UNIVERSITY OF OREGON

May 15, 2013

The Honorable Chris Garrett
Chair, House Committee on Rules
900 Court St. NE, H-283
Salem, OR 97301

Dear Representative Garrett:

We write on behalf of the University of Oregon and Oregon State University regarding HB 3524. This bill would put the universities at a disadvantage relative to other colleges and universities in attracting and retaining coaches in all sports. The bill also singles out one category of employee for unfavorable treatment relative to acts or omissions in the scope of employment that are not unlawful. Finally, at its most elemental level, the bill provides for the threat of legal action, and actual legal action, by the State against a university employee relative to conduct that is proscribed by an organization that the employer has joined voluntarily.

Governmental and private employers generally indemnify and defend their employees from and against any claim or demand arising out of an alleged act or omission occurring in the performance of duty. This time-honored doctrine is called "*respondeat superior*" (Latin for "let the superior answer"). The purpose of this doctrine is fairly simple: to hold employers responsible for the costs of doing business, including the costs of employee carelessness or misconduct, because the employer directly benefits from the employee's work. If the injury caused by the employee is simply one of the risks of the business, the employer will have to bear the responsibility.

There are a number of practical reasons for this approach: (1) it encourages employers to monitor the conduct of their employees and train them how to do their jobs properly; (2) it enables employees to do their jobs without having to worry at every moment about personal liability; (3) it fosters cooperation between employees and employers in the defense of litigation and other matters; and (4) it provides assurances that employees will follow the instructions of their employers.

Employers need not defend and indemnify their employees who engage in conduct that is criminal or malicious in nature. In particular, Oregon public employers are relieved of their obligations of defense and indemnity if a public employee engages in malfeasance in office or willful or wanton neglect of duty. However formulated, the general line drawn is time-honored and promotes stability and the public interest. HB 3524 would change this standard for one category of employee in one type of situation.

While we may think of head football and men's basketball coaches, the bill as drafted applies to all coaches, regardless of sport or duties. Further, the bill would apply to Oregon State University, Portland

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State University, the University of Oregon, and Western Oregon University—all members of the National Collegiate Athletic Association. However, the bill would not apply to NCAA member institutions in other states, nor would it apply to members of the National Association of Intercollegiate Athletics such as Eastern Oregon University, Oregon Institute of Technology, and Southern Oregon University.

Membership in the NCAA is at the institutional level and is voluntary. Membership generally serves the interests of the member institutions. The NCAA currently classifies violations as "secondary" or "major." This is not like the distinction between a misdemeanor and felony. Further, a word search of the NCAA Division I Rule Manual does not reveal the use of intent or recklessness to characterize conduct. Thus, an initial issue in any litigation brought against the coach would be whether the coach acted intentionally or recklessly. In order to avoid a lawsuit by the Attorney General, a coach would have the incentive to hire a lawyer at the earliest possible hint of an allegation of an NCAA violation in order to formulate a strategy that protected the coach, not the university, rather than cooperate with the university in the investigation and defense of the matter.

We thank you for the opportunity to comment on this bill.

Sincerely,

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University of Oregon

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