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March 22, 2022

The Honorable J. Stuart Adams
President of the Senate

and

The Honorable Brad R. Wilson
Speaker of the House

Mr. President and Mr. Speaker,

I believe in fairness and protecting the integrity of women's sports. I know both of you are committed to these same ideals and that we have worked very hard together to resolve the many issues surrounding transgender student participation in sports. Unfortunately, HB11 has several fundamental flaws and should be reconsidered. Because the bill was substantially changed in the final hours of the legislative session with no public input and in a way that will likely bankrupt the Utah High School Athletic Association and result in millions of dollars in legal fees for local school districts with no state protection, and for several other reasons below, I have chosen to veto this bill.

The transgender sports participation issue is one of the most divisive of our time. Because there are logical and passionate arguments by many parties, finding compromise or common ground can be difficult. Sadly, there is very little room for nuance in this debate. But I hope you will permit me an opportunity to explain my reasons for vetoing HB11.

Utah has a history of trying to approach complicated issues in ways that bring collaboration and fairness. From immigration and criminal justice reform to LGBTQ protections and religious freedom, Utah has often shown an unusual willingness to find new and compassionate ways to solve the most toxic debates of our time. For this reason, I was heartened and encouraged to see legislators sitting down with LGBTQ advocates to work on a compromise that would both protect women's sports and allow some participation for our most marginalized transgendered youth. No other state has done this, and we hoped that Utah could be the first.

As you know, the negotiations centered around the potential compromise of a commission of experts that would help decide on an individual basis which kids would be able to participate.

The concept was fairly simple. For the very small number of transgender kids who are looking to find a sense of connection and community—without posing any threat to women’s sports—the commission would allow participation. However, the committee would prohibit participation in the rare circumstance of an outlier who could pose a safety threat or dominate a sport in a way that would eliminate competitive opportunities for biological females.

Unfortunately, over time, the negotiations got bogged down debating the makeup of the commission and some of the language in the bill. While we were not able to reach an agreement on the commission, the bill sponsors did agree to remove some of the most troubling language. As the hallmark of a good compromise, neither side was thrilled, but there was a path forward. And while I admit it was not perfect, there was general agreement that we could pass the bill and continue tweaking the concept during the next year as necessary.

On the last day of the legislative session we began hearing rumors of a 4th substitute of the bill that would implement an all-out ban, with the new commission only coming into play if a court prohibited the ban. While it is not unusual to have legislators propose changes to bills, it is unusual to have major overhauls proposed at the last minute on significant policy issues that had been the subject of so much negotiation. It is even rarer to have these pass, especially with no communication with those who had been negotiating the issue. So, you can imagine my surprise when the 4th substitute was revealed late on the last day of the session and debated and passed just a few hours before midnight.

It is important to note that a complete ban was never discussed, never contemplated, never debated and never received any public input prior to the Legislature passing the bill on the 45th and final night of the session. For this reason, many legislators who might have otherwise supported the policy felt compelled to vote against it.

I believe in process. How we make policy matters almost as much as the policy itself. An opportunity to participate is a critical component of public trust. While changes are inevitable, this was more than just a cosmetic change. This was a complete reversal of every discussion, public or private. Every article written by the media on this issue was about the commission and a compromise. Every answer given during press availability was about the commission and a compromise.

Much of the debate that night centered around the difficulties of bad process and a lack of time to get constituent input. This lack of time and input has serious legal and financial implications as well (more on that below). And while I appreciate the apologies I have received from legislators involved in the truncated proceeding, I feel a veto is necessary to improve the process and to better allow the public an opportunity to weigh in.

One of the worst results of that process was the inability of legislators to understand the financial impacts that will be forced upon the Utah High School Athletic Association (UHSAA) and local Utah school districts that will inevitably get sued under this bill. The UHSAA is a private organization and runs the real risk of insolvency and bankruptcy, putting our entire state athletics program in danger. Having just completed a lengthy and very expensive lawsuit, the organization does not have significant reserves on hand. Furthermore, the UHSAA has been clear that if the state ever attempted a ban, the state would also need to provide indemnification to hold the organization harmless in the forthcoming lawsuit.

Unfortunately, HB11 provides no financial protection for the UHSAA, only an explicit invitation for a lawsuit. With several lawsuits already being litigated across the country, why would Utah insist — even encourage — expensive and debilitating legal action with no recourse for the organization that serves our own student athletes and schools? I hope you can agree that if we want to protect women's sports, bankrupting the institution that is responsible for their participation is a bad place to start.

To make matters worse, shortly after the introduction of the 4th substitute there was a hastily adopted amendment to explicitly exclude Utah's local schools from indemnification. Because the 4th substitute was so quickly introduced and at the very end of the session, there was significant confusion at the time about the reason such a clause was necessary and the impact it would have. Clearly, the reason for the amendment was to avoid a fiscal note that could not have been funded at such a late hour without nullifying the bill. However, during the discussion on the Senate floor it was incorrectly argued that government immunity would protect schools from a lawsuit based on the ban. Because these lawsuits would involve potential civil rights violations, they would not qualify for governmental immunity. This means that schools would inevitably face costly litigation and the potential for significant damages.

For this reason, many schools across the state of Utah have reached out expressing concern. Had they been aware of the language of the 4th substitute with enough time to comment, they undoubtedly would have shared a similar message with legislators who were forced to vote on the bill with no public input. Again, why would we risk significant legal exposure for some of our poorest schools with no financial support when other states are already funding identical legal defenses across the country? If the state insists on a policy that encourages significant litigation, I believe the state should pay for the litigation. It is my understanding that you have polled your members and that you have the sufficient two-thirds majority to override a veto. Should this occur, I will immediately call a special session to change this section of the bill in order to avoid bankrupting our athletic association and local schools. A simple veto override will not resolve this fundamental issue.

I also think it's important to address some of the arguments that came up during the passing of the 4th substitute of the bill. Many legislators brought up the trans swimmer at the University of Pennsylvania, who has recently dominated women's swimming, setting records and lapping the field. I agree with those who are concerned with this egregious example. I believe this is terrible for women's sports. There are natural advantages that come from our birth sex, which is the very reason that we have men's and women's sports in the first place. Setting records and taking scholarships away from biological gendered women should give everyone pause. It's bad for women and it is bad for the LGBTQ community, as it turns allies and reasonable people into opponents. I don't believe that this type of participation is compelled by the Constitution, but that decision will be left to the courts in the months and years to come.

However, there are a few problems with this example being the reason for a complete ban in Utah. First, this bill would do nothing to prevent that example, as HB11 only applies to high school and middle school and does not impact collegiate athletes. And second, if there was a similar example in a Utah high school, the proposed commission would prevent it from happening. Indeed, that is the very purpose of the commission: it would attempt to both protect women's sports and allow our most vulnerable an opportunity to participate. Interestingly, the very legislator who introduced the 4th substitute of the bill called the commission concept "brilliant." I do not know if the commission would completely solve this divisive issue, but I appreciate the innovative and respectful approach that it offers.

I also believe there is broad misunderstanding around the current rules regarding transgender participation in sports. In particular, from the testimony of many, there seems to be a belief that any biologically-born male could simply say he was transgender and begin participating in women's sports. This is incorrect. For many years now, the UHSAA has had in place a rule that only allows male-to-female transgender participation in women's sports after a full year of difficult transition hormone therapy and in consultation with a health care professional. This has likely prevented some participation and helped to even the playing field. As a representative of the UHSAA stated: "As we read the science right now, we like our policy. This year we have four students who have gone through our paperwork and we have not had any complaints from any other students or families or school administrators." I should note that while I have some reservations about a policy that requires or incentivizes these transitions, it is the policy in place.

Finally, there is one more important reason for this veto. I must admit, I am not an expert on transgenderism. I struggle to understand so much of it and the science is conflicting. When in doubt however, I always try to err on the side of kindness, mercy and compassion. I also try to get proximate and I am learning so much from our transgender community. They are great kids who face enormous struggles. Here are the numbers that have most impacted my decision: 75,000, 4, 1, 86 and 56.

- 75,000 high school kids participating in high school sports in Utah.
- 4 transgender kids playing high school sports in Utah.
- 1 transgender student playing girls sports.
- 86% of trans youth reporting suicidality.
- 56% of trans youth having attempted suicide¹

Four kids and only one of them playing girls sports. That's what all of this is about. Four kids who aren't dominating or winning trophies or taking scholarships. Four kids who are just trying to find some friends and feel like they are a part of something. Four kids trying to get through each day. Rarely has so much fear and anger been directed at so few. I don't understand what they are going through or why they feel the way they do. But I want them to live. And all the research shows that even a little acceptance and connection can reduce suicidality significantly. For that reason, as much as any other, I have taken this action in the hope that we can continue to work together and find a better way. If a veto override occurs, I hope we can work to find ways to show these four kids that we love them and they have a place in our state.

I recognize the political realities of my decision. Politically, it would be much easier and better for me to simply sign the bill. I have always tried to do what I feel is the right thing regardless of the consequences. Sometimes I don't get it right, and I do not fault those who disagree with me. But even if you disagree with me, I hope this letter helps you understand the reasons for my decision.

Sincerely,



Spencer J. Cox
Governor

¹ Austin, Ashley, Shelley L. Craig, Sandra D'Souza, and Lauren B. McInroy. 2022. "Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors." *Journal of Interpersonal Violence*. Vol. 37(5-6) NP2696–NP2718.