



Tuesday, February 18, 2020
House Bill 533 – Council on the Fair Treatment of Student Athletes
Maryland House Appropriations Committee
Ellen Herbst, USM Vice Chancellor for Administration and Finance
Urging an Unfavorable Report

Chair McIntosh, Vice Chair Jackson and members of the committee, the University System of Maryland (USM) offers the following testimony to be considered in the deliberations over the proposed House Bill 533.

The USM Board of Regents places the highest priority on the health and well-being of all its students—including those who participate in intercollegiate athletics. The Board has worked with leadership at USM institutions to identify issues and areas for improvement, and institutions have responded with enhancements to programs related to the care and training of student-athletes. This includes the implementation of last session’s House Bill 876 Policy on Student Concerns about Athletic Programs & Activities. Institutions have created portals for student athletes to confidentially submit issues and problems to be addressed. The portal is monitored by officials both inside and outside of the athletic department. USM will submit an annual report to MHEC as stipulated in the legislation.

The USM shares the intentions and motivations behind House Bill 533 but must point out general and specific areas of concern. The past 20 months have been tragic and difficult for all impacted by the passing of Jordan McNair, and has prompted both internal and independent reviews of athletics and the associated medical care provided to student-athletes, not just at University of Maryland, College Park (UMCP), but at each of the USM institutions with athletics programs. The chair of the Board of Regents, Linda Gooden, has made it a top priority to address the recommendations identified in the Walters report, a report that examined procedures and policies specific to athlete-training and the care of university student-athletes, and implement them. USM institutions have responded by adopting the recommendations of the Walters report.

The Walters report included several dozen recommendations which the Board has directed all USM institutions with athletics to review and adopt. Importantly, and relevant to the consideration of the proposed bill, UMCP has created an independent Athletic Medical Review Board comprised of approximately a dozen medical and sports performance professionals from outside the university to review and advise on student-athlete medical protocols and health and well-being matters.

Provisions relating to a state-wide Council on the Fair Treatment of Student Athletes

The Board of Regents continues to review and improve its oversight of intercollegiate athletics at USM institutions, strengthening the existing workgroup of Regents that has been effective in providing sustained and focused attention on issues and concerns associated with academic achievement and progress, Title IX and equity considerations, appropriate fiscal management, and student-athlete physical and mental health matters. Through its Workgroup on Intercollegiate Athletics, the Board of Regents regularly reviews financial, academic and Title IX compliance information submitted in accordance with Board policy. It has also investigated matters relating to academic support resources, institutional pay practices for coaches and athletic directors, and medical support arrangements. The Regents routinely consult with athletic directors and institution presidents ultimately responsible for the operations of their campuses, including athletics, to ensure that communication and lines of accountability are maintained and recognized.

This established Board of Regents Workgroup has a scope and focus which includes many of the matters proposed for the Council in the bill, and has an established and direct route for proposing policy, collecting essential information in a manner that protects student privacy concerns, communicating with institution presidents and athletic directors to initiate needed change outside of Board of Regents policy, and has a proven track record of overseeing improvement both in oversight as well as program management, such as the mechanisms in place to monitor, in near real-time, academic progress of student-athletes. The Regents also oversee other areas covered in the proposed bill through its Education Policy Committee.

Establishing a state-wide review and advisory group proposed in the bill, distinct and outside of the University System of Maryland, such as the Council, would create a conflict between the role of the proposed Council and the responsibilities and authorities of USM Regents, Chancellor, and institution Presidents. The Board of Regents Workgroup on Intercollegiate Athletics has been effective in the review of athletics programs and student-athlete academic information, and in assessing operational activities such as student-athlete academic support and, more recently, medical support services available to student-athletes.

The USM and the Board of Regents welcomes the voice of the General Assembly, in addition to student-athletes, parents, and others with interest, in identifying new areas of focus or improvement, but believe the proposed Council will undermine and diminish the work and effectiveness of USM governance mechanisms put in place to date.

The requirement that the USM provide staffing for the proposed Council will require the addition of specialized staff, both at the USM Office, as well as within athletics departments. This will add considerable cost to the USM Office budget, but more importantly, to the staffs of institutions' athletic departments. This is an important concern, as USM institutions, like most athletics programs at colleges and universities across the country, are expected, by policy, to be self-supporting. This means the Board expects athletics spending to be done with athletics monies, and not place pressure on tuition levels or use funds of other activities. This fiscal mandate is difficult to achieve, and USM institutions work extremely hard to satisfy the expectation. That point made, of the five institutions in the University System of Maryland with

Division 1 athletics programs, four rely heavily on a student-athletics or activities fee that is used to support athletics. Any additional cost imposed on the athletic department must be covered by additional revenue, and the only plausible source is increased student athletics or activities fees, which increase the cost of attendance for all students at that institution. None of the USM institutions have any significant amount of reserves or surplus operating revenues to fund the additional costs expected to be incurred as a result of the proposed legislation. Importantly, it will also represent additional workloads for the staff at the universities that currently support our student athletes and oversee the universities' support of student athletes.

Provisions relating to student-athletes use of name, likeness, or image

The USM and its institutions share the values and intent of the proposed legislation relating to student-athletes' ability to benefit from the use of name, likeness, and image. Across the country, a number of states are considering, or have adopted legislation relating to student-athletes' use of their names, likeness, or image. At the same time, there is strong interest in Congress to adopt federal legislation that would affect and compel NCAA and conference rule changes, and some legislative action is expected. The prospect of a patchwork of federal law and individual, differing state requirements is concerning to the USM, and we believe that any legislative initiative is best handled at a federal, rather than state, level so that there is a clear and consistent set of standards devoid of conflicts between differing legislative initiatives in different legislative bodies. Further, the implementation of rule changes adopted by the NCAA and the various conferences are matters where institutional decision-making, rather than the perspective of a detached and independent Council, will balance the concerns and needs of the entire campus community.

Lastly, issues like the impact of compensation received by student-athletes for the use of name, likeness, or image may have implications for federal financial aid processes and calculations, and potentially accreditation matters that are better addressed through federal legislative processes.

In summary, while the University System of Maryland shares the values, intentions, and motivations behind House Bill 533, we have significant concerns with the proposed bill as written, for the reasons and concerns laid out above.