

# THE ROLE OF THE FACULTY ATHLETICS REPRESENTATIVE IN NCAA DIVISION I GOVERNANCE CIRCA 2018-19

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## I. INTRODUCTION

I have had the fortunate opportunity to serve as the Faculty Athletics Representative (FAR) for Texas Tech University since 2008. In addition, for the last six years, it has been my great privilege to serve as President of 1A FAR, our national association of FARs at the 129 institutions and ten conferences comprising the NCAA Division I's Football Bowl Subdivision (FBS), formerly known as Division 1A.<sup>1</sup> My third and final two-year term as

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<sup>1</sup>The NCAA is a private membership association that numbers 1117 colleges and universities as members across three divisions. *What is the NCAA?*, NCAA, <http://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited July 17, 2018). Among the three divisions, there are 351 colleges and universities within NCAA Division I. *Our Three Divisions*, NCAA, <http://www.ncaa.org/about/resources/media-center/ncaa-101/our-three-divisions> (last visited July 17, 2018). Division I schools typically “have the biggest student bodies, manage the largest athletics budgets and offer the most generous number of scholarships.” *NCAA Division I*, NCAA, <http://www.ncaa.org/about?division=d1> (last visited July 17, 2018). Division I is further “subdivided based on football sponsorship” or the lack thereof. *Id.* The Football Bowl Subdivision (FBS) includes 129 member schools from across ten conferences and including several independents. See NCAA FBS Football, <http://www.ncaa.com/standings/football/fbs> (last visited July 17, 2018) (listing the 129 FBS institutions by

President of 1A FAR will end following our national conference in Washington, D.C., in late September 2018, and Kurt Zorn, the FAR at Indiana University, will succeed me.<sup>2</sup> It has been an interesting and, on occasion, exciting time to serve as President of 1A FAR, particularly given the transitions in the NCAA's governance structure.

All is not good news, however. As I step down from the President's role for 1A FAR, I have been reflecting on the current opportunities for engagement by FARs in policy-setting for the NCAA. In particular, this presentation will focus on the role of FARs in the current NCAA governance structure for Division I, including an examination of FAR involvement in both Council governance matters and areas under the jurisdiction of the five Autonomy conferences (the "Autonomy 5").<sup>3</sup> Unfortunately,

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conference or as independents). As Professor Jo Potuto, the FAR at the University of Nebraska-Lincoln, has described,

FBS institutions are public and private, non-sectarian and religiously affiliated, large land grant universities with big budgets and big endowments, and small liberal arts colleges. Some FBS institutions offer extensive graduate and professional programs, others concentrate exclusively on undergraduate education.

Josephine (Jo) R. Potuto, *Two, Four, Six, Eight; What Can We Now Regulate? The Regulatory Mentality and NCAA Satellite Camps (Et al)*, 35 QUINNIPIAC L. REV. 287, 292 (2017).

<sup>2</sup> Per the 1A FAR Bylaws, I will remain on the Executive Committee of the 1A FAR Board of Directors as the immediate past president. See Bylaws of 1A Faculty Athletics Representatives, [http://www.oneafar.org/1AFAR\\_Bylaws.html](http://www.oneafar.org/1AFAR_Bylaws.html).

<sup>3</sup> As I have described in greater detail elsewhere, in August 2014 the NCAA Division I Board of Directors significantly restructured the governance system for Division I institutions. See generally Brian D. Shannon, *The Revised NCAA Division I Governance Structure After Three Years: A Scorecard*, 5 TEX. A&M L. REV. 65, 65-76 (2017) (discussing governance restructuring process); Michelle B. Hosick, NCAA, *Board Adopts New Division I Structure* (Aug. 7, 2014), <http://www.ncaa.org/about/resources/media-center/news/board-adopts-new-division-i-structure> (last visited July 17, 2018) (discussing the Board's vote in favor of adopting new governance model).

A key aspect of the August 2014 governance restructuring, which became effective in January 2015, was the determination by the NCAA Division I Board of Directors to grant certain autonomous decision-making powers to the five Autonomy conferences and their 65 member institutions. NCAA, Division I Steering Committee on Governance: Recommended Governance Model 29, 42-44 (July 18, 2014) [hereinafter RECOMMENDED MODEL], <http://www.ncaa.org/sites/default/files/DI%20Steering%20Committee%20on%20Gov%20Proposed%20Model%2007%2018%2014%204.pdf> (last visited July 17, 2018). Specifically, beginning in 2015 the revised NCAA bylaws have authorized members of the Atlantic Coast Conference ("ACC"), Big Ten Conference, Big 12 Conference, Pac-12 Conference, and Southeastern Conference ("SEC") to "have the authority to adopt or amend [NCAA] legislation that is identified as an area of autonomy." See NCAA Constitution § 5.3.2.1, NCAA Division I Manual 2018-19

following the last round of Division I governance restructuring, the extent of FAR participation opportunities was reduced in national governance for most Division I subject areas, but it remains robust within the realm of Autonomy 5 governance. The overall reduction, however, is both unfortunate and at odds with typical FAR involvement at the campus and conference levels and runs counter to a critical premise that college athletics should be a part of the overall educational mission of our universities. In this presentation, I will highlight some of the changes we have seen in the last several years, but also emphasize that FARs should remain assertive in endeavoring to provide a strong voice in the governance of Division I athletics.

## II. FARs IN NCAA DIVISION I GOVERNANCE TODAY

In contrast to campus leadership responsibilities and even previous NCAA governance processes, FARs today from the vast

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(August 2018) [hereinafter NCAA MANUAL 2018-19], <http://www.ncaapublications.com/productdownloads/D119.pdf> (granting autonomous authority to the five conferences) (last visited July 17, 2018). The areas of legislative autonomy “permit the use of resources to advance the legitimate educational or athletics-related needs of student-athletes and for legislative changes that will otherwise enhance student-athlete well-being.” *Id.* § 5.3.2.1.2 (also identifying the various areas of autonomy enjoyed by the Autonomy 5). More specifically, the subject matters of the bylaws that fall within the exclusive province of the Autonomy 5 conferences include the following: health and wellness, *id.* § 16.4; meals and nutrition, *id.* § 16.5; certain financial aid matters, *id.* §§ 15.01.5-15.2.8.2, 15.3-15.3.5.2; expenses and benefits pertaining to student-athlete support, *id.* § 16; expenses and benefits relating to pre-enrollment support, *id.* § 13.2; insurance and career transition, *id.* §§ 12.2-12.3; career pursuits, *id.* § 12.5; time demands, *id.* § 17; academic support, *id.* § 16.3; recruiting, *id.* § 13.1; and personnel *id.* § 11.7. *See also id.* § 5.3.2.1.2 (identifying and summarizing the eleven general “areas of autonomy”).

In addition to authorizing the 65 institutions comprising the Autonomy 5 to have the exclusive authority for adopting NCAA legislation in these areas of autonomy, the Division I governance restructuring also created a new structure for adopting policies for all other topical areas set forth in the NCAA bylaws. For NCAA policies and legislation in bylaw areas not under the exclusive authority of the Autonomy 5 conferences, the current governance structure for Division I includes a forty-member governing Council. The Council must include representatives from each of the thirty-two conferences, a minimum of 60% athletics directors, conference commissioners, FARs, senior woman administrators, and student-athletes. *See* RECOMMENDED MODEL, *supra* at 21 (providing the breakdown of representation on the Council). For all areas of shared, non-autonomy, governance, the Division I Board of Directors intends for the Council to have primary legislative authority. NCAA MANUAL 2018-19, *supra* §§ 4.3.1, 4.3.2(a).

majority of Division I institutions and conferences have an overall reduced level of authority and involvement in NCAA governance. This is not necessarily the case, however, for FARs from the Autonomy 5 conferences, at least with respect to autonomy governance subject areas and issues. In this section, I will address the roles of FARs in today's Division I governance at both the Council level and within the autonomy structure.

### A. *Council Governance*

As I have chronicled elsewhere, in terms of numbers and percentage representation, there currently exists a relative dearth of FARs in the NCAA Division I Council governance process.<sup>4</sup> The revised governance model included an aspirational goal that the Division I Board would be less operational and, instead, “focus chiefly on oversight and strategic issues, while leaving much of the day-to-day policy and legislative responsibility to the council.”<sup>5</sup> In addition, the drafters intended the new Council to “be the final voice on shared-governance rule-making decisions” but also be “composed of at least 60 percent athletics directors.”<sup>6</sup> Of the forty-member Council, in addition to the sixty percent target for athletics directors, the bylaws now require representatives from each of the thirty-two Division I conferences from among conference commissioners, FARs, senior woman administrators, and student-athletes.<sup>7</sup> Ostensibly, the sixty-percent athletics director mandate stemmed from a purposeful decision to empower “practitioners” in the governance system.<sup>8</sup> As Professor Potuto has pointed out, however, the NCAA DI Manual does not include a

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<sup>4</sup> See Brian D. Shannon, *supra* note 3, at 90-95 (discussing the dearth of FARs in the revised Council governance structure).

<sup>5</sup> Michelle B. Hosick, *DI Board Endorses Restructuring, Seeks Feedback from Schools*, NCAA (Apr. 24, 2014), <http://www.ncaa.org/about/resources/media-center/news/di-board-endorses-restructuring-seeks-feedback-schools> (last visited July 23, 2018).

<sup>6</sup> *Id.* The governance redesign also emphasized that because the Board had “focused too often on legislative matters,” the Board should primarily be engaged in “oversight, policy and strategic issues.” See RECOMMENDED MODEL, *supra* note 3, at 7 (comparing the former governance model to the new model).

<sup>7</sup> See *id.* at 21 (identifying the expected positional diversity).

<sup>8</sup> See *id.* at 7-8 (indicating that practitioners were not fully represented or involved in the former governance structure).

definition of the term “practitioner.”<sup>9</sup> One could easily contend the term “practitioner” in college athletics should broadly include FARs along with athletics directors.<sup>10</sup> In that regard, even the Division I Board appeared to recognize that FARs should be at the table among the practitioners at the Council level. Indeed, in the Board’s rationale statement for the redesign, the Board observed, “Primary legislative responsibility will include directors of athletics, faculty athletics representatives and other *practitioners*, including student-athletes.”<sup>11</sup> And, FARs do hold appointments on the Council, but the overall representation is scant.

If one does the arithmetic connected with the Board’s structuring of the forty slots for the Council, it is quickly apparent that there exists the potential for FARs to populate a reasonable, if not significant, percentage of Council seats. First, the bylaws designate that each of the thirty-two conferences within Division I is entitled to a representative on the Council who must be either an “athletics administrator or faculty athletics representative from each of the conferences ....”<sup>12</sup> But, as noted earlier, a minimum of sixty percent of these thirty-two conference-only seats must be filled by athletics directors.<sup>13</sup> This equates to a requirement that there be a minimum of twenty slots for athletics directors on the Council.<sup>14</sup> Assuming no other athletics directors were to be appointed, that would of course leave twenty remaining seats ( $40 - 20 = 20$ ). Of those remaining seats, four of the slots are designated for conference commissioners and two for student-athletes.<sup>15</sup> After subtracting those six positions, that results in there being fourteen additional seats ( $20 - 6 = 14$ ). Two of these

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<sup>9</sup> See Josephine (Jo) R. Potuto, *supra* note 1, at 292 n.33.

<sup>10</sup> See *id.* (commenting that “[i]n theory, practitioners are both athletic administrators and faculty athletic representatives”).

<sup>11</sup> See RECOMMENDED MODEL, *supra* note 3, at 8 (emphasis added).

<sup>12</sup> See NCAA MANUAL 2018-19, *supra* note 3, § 4.3.1 (a) (requiring that each of the Division I conferences is to be represented by an “athletics administrator” or a FAR).

<sup>13</sup> See *id.* (specifying that a minimum of “60 percent of these representatives shall be directors of athletics”).

<sup>14</sup> Note that 60 percent times 32 equals 19.2. Because there cannot be a fractional percentage of an athletics director, I have rounded 19.2 up to 20.

<sup>15</sup> See *id.* § 4.3.1 (b)-(e), (g) (specifying conference commissioner representatives from four different groups of conferences and two representatives from the Student-Athlete Advisory Committee).

slots are specifically designated for FARs,<sup>16</sup> but the bylaws contain no further specific guidance as to any positional diversity for the remaining twelve seats (14 – 2 = 12) other than they be conference representatives who are athletics administrators or FARs.<sup>17</sup>

In practice, despite there being twelve “wild card” seats available on the Council, very few FARs have been named to the Council. In theory, per the bylaws, the Board is required to appoint only twenty athletics director representatives among the thirty-two conference seats.<sup>18</sup> The other twelve conference seats could all be filled by FARs or a mix of FARs and other athletics officials such as senior women administrators (“SWAs”).<sup>19</sup> But, that has not been the case. The initial make-up of the Council included the appointment of only three FARs, and two of those were in the designated FAR slots.<sup>20</sup> Accordingly, only one of the twelve “wild card” appointments went to a FAR. Following the public announcement of the initial Council appointments, the 1A FAR Board of Directors issued a statement expressing disappointment and chagrin regarding the naming of only three FARs out of the total forty seats.<sup>21</sup> In our statement, “the 1A FAR Board questioned whether the configuration reflected ‘a commitment to the collegiate model,’ and observed that ‘[i]f academic values are to have significant relevance in intercollegiate athletics, it strikes us as inconsistent to include only minor representation by faculty.’”<sup>22</sup> In response to an array of comparable concerns, the Division I Board of Directors expressed some apparent concern about the overall diversity of the Council regarding gender, race, and positional experience, and has subsequently required conferences to submit slates of Council nominees for open positions that must “include at least one person

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<sup>16</sup> See *id.* § 4.3.1 (f) (specifying that one of the FARs be appointed by 1A FAR and the other by the Faculty Athletics Representative Association (“FARA”)). Unfortunately, in the weighted voting structure set forth in this bylaw, the two designated FAR members have only one vote each. *Id.* § 4.3.4 (d).

<sup>17</sup> See *id.* § 4.3.1 (a) (requiring that each of the Division I conferences is to be represented by an “athletics administrator” or a FAR).

<sup>18</sup> *Id.*

<sup>19</sup> See *id.* § 4.02.4 (defining “senior woman administrator”).

<sup>20</sup> See Brian D. Shannon, *supra* note 3, at 94 (indicating that only three FARs were appointed in January 2015).

<sup>21</sup> *Id.* at 90-91.

<sup>22</sup> *Id.* (quoting 1A FAR press release).

who isn't an athletics director."<sup>23</sup> To date, however, not much has changed. As of late July 2018 only four of the current forty members of the Council are FARs.<sup>24</sup> Two of the four FARs fill the designated slots for 1A FAR and FARA, respectively, and the other two FARs are among the thirty-two conference representatives. The remainder of the thirty-two conference appointees are spread among athletics directors, SWAs, and additional commissioners.<sup>25</sup> Indeed, there are more SWAs (six) than FARs (four).<sup>26</sup> In sum, FARs currently comprise 10% (four out of forty) of the total number of Council members while, in contrast, senior athletics administrators (commissioners, athletics directors, and SWAs) hold 85% of the seats.<sup>27</sup> Given that higher education is intended to be a key part of the overall endeavor, this disparity is striking and markedly imbalanced. Indeed, under the former governance structure FARs comprised 20% of the leadership.<sup>28</sup> As Professor Potuto has declared, under the revamped structure FARs have by and large been marginalized.<sup>29</sup>

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<sup>23</sup> *Id.* at 95 (quoting Michelle B. Hosick, *New Board Starts Discussion on Future of Division I*, NCAA (Jan. 18, 2015), <http://www.ncaa.org/about/resources/media-center/news/new-board-starts-discussions-future-division-i> (last visited July 24, 2018)).

<sup>24</sup> See *Division I Council*, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1COUNCIL](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1COUNCIL) (last visited July 24, 2018) (providing the roster of the forty Council members).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* The remaining two seats (5% of the total) are designated for student-athletes.

<sup>28</sup> See Josephine (Jo) R. Potuto, *supra* note 1, at 292 n.33. Moreover, in the mid-1980's, the NCAA Council included an even greater percentage of FARs. See WALTER BYERS AND CHARLES HAMMER, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES 24-25 (Univ. of Michigan Press 1995) (discussing SMU's 1985 appeal of its death penalty sanction for football from the NCAA Infractions Committee to the NCAA Council, and observing that "the council was composed of 5 college presidents, 10 faculty athletics representatives, 14 athletics directors, 13 women athletic administrators, and 3 conference commissioners"). Accordingly, 10 of the 35 council members were FARs, comprising 28.6% of the membership.

<sup>29</sup> Josephine (Jo) R. Potuto, *Professors Need Not Apply*, INSIDE HIGHER ED. (May 19, 2014), <https://www.insidehighered.com/views/2014/05/19/new-ncaa-governance-structure-marginalizes-faculty-members-essay> (criticizing NCAA leadership for failing to include a greater number of FARs in the structure and urging readers to "[t]ry defining a university without mentioning faculty. It can't be done."). The same lack of FAR inclusion holds true with regard to the governance structure for the College Football Playoff ("CFP". Although not a part of the NCAA, the members of the College Football Playoff "company are the 10 FBS conferences and ... Notre Dame." *Governance*, College Football Playoff [https://collegefootballplayoff.com/sports/2016/10/1/1\\_131504729614425311.aspx](https://collegefootballplayoff.com/sports/2016/10/1/1_131504729614425311.aspx) (last visited Sep. 7, 2018)). There are no FARs among the

The relative dearth of FARs has extended beyond the Council to the primary committees that report to the Council. On the positive side, the revamped structure requires there be one FAR on the Division I Board of Directors.<sup>30</sup> In addition, the bylaws require the Board-appointed Committee on Academics to include a minimum of four FARs out of a total of twenty members (25% minimum).<sup>31</sup> In contrast, however, the FAR representation on the seven primary committees that report directly to the Council is, in general, far less satisfactory or sufficient. These seven committees include the Football Oversight Committee, the Men's and Women's Basketball Oversight Committees, the Competition Oversight Committee (for all other sports), the Student-Athlete Experience Committee, the Strategic Vision and Planning Committee, and the Legislative Committee.<sup>32</sup> The following chart compares the number of FARs to the total number of voting members on each of these committees as of late July 2018:

<b>Committee</b>	<b>Total Voting Members</b>	<b>Voting Members - FARs</b>
Student-Athlete Experience <sup>33</sup>	11	1

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CFP's Board of Managers (who are all university presidents or chancellors), Management Committee (who are the ten FBS conference commissioners and the Notre Dame athletics director), or Selection Committee (although the latter committee currently includes a faculty member from Arizona State, Paola Boivin). *See id.* (listing the 11 members of the Board of Managers and 11 members of the Management Committee), and *Selection Committee*, College Football Playoff <https://collegefootballplayoff.com/sports/2017/10/16/selection-committee.aspx> (last visited Sep. 7, 2018) (listing the committee members).

<sup>30</sup> *See* NCAA MANUAL 2018-19, *supra* note 3, § 4.2.1 (specifying the composition of the Board of Directors).

<sup>31</sup> *Id.* § 4.4.1. As of late July 2018, the Committee on Academics actually included six FARs and one former FAR among its members. *See* Division I Committee on Academics, NCAA, [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1ACADCOM](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1ACADCOM) (last visited July 25, 2018).

<sup>32</sup> *See id.* § 4.9 and Figure 4-1 (depicting an organizational chart with a listing of the seven committees that report to the Council). Note that the Committee on Academics reports directly to the Board, but recommends academically related legislative proposals to the Council. *Id.* § 4.4.2 (a), (c) and Figure 4-1.

<sup>33</sup> *See* Division I Student-Athlete Experience Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1SAEXP](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1SAEXP) (roster) (last visited July 25, 2018).



Strategic Vision & Planning <sup>34</sup>	10	2
Legislative <sup>35</sup>	18	3
Competition Oversight <sup>36</sup>	16	1
Football Oversight <sup>37</sup>	15	0*
Men's Basketball Oversight <sup>38</sup>	12	0*
Women's Basketball Oversight <sup>39</sup>	11	0*

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

As the forgoing table reflects, these numbers are paltry and appalling. Out of 93 total voting members on these seven principal committees, there are only seven FARs who have full representation, equating to 7.5%. Similarly, only one of the twelve members of the Division I Nominating Committee is a FAR.<sup>40</sup> Thus, except for FAR representation on the Committee on

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<sup>34</sup> See Division I Strategic Vision and Planning Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1STRATVISION](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1STRATVISION) (roster) (last visited July 25, 2018). One of the two FARs, Steve Perez, is also the current Chair.

<sup>35</sup> See Division I Legislative Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1LEGSCOM](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.

<sup>36</sup> See Division I Competition Oversight Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1COMPOVERSIG](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1COMPOVERSIG) (roster) (last visited July 25, 2018).

<sup>37</sup> See Division I Football Oversight Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1FBOVERSIGHT](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1FBOVERSIGHT) (roster) (last visited July 25, 2018).

<sup>38</sup> See Division I Men's Basketball Oversight Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1MBBOVERSIG](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1MBBOVERSIG) (roster) (July 25, 2018).

<sup>39</sup> See Division I Women's Basketball Oversight Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1WBBOVERSIG](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1WBBOVERSIG) (roster) (last visited July 25, 2018).

<sup>40</sup> See Division I Nominating Committee, NCAA [http://web1.ncaa.org/committees/committees\\_roster.jsp?CommitteeName=1NOM](http://web1.ncaa.org/committees/committees_roster.jsp?CommitteeName=1NOM) (roster) (last visited July 25, 2018). The sole FAR member, Martha Putallaz, is the current Vice-Chair.

Academics, the primary governing body for the policy-setting for most Division I issues (the Council), the seven primary committees that report directly to the Council, and the Nominating Committee for all Division I committees all have de minimus FAR representation.<sup>41</sup>

### *B. Autonomy*

In contrast, FARs from Autonomy 5 institutions enjoy greater governance responsibilities and opportunities with regard to legislation and policy-setting in the bylaw areas ceded to the Autonomy 5 conferences.<sup>42</sup> There are eighty possible votes on any Autonomy 5 legislation.<sup>43</sup> Each of the sixty-five member institutions from the Autonomy 5 conferences has a vote, and fifteen student-athletes (three from each of the five conferences) have votes.<sup>44</sup> Given that each member institution has an equal vote, the FARs from Autonomy 5 universities play a larger role in developing and approving autonomy concepts than for Council governance matters. For example, each spring the Autonomy 5 conferences hold an “Autonomy Governance Forum.”<sup>45</sup> At these forums, each conference may be represented by two Presidents, two FARs, two athletics directors, two SWAs, and two student-

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<sup>41</sup> Individually, I have enjoyed having the opportunity to serve as one of the initial FAR members of the Council and as Chair of the Legislative Committee, but having only a handful of FAR members is inadequate. As any faculty member who has attended a departmental or college faculty meeting can attest, there are often numerous diverging points of view. Having only a handful of FARs on key committees that set and shape policy limits the opportunity to include robust campus-wide and academic considerations.

<sup>42</sup> As described above, institutions from the Autonomy 5 conferences have exclusive authority to adopt and revise policies in certain designated portions of the NCAA Manual primarily to allow “the use of resources to advance the legitimate educational or athletics-related needs of student-athletes and for legislative changes that will otherwise enhance student-athlete well-being” See NCAA MANUAL 2018-19, *supra* note 3, §§ 5.02.1.1 & 5.3.2.1.2 (specifying the various areas of Autonomy 5 authority).

<sup>43</sup> See RECOMMENDED MODEL, *supra* note 3, at 6–7 (authorizing “the five conferences and their 65 member institutions and 15 student-athlete representatives (80 total) to act on legislation” in the areas of autonomy).

<sup>44</sup> *Id.* See also NCAA MANUAL 2018-19, *supra* note 3, § 5.3.2.1.7.1 (directing that the “president or chancellor of each institution shall appoint one representative and each of the five conferences shall appoint three student-athlete representatives to cast votes on proposed” autonomy legislation).

<sup>45</sup> See, e.g., Autonomy Governance Forum Materials (April 3, 2018) (copy on file with Author).

athletes.<sup>46</sup> Thus, FARs comprise 20% of this informal structure. Typical FAR participation is often greater, however. At the most recent forum in early April 2018, ten FARs participated (two from each conference) while only three Presidents and seven athletics directors were present.<sup>47</sup> Similarly, as the sixty-five member institutions develop their positions on autonomy legislation, FARs are typically very engaged in the process. In addition, there are typically far more FARs than Presidents who attend the annual autonomy business sessions during the annual NCAA conventions (when autonomy votes are cast). Accordingly, at least within the autonomy realm, the FAR voice is significant for the Autonomy 5 member institutions.

### *C. Contrasts with Campus and Conferences*

On our institution's campuses and within conference governance structures, the FAR tends to enjoy a significantly greater voice than in national governance. At the campus level, the FAR generally works closely with the athletics director, top athletics staff, and the campus President on policy issues. Moreover, these are not limited solely to academic matters, but instead extend to most major issues. For example, I meet regularly with my President, athletics director, deputy athletics director, SWA, and directors of compliance and academic services. There are typically multiple such meetings every week, and often daily interaction. Our positions on NCAA legislation (for both Council-governance and autonomy proposals) are developed jointly between the athletics director, the associate athletics director for compliance, and the FAR. For significant legislative issues, we also engage the President. As FAR, I am also involved in the development, drafting, and review of most athletics department institutional policy. My peers within the Big 12 Conference and the 1A FAR Board report comparable levels of engagement at their respective campuses.

Similarly, FARs tend to be significantly involved in conference-wide governance, at least within the ten FBS conferences. For example, in the Big 12 Conference, the FARs

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<sup>46</sup> See *id.* Supplement 1.

<sup>47</sup> See *id.* (identifying attendees at the April 3, 2018, forum).

review policy recommendations from the athletics directors and SWAs (or develop proposals) and forward those to the conference's board of directors (the Presidents), a FAR chairs and sets the meeting agendas for the Joint Council of FARs, athletics directors, and SWAs, and the FARs hold the institutional votes at such meetings.<sup>48</sup> I understand that other FBS conferences have similar structures. Indeed, within the Southeastern Conference, a FAR is a designated member of the conference's Executive Committee.<sup>49</sup> Accordingly, as at the institutional level, FARs play a key role in conference-wide governance.

### III. FUTURE CHALLENGES AND OPPORTUNITIES

Notwithstanding that the FAR voice is prominent at the campus and conference levels, particularly within FBS conferences and their member institutions, the NCAA governance restructuring efforts reduced the percentage of FAR representation within the Council governance structure and correspondingly diminished the role of FARs as a whole in national governance for Council-related matters.<sup>50</sup> This outcome was disappointing and continues to be demoralizing to many FARs. Nonetheless, it is my firm view that FARs should continue to speak out about the need for inclusion in NCAA governance. In this final Section, I will emphasize the value of including the FAR voice, and issue a challenge to all of us to continue to provide that voice.

#### A. *The Value of a FAR Voice*

Of course, I have a decided bias in this regard, but in my view it is critical that the FAR have a voice not only on campus, but also within conference governance and at a national level.

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<sup>48</sup> See Big 12 Conference 2017-18 Conference Handbook §§ 5.1.2 & 5.3.7 [http://www.big12sports.com/attachments1/files/10410/614136.pdf?DB\\_OEM\\_ID=10410](http://www.big12sports.com/attachments1/files/10410/614136.pdf?DB_OEM_ID=10410) (last visited July 26, 2018) (identifying FAR role and Joint Council responsibilities).

<sup>49</sup> See SEC Constitution and Bylaws 2017-18 § 4.3.1 <http://a.espn.com/photo/2018/0217/2017-18%20SEC%20Constitution%20and%20Bylaws.pdf> (last visited July 26, 2018) (describing the Executive Committee).

<sup>50</sup> See *supra* notes 27-29 & 40 (identifying the current percentages of FARs on the Council and on committees reporting directly to the Council).

Although the definition of the FAR role in the NCAA bylaws is minimal, there is an expectation that the FAR be a key representative of a university in its relationship with the NCAA.<sup>51</sup> Indeed, FARs “have long been thoroughly integrated into the infrastructure of the NCAA.”<sup>52</sup>

As the NCAA went through the governance redesign process several years ago, the 1A FAR Board repeatedly urged that the new governance model include a significant opportunity for FAR involvement.<sup>53</sup> As we contended at the time:

Policy for intercollegiate athletics should be vetted and considered through both an athletics and a campus/academic lens and challenges should be addressed in a manner that not only embodies – but, equally, is *seen* to embody – the values of higher education and the enhancement of all facets of the collegiate student experience, including those directly related to the student-athlete experience. Few, if any, collegiate athletics issues are either exclusively athletic or exclusively academic. The inclusion of both ADs and FARs with significant representation ... serve[s] to demonstrate that intercollegiate athletics is a shared

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<sup>51</sup> See NCAA MANUAL 2018-19, *supra* note 3, §§ 4.02.2 & 6.1.3 (requiring each member institution to name a FAR who will “represent the institution and its faculty in the institution’s relationships with the NCAA and its conference ...” and must “be a member of the institution’s faculty or an administrator who holds faculty rank and shall not hold an administrative or coaching position in the athletics department.”).

<sup>52</sup> See FARA, Faculty Athletics Representative Handbook, at 6 [http://farawebsite.org/wp-content/uploads/2015/07/FARA\\_Handbook\\_15.pdf](http://farawebsite.org/wp-content/uploads/2015/07/FARA_Handbook_15.pdf) (last visited July 27, 2018). See also THE STUDENT-ATHLETE, ACADEMIC INTEGRITY, AND INTERCOLLEGIATE ATHLETICS, AM. COUNCIL ON EDUC. 4 (2016), <http://www.acenet.edu/news-room/Documents/ACE-Academic-Integrity-Athletics.pdf> (addressing “the important ‘connective tissue’ and watchdog role FARs can play on campus when it comes to academic integrity and intercollegiate athletics ...” and urging that “the FAR should have regular access to the president”) (last visited July 27, 2018).

<sup>53</sup> See, e.g., Letter from Brian D. Shannon, President, 1A FAR Board, to Nathan O. Hatch, Chair, NCAA Division I Board of Directors, Feb. 4, 2014, [http://www.oneafar.org/archive/2014\\_archive/letter\\_to\\_President\\_Hatch.pdf](http://www.oneafar.org/archive/2014_archive/letter_to_President_Hatch.pdf) (urging that there be an equal number of FARs and athletics administrators on the Council to assure that policy “issues are vetted and considered through both an athletics and a campus/academic lens.”) (last visited July 27, 2018); Letter from Brian D. Shannon, President, 1A FAR Board, to Nathan O. Hatch, Chair, NCAA Division I Board of Directors, May 12, 2014, at 3 [http://www.oneafar.org/archive/2014\\_archive/Comments\\_on\\_NCAA\\_Governance%20%20May12\\_2014.pdf](http://www.oneafar.org/archive/2014_archive/Comments_on_NCAA_Governance%20%20May12_2014.pdf) (urging “a greater inclusion of FARs on the Council as the representative of the broader campus”) (last visited July 27, 2018).

partnership between athletics and the greater campus and ... [would demonstrate] a renewed commitment to the collegiate model.<sup>54</sup>

Unfortunately, of course, we were unsuccessful in persuading the Division I Board to include significant numbers of FARs in the Council governance structure. Nonetheless, the campus voice as represented by FARs continues to be critical. We as an association of universities committed to the collegiate model, with an overarching focus on student-athlete well-being and the ability to provide opportunities for success not only on the field or court but also in the classroom, should continue to insist that current and future policy issues, as well as problems, should be addressed and solved in a manner reflective of the values of higher education. To do so in a meaningful manner unquestionably requires FAR engagement, in tandem with senior athletics administrators, to tackle the many challenges facing college athletics.

#### *B. A Challenge to Continue to Provide a Voice*

As I step down from serving as President of 1A FAR, I would challenge all of us to continue to urge the inclusion of a broad voice for FARs in NCAA governance. The minor representation of FARs on both the Council and the key committees that report directly to the Council undercuts the premise that academic and campus values have a particularly significant relevance in intercollegiate athletics. We must continue to be vocal in insisting that FARs be at the table. In that regard, it will be necessary to persuade key presidents and chancellors on the NCAA Division I Board of Directors. Those FARs who do get the opportunity to serve in Council governance roles must not only carry out their governance responsibilities in a thoughtful and dedicated manner, but also be advocates for additional FAR involvement.<sup>55</sup>

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<sup>54</sup> *Id.* (emphasis in original). For a more detailed discussion of this topic, see the subsection entitled, “Dearth of FARs” in my 2017 article. See Brian D. Shannon, *supra* note 3, at 90-95 (discussing the ultimately unsuccessful efforts by the 1A FAR Board to urge the inclusion of a significant number of FARs in the redesigned governance structure).

<sup>55</sup> When my term on the Council ends in June 2019, other non-FAR members might be glad to no longer hear my constant refrain in this regard.

## IV. CONCLUSION

FARs at large institutions within the FBS subdivision of NCAA Division I typically play a significant role in policy development and oversight at the institutional and conference level. That is also largely the case with regard to autonomy governance issues for FARs from universities within the Autonomy 5 conferences. In contrast, however, the FAR role has been diminished across Division I for division-wide Council governance matters. Individual FARs within the Council governance structure have had the opportunity for significant involvement, but overall the representation of FARs is now minimal. FARs must continue to speak out about this shortfall. To assure that governance and policy-setting for a body that is intended to self-regulate *college* athletics and *student-athletes*, the Council should visibly reflect a commitment not only to the administration of sports, but also give recognition to the inclusion of collegiate sports within the broader university setting. To carry out that mission in a transparent, inclusive, and effective manner necessitates more representation from our institutions of higher education through our FARs.