Louie Sakoda who, in each of the last three seasons, was the Mountain West Special Teams Player of the Year and named to several All-America teams. Nicknamed "King Louie," this 5-foot-9, 178-pound team captain is something of a celebrity in Salt Lake City. Last year, he offered himself as a date for a campus charity auction and drew the highest bid of any item on sale—though NCAA restrictions kept him from actually going on the date. His parents, according to news stories, can join any pregame party in the parking lot outside Rice Eccles Stadium if they just mention their son's name. He has also lent his celebrity to an ad campaign started by Utah First Lady Mary Kaye Huntsman aimed at combating teenage drinking and driving. Louie can be seen in TV commercials in Utah urging teens and anyone who's been drinking to "punt the keys."

Indeed, the entire University of Utah football team has become the toast of every town in my State—even among those who typically root for the Utah's other fine football programs. They have also become one of the most talked about teams in college football nationwide.

Unfortunately, the success enjoyed by the Utah football team has been marred somewhat by the controversy surrounding the Bowl Championship Series. The Utes were the only football team in NCAA Division I to finish the season 2008 undefeated. Their season included victories against a powerhouse team at Brigham Young University, Oregon State, Texas Christian University, and Alabama, all of which finished the season ranked in the Associated Press Top 25—the latter two in the Top 10. In fact, Alabama spent much of the regular season ranked number one in the country before losing to Florida near the end of the season.

Yet despite these accomplishments, even with its perfect record and impressive schedule, the University of Utah finished the season ranked second in the country. Florida, the team that won the so-called BCS Championship Game, had a very good year. But unlike Utah, they were not undefeated; they had one loss, as did at least three other teams in the country. Yet under the BCS system, this unbeaten Utah team was denied an opportunity to even play for the national championship. One has to wonder what more Utah could have done with its season in order to get into the national championship game. It is interesting that the former Utah coach under whom Coach Whittingham served, Urban Meyer, had a championship team. We all admired him. He was a great coach at Utah and one of the greatest coaches in America today. Unfortunately, the answer to this question is even more disheartening than the question itself: nothing. The fact of the matter is that the Utah team was left out of the national championship picture, not due to any competitive shortcoming, but because the BCS system categorically excluded them from consideration.

Under the BCS, the champions of six athletic conferences receive automatic bids to play in the five most lucrative and prestigious bowl games. Collectively, those six conferences include 66 of the 119 teams in NCAA Division I football. So, in short, nearly half of all college football teams begin the season virtually left out of the BCS picture, yet the BCS still wants to call the winner of its championship game the "national champion." I don't know about you, Mr. President, but that strikes me as odd.

Of course, it needs to be acknowledged that teams from non-BCS conferences can play their way into a BCS game. The University of Utah did so both this year and in 2004. In other years, teams from Boise State and Hawaii have earned bids to play BCS bowl games. But in doing so, these teams had to overcome serious competitive disadvantages. For example, it is virtually impossible for a school from a non-BCS conference to get a BCS bid without going undefeated in the regular season, and even that is not a guarantee. Yet this past season, each

of the six BCS conference champions had at least one regular season loss—three of them had two or more. Two non-BCS teams—Utah and Boise State—were undefeated after the 2008 regular season. In addition, Texas Christian University, another non-BCS team, had only one loss and was higher in the BCS rankings than two of the conference champions with automatic berths. Yet of these three teams, only Utah was invited to play in a BCS game.

These are the disadvantages non-BCS teams must face just to get into one of five prestigious BCS bowl games. While mere participation is an uphill battle, the system makes it virtually impossible for a non-BCS team to win the national championship. The BCS relies on a combination of polls and computer formulas to determine its rankings. For decades, these polls have almost invariably tended to favor teams from the bigger BCS conferences, evidenced by the fact that no team from an outside conference has finished a season atop a major college football poll since 1984. So unless a team from a non-BCS conference begins the season with a very high national ranking in the polls, they stand virtually no chance of getting ranked high enough to play in the championship game, even if they go undefeated. This system excludes teams like this year's Utah team, which began the season unranked and spent the season shocking opponents and exceeding expectations, from national championship contention.

The flaws of the BCS system might not be so bad if it helped to clear what traditionally had been a muddled national championship picture. But unfortunately, that is not the case. In at least 6 out of the last 10 years, there has been substantial controversy over the selection of the teams to play for the championship. So the system is not only biased, but ineffective as well.

Mr. President, the BCS system is anti-competitive, unfair, and, in my opinion, un-American. I am not just saying that because my team was treated unfairly. I am making the case that many teams are not treated fairly. In no other sport in this country are champions selected by arbitrary and biased polls and computer ranking systems. Much worse, the BCS ensures that the millions of dollars paid to the participants of these prestigious games remain concentrated among a few elitist conferences. Such exclusionary practices put teams from non-BCS conferences at a monetary, recruiting and competitive disadvantage. This may not only be unfair in the normative sense, it may very well violate our nation's antitrust laws.

In 1984, in *NCAA v. Board of Regents of the University of Oklahoma*, the Supreme Court determined that NCAA is not exempt from the requirements of the Sherman Antitrust Act. That being the case, college football, like most other industries in this country, must conduct business in a manner that does

not intentionally stifle competition or systematically favor specified competitors. Specifically, in the words of the Sherman Antitrust Act, no "contract, combination, or conspiracy" may be undertaken to exclude competitors.

In my opinion, it is quite probable that the BCS violates the Sherman requirements. In 2003, I chaired a series of Judiciary Committee hearings to investigate the antitrust implications of the BCS. I stated at that time that I believed the BCS was anticompetitive and in dire need of reform. Shortly thereafter, the BCS added another bowl game and, to some extent, expanded the field of eligibility. However, as this past season demonstrates, these changes leave much to be desired in terms of fairness and competition. Utah Attorney General Mark Shurtleff shares this view and is consulting with lawyers and investigators to determine whether the BCS system constitutes an antitrust violation. Indeed, it appears that litigation over this matter may be on the horizon. Also, on at least two separate occasions, President Obama has publicly stated his concern about the fairness of the BCS and his hope to see the creation of a playoff system. Therefore, it is not unreasonable to predict that a Justice Department investigation into the potential antitrust violations of BCS will be forthcoming.

Mr. President, I would prefer that reforms take place without putting the matter before the courts. In addition, given the many problems facing our nation, I hope that the Justice Department will not have to get involved in this issue. And while some have proposed a legislative fix, this also would not be my preferred solution, though ultimately, this may end up being the only effective means of addressing these problems. Instead, I would hope that those with the power to change or eliminate the BCS, including NCAA President Myles Brand as well as the university presidents and the conference commissioners in the BCS conferences, will hear the public outcry against the BCS and voluntarily work to reform the system to ensure that, as in every other American sport, championships are decided on the field and not in arbitrary polls and computer calculations. While a playoff seems like the most natural solution, other means may be available.

That said, I want to say that I believe the University of Utah football team are champions in the truest sense of the word. They won on the field against worthy competition in a year when literally everyone else proved unable to do so. Once again, I want to congratulate University President Michael Young, Coach Whittingham and every member of the team for what proved to be an exhilarating and tremendous season. I also congratulate other teams that qualified for bowl games who were winners and deserve certainly the plaudits of all of us.

I hope this helps to bring this matter to a head. I hope we can change this system that is an unjust system.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, let me say, first, what a pleasure it is to hear the distinguished Senator from Utah speak about his beautiful State and his beloved Utes.

EXECUTIVE COMPENSATION AND THE BAILOUTS

Mr. WHITEHOUSE. Thank you, Mr. President. I have a different topic today. This speech is about a stove, a jet, and \$40 billion.

The stove belonged to Margarita Fuentes, and a local deputy sheriff in Florida repossessed it for the finance company. The case went all the way to the Supreme Court, and became the famous case of *Fuentes v. Shevin*, which every first year law student has to read.

The court held that you couldn't take away Ms. Fuentes' stove, not without giving her a hearing; that she had a constitutional right to a hearing. The court stated:

[T]he constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions.

Important rule: The finance company may well have been right about the stove, but the sheriff still cannot take property without due process.

That is the stove. Now the jet.

Citigroup has received billions and billions in Federal funds—\$45 billion in preferred stock purchases alone—to prevent Citigroup from failing. What did they do? Bought a \$50 million French-made luxury private jet.

It took the new Secretary of the Treasury to personally talk them out of it, with a helpful push from our colleague, Senator LEVIN. And that's not all. Here's how Maureen Dowd reports they spent the money on executive office furnishings at Merrill Lynch, just bought by Citigroup:

... big-ticket items included curtains for \$28,000, a pair of chairs for \$87,000, fabric for a "Roman Shade" for \$11,000, Regency chairs for \$24,000, six wall sconces for \$2,700, a \$13,000 chandelier in the private dining room and six dining chairs for \$37,000, a "custom coffee table" for \$16,000, an antique commode "on legs" for \$35,000, and a \$1,400 "parchment waste can."

A lot of executive compensation goes to the same executives who led their companies into this mess, while reaping vast sums.

For example, Wells Fargo, which received \$25 billion in bailout money, is planning layoffs but is keeping its CEO and chairman who were paid \$12.5 million and nearly \$23 million in 2007, respectively.

JP Morgan received \$25 billion in bailout money, but is keeping its CEO who was paid \$28 million in 2007.

Capital One bought and closed GreenPoint mortgage—1,900 layoffs, 1,900 families where someone lost a