

JOINT WRITTEN TESTIMONY FROM THE OFFICES OF GENERAL  
COUNSEL OF  
THE UNIVERSITY OF KANSAS AND KANSAS STATE UNIVERSITY  
FOR SENATE BILL 208

On behalf of the University of Kansas, Kansas State University, and each's respective Athletics Programs, we jointly write to oppose the legislature's passage of Senate Bill 208.

This legislation puts higher education on a certain path to numerous litigation situations. Universities around the state will see an already difficult financial circumstance strained even further. The application of Section 4 to state agencies conflicts with constitutional protections and federal legislation, such as Title IX, that those educational agencies are required to follow. The net result creates a situation where school administrators are forced to allocate depleted financial resources to litigate the application of those conflicting laws instead of using those funds to meet pressing educational goals for the students and communities they serve.

Additionally, the proposed legislation creates an environment ripe for misuse. The language provides an unchecked course where competing students, competing student's family members, individuals with personal grudges, or wholly unaffiliated third-parties can dispute a student's gender. The result being universities are handcuffed into withholding such students from competition or face the potential of uncapped damages and attorneys' fees liabilities. And on the other hand, universities will also have to contend with the likely litigation fallout from its own student(s)

being wrongfully withheld from competition. The result being universities litigating this law's application from all sides and at every foreseeable turn.

Further, Section 5's newly created cause of action relies on legal phrasing associated with employment law ("retaliation or other adverse action") yet such phrasing has no defined meaning outside of a traditional employer/employee relationship. It is not a stretch to envision lawsuits claiming retaliation when coaches make legitimate decisions concerning playing time or play calls that do not match a student or family's personal views on team management. Thus, similar to other sections of the proposed legislation, universities are left to apportion valuable resources to investigating and responding to not only actually filed claims but also threatened claims—regardless of merit.

Lastly, rules and regulations governing scholastic athletic competitions have a long history of oversight by governing bodies such as athletic associations and conference affiliations. The guidelines for competition standards and competitor allowances is best left to those respective athletic governing bodies to establish its own competitive environment that works for its student-athletes and communities.

We are hopeful that after evaluating the unquantifiable and certain financial liabilities this new legislature places on the various educational levels around the State of Kansas that the legislature will see fit to vote "no" on passage of SB208.