

Delivered Electronically

April 28, 2022

Minnesota State Legislator
State Office Building
St. Paul, MN 55212

Subject: Support for the Legislative Request for a Comprehensive Review of the Role of Athletics at the University of Minnesota

Dear Legislator:

On March 15, 2022, a bipartisan group of thirty legislators signed a letter directed to University of Minnesota President Joan Gabel, the Board of Regents, and Athletics Director Mark Coyle expressing significant concerns about the University's recent cutting of three sports teams and individual athletics opportunities for women by the Twin Cities Campus Athletics Department. On April 6th of this year, another letter was sent by five State Senators to the Board of Regents requesting the establishment of a special commission to review and evaluate the role of athletics at the University of Minnesota.¹

On April 7th, the Chair and Vice Chair of the Board of Regents responded to the March letter describing the Regents' vote to cut three men's sports and a number of women's athletics opportunities on the Twin Cities Campus ("Board Leadership Letter"). The Board Leadership Letter provides a lengthy explanation of their bases to support the cuts.

As an individual Regent, I want to ensure the Board Leadership Letter does not cause confusion about the final vote or the range of perspectives offered by individual Regents during the discussion. While I understand each Regent received a draft of the Board Leadership Letter prior to its distribution, I did not contribute to its drafting nor was my input requested.

This letter provides more detail and context relating to the Regents' vote on this issue, as additional clarity is appropriate when the actions and intent of public officials are being presented in this fashion. This clarity is especially important when the matter in question is of strong interest to our legislative electors and other community members.

¹ These letters followed the letter inquiry on the same topic by nine State Senators and a State Representative on August 23, 2021.

The Board of Regents vote to cut Men's Gymnastics, Men's Indoor Track, Men's Tennis, and a number of women's athletics opportunities was 7-5, occurring after a fourth team presented for elimination – Men's Outdoor Track – was taken off the list the morning of the vote.

The Regents voted to cut three men's sports and numerous women's athletics opportunities by the narrowest margin possible. Those voting in favor of eliminating the men's sports and women's positions without further review were:

Regent Ken Powell
Regent Steve Sviggum
Regent Rick Beeson
Regent Mary Davenport
Regent Kao Ly Ilean Her
Regent Janie Mayeron
Regent David McMillan

The Regents voting to retain the men's sports and women's sports opportunities to, at a minimum, consider community input and alternative funding models were:

Regent Tom Anderson
Regent Michael Hsu
Regent Mike Kenyanya
Regent Darrin Rosha
Regent Randy Simonson

Without providing the vote count, the Board Leadership Letter may give the impression that all Regents supported the decision and shared the views offered in the letter. As seen above, nearly half the Board took issue with the bases provided for the late-amended cuts and requested information about alternatives, which is in alignment with a broad bipartisan spectrum of legislators and citizens across Minnesota who believe the programs hold importance beyond the University.

Prior to the proposed cuts, the University remained in compliance with equal opportunity and Title IX as shown in multiple recent reviews of University athletics programs.

The Board Leadership Letter provides that Title IX compliance concerns provided a basis for cutting four men's sports (again, reduced to three men's sports on the day of the vote). This claim is inconsistent with the recent internal and external reviews and actions taken by the University's athletics programs prior to the vote. Those reviews, the last-second removal of Men's Outdoor Track, the elimination of women's athletics opportunities, and the addition of men's opportunities on other teams reflect that Title IX compliance did not compel the elimination of men's sports teams or women's opportunities.

In 2015, the Regents received an internal legal review of our Athletics Department that showed areas in need of improvement to remain in compliance with Title IX. As during my previous term as a Regent in the 1990s, I was especially interested in ensuring the University would address those concerns in compliance with Title IX. The Regents were assured by the administration that the University was acting appropriately and was in compliance.

In February 2017, the University's external auditor reported to the Board that NCAA agreed-upon procedures performed by the auditor did not identify any NCAA violations. Those procedures were also included in the external auditor's 2019 audit plan.

In 2018, the U.S. Department of Education Office of Civil Rights ("OCR") conducted a thorough review of the University's Athletics Department programs. In August of that year, OCR reported that it had no Title IX concerns about scholarships and participation at the University of Minnesota. This clean bill of health came less than two years before the effort to cut four men's sports at the University commenced.²

In presenting the plan to eliminate four men's sports in 2020, some of the same University personnel who just months earlier reported to the Regents that the University was in Title IX compliance appeared to abruptly reverse their position. Remarkably, Men's Outdoor Track was suddenly and with limited explanation taken off the list of sports to be cut just as the Regents were entering the boardroom to vote. After months of being told all four sports must be cut to avoid Title IX and other issues, a team with a very large number of male athletes was retained without causing the issues proponents of the cuts previously insisted would arise.³

The reality is that Men's Outdoor Track was retained to secure the Regent votes to narrowly pass the proposed cuts. Further, any imbalance between the number of men's and women's sports opportunities arising after the 2018 OCR review would have resulted from intentional decisions related to women's sports opportunities. Again, the reduction in opportunities for women, the increase in men's participation opportunities on other teams, and the reversal on eliminating Men's Outdoor Track demonstrate that Title IX compliance did not compel eliminating the three men's sports at issue.

Without an immediate Title IX compliance issue and with commitments for private funding, cutting three men's sports and athletics opportunities for women was not necessary.

Without immediate Title IX compliance issues as a basis to validate the cuts, the Board Leadership Letter appears to offer two additional justifications: a growing disparity in gender numbers on campus, and financial considerations.

² When the Regents were originally told cutting four men's sports was required to avoid Title IX non-compliance, we were not informed women's athletics opportunities were also being cut. The women's cuts weren't made clear until shortly before the Regents' vote on the matter.

³ When the administration and Board leadership abruptly removed Men's Outdoor Track from the list of sports teams to be cut, I moved to postpone the vote on the remaining cuts to permit clarification on the impact of the surprising change in course. The motion failed 5 to 7, with the Regents who would then vote to eliminate the remaining three men's sports all voting against the request for additional clarity about the sudden change. This denial of a request for information supported by nearly half the Board, and the denial of an opportunity for the public to understand how the sudden retention of a large men's team would affect the previously offered bases for cutting sports goes against any claim that the final process was transparent.

A change in the gender balance on campus does not require an immediate change in sports opportunities by gender.

The Board Leadership Letter alludes to an increasing percentage of female students at the University of Minnesota that now comprises over half the student body. While the University's mission to serve all Minnesotans should prompt the Board to endeavor to understand the reduction in young men seeking a University education, the recent gender imbalance on campus does not provide a basis to cut men's sports teams and women's sports opportunities.

During the Board's review of Title IX compliance standards, we considered a court opinion offered for the proposition that a shift in campus demographics mandates a shift in sports opportunities by gender. Although the case involved a substantially different fact pattern, the court stated that an institution does not have to respond immediately to shifts in enrollment when a short-term increase in either gender occurs on campus.

In Biediger v. Quinnipiac University, 728 F. Supp.2d 62 (D. Conn. 2010), the judge held that an institution is out of compliance with Title IX if a disparity between athletics opportunities and enrollment results from the institution's actions rather than natural fluctuations in enrollment. *Id. at 85*. In upholding the District Court's ruling, the 2nd Circuit Court of Appeals noted, "OCR has not construed substantial proportionality to require exact proportionality. Rather, substantial proportionality is determined on a case-by-case basis in light of 'the institution's specific circumstances and the size of its athletic program.'" Biediger v. Quinnipiac University, 691 F.3d 85 (2d Cir. 2012) (Citation omitted.)⁴

If the University does not address the growing disparity between the genders in the coming years, a point will eventually arise at which the University must address the number of athletics opportunities it provides for each gender. But based on legal precedent, a natural fluctuation just two years after an OCR finding of compliance does not require immediate termination in men's sports opportunities nor a cut in sports opportunities for women.

The University of Minnesota saves very little money by cutting the three men's sports, if any money at all.

When Athletics Director Mark Coyle first arrived at the University of Minnesota, he and I met individually to discuss his role and the importance and high visibility of college sports. I informed him that I would potentially support narrowing the number of sports offered by the University if doing so eliminated the subsidy of sports by our general fund – which inevitably affects tuition – and resulted in greater success for our most visible and revenue-producing sports. I understood from that dialogue, and a conversation with then-President Eric Kaler, that the department planned to maintain its roster of sports.

Accordingly, when the Regents first learned of the plan to reduce the University's intercollegiate sports offerings, I was open to the discussion. I was surprised, however, by what appeared to be limited

⁴ I agree with the Board Leadership Letter that Title IX is complex and often misunderstood and mischaracterized. If the above reference to the legal standard leads to a continuing dialogue, I welcome an opportunity to participate in a public discussion on the topic.

financial benefit and an inconsistency with principles I believe the Legislature and the public would apply to determine which sports the U of M should offer.⁵

First, each of the sports to be eliminated utilize facilities that will continue to be maintained by the University: Women's Tennis continues to use the tennis courts, Women's Track and Field continues to use the track and field facilities, and Women's Gymnastics, Women's Volleyball, Men's Wrestling, and other activities continue to use Maturi Pavilion. Only Men's Gymnastics had a separate, small, and antiquated practice space that the University will apparently reclaim.

Second, principles we should expect to guide our sports offerings don't appear to be met:

Men's Indoor Track

Men's Indoor (and Outdoor) Track is the most equitable sport, with any individual, regardless of race, ethnicity, geography, or economics being able to participate in any location with nothing more than a pair of shoes (and sometimes not even that). It's a feeder to the Olympics and is otherwise the highest level of competition for virtually all its participants.

Cutting Men's Indoor Track while retaining Men's Outdoor Track makes no sense. It's the equivalent of cutting the football team's offense but retaining its defense. Serious track athletes will select institutions that permit them to compete all year. Offering only half an opportunity to excel at track will reduce the quality and competitiveness of our remaining outdoor track program to a standard below what Minnesota should expect from its flagship campus teams.

Men's Indoor and Outdoor Track are the type of non-revenue sports one would expect at a Land Grant University.

Men's Tennis

While Men's Tennis isn't as aligned as Indoor Track as a core sport, it's a very small team with a limited budget. As stated above, all its facilities remain on the University's books even after the team is eliminated.

Most importantly, the Men's Tennis program has an endowment of funds and additional commitments from supporters to fully fund the cost of the program. It has been a successful program in the conference and provides a great opportunity for the students who make the team. With a strong history of success and strong financial backing that would all but eliminate the cost to the University's budget, the program should be retained.

Men's Gymnastics

⁵ In March 2016, as the University began its search for a new AD, I moved to establish a Regents' committee to "recommend budgeting principles and criteria for prioritizing the sports offered by the University." The ensuing discussion revealed that the motion would likely fail, so on the recommendation of the Board Chair to send it to a committee for further consideration, I withdrew my motion. No committee was ever assigned the matter for consideration.

The Board Leadership Letter makes much out of the declining number of men's gymnastics programs across the country as a basis to eliminate the program. To the contrary, the shifts in men's gymnastics and the University of Minnesota's history of success in the program support retaining the program to be part of a new structure not just for men's gymnastics, but all non-revenue sports as colleges and universities face increasingly difficult financial circumstances.

On principle, Men's Gymnastics is a fundamental sport for the University to offer. Gopher Men's Gymnastics is the aspirational target for hundreds if not thousands of boys across the state who practice at gymnastics centers in every city and town. It has also been a pathway to the Olympics and represents the highest level of competition for virtually all its participants.

In the age of chronic screen and computer addiction, the physical activity and goal setting reflected in gymnastics competition are critical for today's youth. Participation by boys is also essential to the economic viability of private and non-profit gymnastics facilities across Minnesota. Without the University's Men's Gymnastics Team to look up to, we will see a decline in the sport among youth. As an institution that serves Minnesota, this impact should be given greater value than that reflected in the Board Leadership Letter and the decision to cut the sport.

Like Men's Tennis, the Men's Gymnastics team has a small budget and committed supporters who were seeking an opportunity to raise the necessary funds to endow the continuation of the team. University leadership unilaterally denied them the opportunity to consolidate that effort and rejected requests to discuss these matters with those who sought to retain the sports. With financial support, a tremendous record of competitive success, and a positive impact on youth and communities across Minnesota, Men's Gymnastics should continue to be a part of U of M intercollegiate athletics.

The University of Minnesota should reinstate the three men's sports at issue and direct all sports to identify external funding.

Two of the cut programs already had substantial commitments to fund an endowment to cover their long-term operations. With a clear directive from the University, all sports at the University should be called on to establish a means of funding, either through revenue generation or philanthropy or both, to avoid taking money from the University's mission of teaching, research, and outreach.

The programs at issue should be given a reasonable time to meet those financial requirements. In doing so, the University will become a national leader in how non-revenue sports are supported in these times of economic challenge. The University missed a critical opportunity, but it isn't too late to proceed in that direction.

The call for a special commission to conduct a comprehensive review and evaluation of the role of athletics at the University of Minnesota is timely and welcomed.

Every aspect of the University of Minnesota, including intercollegiate athletics, belongs to the people of this state. The constitutional vesting of the governance of the University in a board of citizens elected by the Legislature is intended to ensure the University meets its mission to serve the people of Minnesota.

After calling for a comprehensive review of intercollegiate athletics over six years ago, I fully support the legislative call for a review of their purpose and role. The Legislature's request is appropriate for three reasons: the University exists for the benefit of the people of Minnesota, the Legislature provides

hundreds of millions of dollars annually to the U of M including those that have supplemented the athletics department budget for decades, and the Legislature elects the Regents who, while benefitting from a constitutional autonomy created to preserve academic freedom, should be responsive to the public and our legislative electors.

Responding to Your Request.

In addition to individual conversations some Regents have had with numerous legislators, thirty-nine legislators including members of both chambers and each political party have called for a review of the recent vote to eliminate three men's sports and women's sports opportunities and the future of intercollegiate athletics on our Twin Cities Campus. At the next Board of Regents meeting, I will move to immediately establish a committee to conduct the review in consultation with legislative leadership regarding its composition and purpose. In the meantime, I urge all legislators to stay engaged with the University of Minnesota and the Regents you've elected to guide the University. I earnestly hope you maintain your interest and involvement and that the Board of Regents is responsive to your concerns and the concerns of the public we're elected to serve.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Rosha', with a large circular flourish on the left side.

Darrin M. Rosha
3rd District Regent
University of Minnesota