

DIVISION I STUDENT-ATHLETES: THE EVOLUTION OF THEIR VOICE AND VOTE

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I. INTRODUCTION

At the NCAA Annual Convention in San Diego in January 2014, Division I members engaged in a “Governance Dialogue” that resulted in a total revamp of the NCAA Division I Governance Structure, including legislative authority for the ACC, Big Ten, PAC-12, Big 12, and the SEC (the “Autonomy Conferences”)² on a series of topics. The new structure was approved in August 2014 and the first legislative activity of the Autonomy Conferences took place at the NCAA Annual Convention in January 2015. Since then, the Autonomy Conferences have adopted significant legislation that has positively impacted student-athletes, such as the cost of attendance allowance³ and the time management legislation.⁴

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² The Autonomy Conferences are sometimes referred to as the Power 5, with the other Division I conferences, other than the Ivy League, referred to as the Group of 5 (AAC, C-USA, MAC, MWC, and Sun Belt).

³ Mitch Sherman, *Full cost of attendance passes 79-1*, ESPN (January 18, 2015), http://www.espn.com/college-sports/story/_id/12185230/power-5-conferences-pass-cost-attendance-measure-ncaa-autonomy-begins.

⁴ Jake New, *A True Day Off*, INSIDE HIGHER ED (Jan. 23, 2017), <https://www.insidehighered.com/news/2017/01/23/power-five-leagues-adopt-new-rules-lessening-time-demands>; Jake New, *What off-Season?*, INSIDE HIGHER ED (May 8, 2015), <https://www.insidehighered.com/news/2015/5/08/college-athletes-say-they-devote-too-much-time-sports-year-round>.

To me, however, one of the most important aspects of this new governance structure has been the involvement of student-athletes. Following approval of the new structure in August of 2014, one student-athlete serves on the Division I Board of Directors and two student-athletes serve on the Division I Council.⁵ Most significantly, in the Autonomy Conference governance structure, three student-athletes from each of the five conferences cast votes on autonomy legislation, resulting in fifteen student-athlete votes to complement the sixty-five votes of the schools that make up the Autonomy Conferences.⁶

As a result, in the Atlantic Coast Conference (ACC) five student-athletes (the three autonomy representatives and the incoming and outgoing ACC Student-Athlete Advisory Council (SAAC) chair) now attend the ACC's spring meeting. A subset of these students participate in the conference's fall governance meeting and legislative conference calls. At my school, and I assume others, student-athletes now serve on the athletic committee and other school committees that relate to athletics.

The involvement of student-athletes has enriched the debate and discussion. Having student-athletes at the table provides important information and perspective that may not have otherwise been considered. Why, I wonder, did it take us so long to do this? This paper explores the evolution of the student-athlete voice and vote in the NCAA Division I governance structure.

II. THE EVOLVING NCAA GOVERNANCE STRUCTURE FOR DIVISION I

The governance changes effective at the 2015 NCAA Annual Convention mark the first-time student-athletes have been represented in the NCAA governance structure, other than in advisory capacity or through the Student-Athlete Advisory Council (SAAC). The NCAA was created in 1910, but did not have a regulatory function until the Committee on Infractions was formed in 1951, the same year that Walter Byers was named the

⁵ 2018-19 NCAA DIVISION I MANUAL §§ 4.3.1(g) (Division I Council), 4.4.1. (Division I board of Directors).

⁶ *How the NCAA Works: Division I*, http://www.ncaa.org/sites/default/files/2018DINCAA-HowTheNCAAWorks-DI_20180313.pdf.

NCAA's first Executive Director.⁷ In 1973, Divisions I, II, and III were created to provide rules specific to – and presumably favorable for – those institutions that were engaged in “major college football.”⁸ This arguably marked the beginning of the governance challenge raised by the variety of schools in the NCAA and the disparate level of resources that they devote to intercollegiate athletics. The brief history of the evolution of the NCAA governance structure recounted below demonstrates that this struggle is part, if not all, of the motivation behind each successive governance change. In each iteration of the governance discussion, the challenge has been addressed by granting the schools that can and wish to devote more resources to athletics the ability to do so for the greater goal of keeping the institutions united under one banner, particularly the banner that operates the lucrative NCAA Division I Basketball Championship.⁹

The creation of Division I did not ease the frustration of the “major” college football schools with NCAA governance for long. The College Football Association was formed in 1976 by the big football schools and at the 1976 NCAA Convention there was talk that eighty-one of these “major” schools might split from the NCAA because they wished to devote more resources to football than the other schools in Division I.¹⁰ The solution was the 1979 subdivision of Division I into Division I-A for the major football schools and Division I-AA for those Division I institutions that did not wish to devote as much financial support to football.¹¹ In 1996, the next governance restructuring took place with the elimination of the one school, one vote policy and the advent of greater governance responsibility given to college presidents.¹² A twelve-member Executive Committee, with eight members from Division I-A, was created to oversee three separate boards, one for each of

⁷ Anthony G. Weaver, *New Policies, New Structure, New Problems? Reviewing the NCAA's Autonomy Model*, 7 ELON L. REV. 551, 554 (2015).

⁸ *Id.*

⁹ Will Hobson, *Fund and Games*, WASH. POST (Mar. 18, 2014), <https://www.washingtonpost.com/graphics/sports/ncaa-money/>.

¹⁰ Weaver, *supra* note 6, at 556.

¹¹ *Id.* at 553-55.

¹² Brian D. Shannon, *The Revised NCAA DI Governance Structure After Three Years: A Scorecard*, 5 TEXAS A&M L. REV. 69 (2017).

the NCAA Divisions.¹³ A Legislative Council for Division I was created to consider legislation which could also be reviewed by the Board of Directors.¹⁴ Schools were represented on the Legislative Council by their conference representative who cast a weighted vote, depending on a prescribed conference pecking order, designed again to appease the better resourced conferences and to help ensure their continued commitment to NCAA membership.¹⁵ In 2006, the former Division I-A was renamed the Football Bowl Subdivision (FBS) and the former Division I-AA was renamed the Football Championship Series (FCS).¹⁶

The latest governance restructuring talk surfaced in part by the failure of the Division I Legislative Council to adopt a proposal to provide a stipend of \$2,000 to student-athletes as an additional component for the athletics grant-in-aid.¹⁷ As a general matter, the major football schools supported the proposal and the other Division I schools voted against it because of financial resource concerns.¹⁸

Again, the NCAA considered governance reform in an effort to keep the larger, better resourced schools from “breaking away to form their own organization.”¹⁹ The NCAA engaged Ideas for Action, LLC and one of its principals, Jean Frankel, to assist in a governance review. For the first half of 2013, the consultants talked to over 200 stakeholders, including student-athletes.²⁰ An eight-member Presidential Steering Committee was created to oversee the governance overhaul.²¹ A second board of eighteen—including university presidents, senior NCAA staff, and other

¹³ Weaver, *supra* note 6, at 557.

¹⁴ NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 78 (July 18, 2014), <https://www.ncaa.org/sites/default/files/DI%20Steering%20Committee%20on%20Gov%20Proposed%20Model%2007%2018%2014%204.pdf>.

¹⁵ Shannon, *supra* note 11.

¹⁶ *Id.*

¹⁷ See 2014-15 NCAA DIVISION I MANUAL § 15.02.5 (excluding from the grant-in-aid “the incidental costs of attending college . . . [such as] transportation and miscellaneous personal expenses”).

¹⁸ Weaver, *supra* note 6, at 559.

¹⁹ Jean S. Frankel (with Nancy Alexander), *Think it's Hard for Your Board to Work Effectively?* Blog Post, Ideas for Action (Jean Frankel and Ideas for Action were engaged by the NCAA to help it examine its governance structure).

²⁰ Shannon, *supra* note 11, at 70-73.

²¹ *Id.* at 101.

leaders from NCAA councils and committees—also provided guidance. A draft governance proposal was discussed at the Division I Governance Dialogue at the 2014 NCAA Convention.²² Heading into the Dialogue, there was a sense that governance reform should include more representation by “practitioners,” which seemed to be understood to mean athletic directors and perhaps senior athletic administrators including the senior woman administrators. A focal point of the discussion was determining what set of issues would be within the legislative control of the five Autonomy Conferences, with the understanding that the other Division I conferences and schools could opt into legislation adopted by the Autonomy Conferences if they wished.²³

In January 2014, the President of the NCAA Division I Student-Athlete Advisory Council was Duke Lacrosse player, Maddie Salamone. The first day of the Division I Governance Dialogue had come and gone, but student-athletes did not appear in the proposed structure. Indeed, when the question about the role of student-athletes was first raised, “[s]eemingly taken by surprise then, Division I Board of presidents chairman Nathan Hatch had said, ‘That’s not something we’ve wrestled with.’”²⁴ Maddie, after discussion with some of her SAAC cohorts, came armed the next day (like any good student of the time) with her notes on her cell phone. She spoke first, galvanized the room, and literally changed the structure going forward by her powerful remarks. As reported by the press, she said:

There has been a lot of rhetoric around this room that student-athlete well-being is the most important concern. . . . How

²² *Division I Steering Committee on Governance: Recommended Governance Model 29* (July 18, 2014),

<http://www.ncaa.org/sites/default/files/DI%20Steering%20Committee%20on%20Gov%20Proposed%20Model%2007%2018%2014%204.pdf> (describing how the NCAA Division I Board of Directors began an initiative in August 2013 to redesign the “governance structure for Division I).

²³ Michelle B. Hosick, *DI Members Provide Feedback on Restructuring Ideas*, NCAA (Jan. 18, 2014); see Jake New, *‘Autonomy’ Arrives at the NCAA*, Inside Higher Ed (Jan. 19, 2015).

²⁴ Nicole Auerbach, *NCAA Athletes Demand Greater Influence, Inclusion*, USA Today (Jan. 17, 2014); see Allie Grasgreen, *What About the Athletes?*, Inside Higher Ed (Jan. 17, 2014) (reporting that when the question about student-athletes was first asked there was “awkward silence” prior to President Hatch’s response that it had not been considered, although he did add “I think the whole goal of the board is on behalf of the student-athletes”).

could anyone truly know how student-athletes are being affected by the rules without actually talking to student-athletes? Anybody that is going to create and pass legislation related to student-athletes must have a student-athlete on that body with a voting or advisory role, at every level.²⁵

She won the room that day with a straw poll indicating a strong majority in favor of student-athlete representation on the Council.²⁶ Not only did these remarks help to ensure for the first-time that student-athletes would be granted two votes on the Council, but they also led to a student-athlete voting representative on the Division I Board of Directors, and, in the greatest representation of all, gave student-athletes fifteen out of eighty votes in the new Autonomy Conferences' governance structure.²⁷

III. STUDENT-ATHLETE PARTICIPATION IN NCAA DIVISION I GOVERNANCE TODAY

A. *NCAA Division 1 Board of Directors*

There are 351 colleges and universities in the NCAA's Division I.²⁸ Division I is subdivided into the Football Bowl Subdivision (FBS) and the Football Championship Subdivision (FCS).

There are 129 schools from ten conferences and several independents in the FBS.²⁹ The NCAA Division I Board of Directors serves as the highest governing body—with responsibility over “big picture” “strategy, policy, legislative oversight and membership oversight,” setting the overall agenda for Division I Athletics.³⁰ The Board of Directors can, however,

²⁵ Hosick, *supra* note 22; see Auerbach, *id.*

²⁶ Hosick, *supra* note 22 (“sixty-seven percent supported some form of student-athlete participation on a proposed high-level council that would do the day-to-day work of the division”).

²⁷ On May 16, 2017, I had the pleasure of presenting Maddie Salamone with the ACC President's Award for her contributions to this important change in the NCAA's governance structure.

²⁸ *Our Three Divisions*, NCAA, <http://www.ncaa.org/about/resources/media-center/ncaa-101/our-three-divisions>.

²⁹ See NCAA FBS Football, <http://www.ncaa.com/standings/football/fbs>.

³⁰ 2018-19 NCAA Division I Manual § 4.2.2; (Aug. 2018) [hereinafter NCAA Manual 2018-19]; DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED

ratify or adopt legislation concerning academic affairs, or other items that show an extraordinary adverse impact on D1 membership.³¹ The Chair of the NCAA Division I Student-Athlete Advisory Committee (DI SAAC) sits on the NCAA D1 Board of Directors (Board) with voting privileges.³² There are twenty-four members on the Board, twenty are Presidents or Chancellors (one from each FBS Conference and ten who rotate from among the remaining twenty-two Division I conferences).³³ The other three members of the Board are an athletic director (AD), senior woman administrator (SWA), and a faculty athletics representative (FAR).³⁴ The presidents/chancellors on the Board retain the right to exclude the four non-president voting members (FAR, AD, SWA, and student-athlete) “to meet in limited circumstances in president-only executive sessions when necessary and appropriate.”³⁵ The student-athlete vote is one of twenty-four (or 4.2% of the total votes) and the student-athlete may be excluded with other non-presidents from the Board’s executive sessions.

GOVERNANCE MODEL 7-8 (July 18, 2014) (explaining how the Board addresses future challenges of athletics, sets parameters that determine present and future goals, procedures and strategies, monitors membership standards and legislation to make sure it does not conflict with the policies or goals of the NCAA).

³¹ NCAA MANUAL 2018-19 § 4.2.2(d) & (e); NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 7-8 (July 18, 2014) (explaining how the Board addresses future challenges of athletics, sets parameters that determine present and future goals, procedures and strategies, monitors membership standards and legislation to make sure it does not conflict with the policies or goals of the NCAA).

³² NCAA MANUAL 2018-19 § 4.2.1; This student-athlete is the Chair of the NCAA’s Student Athletic Advisory Committee. *Id.* at § 4.2.1(g).

³³ NCAA MANUAL 2018-19 § 4.2.1(a), (b) & (c); *How the NCAA Works: Division I*, (outlining that the overall composition of the Board of Directors is: 1 student-athlete; 1 athletic director (Chair of the Council); 1 faculty-athletic-representative; 1 senior-woman-administrator (appointed by National Association of Collegiate Women Athletics Administrators); and 20 presidents/chancellors (1 from each FBS conference and 10 rotating among the remaining 22 conferences)).

³⁴ NCAA MANUAL 2018-19 § 5.4.2.1; *How the NCAA Works: Division I*, (showing that the AD representative is the Chair of the NCAA Division I Council who is always an A.D., and the SWA representative is appointed by the National Association of Collegiate Women Athletics Administrators).

³⁵ NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 18 (July 18, 2014) (showing that the Board of Directors can, however, ratify or adopt legislation concerning academic affairs, or other items that show an extraordinary adverse impact on D1 membership); NCAA Manual 2018-19 § 4.2.6.

Nevertheless, a student-athlete is at the table of the NCAA's top governance group.

B. Division I Council

The Council is the body that has primary responsibility for Division I legislation.³⁶ Out of the forty total members that make up the Council, two are student-athletes with voting privileges.³⁷ The two student-athletes are Vice Chairs of the D1 SAAC, nominated by the SAAC. One of these student-athlete representatives must be male and one must be female.³⁸ Before the 2014 modified governing structure, there were no student-athletes serving on the equivalent body.³⁹

Another two of the forty seats are designated for FARs, one representing the D1A FAR group and one representing the Faculty Athletic Representatives Association (FARA).⁴⁰ Four conference commissioners have Council seats – a commissioner from the Autonomy Conferences, the Group of 5 (AAC, C-USA, MAC, MWC, and Sun Belt), and two commissioners from the remaining twenty-four Football Championship Subdivision (FCS) conferences.⁴¹ The remaining thirty-two Council members represent each of the thirty-two conferences and may be athletics administrators or FARs.⁴² However, a minimum of sixty percent of these thirty-two members (or twenty) must be ADs.⁴³

³⁶ NCAA MANUAL 2018-19 § 4.3.2(a); § 5.3.2 (describing the Division I legislative process); NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 21 (July 18, 2014).

³⁷ NCAA MANUAL 2018-19 § 4.3.1; *How the NCAA Works: Division I*.

³⁸ DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 21 (July 18, 2014).

³⁹ *Id.*

⁴⁰ NCAA MANUAL 2018-19 § 4.3.1(f); NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 21 (July 18, 2014).

⁴¹ NCAA MANUAL 2018-19 § 4.3.1; NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL (July 18, 2014).

⁴² NCAA Manual 2018-19 § 4.3.1(a); NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 21 (July 18, 2014).

⁴³ NCAA Manual 2018-19 § 4.3.1(a); NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 18 (July 18, 2014); Brian Shannon, *The Role of the Faculty Athletics Representative in NCAA Division I Governance Circa 2018-19*. Shannon explained that it is disheartening that only two FARs are currently serving as conference representatives, and that “given that higher education is intended to be a key part of the overall endeavor, this disparity is striking and

Although the student-athletes are two of forty Council members,⁴⁴ voting is weighted. The votes of each Autonomy Conference representative counts as four votes, the votes of each Group of 5 representative counts as two votes, and the votes of the twenty-two other conference representatives, student-athletes, and the two designated FAR representatives each count as one vote.⁴⁵ The two student-athletes thus have 3.1% of the Council votes because of this weighted voting.⁴⁶

C. Division I Student-Athlete Advisory Committee and Other Division I Committees

Prior to the 2014 NCAA governance revamp, the main student-athlete voice came from the Division I Student-Athlete Advisory Committee (D1 SAAC), which is a thirty-two-member committee that is entirely comprised of student-athletes, with one student-athlete representative from each conference nominated by their respective Conference SAAC.⁴⁷ The D1 SAAC remains an important voice in Division I governance today. Its purpose is to participate in debate on issues, respond to proposed legislation, and advocate on behalf of student-athletes.⁴⁸ The updated post-2014 governance model did not change the role of the SAAC; it acts primarily as an advisory body.⁴⁹ The SAAC has its own

markedly imbalanced. Indeed, under the former governance structure FARs comprised 20% of the leadership.”

⁴⁴ NCAA MANUAL 2018-19 § 4.3.1.

⁴⁵ NCAA MANUAL 2018-19 § 4.3.4(a), (b) & (c). Voting on FBS issues and legislation is weighted differently, increasing the student-athlete voice somewhat; § 4.3.4, and voting on scholarship limitations is not weighted; § 4.3.4.1.1.

⁴⁶ NCAA Manual 2018-19 § 4.3.4; NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 22 (July 18, 2014) (outlining the weighted voting for the Council’s 4-2-1 model).

⁴⁷ NCAA MANUAL 2018-19 § 21.7.6.9; *NCAA Student-Athlete Advisory Committees (SAACs)*, <http://www.ncaa.org/student-athletes/ncaa-student-athlete-advisory-committees-saacs> (stating that a student-athlete must be a member of his or her school’s SAAC to be on the Conference SAAC).

⁴⁸ See *NCAA Student-Athlete Advisory Committees (SAACs)* *supra* note 46; NCAA MANUAL 2018-19 § 21.7.6.9.3 (The Committee shall receive information and explanations of divisional activities and legislation, review and react to topics referred to it by other governance entities and comment to the governance structure on any divisional subject of interest.); Scott Krapf, *From the Seat of the Chair: An Insider’s Perspective on NCAA Student-Athlete Voices*, 90 IND. L.J. 63-68 (2015).

⁴⁹ *NCAA Student-Athlete Advisory Committees (SAACs)*, *supra* note 46.

planned meetings where it is given presentations on pending legislation and formulates positions on potential legislation.⁵⁰

On each of the other eight committees within the Council governance structure, there is one student-athlete member,⁵¹ other than the Nominating Committee, where no student-athlete sits.⁵²

Committee	Total Voting Members	Voting Members - FARs	Voting Members - SAs	Nonvoting Members - SAs
Student-Athlete Experience ⁵³	11	1	2	
Strategic Vision & Planning ⁵⁴	10	2	1	
Legislative ⁵⁵	18	3	1	
Competition Oversight ⁵⁶	16	1	1	2

⁵⁰ *Id.*

⁵¹ *How the NCAA Works: Division I*, *supra* note 6 (showing that one student-athlete sits on: Legislative Committee, Competition Oversight Committee, Student-Athlete Experience Committee, Strategic Vision and Planning Committee, Women's Basketball Oversight Committee, Men's Basketball Oversight Committee, Football Oversight Committee).

⁵² The chart below is an expanded version of the chart presented in Brian Shannon, *The Role of the Faculty Athletics Representative in NCAA Division I Governance Circa 2018-19*.

⁵³ See *Division I Student-Athlete Experience Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1SAEXP (roster) (last visited July 25, 2018).

⁵⁴ See *Division I Strategic Vision and Planning Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1STRATVISION (last visited July 25, 2018). One of the two FARs, Steve Perez, is also the current Chair.

⁵⁵ See *Division I Legislative Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1LEGSCOM (roster) (last visited July 25, 2018). One of the two FARs, Brian Shannon (the Author), is also the current Chair.

⁵⁶ See *Division I Competition Oversight Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1COMPOVERSIG (roster) (last visited July 25, 2018).

Football Oversight ⁵⁷	15	0*	1	2
Men's Basketball Oversight ⁵⁸	12	0*	1	1
Women's Basketball Oversight ⁵⁹	11	0*	1	1

* The Football, Men's Basketball, and Women's Basketball Oversight Committees each have one *non-voting* FAR member.

D. Autonomy Conferences Governance Structure

Following the January 2014 Autonomy Governance Dialogue, a recommended governance model was circulated by the Division I Steering Committee on Governance⁶⁰ and approved by the Division I Board of Directors in August 2014, to become effective in January 2015. The student-athlete voice and vote is the most significant in the new Autonomy governance structure. There are five autonomy conferences composed of sixty-five individual schools. Each school has one vote.⁶¹ In addition, there are fifteen voting student-athletes (three from each of the five conferences) and each of their votes counts the same as that of one of the sixty-five institutions.⁶² So, out of the total eighty votes, student-athletes hold fifteen or almost 18.75% of the votes, as compared to

⁵⁷ See *Division I Football Oversight Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1FBOVERSIGHT (roster) (last visited July 25, 2018).

⁵⁸ See *Division I Men's Basketball Oversight Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1MBBOVERSIGH (roster) (July 25, 2018).

⁵⁹ See *Division I Women's Basketball Oversight Committee*, NCAA http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1WBBOVERSIGH (roster) (last visited July 25, 2018).

⁶⁰ NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 29, 42-44 (July 18, 2014),.

⁶¹ NCAA MANUAL 2018-19 § 5.3.2.1.7.1 (“president or chancellor of each institution shall appoint one representative”).

⁶² *Id.* § 5.3.2.1.7.1 (“each of the five conferences shall appoint three student-athlete representatives to cast votes”).

student-athletes' 4.12% of the Board of Director's votes, and 3.1% of the Council's votes.⁶³

A simple majority vote, however, is not sufficient to adopt Autonomy legislation. There are two ways to pass autonomy legislation. First, sixty percent or more of the 80 votes (48 or more votes) *and* approval of three of the five conferences (by a simple majority vote of the institutions within the conference).⁶⁴ Or, a simple majority of the 80 votes (41 or more) and approval of four of the five conferences (by a simple majority vote of the institutions within the conference).⁶⁵ If the student-athletes voted as a bloc, they would still need to garner additional votes from the Autonomy Conference schools to adopt legislation.

At the Autonomy Conference Governance Forums held in the spring of each year to develop Autonomy legislation, each conference is encouraged to send ten representatives – two presidents/chancellors, two ADs, two SWAs, two FARs, and two SAs.⁶⁶ Assuming all conferences send all representatives, student-athletes represent twenty percent of the voices in the room and can have a significant impact in shaping the Autonomy legislative agenda for the coming year.

At the first Autonomy Forum in January 2015, a number of significant issues were discussed. The vote to permit Autonomy schools to augment the grant-in-aid award with an additional amount equaling the cost of attendance as calculated by each school for its general student body was adopted, with only one vote against the cost of attendance.⁶⁷

A second vote to prohibit a student's athletics aid from being reduced or eliminated for athletics performance reasons was more divided; it passed with fifty votes (forty-eight were needed for passage).⁶⁸ One might have thought the fifteen student-athletes would have been united in support for this legislation, but in fact

⁶³ NCAA, DIVISION I STEERING COMMITTEE ON GOVERNANCE: RECOMMENDED GOVERNANCE MODEL 29, 42-44 (July 18, 2014).

⁶⁴ NCAA MANUAL 2018-19 § 5.3.2.1.7.2(a).

⁶⁵ *Id.* at § 5.3.2.1.7.2(b).

⁶⁶ Brian Shannon, *The Role of the Faculty Athletics Representative in NCAA Division I Governance Circa 2018-19*, 7.

⁶⁷ Sherman, *supra* note 2.

⁶⁸ New, *supra* note 22.

they were split.⁶⁹ Some students argued the rule would restrict coaches from cutting players who were “a cancer to the team.”⁷⁰ Josh Tobias, a student-athlete who played baseball at the University of Florida said, “People forget that our job is to perform,” while student-athlete Kene Orijoke, a football player at UCLA, shot back, “This isn’t supposed to be our job.”⁷¹ Other student-athletes spoke in favor of the measure arguing that permitting scholarships to be reduced for athletics reasons undermined the NCAA’s claim that student-athletes are to be treated as students first.⁷²

A third vote on a proposal to require colleges to adopt a new concussion policy passed, although many student-athletes and some Big 12 schools voted against it because they felt the legislation did not go far enough to protect the health and safety of student-athletes.⁷³ Some of those opposing the legislation said it did not give medical personnel “unchallengeable authority” in deciding whether a student-athlete should be allowed to return to practice or competition after sustaining an injury.⁷⁴ One of the student-athletes, Ty Darlington, a football player at the University of Oklahoma, moved to refer the proposal to a committee, which would have tabled the legislation for at least another year. Thirty-two votes in favor of this motion were recorded, indicating that this student-athlete’s motion gained support outside of the ranks of just the other fourteen student-athletes. But, even in defeat the student-athlete voice was heard. Darlington said he felt more confident that the policy would be improved now that the membership had heard so many student-athletes speak against it, and Dr. Brian Hainline, the NCAA’s Chief Medical Officer, sought out Darlington after the vote to assure him that the policy would be improved.⁷⁵

Darlington also astutely understood the public perception issues around opposing any legislation that seems to improve student-athlete welfare.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*; Sherman, *supra* note 2..

⁷⁴ New, *supra* note 22.

⁷⁵ *Id.*

I was worried that some of the members might vote for the legislation because they were worried about public perception. Nobody wants to look like they're against protecting the safety of student-athletes. It's hard to stand up and make that motion. But as a student, I could do that.⁷⁶

The 2016 Autonomy legislative session dealt with a number of proposals described by one journalist covering the meeting as “a series of milquetoast proposals” that were “thoroughly non-controversial and rooted largely in NCAA minutia.”⁷⁷ Ty Darlington was again one of the Big 12's student-athlete representatives. He told the assembled group that he didn't feel like the session “accomplished anything to significantly impact the student-athlete experience.”⁷⁸

Student-athletes were also heavily engaged in the discussion at the 2017 Autonomy Forum regarding time management legislation that would provide additional days off throughout the academic year from required athletically related activities.⁷⁹ The student-athlete representatives had split views on an amendment to the legislation that would permit department-wide life skills activities on a student-athlete's day off.⁸⁰ The amendment was just barely approved in a 48-32 vote.⁸¹ The student-athlete voice was more united in opposing a second amendment to permit student-athlete host duties for recruits to occur on a student-athlete's day off and that amendment received only twelve favorable votes, with fourteen of the fifteen student-athlete votes opposed to the amendment.⁸² Student-athletes also spoke in support of the time management plan's requirement that they be given adequate notice of any schedule changes, with one student-athlete commenting that it was common for coaches to give students just thirty minutes notice before an unscheduled athletically related activity.⁸³

⁷⁶ *Id.*

⁷⁷ Dan Wolken, *Small, Positive Steps, but no Fireworks at NCAA Convention*, USA TODAY, Jan. 15, 2016.

⁷⁸ *Id.*

⁷⁹ New, *A True Day Off*, *supra* note 3.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

The student-athlete voice may have again influenced the Autonomy vote when at the 2018 Autonomy Forum two student-athletes asked voters to reject a proposed increase in the expense allowance for student-athletes hosting recruits from \$40 per day to \$50 per day, and to vote instead for an increase to \$75 per day. The \$75 per day expense allowance proposal then passed 64-15.⁸⁴

E. Conferences and Schools

In the Atlantic Coast Conference (ACC) five student-athletes (the three autonomy representatives and the incoming and outgoing ACC SAAC chair) now attend the ACC's spring meeting. A subset of these students participate in the conference's fall governance meeting and legislative conference calls. At the other four Autonomy Conferences, student-athletes have similar participatory roles at conference governance meetings. At my school, student-athletes now sit on the athletic committee and other school committees that relate to athletics, although they are not voting members. The anecdotal information I have received confirms a similar practice at most schools.

IV. MAXIMIZING STUDENT-ATHLETE IMPACT

As Big Ten Commissioner Jim Delaney said following the 2015 Autonomy Forum, the student-athlete "voice is even more powerful than their number."⁸⁵ He continued, the student-athletes "clearly impacted people. I would say, going forward, if you're interested in your proposal having a good chance of passing, you need to bring [student-athletes] into the construction of the proposal process."⁸⁶ Further, as student-athlete Ty Darlington observed, public perception makes it hard to vote against something that student-athletes have advocated.⁸⁷ The voice and

⁸⁴ Michael Marot, *Power Five Conferences Approve 11 New Measures, Including Medical Benefits Extension and Holiday Break for Hoops*, CHI. TRIB. (Jan. 19, 2018), <http://www.chicagotribune.com/sports/college/ct-power-five-conferences-approve-medical-benefits-extension-20180119-story.html#>.

⁸⁵ Sherman, *supra* note 2. http://www.espn.com/college-sports/story/_/id/12185230/power-5-conferences-pass-cost-attendance-measure-ncaa-autonomy-begins.

⁸⁶ *Id.*

⁸⁷ New, *supra* note 3.

vote of student-athletes have great impact. Student-athletes should be at the table, but it is important that we ensure their contributions to NCAA governance are maximized. First, we should consider whether the voice and vote could be further increased. Are student-athletes included in meaningful ways in our campus committees and in our conference governance structures? Is a handful of student-athlete participants at the conference level sufficient, or should each school send a student-athlete representative to participate in conference governance meetings (paralleling the representation from each school for athletic directors, FARs, and Senior Woman Administrators), particularly those meetings held in the late spring after most schools have finished exams and most teams have finished competition?⁸⁸

No matter how student-athletes are represented, they have some unique challenges. Student-athletes will necessarily have a shorter-tenure on these governance committees than most of the other members. Moreover, they need to learn and understand the existing rules to be able to effectively advocate for changes to them. They also are expected, through their collective voice, to endeavor to represent all student-athletes and understand how specific rules impact all the NCAA-sponsored sports. Outside of the Autonomy governance structure, the student-athlete voice on the Board of Directors and Council could be marginalized, given the small percentage of votes they control. These are daunting hurdles to maximizing the student-athlete voice and vote. How might the student-athlete voice and vote be made the most effective?

It is imperative that other members of the NCAA governance structure invest time and effort into helping student-athletes overcome these obstacles so that the student-athlete representatives may be as effective as possible in presenting the views of student-athletes. This may include:

- Investing time in the education of student-athletes about the issues on which they will be voting. The Division I SAAC, conference SAACs, and school SAACs all do this. The education

⁸⁸ Thanks to Joel Pawlak (FAR at North Carolina State University) and Adam Broome (my husband) for independently suggesting further improving the participation of student-athletes in the governance structures of the conferences.

process for the student-athletes voting in the Autonomy structure is evolving as that structure is so new, but education is most important for the student-athletes who cast fifteen of eighty votes on Autonomy issues. The schools and the conferences of the student-athlete representatives have a special responsibility which may involve time additional preparation with the student-athlete representatives prior to each meeting or conference call.

- Appointing student-athlete representatives who can serve two or three years in their positions. Ty Darlington attended at least three Autonomy legislative forums. His voice was clearly heard at all three.⁸⁹

- Advising student-athletes to try to understand how issues impact sports other than the one in which they compete. The Division I SAAC should have a broad representation of sports and to the extent that a sport is not represented on the SAAC, SAAC members should reach out to student-athletes in non-represented sports to understand their issues and how potential legislation may affect their sports.

- Providing that at least one of the five Division I SAAC representatives from the Autonomy conferences is on the Division I NCAA SAAC so a student-athlete Autonomy representative can be informed by the views of the student-athletes from non-Autonomy conferences.⁹⁰

- Ensuring that on the Division I Board of Directors and Council the student-athlete representatives are not tokens. Their views should be sought out on each issue even if the student-athlete has not volunteered to speak and the Division I SAAC should assist them in providing feedback from all NCAA Division I sports.

- Educating the student-athlete representatives about the financial implications of legislation and how intercollegiate athletics is funded at the NCAA, conference, and institution level. As Jerry Maguire said, “Show me the money.”⁹¹

⁸⁹ See *supra* notes 74, 75, & 77.

⁹⁰ Thanks to Christine Copper (FAR, The U.S. Naval Academy) for this suggestion.

⁹¹ Bryan Alexander, *20 Years After ‘Jerry Maguire,’ ‘Show me the Money!’ Still Makes Bank*, USA TODAY (December 12, 2016), <https://www.usatoday.com/story/life/movies/2016/12/12/jerry-maguire-anniversary-tom-cruise-show-me-money/95300458/> (describing how the phrase “show me the money” made cinematic fame).

- Assisting student-athletes in devising systems to retain institutional memory and train and transfer knowledge to their successors in the governance structure by preparing written materials and guides, repositories of minutes and prior materials, and passing down an agenda of items for consideration, a list of contacts within the governance structure, and onboarding new student-athlete representatives are important steps to help ensure that student-athlete representatives build upon the work of their predecessors rather than start over each year.

- Considering a formal mentor structure, pairing student-athlete representatives with another governance member, perhaps outside of the student-athlete's conference to provide additional guidance and support.

The irony of this is all that I have described takes time and effort and further compounds the time demands on student-athletes. We want student-athletes who participate at the highest level of athletics to share their perspectives and then for some of them we add on to the time demands of their sport and academic work this additional NCAA governance burden. Nevertheless, what we have seen so far suggests the students are more than up for these challenges.

V. CONCLUSION

The 2014 Governance Dialogue brought the student-athlete's voice to the forefront, thanks to Maddie Salamone and the rest of her Division I SAAC colleagues. Student-athletes like Ty Darlington have shown the impact the student-athlete voice can have on Autonomy legislation and student-athlete welfare. This change to the NCAA Division I governance structure has been one of the most important changes in helping the NCAA maximize student-athlete welfare. We need to consider how we can include student-athletes at our individual schools and in conference governance and ensure that they participate fully. Let's pledge to consider how we can work with our student-athlete representatives to help them maximize their contributions to the NCAA Division I governance structure.