

## Opponent Testimony of SB13

House Education Committee

March 13, 2023

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Chairman Thomas and Members of the Committee, thank you for the opportunity to provide testimony in **opposition of Senate Bill 13** on behalf of the 759 member schools and governing boards of the KSHSAA.

1. The KSHSAA mission is to serve Kansas students by providing leadership for the administration of education based interscholastic activities. Each year, more than 110,000 students participate in these education-based activities, learning and growing in the process.
2. Since 2011, the KSHAA has engaged in a media rights contract in order to feature Kansas students participating in any of the 34 athletic, academic and performance activities sponsored by the KSHSSAA.
3. The current contract between the KSHSAA and the NFHS Network is the third exclusive contract extended by the KSHSAA, but the first with the Network. Ironically, one of the previous exclusive contracts was with a broadcaster now supporting SB 13.
4. In 2019, the Kansas State High School Activities Association (“KSHSAA”) entered into a written contract with NFHS HoldCo., LLC (“NFHS Network”), granting NFHS Network certain exclusive rights to produce and distribute certain KSHSAA playoff, tournament, and championship events. I have been advised that SB 13 would have the effect of impairing that contract by negating the exclusive rights granted to NFHS Network in the contract. For that reason, I have been advised that SB 13 not only has the potential of causing a breach of the contract, but would violate Article I, Section 10, Clause 1 of the United States Constitution which provides that “**No State shall ... pass any ... law impairing the Obligation of Contracts ...**”, exposing the State to liability. The KSHSAA would respectfully suggest that before considering SB 13 further, the Legislature seek the opinion of the Kansas Attorney General on these serious issues.
5. Since 2019, the KSHSAA has partnered with the NFHS Network, as they were the only media partner willing to support all activities we administer, at all levels of participation. In fact, the NFHS Network is the only media platform willing to:
  - a. Support all KSHSAA member schools.
  - b. Support boys and girls athletics.
  - c. Support academic non-athletic activities such as assemblies, performances, graduations, convocations, and speech & debate.
  - d. Support all levels of activities (varsity, junior varsity, freshman, C-team, etc.).
  - e. Not focus on the elite individuals, schools, or teams.
6. The Network covers all production costs for all events. No funds are expended by member schools nor the KSHSAA for these broadcasts.
7. The NFHS Network supports school (student) broadcast programs, providing learning opportunities for students in all components of production, marketing, and more relative to streaming media and broadcasts.

8. Since the NFHS Network started, the **first ever broadcasts of state championship events** have been streamed in the following activities:
  - Boys cross country
  - Girls cross country
  - Gymnastics
  - Boys Swimming and Diving
  - Girls Swimming and Diving
  - Both days of Boys and Girls Track and Field
  - Boys Bowling
  - Girls Bowling
  - Unified Bowling
  - For the first time, all quarterfinal, semifinal, consolation and championship games for boys and girls in all classifications of the state championship basketball tournament were live streamed. For the first time, all classifications of championship softball games were live streamed.
  - For the first time, all classifications of championship baseball games were live streamed.
9. In addition to the NFHS Network agreement with the KSHSAA, 186 member schools are partners with the Network for regular season contests. Schools exercise local control to make decisions relative to their broadcast partners during the regular season.
10. The NFHS Network returned \$108,000 to those schools this past year and \$290,000 since inception. The NFHS also provides funds to the KSHSAA which help the KSHSAA to hold down postseason ticket prices and limit needed financial support from member schools. This type of financial support to member schools and the KSHSAA would not be possible without the exclusive rights granted to the NFHS Network through its agreement with the KSHSAA. SB 13 would have the effect of terminating that exclusive right and those benefits.
11. Events not picked up by the NFHS Network are available to other broadcasters.
12. To date, the NFHS Network has met every expectation detailed in the contract.
13. The NFHS Network is the only national network allowing all levels of college coaches the opportunity to utilize one source to review video of prospective students they may pursue for scholarship offers.
14. The right of a state association, such as the KSHSAA, to enter into an exclusive media agreement was upheld by the 7<sup>th</sup> Circuit Court decision in *Wisconsin Interscholastic Athletic Association v. Gannett Co., Inc*, 658 F.3d 614 (7th Cir. 2011).
15. The Gannett case is the same ruling providing the opportunity for the colleges and universities to maintain exclusive agreements, similar to the one maintained by the KSHSAA with the NFHS Network.
16. If a postsecondary version of SB 13 were passed, other parties would be permitted to stream KSU football and KU basketball aside from the exclusive contracts maintained by those institutions (and every postsecondary institution attempting to feature their student-athletes in competition).

The KSHSAA respectfully requests the Committee not support SB 13.