

TO: NCAA Governance Staff

FROM: Tom McMillen, President & CEO, LEAD1 Association

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RE: NCAA Governance Feedback

LEAD1 Association represents the athletics directors and programs of the 130 member universities of the Football Bowl Subdivision (FBS). Key to the LEAD1 mission are influencing how the rules of college sports are enacted and implemented, advocating for the future of college athletics, and providing various services to our member schools.

**Issue: FBS Athletics Directors Have Concerns About Current NCAA Governance**

Based on a recent telephonic survey of certain of members with conference diversity concerning the NCAA governance process, LEAD1 has found that a number of our athletic directors are of the view that the current representative structure does not always yield results that are representative of their views and does not have sufficient flexibility to allow for alternative proposals to be considered.

Some of our FBS athletic directors have expressed the following concerns about the FBS Athletic Director (AD) voice not being heard in the NCAA governance process and that the rank and file FBS AD opinions do not receive fair consideration:

- There is no FBS AD on the D1 Board of Directors even though FBS programs represent the most significant programs, by revenue in D1.
- While the D1 Council has 5 FBS AD representatives, several ADs have stated that they have little or no say in the appointment of these ADs to the Council.
- The 65 Group of Five ADs feel even more marginalized because they have no representative on either the D1 Board of Directors or the Council. If the Autonomy Conferences pass legislation, they either have to accept it or fall behind competitively.
- Some of our ADs have expressed concerns that the rank and file FBS ADs have no say in who is selected to serve on the various D1 committees.
- There were comments made by certain ADs that questioned the relevance of attending the annual NCAA convention and whether it was a productive use of their time as many of the major issues are often predetermined before the convention.

These concerns expressed by some of our ADs are essentially a result of the representative governance model that replaced the one-school, one-vote model in 1997. In theory, and in practice most of the time, conference representatives (60 percent of which must be athletic directors) adequately reflect the collective views of athletic directors. But this is not always the case. While LEAD1 believes this is largely an equitable and efficient model, the inclusiveness of the Division I Council representative model can have the unintended effect of watering down or even negating the views of athletic directors. The views of the athletic directors of certain schools, typically smaller D1 FBS schools, may not even make it to the table for consideration. The fact that nearly half of the D1 Council must be athletic directors obscures the fact that even

the collective view of athletic directors may not carry the day or that there is currently no outlet for the views of an athletic director who may not agree with his or her conference's approach.

Why does that matter? Because athletic directors are closest to what is actually happening from a sports standpoint on college campuses. They are the practitioners who have ultimate responsibility for implementing NCAA decisions within their departments.

The issue is that the current process provides a limited path forward for consideration of policy proposals – through conference representatives or committees. There is no mechanism for consideration of proposals that do not have sufficient support from other schools in the conference. Therefore, as described below, we would like to discuss with NCAA staff a proposal to add to, but not change, the current governance structure, consistent with approaches used in other representative voting systems.

### **Possible Ways to Increase FBS AD's Voice**

A representative governance compared to direct democracy faces the challenge of creating processes to ensure that all the members are engaged and feel that their input is important. The following are some proposals to enhance the FBS AD's voice in the NCAA governance process.

#### **Proposal: Additional Legislative Route for Policy Proposals Meeting Certain Support Threshold**

The NCAA should adopt a provision that provides for something akin to a "discharge petition," which is essentially a procedural mechanism to enable a full legislative body to consider a bill without it passing out of committee. This type of parliamentary procedure exists in the U.S. Congress as well as in many state legislatures.

Discharge petitions generally require a majority of voting members to support it which, in effect, means that they tend to be rarely employed or at least employed successfully. So, it is very much an extraordinary measure, but it provides another sort of check and balance in the system relative to committee power.

In the context of NCAA decision-making, LEAD1's proposal is to create an alternative mechanism for getting proposals before the full Division I Council for a vote. Specifically, instead of the representative conference or committees being the mechanisms for a member institution to bring a proposal before the Council, there could be a process under which a proposal could be considered upon agreement of a majority of the 130 FBS schools. Even then, it would still require approval of the Division I Council. The only difference is that the Council would be voting on a proposal that it would not otherwise consider.

Alternatively, within the autonomy structure, if a proposal fit within a specified area granted to the Autonomy 5 conferences, there could also be a process under which a proposal could be considered upon agreement of a majority of the 65 autonomous member institutions.

LEAD1 believes the addition of such a provision would be consistent with the intent underlying the adoption of the representative system as well as with the changes to the NCAA governance process adopted in 2014.

The fact that the current governance model requires that at least 60 percent of the 32 conference representatives be athletic directors is recognition of the unique role of athletic directors and evidences an intent to ensure that their voices are heard and have due weight in the process.

Further, as noted in a recent law review article (The Revised NCAA Division I Governance Structure After Three Years: A Scorecard, Texas A&M Law Review, Vol. 5, Issue 1, 1/12/18, p. 75), “[t]here was also a conscious effort to assure that practitioners were “represented and empowered within the governance system.” The footnote to this statement notes that there was a “finding that practitioners were not fully represented or involved in the former governance structure.” Again, while athletic directors are not the only so-called “practitioners,” they are certainly the ones with the most responsibility on all matters affecting collegiate athletics.

As is the case in other legislative bodies, this alternative mechanism would likely not be successfully employed very often, but would provide an important safety valve to ensure that the voices of individual member institutions, and FBS athletic directors in particular, have another way of being heard without conferences or committees necessarily being the filter between them and the NCAA in all cases.

**Proposal: Provide At Large FBS AD Representative(s) on the D1 Board of Directors and D1 Council that are directly elected by the FBS member schools**

The NCAA should adopt a provision that provides one or two at large FBS AD representatives on the D1 Board of Directors and Council, and selected by a direct voting by the 130 FBS member ADs. LEAD1 would be willing to assist in this process as you deem appropriate. This would ensure that the rank and file ADs would always be represented at the leadership level of D1.

**LEAD1 Relationship with NCAA**

In order to develop a close working relationship between the NCAA, it is essential for LEAD1 to be provided timely information. To facilitate this objective, LEAD1 would propose that it be added to the distribution list for all relevant information that is currently sent only to conferences.