

**Testimony of Allison Garrett, President
Emporia State University
House Judiciary Committee
February 18, 2020**

Thank you for inviting me to present to you today on House Bill 2264, regarding athletes' ability to seek compensation from third parties for the use of their names, images and likenesses while playing college sports.

Before I address the content of the proposed legislation, I would like to share just a bit about my background, if you will indulge me. I serve as the President of Emporia State University, a Division II school that is a member of the MIAA Athletic Conference. Here in Kansas, Pittsburg State, Fort Hays State and Washburn University are also members of the MIAA, while Newman University is an affiliate member.

In addition to my role at Emporia State, I have been actively involved with the NCAA for several years. My roles with the NCAA include my current service as Vice Chair of the Division II Presidents' Council, Chair of the Division II Planning and Finance Committee, and Chair of the Infractions Task Force for Division II. I am also Chair-Elect of Division II and will begin that role this summer. I serve as one of the 24 members of the NCAA's Board of Governors, which is the governing body of the NCAA. Before I entered higher education, I served as Walmart's Vice President and General Counsel for corporate-level legal services.

My comments today represent the views of one college president who loves athletics and who sees first-hand how college athletics change people's lives. The views I will share are my own and in expressing these views, I do not speak for the NCAA, the MIAA or the Kansas Board of Regents.

The Division II model for college athletics focuses on life in the balance, with an objective of assuring that students at our schools graduate from college and are well prepared to enter the work force. Even at the Division I level, very few college athletes go on to compete professionally.

The legislation proposed in Kansas and elsewhere should not be viewed as "pay-for-play" legislation. Rather, it should be viewed as "pay-while-playing" legislation. I make that distinction because the legislation does not contemplate compensation of student athletes by educational institutions, beyond the current scholarship model. Rather, the legislation is an attempt to clarify the circumstances in which a student athlete may make outside use of his or her name, image and likeness.

The NCAA has long had a process for student athletes to seek approval for outside compensation earned in various ways, though this legislation as well as that of Florida, California and other states will broaden significantly the circumstances for this.

The legislation proposed in Kansas serves as a place saver for our state, which will allow universities in Kansas to remain competitive in a changing landscape. A patchwork of fifty

different states' legislative approaches to what will prove to be an extraordinarily complex area of rulemaking and monitoring will present nationwide difficulties. As I am sure you know, Congress is working to address the issue of student athletes' use of their name, image and likeness at the national level. Whether Congress can accomplish this prior to a number of states' laws becoming effective remains to be seen.

While the legislation addresses an important area, I appreciate the deliberative approach shown here in Kansas. This legislation will create opportunities for college athletes, yet there are some areas of concern. Those include:

- Preserving the distinction between an amateur college athlete and a professional athlete,
- Assuring that college athletes do not become employees of their universities,
- Assuring that Title IX remains an effective tool for keeping opportunities open to both men and women,
- Challenges in monitoring what will be a very complex area,
- Assuring that the new model is not used to incentivize recruiting, meaning its application would be limited to student-athletes once they are enrolled at an institution, and
- Assuring that Olympic-type sports, that may not be as lucrative as some other sports, are not harmed by a move toward a pure business model.

Two things are true, regardless of whether the legislation comes from Congress or the states:

1. Rulemaking is necessary through the NCAA's legislative processes to ensure that a structure exists to maintain a level playing field for schools from around the Association. The NCAA is working hard to identify key attributes of that structure and, through its legislative bodies, to put that structure in place in a timely fashion. The NCAA's three divisions were all poised to vote on Name, Image and Likeness legislation last month during the NCAA's national convention. Because of intervention by the U.S. Department of Justice Antitrust Division asking the NCAA to refrain, we did not move ahead with planned rules that would have created a level playing field among the student athletes in each division of the NCAA.
2. The second important factor to consider is that monitoring will present new areas of complexity for universities. The NCAA has said that the compensation that should be open to athletes for use of their name, image and likeness should be for just that. In other words, it should not be compensation for choosing one school over another, nor should the compensation be for performance on the track, court or field. I agree with this concept, because otherwise, we could be courting a series of legal rulings that student athletes are university employees.

Thank you for allowing me to share a few thoughts with you today on this important topic.