

To: Members of the Uniform Law Commission

**From: Bubba Cunningham, Director of Athletics, University of North Carolina
Paul Pogge, Associate Athletic Director, University of North Carolina**

RE: Name, Image, and Likeness Legislation

Members of the Uniform Law Commission,

Thank you for your willingness to discuss matters related to student-athletes' commercial use of their names, images, and likenesses. We sincerely appreciate the time and effort on this project. The topic is an important one and has the potential to have lasting impacts on intercollegiate athletics.

Under the existing collegiate model, approximately 460,000 male and female student-athletes have opportunities to attend institutions of higher education and compete in college sports each year. This is a valuable outcome. We encourage those participating in conversations about significant changes to the existing model to remain mindful of this important result and consider all potential consequences, intended and unintended, when exploring alternatives.

The attached document specifically expresses our concerns regarding the recent proposals from the NCAA's Federal and State Legislation Working Group. Among others, the document is supported by multiple national coaches' associations in a variety of Olympic sports. We hope you will consider these perspectives in your upcoming work.

Thank you again for your efforts on such an important issue as we all strive to identify ways to continue to enhance intercollegiate athletics and the services we provide for our student-athletes.

We write to express our significant concerns regarding some of the name, image, and likeness legislative recommendations from the NCAA's Federal and State Legislation Working Group, which were subsequently supported by the NCAA Board of Governors. If implemented, this new model would result in extraordinary changes to intercollegiate athletics and could threaten the sustainability of meaningful opportunities for hundreds of thousands of participants in Olympic sports. It is our hope that consideration of the best interests of the overwhelming majority of student-athletes and the sports in which they compete at colleges and universities around the country will ultimately dictate any changes to legislation. Despite public pressure that has been exerted on NCAA leaders from some vocal opponents of college athletics, we urge those involved in the ongoing legislative conversations not to abandon a model that has provided educational and athletic opportunities for hundreds of thousands of student-athletes.

I. Views of Student-Athletes Expressed by the National Student-Athlete Advisory Committee

In October, the national Student-Athlete Advisory Committee (SAAC) publicly urged caution when considering fundamental alterations to the framework of college athletics solely for the benefit of the very few student-athletes who stand to profit from the commercial use of their names, images, and likenesses. In a document entitled "We Are the 100%," the Division I SAAC reminded everyone that they represent the "100%" of student-athletes the NCAA and its member institutions serve. SAAC leadership directly asserted that the focus of the national conversation regarding student-athletes' name, image, and likeness rights was misguided. They commented: "No one is talking about how proposals for name, image and likeness reform – both state and federal – will affect sports other than football and men's basketball or a handful of elite student-athletes in other sports. No one is talking about what the proposals will do for limited resource institutions, historically black colleges and universities, or international student-athletes."

The SAAC implored NCAA leadership to be careful in their approach and provide "a thoughtful explanation for how completely uprooting and discontinuing the collegiate model of amateurism is truly in the best interests of the vast majority of student-athletes." Despite the request of the student-athletes, no such justification has been provided. The current proposals directly contradict the explicit desires expressed by the organization representing all Division I student-athletes and threaten significant harm to college athletics as they know it.

II. Likely Displacement of Resources and Attention from Many Sports and Student-Athletes to a Select Few

It is our hope that the NCAA and other leaders involved in legislative conversations will consider consequences which will likely ensue for Olympic sports if a new structure enables more money and attention to flow to a small number of high-profile sports. Allowing likely displacements of varying levels of economic resources from hundreds of thousands of other student-athletes and the many sports in which they compete will compromise the experiences of those student-athletes and could potentially threaten opportunities altogether. Most of these Olympic sport student-athletes will derive no financial benefit from the new name, image, and likeness rules proposed, yet they could stand to lose considerably.

Though the shift may not occur immediately, an increased amount of attention and money will eventually move towards football and men's basketball. The ticket revenue, attendance data, and corporate sponsorship attention currently associated with these sports demonstrates the acute focus most fans already place on these two areas. In time, it is likely that corporate sponsors will reduce or eliminate broader financial sponsorship agreements with athletic departments in favor of allocating certain money to an infinitesimal percentage of individual student-athletes in the most high-profile sports. This reallocation of funds will directly impact athletic departments' ability to support Olympic sports and will very likely lead to the eventual elimination of many such programs around the country.

Furthermore, these outcomes also pose a major threat to elements of equity and inclusion so important to college athletics. Elimination of opportunities would undermine years of progress. Such results would not align with the NCAA's mission or those of its member institutions.

III. Risks of Negative Impacts on Recruiting

The current proposals also present the likelihood of further disruption through increased potential of negative impacts in recruiting. Among other things, the proposals do not include sufficient explanations or parameters which would effectively mitigate the risk of boosters engaging in commercial activity, overt or otherwise, in attempts to buy competitive advantages. Instead, the proposals simply mention the ambiguous need for "guardrails" which will prevent certain unwanted conduct. While this undefined solution may sound great in theory, it is simply unreasonable to expect enough "guardrails" to be created to effectively govern this area.

At North Carolina, we have already been approached by companies seeking to amplify the online and social media "brands" of individual student-athletes with the ultimate objective of helping them make more money through related commercial activity. Separately, some schools have recently begun to publicize why their local economies and fan bases are best positioned to advance the economic interests of student-athletes. The proposals have not even been voted upon, let alone passed, yet it is already easy to see a major shift towards an emphasis on individual interests over teams, as well as personal profit over quality academic and athletic experiences. This is a disheartening outcome for college sports.

Moreover, the proposal of increased avenues by which student-athletes could obtain money will make monitoring virtually impossible. Without subpoena power, it is not at all realistic to expect university compliance offices or, for that matter, the NCAA or any other governing association, to oversee these activities effectively. It will be impossible for athletic departments to detect many instances of boosters or others funneling money through endorsements, using proxies who are not technically "boosters" to make payments, and using other disguised means in attempts to buy talent. This conduct is inevitable and has the potential to quickly spiral out of control.

We do not want to live in a world of crowdfunded recruiting in which boosters have direct access to buy top talent or can easily disguise their attempts to do so. This would enable the schools with the wealthiest supporters to exacerbate challenges of competitive imbalance. Once again, this result would disregard the interests of many in favor of a privileged few.

IV. Harms which Could Ensur with Increased Agent Involvement in College Sports

Under the current proposals, much of the flow of money would likely be facilitated by agents or other professional representatives who fulfill the same purpose, regardless of the titles ascribed to them. We urge those involved in the legislative conversations to further research these individuals and the well-documented issues they have caused for many athletes over the years. Agents usually make a percentage of what their clients make, so economic incentives will encourage them to interfere with college sports at an unprecedented level. If given the opportunity to earn a portion of endorsement deals for student-athletes, agents will certainly pressure coaches to position their clients to make them more marketable. We do not wish for people motivated by their own financial interests to interfere with player-coach relationships and team dynamics. Increased agent involvement will make roster management an extraordinary challenge for coaches as well.

Agents will certainly start recruiting more high school athletes and attempt to exert control, either publicly or surreptitiously, over the college recruiting process. It would not benefit college sports to create a new model in which coaches would have to recruit through agents. We implore leaders to learn more about the malfeasance of some of these individuals, criminal and otherwise, and the harm that such conduct has caused before opening pathways for agents to potentially assume a significant level of control in the college sports environment.

We understand that some non-athlete students may have certain opportunities to leverage social media and other avenues to pursue economic gain. These students do not benefit from the remarkable platform afforded by college athletics, nor do they operate in an environment subject to broader concerns about fair recruiting and consistent application of rules intended to promote broader competitive balance. Therefore, comparisons between certain positioning and opportunities for student-athletes and their non-athlete student counterparts are limited in relevance. The two populations are situated very differently. We urge leaders to be mindful of these different considerations before drastically changing the existing model.

College athletics is a special element of sport in America. It has provided life-changing opportunities to student-athletes in many sports who have gone on to become leaders throughout society. We understand the importance of evolving with the world in which we live. As leaders attempt to discern fair ways for a very small number of student-athletes to make money from commercial activities each year, however, we implore them not to disregard the paramount concerns of the overwhelming majority of other sports and student-athletes. It is our hope that the current name, image, and likeness proposals will be revisited in light of the sentiments herein so that we may ensure the sustainability of meaningful educational and athletic opportunities.

This Statement is Supported by the Following National Associations:

American Hockey Coaches Association
American Volleyball Coaches Association
College Gymnastics Association
College Swimming and Diving Coaches Association of America
Collegiate Rowing Coaches Association
Intercollegiate Tennis Association
National Collegiate Equestrian Association
National Field Hockey Coaches Association
National Wrestling Coaches Association
United Soccer Coaches
United States Fencing Coaches Association
Water Polo Coaches Association
Women's Golf Coaches Association