PUBLIC DOLLARS SERVING PRIVATE INTERESTS

TAX IRREGULARITIES OF BOWL CHAMPIONSHIP SERIES ORGANIZATIONS

ABOUT PLAYOFF PAC

Launched with support from key Members of Congress in October 2009, Playoff PAC is the principal opposition group to college football's Bowl Championship Series. Playoff PAC's website is located at www.PlayoffPAC.com.

Playoff PAC is a federal political committee dedicated to establishing a competitive post-season championship for college football. The Bowl Championship Series is inherently flawed. It crowns champions arbitrarily and stifles inter-conference competition. Fans, players, schools, and corporate sponsors will be better served when the BCS is replaced with an accessible playoff system that recognizes and rewards on-the-field accomplishment. To that end, Playoff PAC helps elect pro-reform political candidates, mobilizes public support, and provides a centralized source of pro-reform news, thought, and scholarship.

ACKNOWLEDGMENTS

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EXECUTIVE SUMMARY

Playoff PAC's report, *Public Dollars Serving Private Interests: Tax Irregularities of Bowl Championship Series Organizations*, is the result of an exhaustive review of over 2,300 pages of tax records and public documents.

The four bowl organizations that comprise college football's Bowl Championship Series ("BCS") all claim to be public charities to receive tax-exempt status and other taxpayer-funded benefits. But Playoff PAC's review uncovered a disturbing pattern of BCS Bowl organizations using their charitable tax status to serve insiders' private interests. The findings lay bare certain realities about college football's existing post-season system. In clinging to the status quo, BCS Bowl officials aim to protect themselves, not student-athletes. Their objections to government inquiries do not stem from principle, but rather from a fear of greater transparency.

Most importantly, the BCS Bowls' use of charitable funds to give Bowl executives excessive compensation, pay registered lobbyists without disclosure, intervene in political campaigns, and heap frivolous benefits on Bowl insiders raises significant concerns under federal tax laws.

INFLATED SALARIES AND PERKS PAID FROM CHARITABLE FUNDS

Federal law prohibits BCS Bowls from abusing their favorable tax status and using their charitable funds to enrich Bowl executives. However, Bowl officials are rewarded handsomely for promoting the BCS's once-a-year events with lavish salaries, sweetheart loans, and generous perquisites. The findings of Playoff PAC's review include the following:

- The Sugar Bowl's top three execs received $1,225,136 in FYE 2009 on revenue of $12.7 million, meaning that just three people skimmed almost $1 of every $10 the Bowl earned.
- Fiesta Bowl CEO John Junker received $317,717 in FYE 2009 for working just 21 hours per week from the Arizona Sports Foundation, the Bowl's lead entity. Mr. Junker's total compensation package from all Fiesta Bowl-related entities was $592,418 for FYE 2009, nearly quadruple the CEO pay at similarly sized charities.
- The Fiesta Bowl gave two Bowl executives $240,000 in unsecured interest-free loans, reportedly to pay for their personal memberships in a private golf club.
- Sugar Bowl Exec. Dir. Paul Hoolahan received $645,386 in FYE 2009, a year in which the Sugar Bowl lost money despite receiving a $1.4 million government grant. Mr. Hoolahan collected $25,000 more than the Rose Bowl's top three executives combined.
- BCS Bowls use charitable funds to fly Bowl execs and spouses first-class, pay private club dues, and foot the bill for employees' personal income taxes. The Orange Bowl, for example, spent 756,546 on travel in FYE 2009 for its employees.

To be clear, BCS Bowl officials should receive "reasonable compensation" for their efforts. But BCS Bowl officials are not entitled to appropriate charitable funds for their own benefit in the form of above-market salaries and excessive perks. To do so is an abuse of their organizations' favorable tax status.

UNDISCLOSED LOBBYING PAYMENTS FINANCED WITH CHARITABLE FUNDS

Federal tax laws require all tax-exempt charities, including the BCS Bowls, to disclose fully all lobbying payments to the public and the IRS. But Playoff PAC's review has uncovered rampant failures to disclose activities that clearly constitute lobbying. The Fiesta Bowl has somehow repeatedly affirmed on its federal tax returns that it does not "engage in lobbying activities." Yet the review has found that the Fiesta Bowl has engaged in the following activities:

- Gave $1.2 million for "consulting" to one registered Arizona lobbying firm and retained two other registered lobbying firms for undisclosed sums;
- Paid $123,637.93 for state officials' entertainment and out-of-state travel expenses;
- Registered with the Arizona Secretary of State as a "principal" each year from 2005 to 2010, signifying that it employed lobbyists to "attempt[ ] to influence the passage or defeat of ... legislation by directly communicating with any legislator" on its behalf; and
- Pushed specific legislation that required taxpayers to, among other things, bear game costs while forgoing all ticket, concession, and advertising revenue at a state-owned stadium.

These facts show that the Fiesta Bowl undeniably engaged in lobbying as defined under federal tax rules, and should be held accountable for its failure to disclose properly over $1.2 million in lobbying fees and expenses. The Orange Bowl also appears to have made several large payments to registered lobbyists that were inadequately disclosed.

POLITICAL CONTRIBUTIONS MADE WITH CHARITABLE FUNDS

As a public charity, the BCS's Fiesta Bowl is strictly prohibited by federal law from using charitable funds to contribute to political campaigns.

Despite this ban, the *Arizona Republic* reported that five Fiesta Bowl employees made contributions "at the urging of [Fiesta Bowl CEO John] Junker and were reimbursed a few weeks later." Donating charitable funds directly to political candidates is clearly against the law; funneling donations through employees by arranging to reimburse them is no less illegal. The Fiesta Bowl attempted to stem the controversy ensuing from The Republic's reports by paying a consultant to perform a cursory internal review. But after the Arizona Secretary of State conducted a real investigation, he recommended that the state Attorney General open a criminal investigation on potential violations of state election laws.

The Fiesta Bowl's use of charitable monies to support a politician's legal defense fund also appears to violate the federal ban on "political intervention" by tax-exempt charities. Despite the fact that its purpose is supposedly to promote amateur athletics, the Fiesta Bowl made monetary contributions out of charitable funds to former Congressman J.D. Hayworth's legal defense fund. At the time, Mr. Hayworth was testing the waters as a U.S. Senate candidate and pitching donations to his legal fund (which was used to settle politically related legal expenses) as a way to jump-start his candidacy.

FRIVOLOUS SPENDING OF CHARITABLE FUNDS

Bowl organizations have long justified their existence, if not their tax-exempt status, by trumpeting their magnanimity. But as reported in the press, the 23 bowl games run by charitable groups "combined to give just $3.2 million to local charities on $186.3 million in revenue." Playoff PAC's review of charitable giving by BCS Bowls revealed a similarly lackluster record. While BCS Bowls were relatively frugal with their charitable grants, they were positively spendthrift when it came to less worthy causes.

- The Orange Bowl spent $535,764 on "gifts" in FYE 2006;
- The Fiesta Bowl spent $1,325,753 on "Fiesta Frolic," an "annual weekend golf retreat for college-football officials at a Phoenix-area resort" from FYE 2005 to FYE 2008;
- The Orange Bowl paid $331,938 for "parties" and a "summer splash" in FYE 2004;
- The Sugar Bowl spent $710,406 in FYE 2007 and FYE 2008 on a mysteriously vague category called "special appropriations;"
- The Fiesta Bowl spent $91,020 on "travel or entertainment expenses" for "federal, state, or local public officials" in FYE 2009;
- The Orange Bowl spent $111,492 on "postage and shipping" in FYE 2008;
- The Sugar Bowl paid $201,226 for "gifts and bonuses" and $330,244 on "decorations" in FYE 2008;
- The Fiesta Bowl spent $444,948 on "hospitality" in FYE 2009; and
- The Orange Bowl paid $42,281 for "golf" in FYE 2004 and FYE 2006.

This BCS Bowl spending calls into question the Bowls' need for the substantial government assistance they receive. If the Orange Bowl can afford to spend $535,764 on "gifts" and $756,546 on travel for its personnel, why does it deserve charitable status and the resulting "free ride" on paying taxes? If the Sugar Bowl shells out $201,226 for "gifts and bonuses" and six-figure sums for its crony-filled "Football Committee," why has it received $5,448,539 in government grants the past three years? And if the Fiesta Bowl has had the money to spend $331,438 per year on a "Fiesta Frolic," why did it need a hefty taxpayer-funded subsidy from the State of Arizona? These are among the important questions raised by Playoff PAC's review.

The four bowl organizations that comprise college football's Bowl Championship Series ("BCS") all claim to be public charities under federal tax laws, the same tax status as the American Red Cross, Habitat for Humanity, and the Cancer Research Institute.

As "501(c)(3)" public charities, these BCS Bowls—the Fiesta Bowl,[1] Orange Bowl,[2] Rose Bowl,[3] and Sugar Bowl—obtain immense taxpayer-funded benefits. BCS Bowl revenues, totaling tens of millions of dollars annually for each organization, are entirely exempt from federal taxes.[4] BCS Bowls are eligible to receive tax-deductible contributions from donors. BCS Bowls also fetch sizeable public subsidies. For example, the Sugar Bowl collected $5,448,539 in government grants the past three years,[5] the Orange Bowl received a $1,213,383 government grant in the fiscal year ending in ("FYE") 2009,[6] and the Fiesta Bowl has profited from the State of Arizona's considerable financial support.[7]

In return for these substantial public benefits, federal tax laws require the BCS Bowls to use *all* of their charitable funds to serve public rather than private interests. And for good reason—the taxpaying public provides the valuable tax benefits the BCS Bowls enjoy as charities. But Playoff PAC's inquiry into the BCS Bowls' activities has revealed a troubling pattern of behavior that falls well short of this standard.

Indeed, Playoff PAC's inquiry found that the BCS Bowls are abusing their privileged tax-exempt status to line executives' pockets, pay off registered lobbyists without disclosure, fund illegal political activity, and heap frivolous rewards on Bowl insiders. BCS Bowls used charitable funds to offer Bowl officials six-figure interest-free loans, club memberships and other extravagant perquisites, and compensation packages that were four times what comparable charities paid their executives. BCS Bowls failed to disclose properly over $1.2 million in payments to registered lobbyists made from charitable funds. One BCS Bowl reportedly used charitable funds for illegal political contributions. And BCS Bowls scrimped on donations to actual charities serving their communities while splurging on items like a "summer splash" and a "Fiesta Frolic."

In sum, BCS Bowls use public dollars for private interests. Their activities raise serious questions about the organizations' status under federal tax laws and provoke fundamental concerns about the propriety of government assistance in this context.

Playoff PAC's findings and analyses, based on a thorough review of over 2,300 pages of tax records and public documents, are detailed below.

1. The Arizona Sports Foundation, Arizona College Football Championship Foundation, Valley of the Sun Bowl Foundation, and Fiesta Events, Inc. form the "Fiesta Bowl" organization. Arizona Sports Foundation Form 990 FYE 2009, Schedule R. These four entities will be referred to as the "Fiesta Bowl" unless specifically referenced otherwise.
2. The Orange Bowl Committee, OBC Moore Park LLC, OB Youth Sports LLC, OB Property Holdings LLC, and the Orange Bowl Foundation form the "Orange Bowl" organization. Orange Bowl Committee Form 990 FYE 2009, Schedule R. Please note that the Orange Bowl Foundation was terminated as an entity last year.
3. The Pasadena Tournament of Roses Association and the Pasadena Tournament of Roses Foundation form the "Rose Bowl" organization. Pasadena Tournament of Roses Association Form 990 FYE 2009, Schedule R.
4. Playoff PAC's review of BCS Bowl tax records did not reveal any assessments of "unrelated business income tax."
5. Sugar Bowl Form 990 FYE 2009, Part VIII, Line 1e ($1,395,000); Sugar Bowl Form 990 FYE 2008, Part I, Line 1d ($3,000,000); Sugar Bowl Form 990 FYE 2007, Part I, Line 1d ($1,053,539).
6. Orange Bowl Committee Form 990 FYE 2009, Part VIII, Line 1e.
7. See Andrew Bagnato & Chip Scutari, Valley Wins BCS Prize, The Arizona Republic Apr. 27, 2005; Chip Scutari & Robbie Sherwood, *Arizona Angling for New BCS Title Game*, Mar. 30, 2005.

I. EXECUTIVE COMPENSATION PAID FROM CHARITABLE FUNDS

Bowl officials are rewarded handsomely for promoting the BCS's once-a-year events. The lavish salaries, sweetheart loans, and other perquisites they receive from BCS-affiliated charities raise not only eyebrows, but numerous legal questions about whether the charities' activities are legitimately tax-exempt. This Section discusses Playoff PAC's factual findings and legal analysis related to BCS Bowl officials' compensation.

A. FACTUAL FINDINGS

The BCS-affiliated Fiesta Bowl, Orange Bowl, and Sugar Bowl which are all organized as section 501(c)(3) public charities, have assembled outlandish compensation packages for their top executives that far exceed those offered by comparable organizations.

1. Monetary Compensation of CEOs Paid from Charitable Funds

A spot as a BCS Bowl CEO is good work, if you can find it. BCS Bowls use charitable funds to heap benefits on their chief executives.

Take Fiesta Bowl CEO John Junker, for example. In what may be the nation's choicest part-time job, Mr. Junker received $317,717 during FYE 2009 for working just 21 hours per week for the Arizona Sports Foundation, the Fiesta Bowl's lead entity.[8] Mr. Junker's total pay package from all Fiesta Bowl-related entities was $592,418 for FYE 2009[9] and $597,227 with a five-figure expense account in FYE 2008.[10] His pay increased 48.4 percent in just two years, from FYE 2006 to FYE 2008.[11] Overall, Mr. Junker reaped a $2,512,708 windfall the past five years.[12] And in a highly peculiar arrangement, he has received three separate unsecured interest-free loans paid from the Fiesta Bowl's charitable funds, totaling $124,500.[13] (Two unsecured interest-free loans worth $120,000 were also made to former Bowl executive Doug Blouin.[14]) At least one of these loans was neither approved by the Bowl's board nor memorialized in a written agreement.[15] Most loans were reportedly made to defray the cost of Mr. Junker's personal membership in the elite Whisper Rock Golf Club of Scottsdale, Arizona.[16]

The Sugar Bowl pays the highest price of any BCS Bowl entity for its chief executive's services. Sugar Bowl Executive Director Paul Hoolahan took home a whopping $645,386 in FYE 2009, over five percent of the Bowl's total revenue that year.[17] Mr. Hoolahan has received a total of $2,606,003 over the past five years,

8. Arizona Sports Foundation Form 990 FYE 2009, Schedule J-2, Part I.
9. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part II.
10. Arizona Sports Foundation Form 990 FYE 2008, Part V-A, Statements 19-25.
11. Mr. Junker's total compensation was $415,035 in FYE 2006 (Arizona Sports Foundation Forms 990 FYE 2006, Part V-A and attached statements). It rose to $616,035 in FYE 2008 (Arizona Sports Foundation Form 990 FYE 2008, Part V-A, Statements 19-25).
12. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part II; Arizona Sports Foundation Forms 990 FYE 2005-2008, Part V-A and attached statements.
13. Arizona Sports Foundation Form 990 FYE 2006, Statement 7; Arizona Sports Foundation Form 990 FYE 2009, Schedule L, Part II.
14. Arizona Sports Foundation Form 990 FYE 2006, Statement 7.
15. Arizona Sports Foundation Form 990 FYE 2009, Schedule L, Part II.
16. Craig Harris, Fiesta Bowl Employees Say Bowl Repaid Political Contributions, The Arizona Republic, Dec. 18, 2009.
17. Sugar Bowl Form 990 FYE 2009, Part VII.

with a sudden pay increase of 42.8 percent from FYE 2007 to FYE 2009.[18] This boon is surprising, given that the Bowl lost money in FYE 2009.[19] Fortunately for Mr. Hoolahan, though, his compensation is fixed, regardless of the Sugar Bowl's financial performance.[20]

Even leaving aside the perquisites these CEOs receive, their monetary pay packages far exceed those offered by similar charitable organizations.

The Rose Bowl, for example, is directly comparable to the Fiesta Bowl and Sugar Bowl. The Rose Bowl is a BCS-affiliated charity that brings in comparable annual revenue totals and includes similar numbers of personnel.[21] The "Granddaddy of Them All" is arguably the most successful BCS Bowl, boasting the highest television ratings and attendance figures.[22] But the Rose Bowl's CEO earned only $277,929 in FYE 2009, less than half of what the Fiesta Bowl's John Junker and the Sugar Bowl's Paul Hoolahan took home.[23] In fact, Mr. Hoolahan collected $25,000 more in FYE 2009 than the Rose Bowl's *top three executives combined*.[24] And that year was not an aberration. Over the past five years, Messrs. Junker and Hoolahan each received roughly the same compensation as the Rose Bowl's top three executives.[25] Put differently, the Fiesta Bowl and Sugar Bowl somehow believe that Messrs. Junker and Hoolhan perform services as valuable as three Rose Bowl officials combined. In light of the Rose Bowl's superior ratings and attendance figures, as well as the Sugar Bowl's poor FYE 2009 financial performance, that belief is questionable.

As a BCS-affiliated charity that collects similar annual revenues, the Orange Bowl is also directly comparable to the Fiesta Bowl and Sugar Bowl.[26] But like the Rose Bowl's CEO, the Orange Bowl CEO's $357,722 paycheck for FYE 2009 paled in comparison to that of the Fiesta Bowl and Sugar Bowl chiefs, falling $234,696 short of Mr. Junker and $287,664 short of Mr. Hoolahan.[27]

The Fiesta Bowl and Sugar Bowl CEO paydays are no more defensible when compared to pay packages provided by similarly sized charities outside the realm of college football.

A 2009 *NonProfit Times* compensation survey found that nonprofit entities with annual operating budgets comparable to the Fiesta Bowl and Sugar Bowl ($10,000,000 to $24,000,000) pay their CEOs an average of $185,270.[28] In other words, the average CEO at a comparable charity would need to work nearly three-and-a-half years to earn Mr. Hoolahan's annual pay. And the highest compensation total found for any comparable CEO was only $383,500, a fraction of the Junker-Hoolahan windfalls.[29] The *NonProfit Times* survey also showed that these BCS Bowls paid their CEOs substantially more than other charities in their respective geographic regions.[30]

18. Mr. Hoolahan made $645,386 in FYE 2009 (Sugar Bowl Form 990 FYE 2009, Part VII), $607,500 for FYE 2008 (Sugar Bowl Form 990 FYE 2008, Schedule A, Part V), $451,674 for FYE 2007 (Sugar Bowl Form 990 FYE 2007, Schedule A, Part V), $462, 957 for FYE 2006 (Sugar Bowl Form 990 FYE 2006, Statement 5), and $438,486 for FYE 2005 (Sugar Bowl Form 990 FYE 2005, Statement 12).
19. The Sugar Bowl lost $456,330 in FYE 2009. Sugar Bowl Form 990 FYE 2009, Part I, Line 19.
20. Sugar Bowl Form 990 FYE 2009, Schedule J, Part I, Lines 5 and 6.
21. *See e.g.*, Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part I.
22. Bowl Championship Series, TV Ratings, available at http://www.bcsfootball.org/news/story?id=4819384.
23. Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII.2
24. The combined total for the three Rose Bowl executives was $620,336. Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII.
25. The top three Rose Bowl executives earned $2,655,887 from FYE 2005-2009. Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII; Pasadena Tournament of Roses Assoc. Form 990 FYE 2008, Statement 12; Pasadena Tournament of Roses Assoc. Form 990 FYE 2007, Statement 7; Pasadena Tournament of Roses Assoc. Form 990 FYE 2006, Part V-A; Pasadena Tournament of Roses Assoc. Form 990 FYE 2005, Part V.
26. See e.g., Orange Bowl Committee Form 990 FYE 2009, Part I.
27. Orange Bowl Committee Form 990 FYE 2009, Part VII and attached statement.
28. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 185 (2009).
29. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 185 (2009).
30. Charities in the Southwestern U.S. paid their CEOs an average of $86,884. Charities in the South Central U.S. paid their CEOs an average of $136,431. NonProfit Times, 2009 *Nonprofit Organizations Nationwide Compensation and Benefits Report* at 186 (2009). *See also* Charity Navigator, *2009 CEO Compensation Study* at 2 (2009) (stating that charities in the Southwestern U.S. paid their CEOs an average of $146,597 and charities in the South Central U.S. paid their CEOs an average of $139,966).

Likewise, a recent *Economic Research Institute* survey indicated that the mean CEO compensation at non-profits comparable to the Fiesta Bowl and Sugar Bowl is just $155,619, roughly one-fourth of what Messrs. Junker and Hoolahan receive as BCS Bowl executives.[31] In addition, a 2009 *Charity Navigator* study found that even organizations almost six times larger (and therefore more complex) than the Fiesta Bowl and Sugar Bowl paid their CEOs an average of $462,037.[32]

Mr. Hoolahan received $645,386 in compensation. But objective measures offer no reason to believe that these BCS Bowl officials' services are exceptionally valuable. They lead organizations that hold once-a-year sporting events, which are relatively straightforward to execute due to the events' recurring nature. Their organizations are outperformed by their BCS peer, the Rose Bowl, yet they receive more pay than the top three Rose Bowl executives combined. Their compensation dwarfs pay packages at comparable charities, and even surpasses CEOs who manage organizations several times larger than any BCS Bowl. Because these pay arrangements lack any defensible rationale, they are a legally troublesome use of charitable funds.

COMPENSATION COMPARISON FOR CEOs OF SIMILAR CHARITIES

	FYE 2009	FYE 2008	FYE 2007	FYE 2006	FYE 2005	TOTAL
Junker (Fiesta)	$592,418	$616,035	$477,550	$415,035	$411,670	$2,512,708
Hoolahan (Sugar)	$645,386	$607,500	$451,674	$462,957	$438,486	$2,606,003
Poms/Tribble (Orange)[33]	$357,722	$309,046	$321,537	$336,175	$313,661	$1,638,141
Dorger (Rose)	$277,929	$267,009	$252,393	$239,807	$231,243	$1,268,381
Top 3 Rose Bowl Executives' Combined Compensation	$620,336	$566,308	$524,378	$481,438	$463,427	$2,655,887
NonProfit Times CEO Compensation Study – 75th Percentile[34]	$207,426	$207,426	$207,426	$207,426	$207,426	$1,037,130
NonProfit Times CEO Compensation Study – Average[35]	$185,270	$185,270	$185,270	$185,270	$185,270	$926,350
Economic Research Inst. Compensation Survey – Mean[36]	$155,619	$155,619	$155,619	$155,619	$155,619	$778,095

As these comparisons illustrate, the Fiesta Bowl's and Sugar Bowl's extravagant use of charitable funds for CEO compensation has no rational basis. Mr. Junker received a $592,418 paycheck and over $120,000 in unsecured interest-free loans.

31. Economic Research Institute, *Executive Compensation Assessor* (2010). Data accessed via search for CEO compensation of organizations with $15,500,000 in spending each year, performed on Aug. 5, 2010.
32. Charity Navigator, *2009 CEO Compensation Study* at 5 (2009).
33. For the Orange Bowl's CEO, FYE 2005 compensation data was unavailable. The FYE 2005 figure is therefore an estimate, using the average of the FYE 2004 and FYE 2006 compensation figures.
34. *NonProfit Times* study data could not be located for 2005-2008. Thus, the 2009 salary data is used, though it is likely higher than the actual 2005-2008 figures.
35. *NonProfit Times* study data could not be located for 2005-2008. Thus, the 2009 average salary is used, though it is likely higher than the actual 2005-2008 averages.
36. *Economic Research Institute* survey data could not be located for 2005-2008. Thus, the 2009 average salary is used, though it is likely higher than the actual 2005-2008 averages.

2. Monetary Compensation of Top Executives Paid from Charitable Funds

CEOs are not alone in gleaning outsized gain from their BCS Bowl appointments. Other top executives enjoy generous compensation paid from charitable funds too.

For instance, the Fiesta Bowl's top three employees (including CEO John Junker) each collected over $200,000 in compensation in FYE 2009, receiving a combined sum of $4,994,998 for the past five years.[37] To put the gratuitous nature of these amounts in perspective, consider that the Rose Bowl's top three employees earned only $2,655,887 from FYE 2005 to FYE 2009.[38]

The Sugar Bowl's top three executives (including Executive Director Paul Hoolahan) also made a killing, collecting a total of $4,944,357 during the past five years.[39] Notably, these three individuals received a combined $1,225,136 in FYE 2009 on revenue of over $12.7 million, meaning that nearly 10 percent of the Bowl's total intake was later distributed to just three people.[40] In other words, three Bowl insiders took home $1 for every $10 that the Bowl earned. This level of compensation far exceeds that offered by comparable charities. A 2009 *NonProfit Times* study found that similarly sized charities spent an average of just 4.31 percent of their operating budgets on executive compensation, less than half of what the Sugar Bowl gave only three executives.[41]

As with CEO compensation, then, these BCS Bowls inexplicably pay well above the market rate for their top executives' services, raising substantial questions about whether these BCS Bowls' activities are legitimately charitable.

3. Perquisites Financed with Charitable Funds

The BCS Bowls' charitable-funds payday does not end with monetary compensation. Perquisites abound as well.

The Fiesta Bowl treats its top personnel and their spouses to first-class travel around the country,[42] leaving little mystery as to why the Fiesta Bowl spent a lofty $381,488 last year[43] and an annual average of $304,275 the past five years[44] on travel. (The Sugar Bowl's listed travel expenses averaged only $34,289 during that same period.[45]) Fiesta executives' dues at local health and social clubs are also picked up by the Bowl.[46] The Fiesta Bowl even foots some of its top executives' tax bills by offering tax indemnification payments (i.e. "gross-up payments") as part of its compensation package.[47]

The Orange Bowl's lead executives receive perquisites as well. The Orange Bowl spent $756,546 on employee travel in FYE 2009,[48] paying for first-class travel by its CEO and others.[49] To be clear, this sum does not include travel expenses for football teams playing in the Orange Bowl, as those expenses are borne by participating schools. The $756,546

37. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part II. Arizona Sports Foundation Forms 990 FYE 2005-2008, Part V-A and attached statements.
38. Orange Bowl Committee Form 990 FYE 2009, Part VII; Orange Bowl Committee Form 990 FYE 2008, Schedule A, Part I and Statement 9; Orange Bowl Committee Form 990 FYE 2007; Orange Bowl Committee Form 990 FYE 2006, Statement 16. Compensation figures for FYE 2005 were unavailable, so an estimate using the average of FYE 2006 and FYE 2004 figures was used to estimate compensation during that year.
39. The total compensation to the Sugar Bowl's top three executives was: $1,154,243 in FYE 2008 (Sugar Bowl Form 990 FYE 2008, Schedule A, Part V), $885,360 in FYE 2007 (Sugar Bowl Form 990 FYE 2007, Schedule A, Part V), $866,717 in FYE 2006 (Sugar Bowl Form 990 FYE 2006, Statement 5), and $812,901 in FYE 2005 (Sugar Bowl Form 990 FYE 2005, Statement 12).
40. Sugar Bowl Form 990 FYE 2009, Part I and Part VII.
41. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 173 (2009).
42. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part III.
43. Arizona Sports Foundation Form 990 FYE 2009, Part IX, Line 17.
44. Arizona Sports Foundation Form 990 FYE 2005-2008, Part II, Line 39.
45. Sugar Bowl Forms 990 FYE 2005-2008, Part II, Line 39.
46. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part III.
47. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part III.
48. Orange Bowl Committee Form 990 FYE 2009, Part IX.
49. Orange Bowl Committee Form 990 FYE 2009, Schedule J, Part I.

	Club Dues?	First Class Travel	Travel for Companion?	Tax "Gross-Ups"?	Interest-Free Loans
Fiesta Bowl	Yes	Yes	Yes	Yes	Yes
Orange Bowl	No	Yes	Yes	Yes	Yes
Sugar Bowl	No	No	Yes	No	No
Percentage of Similar Charities	12.5%	0.0%	0.0%	0.0%	N/A

total includes travel expenses only for Orange Bowl personnel. In addition, the Orange Bowl appears to have followed the Fiesta Bowl's lead by offering a $60,000 interest-free note to a "related party" in FYE 2006.[50]

Perquisites are also showered on Sugar Bowl insiders. In FYE 2008, for example, the Bowl spent $201,226 on "gifts and bonuses."[51] An average of $152,856 was spent on executives' "meetings" each of the past three years.[52] Bowl executives are permitted to bring companions on business travel at the Bowl's expense.[53] And the Bowl's Football Committee, which allows Bowl insiders to attend regular-season college football games around the country, incurred over $1,025,939 in expenses the past two years.[54] Board membership also has its benefits, as the Sugar Bowl steered business to at least two Bowl board members in FYE 2009.[55]

The perquisites offered by the Fiesta Bowl, Orange Bowl, and Sugar Bowl are exceptional. A 2009 *NonProfit Times* report found that no similarly sized charities (operating annual budgets of $10,000,000 to $24,000,000) offered first-class travel to their chief executives and executives' spouses, a benefit provided by all three of these BCS Bowls.[56] Only 12.5 percent of similarly sized charities paid for lead employees' private club memberships, as the Fiesta Bowl did.[57]

Like the monetary compensation provided to BCS Bowl executives, the unusual nature of perquisites offered in the form of first-class travel, spousal travel, tax "gross-up" payments, and club dues creates significant concerns about whether these entities qualify for the tax-exempt status they claim.

B. LEGAL ANALYSIS

The Fiesta Bowl, Orange Bowl, and Sugar Bowl claim to be public charities in order to receive special tax exemptions and benefits, meaning that all three BCS Bowl organizations must abide by particular rules when compensating their executives out of charitable funds. These rules ensure that charities like the BCS Bowls act exclusively in the public interest as a condition of receiving numerous tax breaks.[58]

Because it appears the Fiesta Bowl, Orange Bowl, and Sugar Bowl violate federal rules against "private inurement" and "private benefit" when compensating their executives with charitable funds,

50. Orange Bowl Committee Form 990 FYE 2006, Statement 11.
51. Sugar Bowl Form 990 FYE 2008, Part II, Line 43. $186,123 was spent on meetings in FYE 2009. Sugar Bowl Form 990 FYE 2009, Part IX.
52. Sugar Bowl Form 990 FYE 2008, Part II, Line 43.
53. Sugar Bowl Form 990 FYE 2009, Sched. J, Part I.
54. Sugar Bowl Form 990 FYE 2009, Part IX; Sugar Bowl Form 990 FYE 2008, Part II, Line 43.
55. Board Member Brian David's printing firm received a payment of $18,136 for printing services and Board Member Wayne Pierce's restaurant received a payment of $16,048 in FYE 2009. Sugar Bowl Form 990 FYE 2009, Schedule L, Part IV.
56. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 649-651 (2009).
57. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 649-651 (2009).
58. 26 U.S.C. § 501(c)(3).

there are compelling reasons for the IRS to impose statutory penalties and/or revoke the BCS Bowls' charitable status.

1. BCS Bowls Use Charitable Funds in a Manner that "Inures" to the Benefit of Bowl Insiders

To receive special tax benefits, a charity must ensure that its net earnings do not "inure in whole or in part to the benefit"[59] of its directors, officers, and other so-called "insiders."[60] This inurement prohibition is intended to prevent a charity from "siphon[ing] its earnings to its founder ... or anyone else fairly to be described as an insider," such as top executives.[61]

Because BCS Bowls organized themselves as charities, they are only allowed to pay their executives "reasonable" compensation[62] without running afoul of the inurement prohibition.[63] No amount of private inurement is permissible.[64] Even if only "a small part of [a BCS Bowl's] income inures to" an insider, the inurement prohibition is violated.[65] A BCS Bowl executive's receipt of "unreasonable" compensation would therefore be grounds for revoking the tax-exempt status of the Fiesta Bowl, Orange Bowl, and Sugar Bowl. The IRS may also levy substantial excise taxes against all recipients of "unreasonable" compensation.[66]

To meet the "reasonable" standard, BCS Bowl officials are not required to donate their services or accept subpar pay.[67] "Reasonable compensation" is simply the amount that "would ordinarily be paid for like services by like enterprises under like circumstances."[68] Put differently, an insider's compensation is "reasonable" if it is roughly equivalent to the "market rate."[69]

BCS Bowls cannot plausibly assert that their executives' compensation packages were the product of "arm's length negotiation," given that nearly all executives are longtime insiders with considerable sway over their respective organizations.[70] The BCS Bowls must therefore show that each highly paid executive is not simply gleaning benefits from his "insider" status by demonstrating that his services are exceptionally valuable in the marketplace.[71] The BCS Bowls

59. 26 C.F.R. § 1.501(c)(3)-1(c)(2).
60. 26 U.S.C. § 503; 26 C.F.R. § 1.501(a)-1(c).
61. *United Cancer Council, Inc. v. Comm'r*, 165 F.3d 1173, 1176 (7th Cir. 1999).
62. For purposes of evaluating whether a compensation arrangement is "reasonable," compensation is broadly construed to include: (1) all forms of cash and non-cash compensation; and (2) all compensatory benefits, whether or not included in an executive's gross income. See 26 C.F.R. § 53.4958-4(a); *Menard, Inc. v. Comm'r*, 103 A.F.T.R.2d 2009-1280 (7th Cir. 2009) (commenting that "compensation" should include all benefits, including "severance packages, retirement plans, or perks.")
63. Mabee Petrol. Corp. v. U.S., 203 F.3d 872, 876 (5th Cir. 1953). *See also* Church of Scientology of California v. Comm'r, 83 T.C. 381, 455 (1984), aff'd, 823 F. 2d 1310 (9th Cir. 1987).
64. Variety Club Tent No. Charities, Inc. v. Comm'r., 74 T.C.M. 1485 (1997).
65. Orange County Agr. Soc., Inc. v. Comm'r., 893 F.2d 529, 534 (2nd Cir. 1990).
66. If the IRS finds that a charity has engaged in an "excess benefit transaction" (i.e. a payment of "unreasonable" compensation) with a disqualified person, the penalties imposed under section 4958 can be substantial. In addition to repaying the full amount of the excess benefit, the disqualified person is liable for an initial tax equal to 25% of the excess benefit. IRC § 4958(a)(1); 26 C.F.R. § 53.4958-1(c)(1). If the excess benefit transaction is not timely corrected before the earlier of (1) the IRS mailing of a notice of deficiency with respect to the initial tax or (2) the IRS assessing the initial tax, then an additional tax equal to 200% of the excess benefit will be imposed on the disqualified person. IRC § 4958(b); 26 C.F.R. § 53.4958-1(c)(2). A separate excise tax of 10% of the value of the transaction (up to $20,000 per transaction) may be imposed on any managers of the organization (e.g., directors or officers) who knowingly approved the transaction. IRC §§ 4958(a)(2), (d)(1)-(2); 26 C.F.R. § 53.4958-1(d).
67. World Family Corp. v. Comm'r., 81 T.C. 858 (1983).
68. 26 C.F.R. §§ 1.162-7(b)(3), 53.4958-4(b)(1)(ii)(A).
69. Tech. Adv. Mem. 9451001 (Dec. 23, 1994) (stating that "reasonable" compensation is "indistinguishable from an ordinary prudent business practice in comparable circumstances").
70. The Church of the Visible Intelligence that Governs the Universe v. U.S., 4 Cl.Ct. 55 (Ct.Cl. 1983).
71. The BCS Bowls will certainly claim that their compensation review procedures establish a "rebuttable presumption" of reasonability, but their setting of compensation so far above the compensation provided by Rose Bowl and other similar charitable organizations undermines the presumption and provides "sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body." 26 C.F.R. § 53.4958-6.

cannot make this showing, meaning that their compensation practices, which utilize charitable funds, violate the inurement prohibition.[72]

i. BCS Bowl Executive Pay is "Unreasonable" Because It Exceeds Compensation Offered by Similar Organizations

The process utilized to define "reasonable" compensation is relatively straightforward. It begins by identifying the closest market comparables—"like services by like enterprises under like circumstances"[73]—and assessing the reasonableness of a charitable organization official's compensation in relation to these comparables. When compared with similar entities, it is apparent that compensation practices at the Fiesta Bowl and Sugar Bowl are "unreasonable" and therefore violate the inurement prohibition.

a. Fiesta Bowl and Sugar Bowl Compensation Practices are "Unreasonable" Relative to Directly Comparable Entities

Compensation practices at entities directly comparable to the Fiesta Bowl and Sugar Bowl carry the greatest weight in a "reasonability" assessment.[74] No non-charitable entity is directly comparable to these BCS Bowls, as all post-season athletic contests in professional sports are managed by multi-faceted league entities.[75] Instead, the Rose Bowl and Orange Bowl are the most readily comparable organizations, given that they are BCS-affiliated charities, boast equivalent annual revenue figures, include comparable numbers of personnel, and require their executives to work similar schedules.[76]

As mentioned above, the Rose Bowl's compensation practices differ markedly from those of the Fiesta Bowl and Sugar Bowl. The Rose Bowl's CEO earns less than half of what his Fiesta Bowl and Sugar Bowl counterparts received in FYE 2009.[77] Perhaps most strikingly, the Sugar Bowl's Hoolahan collected $25,000 more in FYE 2009 than the Rose Bowl's top *three* executives *combined*,[78] and over the past five years, Messrs. Junker and Hoolahan each received roughly the same as the top three Rose Bowl executives' collective compensation.[79] When other Fiesta and Sugar insiders are included in the equation, the disparity becomes even greater. The Rose Bowl's top three employees earned $2.29 million[80] less than their counterparts at the Sugar Bowl and $2.34 million[81] less than their colleagues at the Fiesta Bowl from FYE 2005 to FYE 2009.

When these Rose Bowl figures are viewed in conjunction with compensation comparisons with the Orange Bowl, a pattern of above-market pay is

72. *See* 1993 CPE Text at 201–212 (discussing factors of reasonability and citing various authorities for each). *See also* Priv. Ltr. Ruls. 200435018–200435024 (May 5, 2004) (finding that the use of a church's assets by its founder and members of his family were excess benefit transactions). For factors relating to "reasonability" *See, e.g.*, Mayson Mfg. Co. v. Comm'r, 178 F.2d 115, 119 (6th Cir. 1949); Alpha Med., Inc., 172 F.3d 942; Herold Mktg. Assocs., Inc. v. Comm'r, 77 T.C.M. 1306, 1311–1312 (1999); Owensby & Kritikos, Inc. v. Comm'r., 819 F.2d 1315 (5th Cir. 1987); Levenson and Klein, Inc. v. Comm'r, 67 T.C. 694, 713 (1977); Home Oil Mill v. Willingham, 68 F. Supp. 525 (N.D. Ala. 1945), *aff'd*, 181 F.2d 9 (5th Cir. 1950), *cert. denied*, 340 U.S. 852; Home Interiors & Gifts v. Comm'r. 73 T.C. 1142 (1980).

73. 26 C.F.R. § 1.1627(b)(3).

74. Rutter v. Comm'r, 853 F.2d 1267 (5th Cir. 1988).

75. *See, e.g.*, Constitution and Bylaws of the National Football League at 105-113 (rev. 2006).

76. *See e.g.*, Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part I; Orange Bowl Committee Form 990 FYE 2009, Part I.

77. Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII.

78. The combined total for the three Rose Bowl executives was $620,336. Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII.

79. The top three Rose Bowl executives earned $2,655,887 from FYE 2005 to FYE 2009. Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII; Pasadena Tournament of Roses Assoc. Form 990 FYE 2008, Statement 12; Pasadena Tournament of Roses Assoc. Form 990 FYE 2007, Statement 7; Pasadena Tournament of Roses Assoc. Form 990 FYE 2006, Part V-A; Pasadena Tournament of Roses Assoc. Form 990 FYE 2005, Part V.

80. The total compensation to the Sugar Bowl's top three executives was: $1,154,243 in FYE 2008 (Sugar Bowl Form 990 FYE 2008, Schedule A, Part V), $885,360 in FYE 2007 (Sugar Bowl Form 990 FYE 2007, Schedule A, Part V), $866,717 in FYE 2006 (Sugar Bowl Form 990 FYE 2006, Statement 5), and $812,901 in FYE 2005 (Sugar Bowl Form 990 FYE 2005, Statement 12).

81. The top three Fiesta Bowl employees received a combined sum of $4,994,998 from FYE 2005 to FYE 2009. Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part II. Arizona Sports Foundation Forms 990 FYE 2005-2008, Part V-A and attached statements.

apparent. As noted previously, the Orange Bowl paid its CEO $234,696 less than the Fiesta Bowl's Junker and $287,664 less than the Sugar Bowl's Hoolahan in FYE 2009.[82] And the Orange Bowl's three principal executives were paid roughly $1.4 million less than their Fiesta Bowl and Sugar Bowl counterparts from FYE 2005 to FYE 2009.[83]

No evidence suggests that the Rose Bowl and Orange Bowl pay their executives at below-market rates. Indeed, even though they are located in high-cost-of-living locales, these Bowls have demonstrated their ability to attract management at current pay levels that arguably outperforms higher-compensated personnel at the Fiesta Bowl and Sugar Bowl.[84] The vast difference between Rose-Orange and Fiesta-Sugar compensation figures, then, signifies that the Fiesta Bowl and Sugar Bowl executives are overpaid for their services and that compensation to insiders at these BCS Bowls is "unreasonably" inflated in violation of the inurement prohibition.

b. Fiesta Bowl and Sugar Bowl Compensation Practices are "Unreasonable" Relative to Entities of a Similar Size and in a Similar Location

Compensation practices at entities similar to the Fiesta Bowl and Sugar Bowl are also an important element of a "reasonability" assessment. Size of operating budget is a major factor in determining similarity (because larger organizations are more complex and require higher caliber management), as is geographic region (because variable costs of living across regions impact market compensation levels).[85]

Like comparisons to their closest analogues, the Rose and Orange Bowls, comparisons to similarly sized entities again suggest that these BCS Bowls' compensation practices are "unreasonable." An *Economic Research Institute* survey indicated that the mean compensation for CEOs at comparable non-profits is roughly one-fourth the pay of Mr. Junker and Mr. Hoolahan.[86] A *Charity Navigator* study stated that CEOs at organizations several times larger than the Fiesta Bowl and Sugar Bowl still earned markedly less than Mr. Junker and Mr. Hoolahan.[87] These figures were confirmed by those cited in a 2009 *NonProfit Times* study, which showed that the average CEO of a similarly sized charity (annual operating budget of $10,000,000 to $24,000,000) made $406,148 less than the Fiesta Bowl's Junker and $459,116 less than the Sugar Bowl's Hoolahan in FYE 2009.[88] (Executives whose compensation ranked in the 75th percentile among similar charities made $384,992 and $437,960 less than Junker and Hoolahan, respectively.[89]) This study's figures also demonstrate that the Sugar Bowl's practice of giving nearly 10 percent of the Bowl's total intake to only three people is out-of-step with the norm.[90] Similarly sized charities spent an average of just 4.31 percent of their operating budgets on executive compensation, less than half of what the Sugar Bowl gave just three executives.[91] Finally, the *NonProfit Times* study revealed that similarly sized charities do not offer the lavish

82. Orange Bowl Committee Form 990 FYE 2009, Part VII and attached statement.
83. Orange Bowl Committee Form 990 FYE 2009, Part VII; Orange Bowl Committee Form 990 FYE 2008, Schedule A, Part I and Statement 9; Orange Bowl Committee Form 990 FYE 2007; Orange Bowl Committee Form 990 FYE 2006, Statement 16. Compensation figures for FYE 2005 were unavailable, so an estimate using the average of FYE 2006 and FYE 2004 figures was used to estimate compensation during that year.
84. The Rose Bowl garners the highest television ratings and attendance figures of any BCS Bowl. Bowl Championship Series, *TV Ratings*, available at http://www.bcsfootball.org/news/story?id=4819384. The Sugar Bowl's revenues equal or exceed those of the Fiesta Bowl and Sugar Bowl the past few years. *See, e.g.*, Orange Bowl Committee Form 990 FYE 2009, Part I.
85. *See e.g.*, Home Oil Mill, 68 F. Supp. 525.
86. Economic Research Institute, *Executive Compensation Assessor* (2010). Data accessed via search for CEO compensation of organizations with $13,000,000 in spending each year, performed on Aug. 5, 2010.
87. Charity Navigator, *2009 CEO Compensation Study* at 5 (2009).
88. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 185 (2009).
89. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 185 (2009).
90. Sugar Bowl Form 990 FYE 2009, Part I and Part VII.
91. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 173 (2009).

perquisites—club dues, first-class travel, companion travel, and tax "gross-up" payments—that BCS Bowl executives receive.[92]

The BCS Bowls' compensation practices fare no better when compared to other charities in the same geographic regions. A *Charity Navigator* study showed that charities in the Southwestern U.S. paid their CEOs an average of $445,821 less than the Fiesta Bowl's John Junker and charities in the South Central U.S. paid their CEOs $505,420 less than the Sugar Bowl's Paul Hoolahan.[93] Totals from a *NonProfit Times* survey also showed that these BCS Bowls paid their CEOs substantially more than other charities in their areas.[94]

Again, no evidence suggests that these similarly situated charities pay their executives a below-market rate. Charities several times larger than the BCS Bowls competently manage their affairs with CEOs paid a fraction of what their Fiesta Bowl and Sugar Bowl counterparts receive. And charities in the South and Southwest attract executive talent to these regions by offering salaries that are a pittance compared with what BCS Bowl officials make. Perhaps the high-profile nature of the BCS Bowls warrants somewhat higher compensation. But this cannot justify glaring anomalies, such as Sugar Bowl executives raking in $1 of every $10 brought in by the Bowl or the Fiesta Bowl's John Junker earning four times more than a comparable CEO. This yawning disparity between compensation figures at similarly situated charities and the BCS Bowls therefore indicates that these BCS Bowls' compensation practices are "unreasonable."

c. *Like Other Organizations' "Sweetheart" Loans to Executives, the BCS Bowls' Unsecured Interest-Free Loans to Insiders are "Unreasonable"*

Because loans to insiders are exceedingly rare, the "very existence of a private source of loan credit from an organization's earnings may itself amount to inurement."[95] Federal courts have frequently held that loans extended on advantageous terms to a charity's insiders are "unreasonable,"[96] particularly if the loan is unsecured and/or made "without interest" (or even at rates more favorable than market).[97] One organization, for example, was found to violate the inurement prohibition when it made unsecured interest-free loans without any written evidence of indebtedness to a corporation owned by the charity's controlling members.[98] In such circumstances, particularly without advance board approval, a "loan" is little more than an appropriation of the charity's resources by the executive, limited only by the executive's stated intention to repay.

As mentioned above, the Fiesta Bowl made three separate unsecured interest-free loans to CEO John Junker, totaling $124,500.[99] Two other unsecured interest-free loans worth $120,000 were also made to the Bowl's then-Vice President of Marketing, Doug Blouin.[100] One of these loans was not approved by the Bowl's Board of Directors or memorialized in a contemporaneous written agreement.[101] Disclosure entries for the other "sweetheart" loans also offer no indication that they

92. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 649-651 (2009).
93. Charities in the Southwestern U.S. paid their CEOs an average of $146,597. Charities in the South Central U.S. paid their CEOs an average of $139,966. Charity Navigator, *2009 CEO Compensation Study* at 2 (2009).
94. Charities in the Southwestern U.S. paid their CEOs an average of $86,884. Charities in the South Central U.S. paid their CEOs an average of $136,431. NonProfit Times, *2009 Nonprofit Organizations Nationwide Compensation and Benefits Report* at 186 (2009).
95. Founding Church of Scientology v U.S., 412 F.2d 1197, 1202 (1969).
96. Unitary Mission Church of Long Island v Comm'r., 647 F.2d 163 (2nd Cir. 1981). *See* also Founding Church of Scientology v U.S., 412 F.2d 1197, 1202 (1969) ("If in fact a loan or other payment in addition to salary is a disguised distribution or benefit from the net earnings, the character of the payment is not changed by the fact that the recipient's salary, if increased by the amount of the distributions or benefit, would still have been reasonable.").
97. *See, e.g.*, John Marshall School of Law v. U.S., 48 AFTR2d 81-5340 (Ct. Cl. 1981).
98. Orange County Agr. Soc., Inc. v. Comm'r., 893 F.2d 529, 534 (2nd Cir. 1990).
99. Arizona Sports Foundation Form 990 FYE 2006, Statement 7; Arizona Sports Foundation Form 990 FYE 2009, Schedule L, Part II.
100. Arizona Sports Foundation Form FYE 2006, Statement 7.
101. Arizona Sports Foundation Form 990 FYE 2009, Schedule L, Part II.

were contemporaneously approved by the Board.[102] Similarly, the Orange Bowl appears to have offered a loan to a Bowl insider. In FYE 2006, the Orange Bowl disclosed a $60,000 interest-free "note" to a "related party" without naming the note's recipient or listing any security related to the note.[103] Thus, like other organizations that attempted to provide such "sweetheart" loans to insiders already receiving plum compensation packages, these BCS Bowls have made an "unreasonable" use of charitable funds.

ii. BCS Bowls' Above-Market Compensation Practices are Not Justified by Any Executive's Extraordinary Qualities

Comparables are not the end of a "reasonable" compensation analysis.[104] As discussed below, courts have recognized that certain extraordinary qualities in an executive may justify above-market compensation.[105] BCS Bowl executives, however, exhibit none of these exceptional characteristics, meaning that the above-market compensation they receive is an "unreasonable" use of charitable funds and a violation of the inurement prohibition.

a. *Fiesta Bowl and Sugar Bowl Executives Are Not Unusually Skilled or Productive*

The nature and scope of an employee's duties are obviously an important factor in assessing "reasonableness." If an executive performs highly skilled tasks or handles a prodigious volume of work, he or she may command an above-market salary.[106]

Fiesta Bowl and Sugar Bowl executives, however, cannot rationalize their hefty paydays by claiming to exercise any extraordinary skill or perform abnormal amounts of work. To be sure, managing these large annual events is not a simple job. However, bowl games are also not unusually complicated to execute, given that they recur and are held only once each year. More importantly, to assert that their above-market compensation is "reasonable," the Fiesta Bowl and Sugar Bowl managers must establish that they possess significantly *more skill* or handle significantly *more work* than their colleagues at other entities.

Fiesta Bowl and Sugar Bowl executives would have difficulty showing that they are more skilled or productive than their Rose Bowl and Orange Bowl counterparts. All four Bowl organizations inhabit the same industry. All four organizations conduct activities that are comparable in type and scope. All four organizations deploy corresponding numbers of employees and volunteers. And all four organizations reap similar annual revenue totals. Given these organizational similarities, the Fiesta Bowl and Sugar Bowl executives cannot credibly assert that they apply more skill or productivity to their work than Rose Bowl and Orange Bowl employees. Nearly identical activities yield nearly identical results at these Bowl entities, and if any one organization rises above the others, it is the modest-paying Rose Bowl. So is Paul Hoolahan of the Sugar Bowl actually more skilled and productive than the Rose Bowl's top *three* executives *combined*?[107] Is the skill and productivity of the Fiesta Bowl's John Junker worth $234,696 more annually than the Orange Bowl CEO's management abilities?[108] All relevant facts suggest the answer is "no."

Fiesta Bowl and Sugar Bowl personnel also cannot prove that they bring more skill or productivity to

102. *See, e.g.*, Arizona Sports Foundation Form 990 FYE 2003, Statement 11.
103. Orange Bowl Committee Form 990 FYE 2006, Statement 11.
104. *See, e.g.*, Georgia Crown Distributing v. Comm'r, T.C. Mem. 1983-459.
105. *See, e.g.*, Albert Van Luit Co. v. Comm'r, 34 T.C.M. 321 (1975) ("Petitioner's success was due almost exclusively to the remarkable efforts of Van Luit, which are described in detail in our Findings. In light of his past and continuing services, and his exceptional contributions to petitioner, Van Luit was entitled to substantial compensation."); Elliotts, Inc. v. Comm'r, 716 F.2d 1241, 1246 (9th Cir. 1983); Levenson and Klein, 67 T.C. 694 at 713; L&B Pipe & Supply Co. v. Comm'r, 1994 T.C. Mem. 1994-187; Automotive Inv. Dev. Inc. v. Comm'r, T.C. Mem. 1993-298; Good Chevrolet v. Comm'r, T.C. Mem. 1977-291.
106. 1993 CPE Text at 212 (citing Rev. Rul. 69-383, 1969-2 C.B. 113).
107. The combined total for the three Rose Bowl executives for FYE 2009 was $620,336. See Pasadena Tournament of Roses Assoc. Form 990 FYE 2009, Part VII.
108. See Orange Bowl Committee Form 990 FYE 2009, Part VII and attached statement.

the table than their colleagues at similarly sized charities. Again, given that BCS Bowls are not inordinately complicated to supervise, budget size is a reasonable indicator of organizational complexity. The larger an entity's annual budget, the more complex its operations will generally be to manage. Charities with annual budgets roughly equivalent to those of the Fiesta Bowl and Sugar Bowl, then, require comparable management competencies. Yet BCS Bowl CEOs still somehow receive lavish perquisites and four times the pay of their colleagues at similarly sized charities.[109] And they take home hundreds of thousands more than even CEOs who manage operations that are several times larger and, therefore, generally more complex.[110] These inexplicable disparities demonstrate that Fiesta Bowl and Sugar Bowl executives receive "unreasonable" compensation paid from charitable funds.

Finally, compensation histories also weaken any assertion that above-market pay to BCS Bowl insiders is justified by exceptional skill and productivity. Courts and the IRS view rapid or large increases in an executive's compensation skeptically, believing they result from the executive's influence over the organization, rather than an increase in his duties or capabilities.[111] John Junker's pay from the Fiesta Bowl spiked suddenly, increasing 48.4 percent from FYE 2006 to FYE 2008.[112] Paul Hoolahan's compensation from the Sugar Bowl also escalated rapidly, rising 42.8 percent from FYE 2007 to FYE 2009.[113] It is doubtful that the skills and productivity of Messrs. Junker and Hoolahan suddenly doubled during these two-year periods, and neither can claim to have been inadequately paid during years prior.[114] Thus, these BCS Bowl executives' compensation histories offer further evidence that they receive "unreasonable" compensation paid from charitable funds.

b. Executives Have Not Led the Fiesta Bowl and Sugar Bowl to Extraordinary Success

Above-market pay could also be defensible if an executive's services contributed to an organization's exceptional success.[115] The Fiesta Bowl and Sugar Bowl are surely successful organizations, but neither is peerless. In particular, any Sugar Bowl claims of achievement are tempered by the fact that the Bowl actually lost money in FYE 2009[116]—the end of the period in which Executive Director Paul Hoolahan received a 42-percent raise.[117] By contrast, the Rose Bowl thrives as arguably the most successful bowl in the country, boasting the highest television ratings and attendance figures.[118] The Orange Bowl is at least as successful as the Fiesta Bowl and Sugar Bowl, achieving equal esteem in its community and collecting comparable revenues totals each year.[119] Given these measuring sticks, then, extraordinary success has not visited the Fiesta Bowl and Sugar Bowl, meaning that it cannot validate their

109. Economic Research Institute, *Executive Compensation Assessor* (2010). Data accessed via search for CEO compensation of organizations with $13,000,000 in spending each year, performed on Aug. 5, 2010.
110. Charity Navigator, *2009 CEO Compensation Study* at 5 (2009).
111. *See, e.g., Founding Church of Scientology v. U.S.*, 412 F.2d 1197, 1202 (Ct. Cl. 1969), *cert. denied*, 397 U.S. 1009 (1970); *Incorp. Trustees of the Gospel Worker Soc'y v. U.S.*, 510 F. Supp. 374, 379 (D.D.C. 1981), *aff'd*, 672 F.2d 894 (D.C. Cir. 1981) (noting that sharp increases in compensation were "at least suggestive of a commercial rather than nonprofit operation); *see also Kermit Fischer Found. v.Comm'r*, 59 T.C.M. 898 (1990).
112. Mr. Junker's total compensation was $415,035 in FYE 2006 (Arizona Sports Foundation Forms 990 FYE 2006, Part V-A and attached statements). It rose to $616,035 in FYE 2008 (Arizona Sports Foundation Form 990 FYE 2008, Part V-A, Statements 19-25).
113. Mr. Hoolahan made $645,386 in FYE 2009 (Sugar Bowl Form 990 FYE 2009, Part VII), and $451,674 for FYE 2007 (Sugar Bowl Form 990 FYE 2007, Schedule A, Part V).
114. Compensation figures are discussed above. Compare Max Burton Enters., Inc. v. Comm'r, 74 T.C.M. 652, 655 (1997); PK Ventures, Inc. v. Comm'r, 89 T.C.M. 880 (2005); Devine Bros., Inc. v. Comm'r, 85 T.C.M. 768, 770 (2003) (employee "was undercompensated in prior years in order to meet specified bonding requirements, a business necessity," and "the bonus paid in the year in issue was intended to compensate for the established under-compensation in the earlier years").
115. 1993 CPE Text at 214 (citing Gen. Couns. Mem. 39498 (Apr. 24, 1986)).
116. The Sugar Bowl lost $456,330 in FYE 2009. Sugar Bowl Form 990 FYE 2009, Part I, Line 19.
117. Sugar Bowl Form 990 FYE 2007, Schedule A, Part V.
118. Bowl Championship Series, *TV Ratings*, available at http://www.bcsfootball.org/news/story?id=4819384.
119. *See, e.g.*, Orange Bowl Committee Form 990 FYE 2009, Part I.

executives receiving vastly more than their Rose Bowl and Orange Bowl colleagues.

c. Fiesta Bowl and Sugar Bowl Executives Do Not Devote Remarkable Amounts of Time to Their Work

Where an employee has substantial responsibilities and devotes significant time to an organization, a higher salary may be justified.[120] According to their tax filings, Fiesta Bowl and Sugar Bowl executives complete a normal workweek of 40 hours to promote their once-a-year events.[121] Forty hours per week is not extraordinary, and it cannot justify unreasonably high compensation.

2. BCS Bowls Use Charitable Funds to Confer "Private Benefits"

In addition to complying with the inurement prohibition, charities must "exclusively"[122] serve "a public rather than a private interest"[123] in order to receive special tax benefits. If a charity confers a private benefit that is more than "incidental,"[124] the charity's tax-exempt status is destroyed,[125] regardless of the number of other charitable interests served.[126] Courts and the IRS have held that, to retain its tax-exempt status, a charity may only confer a private benefit if the benefit is: (1) a necessary byproduct of accomplishing the organization's charitable purpose; and (2) insubstantial compared to the totality of the charity's activities.[127] This concept is known as the "private benefit" doctrine. The private benefit doctrine bars non-incidental benefits to any private interests, including the organization's executives. Because the "inurement" doctrine also polices the use of charitable resources for the benefit of executives and other insiders, the two doctrines may both come into play when an organization lavishes unreasonable compensation and other perquisites on its executives[128]—as the Fiesta and Sugar Bowl have done. The two doctrines are related, but they each provide independent grounds for questioning the charitable status of the two BCS Bowl organizations.

As discussed in detail above, certain BCS Bowls have offered above-market compensation to their executives. In so doing, they have invoked not only the prohibition on private inurement but also the ban on private benefit. If the private benefit to the executives is more than "incidental," these BCS Bowls have forfeited their charitable status. To avoid this result, the Fiesta Bowl and Sugar Bowl must show that their executives' compensation is both necessary to accomplish a charitable purpose and insubstantial compared to their overall activities.

Above-market compensation paid by the Fiesta Bowl and Sugar Bowl is not necessary to accomplish the Bowls' putative charitable purpose of promoting amateur athletics.[129] To be permissible under the "private benefit" test, this compensation must be a "necessary concomitant"—the organization's purposes could not be achieved without conferring this ancillary benefit on these executives.[130] But as established above, nearly identical organizations, the Rose Bowl and the Orange Bowl, accomplish nearly identical activities

120. *See* Church by Mail v. U.S., 48 T.C.M. 471 (1984).
121. Sugar Bowl Form 990 FYE 2009, Part VII; Arizona Sports Foundation Form 990 FYE 2009, Schedule J, Part II.
122. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).
123. 26 C.F.R. § 1.501(c)(3)-1(d)(1)(ii).
124. See Gen. Couns. Mem. 37789 (Dec. 18, 1978); Gen. Couns. Mem. 39,862 (Nov. 21, 1991).
125. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).
126. See Gen. Couns. Mem. 37789 (Dec. 18, 1978); Gen. Couns. Mem. 39,862 (Nov. 21, 1991). *Compare* Manning Assoc. v. Comm'r, 93 T.C. 596 (1989).
127. American Campaign Academy v. Comm'r, 92 T.C. 1053, 1066 (1989). *See also Sonora Community pital v. Comm'r*, 46 T.C. 519 (1966); Rev. Rul. 70-186, 1970-1 C.B. 128; Rev. Rul. 78-85, 1978-1 C.B. 150.
128. People of God Community v. Comm'r, 75 T.C. 127, 131 (1980) ("While not necessarily identical, the prohibitions against private inurement and private purposes overlap to a great extent...we will confine our discussion herein to the private inurement issue.")
129. Arizona Sports Foundation Form 990 FYE 2009, Part I, Line 1; Sugar Bowl Form 990 FYE 2009, Part I, Line 1.
130. Gen. Couns. Mem. 37789 (Dec. 18, 1978).

with drastically lower-paid officials. These other BCS Bowl games prove that the Fiesta Bowl and Sugar Bowl do not need to pay exorbitant salaries to promote amateur athletics. Here, above-market pay is not qualitatively "incidental."

Above-market compensation paid by the Fiesta Bowl and Sugar Bowl is also not merely an "insubstantial" part of these organizations' activities. For example, Sugar Bowl Executive Director Paul Hoolahan took home over five percent of the Bowl's total revenue in FYE 2009.[131] And the Bowl's top three executives, including Mr. Hoolahan, took in nearly ten percent of the Bowl's total take.[132] An expense that wipes away ten percent of an organization's income cannot be characterized as "insubstantial" without robbing the term of all meaning. Thus, from a quantitative standpoint, certain BCS Bowl executives' compensation is not "incidental."

Because the Fiesta Bowl and Sugar Bowl use their charitable funds to confer more than just an "incidental" benefit on their executives, they do not "exclusively" serve the public interest and are therefore ineligible for the tax benefits they receive as a charity.

II. UNDISCLOSED LOBBYING FINANCED WITH CHARITABLE FUNDS

BCS bowl entities have given considerable amounts of their charitable funds to registered lobbyists. Federal tax laws allow charitable organizations to pay for some amount of lobbying activity, as long as it is not a substantial part of their overall activities. But all payments for lobbying must be fully disclosed to the public and the IRS. This Section discusses Playoff PAC's factual findings and legal analysis related to the failure of certain BCS Bowls to disclose large sums of charitable money given to registered lobbyists.

A. FACTUAL FINDINGS

The Fiesta Bowl failed to disclose properly the nature and amounts of its significant charitable-funds payments to registered lobbying firms. The Orange Bowl appears to have followed suit.

From FYE 2005 to FYE 2009, the Fiesta Bowl gave $1,217,081 to Husk Partners, a registered Arizona lobbying firm, for "consulting" services.[133] According to state lobbying forms, some of which were filed over a year late, the Bowl also retained (for undisclosed sums) two other registered lobbying firms, Highground, Inc. and Mario E. Diaz & Associates.[134] According to Fiesta Bowl CEO

131. Sugar Bowl Form 990 FYE 2009, Part VII.
132. Sugar Bowl Form 990 FYE 2009, Part I and Part VII.
133. Arizona Sports Foundation Form 990 FYE 2009, Statement 11 ($202,000 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2008, Statement 28 ($284,016 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2007, Schedule A, Part II-A ($248,226 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2006, Schedule A, Part II-A ($229,554 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2005, Schedule A, Part II ($253,285 to Jamieson & Gutierrez, the former name of Husk Partners).
134. Arizona Secretary of State, Lobbyist Principal Forms for the "Tostitos Fiesta Bowl", available at http://www.azsos.gov/scripts/Lobbyist_Search.dll/ZoomPPB?PPB_ID=104840.
135. Craig Harris, Fiesta Bowl Employees Say Bowl Repaid Political Contributions, The Arizona Republic, Dec. 18, 2009.

John Junker, these "consultants and advisors help us communicate our story to opinion leaders and political leaders."[135] And during this period, the Fiesta Bowl paid $123,637.93 for state and local officials' entertainment and out-of-state travel expenses.[136]

Notably, the Fiesta Bowl registered with the Arizona Secretary of State as a "principal" each year from 2005 to 2010, signifying that it employed Husk Partners, Highground, Inc. and Mario E. Diaz & Associates to "attempt[ ] to influence the passage or defeat of ... legislation by directly communicating with any legislator" on its behalf.[137] These firms pushed multiple, specific pieces of legislation that sought to do the following:

- Mandate that the Arizona Sports and Tourism Authority contract with the Fiesta Bowl;
- Require the Arizona Sports and Tourism Authority and taxpayers to bear the cost of any game expenses over $275,000;
- Prevent the Arizona Sports and Tourism Authority from collecting fees on the Bowl's ticket, concession, and advertising sales;
- Offer the Fiesta Bowl exclusive right to market and price all seats and suites;
- Provide the Fiesta Bowl priority use of the stadium over other potential parties; and
- Give the Fiesta Bowl "the right to use all communication systems and all other services and amenities ... without the assessment of a fee, a charge, rent, or a share of the revenue."[138]

These highly unusual legislative provisions, which concern matters nearly always handled through private contract negotiations, entitle the Fiesta Bowl to collect all benefits from hosting a BCS national championship game and push significant costs off on to Arizona taxpayers.

Despite the Fiesta Bowl's retention of multiple registered lobbying firms, sponsorship of local officials' out-of-state trips, registration as a lobbyist "principal" in Arizona, and efforts to pass specific legislation, the Bowl somehow insists that it does not lobby. From FYE 2005 to FYE 2009, the Fiesta Bowl affirmatively stated on each of its IRS forms that it did not "engage in lobbying activities."[139] As discussed below, this representation was legally dubious and hinders the ability of the IRS and the public to evaluate whether the Fiesta Bowl has spent excessive charitable funds on lobbying.

The Orange Bowl similarly represented on federal tax forms that it did not lobby in FYE 2001, FYE 2002, FYE 2003, FYE 2006, and FYE 2007.[140] In each of these years, though, the Orange Bowl made large payments of $55,000 or more to known lobbyists and lobbying firms, ostensibly for "consulting."[141] Public records do not indicate the nature of the "consulting" services, though some early Bowl disclosures identified the payment recipients as "lobbyists."[142] If these payments to lobbying firms were indeed for "lobbying" services,

136. Arizona Sports Foundation Form 990 FYE 2009, Part IX, Line 18; Arizona Secretary of State, Lobbyist Principal Forms for the "Tostitos Fiesta Bowl," available at http://www.azsos.gov/scripts/Lobbyist_Search.dll/ZoomPPB?PPB_ID=104840.

137. Ariz. Rev. Stat. §§ 41-1231(11), 41-1232(A), (A)(8)(C).

138. Ariz. Rev. Stat. § 5-815; S.B. 1208 (2010). See also Andrew Bagnato & Chip Scutari, Valley Wins BCS Prize, The Arizona Republic Apr. 27, 2005; Chip Scutari & Robbie Sherwood, *Arizona Angling for New BCS Title Game*, Mar. 30, 2005.

139. Arizona Sports Foundation Form 990 FYE 2009, Part IV, Line 4; Arizona Sports Foundation Forms 990 FYE 2005 to 2008, Schedule A, Part VI-B.

140. Orange Bowl Committee Form 990 FYE 2008, Schedule A, Part II-B; Orange Bowl Committee Form 990 FYE 2007, Schedule A, Part II-B; Orange Bowl Committee Form 990 FYE 2006, Part VII-B, Line 5a; Orange Bowl Committee Forms 990-PF FYE 2001 to 2003, Part VII-A, Line 1a.

141. Orange Bowl Committee Form 990 FYE 2007, Statement 21 ($60,000 paid to Strategic Edge, Inc. of Coral Gables for "consulting," a firm founded by registered Florida lobbyist Brian May); Orange Bowl Committee Form 990 FYE 2006, Statement 19 ($60,000 paid for "consulting" to Barreto, Cunningham, and May, a registered Florida lobbying firm at the time of the payment—*see* www.leg.state.fl.us/data/lobbyist/Reports/Principl_LEG_2005.pdf); Orange Bowl Committee Form 990-PF FYE 2003, Part VIII ($60,000 payment to Barreto, Cunningham, and May for "lobbyist"); Orange Bowl Committee Form 990-PF FYE 2002, Part VIII ($55,000 payment to Barreto, Cunningham, and May for "lobbyist"); Orange Bowl Committee Form 990-PF FYE 2001, Part VIII ($65,100 payment to Barreto, Cunningham, and May for "lobbyists").

142. Orange Bowl Committee Forms 990-PF FYE 2001 to 2003, Part VIII.

the Orange Bowl also violated important public disclosure rules.

B. LEGAL ANALYSIS

No "substantial part"[143] of a charity's activities may be "to influence legislation."[144] To aid enforcement of this requirement, the IRS obliges each charity to disclose fully to the public all "lobbying" payments.[145]

Certain charities, like the Fiesta Bowl and Orange Bowl,[146] elect not to have their lobbying expenses limited by a fixed-dollar cap.[147] These charities are "regarded as attempting to influence legislation if the organization ... advocates the adoption or rejection of legislation."[148] This broad[149] standard even includes advocacy efforts that do not expressly reference specific legislation.[150] Charities are not required to report "self-defense" lobbying[151] costs, but this exemption applies only to legislation that might affect a charity's existence, powers, duties, or tax-exempt status.[152] Costs associated with legislation that merely increases an organization's funding or enhances its programs fall outside the "self-defense" exemption and must still be reported.[153]

Charities, such as the Fiesta Bowl and Orange Bowl, must therefore disclose on their annual returns all expenses that relate to "advocat[ing] the adoption or rejection of legislation."

1. The Fiesta Bowl Failed to Disclose Properly Over $1.2 Million in Lobbying Expenses to the Public and the IRS

As noted above, the Fiesta Bowl has, year after year, affirmatively stated on federal tax forms that it does not "engage in lobbying activities" or incur expenses for that purpose.[154] The Bowl defends this practice by claiming that its activities are not "lobbying by the IRS definition."[155] But this assertion is mistaken for at least four reasons.

First, the Fiesta Bowl registered with the Arizona Secretary of State as a "principal" each year from 2005 to 2010, signifying that it employed firms to "attempt[ ] to influence the passage or defeat of ... legislation" on its behalf.[156] The Bowl cannot simultaneously register in Arizona due to its "attempt[s] to influence the passage or defeat of ...

143. *Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 855 (10th Cir 1972); Haswell v. United States, 500 F.2d 1133, 1142 (Ct.Cl. 1974). See also Gen. Couns. Mem. 36148 (Jan. 28, 1975); Gen. Couns. Mem. 34798 (June 2 , 1972) ("Because of the nature of the factors to be considered it is not feasible to establish a percentage or other mathematical standard to serve as a precise measure of what is substantial in a particular case.").

144. 26 U.S.C. § 501(c)(3). The primary penalty for these public charities' excessive lobbying is revocation of their exempt status, without the ability to qualify for exemption under section 501(c)(4). See I.R.C. § 504(a).

145. *See* IRS, Form 990, Schedule C.

146. *See, e.g.*, Arizona Sports Foundation, Form 990 FYE 2008, Schedule A, Part IV-A; Orange Bowl Committee Form 990 FYE 2009, Schedule C, Part II-A. See also Sugar Bowl, Form 990 FYE 2008, Schedule A, Part VI-A.

147. 26 U.S.C. § 501(h). The standards under sections 501(h) are elective. By default, charities remain under the vague "no substantial part test" until they choose to comply with the rules of 501(h) and 4911 instead by filing Form 5768 with the IRS. 26 U.S.C. § 501(h)(3),(7). In addition, certain categories of charity, notably, private foundations, remain ineligible to be governed by section 501(h). 26 U.S.C. § 501(h)(4)-(5). The Fiesta Bowl's activities, at least, would still meet the "lobbying" definition even if it had made the 501(h) election, as specific legislation was promoted by the Bowl's hired lobbyists.

148. Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii). As under the section 501(h) rules, ballot initiatives and referenda are considered legislation.

149. IRS regulations state that Section 501(h)'s narrower "lobbying" definition does not apply to entities that do not make a 501(h) eleciton. 26 C.F.R. § 1.501(h)-1(a)(4) ("A public charity that does not elect the expenditure test remains subject to the substantial part test. The substantial part test is applied without regard to the provisions of section 501(h) and 4911 and the related regulations.").

150. *See, e.g.*, Christian Echoes, 470 F.2d at 854, and Fund for the Study of Economic Growth and Tax Reform v. I.R.S., 997 F. Supp. 15 (D.D.C. 1998). Further, the Court of Appeals reviewing the *Fund for the Study of Economic Growth* decision, took a broad approach to the definition of "advocating" for legislation, stating that it is not necessary for an organization to conduct a grassroots campaign for it to be engaging in advocacy. Fund for Study of Economic Growth and Tax Reform v. I.R.S., 161 F.3d 755, 760 n.8 (D.C. Cir. 1998). Costs related to considering policy issues and developing legislative positions are also "lobbying." League of Women Voters v. U.S., 180 F. Supp. 379 (Ct. Cl. 1960).

151. *See* Slee v. Comm'r, 42 F.2d 184 (2d Cir. 1930).

152. 26 C.F.R. § 56.4911-2(c)(4).

153. 26 C.F.R. § 56.4945(d)(3)(ii), exs. 3, 4.

154. Arizona Sports Foundation Form 990 FYE 2009, Part IV, Line 4; Arizona Sports Foundation Forms 990 FYE 2005 to 2008, Schedule A, Part VI-B.

155. Craig Harris, *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, The Arizona Republic, Dec. 18, 2009.

156. Ariz. Rev. Stat. §§ 41-1231(11), 41-1232(A), (A)(8)(C).

legislation" and then claim that related expenses are justifiably hidden from the public and the IRS because the Bowl does not advocate the adoption or rejection of legislation.

Second, the Fiesta Bowl and its "consultants" have, on multiple occasions, pressed specific legislation before Arizona's state legislature.[157] It is unclear how the Fiesta Bowl can sensibly state that it did not "advocate[ ] the adoption or rejection" of these bills. After all, these proposed laws were not broadly applicable. They benefited only the Fiesta Bowl. They concerned only Fiesta Bowl activities. If the Fiesta Bowl had not "advocate[d]" their adoption, these special-interest bills would have never progressed down the legislative pipeline. And the Fiesta Bowl's efforts were ineligible for the "self-defense" reporting exemption because this legislation only enhanced the Bowl's funding and programs without jeopardizing the Bowl's existence, rights, or tax-exempt status.

Third, the Fiesta Bowl doled out $1,217,081 to one registered lobbying firm[158] and an unpublicized sum to two others.[159] These lobbying firms, by all appearances, are not multi-purpose enterprises. The Fiesta Bowl paid seven figures because these firms are skilled at influencing state and local officials. As Mr. Junker said, the firms helped "communicate our story to opinion leaders and political leaders."[160] But given that many of the Fiesta Bowl's legislative contacts appear to involve the same officials, it can be safely assumed that the "story" conveyed by the Bowl involved more than just college football lore. And it is unclear why the Fiesta Bowl needed to spend over $100,000 to transport these officials out-of-state, far away from its events and facilities, to tell its "story."

Fourth and finally, the Fiesta Bowl cannot claim ignorance or confusion over its legal obligations. The Fiesta Bowl's BCS affiliate, the Sugar Bowl, managed to disclose as "lobbying" all payments[161] to "a consultant ... hired to monitor legislative developments in Baton Rouge, LA relevant to the continued financial support of [the] Sugar Bowl."[162] If the rules compelled the Sugar Bowl to publicize its payments for merely "monitor[ing] legislative developments," the Fiesta Bowl certainly should have disclosed the substantial retainers it paid to registered lobbying firms to influence specific legislation.

These facts show the Fiesta Bowl engaged in lobbying as defined under federal tax rules. The Bowl should therefore be held accountable for its failure to disclose properly over $1.2 million in lobbying fees and expenses.

2. The Orange Bowl's Payments to Registered Lobbying Firms Appear to Have Been Inadequately Disclosed

Like the Fiesta Bowl, the Orange Bowl has frequently affirmed on federal tax forms that it does not lobby.[163] However, large outlays to lobbyists and lobbying firms during these periods give the appearance that the Bowl engaged these lobbyists to "advocate[ ] the adoption or rejection of

157. Andrew Bagnato & Chip Scutari, *Valley Wins BCS Prize*, The Arizona Republic Apr. 27, 2005; Chip Scutari & Robbie Sherwood, *Arizona Angling for New BCS Title Game*, Mar. 30, 2005.
158. Arizona Sports Foundation Form 990 FYE 2009, Statement 11 ($202,000 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2008, Statement 28 ($284,016 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2007, Schedule A, Part II-A ($248,226 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2006, Schedule A, Part II-A ($229,554 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2005, Schedule A, Part II ($253,285 to Jamieson & Gutierrez, the former name of Husk Partners).
159. Arizona Secretary of State, Lobbyist Principal Forms for the "Tostitos Fiesta Bowl", available at http://www.azsos.gov/scripts/Lobbyist_Search.dll/ZoomPPB?PPB_ID=104840.
160. Craig Harris, *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, The Arizona Republic, Dec. 18, 2009.
161. Sugar Bowl, Forms 990 FYE 2006-2008, Schedule A, Part VI-B ($12,000 per year); Sugar Bowl, Forms 990 FYE 2006-2008, Schedule A, Part VI-B (11,000).
162. *See, e.g.*, Sugar Bowl, Forms 990 FYE 2006, Statement 9.
163. Orange Bowl Committee Form 990 FYE 2008, Schedule A, Part II-B; Orange Bowl Committee Form 990 FYE 2007, Schedule A, Part II-B; Orange Bowl Committee Form 990 FYE 2006, Part VII-B, Line 5a; Orange Bowl Committee Forms 990-PF FYE 2001 to 2003, Part VII-A, Line 1a.

legislation."[164] This presumption is strengthened by the Orange Bowl's previous references to payment recipients as "lobbyists."[165] These Orange Bowl expenditures should be thoroughly examined to determine if they were improperly concealed from the public and the IRS.

III. POLITICAL CONTRIBUTIONS MADE WITH CHARITABLE FUNDS

The Fiesta Bowl claims to be a public charity in order to receive special tax exemptions and benefits, meaning that it must not use charitable funds to support political campaigns under federal tax law. The paragraphs below discuss Playoff PAC's factual findings and legal analysis related to this BCS charity's troublesome political activity.

A. FACTUAL FINDINGS

The BCS's Fiesta Bowl appears to have used charitable funds to provide financial support for political candidates on multiple occasions.

On December 18, 2009, *The Arizona Republic* reported that "[p]ast and present Fiesta Bowl employees ... were encouraged to write checks to specific candidates and were reimbursed by the bowl."[166] *The Republic*'s examination of "10 years of local, state and federal campaign contribution records" and contact with 10 past and present Fiesta Bowl employees "who have had high-level positions with the bowl" revealed that five employees made contributions "at the urging of [Fiesta Bowl CEO, John] Junker and were reimbursed a few weeks later." In addition to the federal tax ramifications, these allegations, if true, would violate Arizona laws designed to ensure the integrity of the electoral process.[167] Three Fiesta Bowl employees in particular claimed that they received unusual bonuses shortly after contributing to specific candidates. In all, *The Republic* and its Bowl-employee sources reported that $38,000 in charitable funds from the Fiesta Bowl's general treasury was funneled to federal and state candidates.[168]

The Fiesta Bowl attempted to stem the controversy ensuing from *The Republic*'s reports by paying a consultant to perform a cursory internal review.[169] Not surprisingly, the hand-picked consultant, after a hasty investigation that lasted a mere five days, declared that he found no evidence of illegalities. When the Arizona Secretary of State launched a real

164. Orange Bowl Committee Form 990 FYE 2007, Statement 21 ($60,000 paid to Strategic Edge, Inc. of Coral Gables for "consulting," a firm founded by registered Florida lobbyist Brian May); Orange Bowl Committee Form 990 FYE 2006, Statement 19 ($60,000 paid for "consulting" to Barreto, Cunningham, and May, a registered Florida lobbying firm at the time of the payment—*see* www.leg.state.fl.us/data/lobbyist/Reports/Principl_LEG_2005.pdf); Orange Bowl Committee Form 990-PF FYE 2003, Part VIII ($60,000 payment to Barreto, Cunningham, and May for "lobbyist"); Orange Bowl Committee Form 990-PF FYE 2002, Part VIII ($55,000 payment to Barreto, Cunningham, and May for "lobbyist"); Orange Bowl Committee Form 990-PF FYE 2001, Part VIII ($65,100 payment to Barreto, Cunningham, and May for "lobbyists").
165. Orange Bowl Committee Forms 990-PF FYE 2001 to 2003, Part VIII.
166. Craig Harris, *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, The Arizona Republic, Dec. 19, 2009.
167. Ariz. Rev. Stat. § 16-919(A).
168. Craig Harris, *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, The Arizona Republic, Dec. 19, 2009.
169. Craig Harris, *Fiesta Bowl: Inquiry Finds No Evidence of Illegalities*, The Arizona Republic, Dec. 24, 2009.

investigation into these allegations, the Fiesta Bowl tried to stonewall.[170] But the Secretary of State's months-long inquiry yielded enough evidence of wrongdoing to prompt the Secretary to request that the state Attorney General open a criminal investigation on the matter.[171]

On another occasion, the Fiesta Bowl's principal entity, the Arizona Sports Foundation, directly donated its charitable funds to a legal defense account established by J.D. Hayworth, a former Congressman and 2010 U.S. Senate candidate.[172] Mr. Hayworth's legal debts arose from the financial activities of his previous political campaigns.[173] At the time of the Fiesta Bowl's charitable-funds donation, Mr. Hayworth was actively "testing the waters" as a Senate candidate[174] and pitched these contributions as a way to support his imminent campaign.[175]

B. LEGAL ANALYSIS

Charitable organizations, such as the Fiesta Bowl, must not "participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office."[176] This prohibition is absolute. Any amount of money, services, or statements provided in support or in opposition to a candidate for elected public office may jeopardize the tax-exempt status of a charity, regardless of the size and scope of its tax-exempt activities.[177] Moreover, the IRS may impose an excise tax on a charity's political expenditures, either in addition to or instead of revoking its charitable status.[178]

Participation or intervention in a political campaign includes any activity that would directly or indirectly support or oppose a particular federal, state, or local "candidate for public office."[179] The term "candidate" includes anyone who "offers himself, or is proposed by others, as a contestant for an elective public office."[180] This broad standard does not require that an individual formally declare his candidacy. For example, an individual will be deemed a "candidate" if he or she forms an exploratory committee or takes other actions that effectively make the person a candidate, such as embarking on a "listening tour."[181]

A charity's contribution of funds to a candidate is clearly prohibited political participation or intervention.[182] In fact, a contribution to any organization that engages primarily or exclusively in political activity

170. Craig Harris, *Fiesta Bowl Fails to Release Info in Campaign-Contribution Probe*, The Arizona Republic, Jan. 26, 2010 (quoting Secretary of State official as saying that the Fiesta Bowl "has not provided 'sufficient information'" and that "Normally, people are pretty cooperative on getting us information... They haven't provided any data yet, but we are looking forward to getting something from them.").

171. Alia Rau, *Fiesta Bowl Campaign-Donation Claims Referred to Goddard*, The Arizona Republic, July 17, 2010.

172. List of FIT Trust Contributors, available at www.fittrust.org/list-of-fit-trust-contributors.html

173. *See generally*, Freedom In Truth Trust Website, Home (accessed August 18, 2010), *available at* www.FitTrust.org.

174. *See, e.g.*, KFYI, J.D. Hayworth Show, Dec. 7, 2009 ("As a prospective candidate for public office, I want to make it very clear that I respect John McCain."), *available at* http://kfyi.com/pages/podcast-archives.php?pname=jdhayworth.xml.

175. FIT Trust WebSite, www.FitTrust.org (accessed Dec. 2009) ("Are you going to run for office again? That's under active consideration, but I cannot do it without retiring this debt. Imagine the ready-made campaign controversy that would result if the debt remained unpaid."). Congressman Hayworth removed this statement from the FIT Trust website after he began his U.S. Senate candidacy, but other copies can still be located on the Internet. *See, e.g.*, www.keepamericaatwork.com/?p=6453.

176. 26 U.S.C. § 501(c)(3).

177. U.S. v. Dykema, 666 F.2d 1096, 1101 (7th Cir. 1981).

178. 26 C.F.R. § 4955(a)(1). The initial excise tax requires the organization to pay a penalty of 10 percent of its political expenditures. At the same time, any organization managers who, without reasonable cause, agreed to the expenditures knowing they were political expenditures will be taxed (jointly and severally) at the rate of 2.5 percent of the political expenditures, though the tax will not exceed $5,000 with respect to any one expenditure. 26 U.S.C. § 4955(a), (c). The charity must also "correct" the political expenditure by recovering the expenditure, to the extent possible, and establishing safeguards to prevent future political expenditures. 26 U.S.C. § 4955(f)(3). If the organization does not "correct" the political expenditures within the time allowed by law, the IRS may impose on the organization an additional tax of 100 percent of the expenditures. An additional tax of 50 percent of the expenditures, not to exceed $10,000 for any one expenditure, will also be imposed against the organization managers (jointly and severally) who refused to make the correction. 26 U.S.C. § 4955(b), (c).

179. 26 C.F.R. § 1.501(c)(3)-1(c)(3).

180. 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii).

181. *See* Judith E. Kindell & John F. Reilly, *Election Year Issues*, in Exempt Organizations Technical Instruction Program for FY2002, at 335, 342.

182. *See, e.g.*, Rev. Rul. 2007-41, 2007-25 I.R.B. 1421.

is forbidden.[183] And in examining an activity's permissibility, the IRS will determine whether an organization should have reasonably foreseen that the activity would benefit a particular candidate.[184]

The Fiesta Bowl's $38,000 in employee reimbursements for political donations, as described by *The Arizona Republic* and 10 former Bowl employees, violate the ban on the use of charitable funds for "political participation or intervention." As discussed, five Fiesta Bowl employees made contributions "at the urging of [Fiesta Bowl CEO John] Junker and were reimbursed a few weeks later." [185] Donating charitable funds directly to political candidates is clearly against the law; funneling donations through employees by arranging to reimburse them is no less illegal.

The Fiesta Bowl's use of charitable monies to support Congressman J.D. Hayworth's legal defense fund also appears to violate the "political participation and intervention" ban. Though he had not formally entered the Senate race, Mr. Hayworth "offer[ed] himself" to the public as a testing-the-waters candidate and fit the definition of "candidate" under IRS rules. Even if Mr. Hayworth were somehow not considered a "candidate" the donation raises legal questions because the recipient was a fund that paid-off politically related legal expenses and that was pitched as an avenue to jump-start Mr. Hayworth's Senate candidacy. The Fiesta Bowl should have therefore anticipated that its donation would benefit Mr. Hayworth's Senate campaign in contravention of the "political participation and intervention" ban. (Irrespective of the strict rules against political activities by charities, it is entirely unclear how contributing to Mr. Hayworth advanced the Fiesta Bowl's charitable purpose of advancing amateur athletics.)

Given these apparent, multiple violations of the "political participation and intervention" ban, the Fiesta Bowl is no longer eligible for the tax benefits it receives as a charity and may be subject to a considerable excise tax.

IV. FRIVOLOUS SPENDING OF CHARITABLE FUNDS

Bowls organizations have long justified their existence, if not their charitable status, by trumpeting their magnanimity. BCS supporter Derrick Fox, for example, made the following statement during a 2009 congressional hearing:

> *But what we are doing is not just for ourselves... For one thing, since almost all the post-season Bowl Games are put on by charitable groups and since up to one-quarter of the proceeds from the games are dedicated to the community, local charities receive tens of millions of dollars every year.*[186]

Two journalists later rebutted this statement thoroughly by showing that the 23 bowl games run by charitable groups "combined to give just $3.2 million to local charities on $186.3 million in revenue according to their most recent federal tax records," a far cry from "tens of millions of dollars every year."[187]

183. *See, e.g.*, Judith E. Kindell & John F. Reilly, *Election Year Issues*, in Exempt Organizations Technical Instruction Program for FY2002 at 386-387.
184. *See, e.g.*, Judith E. Kindell & John F. Reilly, *Election Year Issues*, in Exempt Organizations Technical Instruction Program for FY2002 at 344-46.
185. Craig Harris, *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, The Arizona Republic, Dec. 19, 2009.
186. Statement of Derrick Fox, U.S. House Subcommittee on Commerce, Trade, and Consumer Protection Hearing, *The Bowl Championship Series: Money and Other Issues of Fairness for Publicly Financed Universities* at 3 (May 1, 2009).
187. Dan Wetzel and Josh Peter, *Congress Seeks Truth on Bowls' Charitable Giving Claims*, Yahoo! Sports (May 26, 2009).

A focus on BCS Bowls in particular reveals a similarly lackluster record. The Sugar Bowl, for example, did not provide a single charitable grant from FYE 2005 to FYE 2009.[188] And for its part, the Fiesta Bowl's principal entity, the Arizona Sports Foundation, gave every penny of its $225,000 in grants from FYE 2005 to FYE 2009 to the Fiesta Bowl's contract partner, the Big XII Conference.[189] Even the Orange Bowl, which was more generous than its other two BCS counterparts, gave less than it appears at first glance. The Orange Bowl's charitable grants were largely given to an affiliated foundation, which ultimately frittered away much of the money on staff salaries and administrative expenses.[190]

While these BCS Bowls were relatively frugal with their charitable grants, they were positively spendthrift when it came to less worthy causes. The Orange Bowl, for instance, spent its tax-exempt funds on the following:

- $1,642,605 on unspecified "entertainment" and "catering" in FYE 2009;[191]
- $1,017,322 on undifferentiated "event food" and "entertainment" in FYE 2008;[192]
- $756,546 on Bowl personnel travel in FYE 2009;[193]
- $535,764 on "gifts" in FYE 2006;[194]
- $472,627 on "gifts" in FYE 2008;[195]
- $331,938 on "parties" and "summer splash" in FYE 2004;[196]
- $111,492 on "postage and shipping" in FYE 2008;[197]
- $75,896 on "recruitment" in FYE 2008;[198]
- $60,000 per year on "governmental relations" in FYE 2008;[199] and
- $42,281 on "golf" in FYE 2004 and FYE 2006.[200]

The Sugar Bowl showed comparably indulgent tendencies by lavishing $201,226 on "gifts and bonuses" and $330,244 on "decorations" in FYE 2008.[201] The Bowl also benefited its insiders by paying six-figure sums for Bowl meetings[202] and an average of $432,723 for "Football Committee" expenses the past three years.[203] And the Sugar Bowl spent $710,406 in FYE 2007 and FYE 2008 on a mysteriously vague category called "special appropriations."[204] Perhaps the category relates to the Bowl's "Standing Committee on Golf."[205]

188. All grants listed on Sugar Bowl tax forms were given to the Bowl Championship Series and affiliated entities as part of the Sugar Bowl's BCS contract. Sugar Bowl Form 990 FYE 2009, Part I, Line 13; Sugar Bowl Forms 990 FYE 2007-2008, Part II, Lines 22a and 22b; Sugar Bowl Forms 990 FYE 2005-2006, Part II, Line 22.
189. Arizona Sports Foundation Forms 990 FYE 2005-2009, Schedule I.
190. In FYE 2008, for example $292,989 of the $640,424 the Orange Bowl Foundation spent went to staff salaries and administrative costs. Orange Bowl Foundation Form 990 FYE 2008, Part I, Lines 14 and 17.
191. Orange Bowl Committee Form 990 FYE 2009, Part VII, Section B.
192. Orange Bowl Committee Form 990 FYE 2008, Statement 3.
193. 189 Orange Bowl Committee Form 990 FYE 2009, Part IX. This amount was not an aberration. In FYE 2008, $342,219 was spent on travel. Orange Bowl Committee Form 990 FYE 2008, Part II, Line 39. In FYE 2007, $402,174 was spent on travel. Orange Bowl Committee Form 990 FYE 2007, Part II, Line 39.
194. Orange Bowl Committee Form 990 FYE 2006, Statement 7.
195. Orange Bowl Committee Form 990 FYE 2008, Statement 3.
196. 192 Orange Bowl Committee Form 990 FYE 2004, Statement 6.
197. Orange Bowl Committee Form 990 FYE 2008, Part II, Line 35. The Orange Bowl spent roughly $100,000 each year on postage and shipping from FYE 2006 to FYE 2008.
198. Orange Bowl Committee Form 990 FYE 2008, Statement 3.
199. Orange Bowl Committee Form 990 FYE 2008, Statement 3.
200. Orange Bowl Committee Form 990 FYE 2006, Statement 7; Orange Bowl Committee Form 990 FYE 2004, Statement 6.
201. Sugar Bowl Form 990 FYE 2008, Part II, Line 43. $186,123 was spent on meetings in FYE 2009. Sugar Bowl Form 990 FYE 2009, Part IX.
202. Sugar Bowl Form 990 FYE 2009, Part IX ($186,123); Sugar Bowl Form 990 FYE 2008, Part II Line 43 ($111,762); Sugar Bowl Form 990 FYE 2007, Part II, Line 43 ($160,683).
203. Sugar Bowl Form 990 FYE 2009, Part IX ($375,790); Sugar Bowl Form 990 FYE 2008, Part II, Line 43 ($650,149); Sugar Bowl Form 990 FYE 2007, Part II, Line 43 ($272,231).
204. Sugar Bowl Form 990 FYE 2008, Part II, Line 43 and attached statements; Sugar Bowl Form 990 FYE 2007, Part II, Line 43 and attached statements.
205. Sugar Bowl Bylaws, Art. VII § 1, appended to Sugar Bowl Form 990 FYE 2009.

Finally, the Fiesta Bowl spent its tax-exempt money on the following worthwhile purposes:

- $1,325,753 on "Fiesta Frolic," an "annual weekend golf retreat for college-football officials at a Phoenix-area resort"[206] from FYE 2005 to FYE 2008;[207]
- $1,217,081 for Arizona lobbying firms' "consulting" services from FYE 2005 to FYE 2009;[208]
- $444,948 on "hospitality" in FYE 2009;[209]
- $271,120 on "meetings" in FYE 2009;[210] and
- $91,020 on "travel or entertainment expenses" for "federal, state, or local public officials" in FYE 2009.[211]

These expenses cannot be characterized as necessities. Conferences stage championship games, equivalent productions to bowl games, for only a fraction of the cost.[212] But these seemingly frivolous expenses are not merely cause for embarrassment. They also undermine BCS claims of virtuous spending. Unless "local charity" somehow now encompasses lobbying firms and golf resorts, it is difficult to fathom how "local charities receive tens of millions of dollars every year" from these types of entities.[213]

Most importantly, though, these revelations concerning BCS Bowl spending call into question their need for the substantial government assistance they receive. If the Orange Bowl can afford to spend $535,764 on "gifts" and $756,546 on travel for its personnel, why does it deserve charitable status and the resulting "free ride" on paying taxes? If the Sugar Bowl shells out $201,226 for "gifts and bonuses" and six-figure sums for its crony-filled "Football Committee," why has it received $5,448,539 in government grants the past three years?[214] And if the Fiesta Bowl has had the money to spend $331,438 per year on a "Fiesta Frolic," why did it need a hefty taxpayer-funded subsidy from the State of Arizona?[215]

These spending practices should be promptly and closely evaluated to determine whether these BCS Bowls are exclusively serving charitable purposes, as their charitable status requires.

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206. Craig Harris, *Fiesta Bowl's Bid for Subsidy is Halted*, The Arizona Republic, Feb. 2, 2010.
207. Arizona Sports Foundation Form 990 FYE 2008, Statement 6 ($387,421); Arizona Sports Foundation Form 990 FYE 2007, Statement 2 ($360,705); Arizona Sports Foundation Form 990 FYE 2006, Statement 1 ($289,540); Arizona Sports Foundation Form 990 FYE 2005, Statement 1 ($288,087).
208. Arizona Sports Foundation Form 990 FYE 2009, Statement 11 ($202,000 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2008, Statement 28 ($284,016 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2007, Schedule A, Part II-B ($248,226 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2006, Schedule A, Part II-A ($229,554 to Husk Partners); Arizona Sports Foundation Form 990 FYE 2005, Schedule A, Part II ($253,285 to Jamieson & Gutierrez).
209. Arizona Sports Foundation Form 990 FYE 2009, Part IX, Line 24b.
210. Arizona Sports Foundation Form 990 FYE 2009, Part IX, Line 19.
211. Arizona Sports Foundation Form 990 FYE 2009, Part IX, Line 18.
212. Dan Wetzel, *The Bowl Boondoggle*, Yahoo! Sports, Dec. 18, 2008 (stating that the "SEC operated its 2007 Championship Game ... for just $2.1 million. The ACC managed to pull off its 2006 title game for $1.2 million.")
213. Statement of Derrick Fox, U.S. House Subcommittee on Commerce, Trade, and Consumer Protection Hearing, *The Bowl Championship Series: Money and Other Issues of Fairness for Publicly Financed Universities* at 3 (May 1, 2009).
214. Sugar Bowl Form 990 FYE 2009, Part VIII, Line 1e ($1,395,000); Sugar Bowl Form 990 FYE 2008, Part I, Line 1d ($3,000,000); Sugar Bowl Form 990 FYE 2007, Part I, Line 1d ($1,053,539).
215. Craig Harris, *Fiesta Bowl's Bid for Subsidy is Halted*, The Arizona Republic, Feb. 2, 2010.

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