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## FACULTY ATHLETICS REPRESENTATIVES (FAR)

*Academics & Athletics as an Integrated Whole: on Campus, in Governance*

September 11, 2013

Nathan O. Hatch  
President, Wake Forest University  
Chair, NCAA Division I Board of Directors

Dear President Hatch:

On behalf of the 1A FAR Board, I am attaching our proposed Principles and Model for a New Governance Structure. I have also uploaded a copy to the Governance Redesign website and transmitted a copy to Jean Frankel.

In addition, thank you for the invitation to participate as a representative of 1A FAR at the joint meeting of the Board of Directors and the Presidential Advisory Group on October 29, 2013. I look forward to working with you and the other Board members.

Sincerely,



Brian D. Shannon  
President, 1A FAR Board  
FAR, Texas Tech University  
Charles "Tex" Thornton Professor of Law  
Texas Tech University School of Law

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## **PRINCIPLES AND MODEL FOR NEW GOVERNANCE STRUCTURE** **As Developed by the 1A FAR Board**

### I. RECOMMENDATION FOR NEW GOVERNANCE STRUCTURE

- FBS as a new and separate NCAA division.<sup>1</sup>
- Management Council rather than Leadership and Legislative Councils.

Composition: One AD and one FAR from each FBS Conference will be included; SWAs and Conference Commissioners may also be represented, perhaps one SWA and one Conference Commissioner from each FBS conference. Item to resolve: Whether there should be weighted voting in favor of the five FBS conferences that remain from the BCS automatic qualifier conferences (SEC, ACC, Big Ten, Big 12, Pac 12), and perhaps the AAC, successor to the former automatic qualifier Big East Conference.

Role: Adjunct to FBS Board; Adoption of Bylaws and Policies, subject to FBS Board; Primary Role in Drafting Legislative Proposals.

- FBS Division Board of Directors

Composition: At least one president/chancellor from each FBS Conference (with weighted voting that reflects Management Council weighted voting, should there be weighted voting for the FBS conferences that remain from the BCS automatic qualifier conferences (SEC, ACC, Big Ten, Big 12, Pac 12), and perhaps the AAC, successor to the former automatic qualifier Big East Conference).

Role: Traditional Board functions, including responsibility for setting overall policy objectives and primary responsibility for budget and strategic planning.

- Division I/FBS combined championships rather than separate FBS championships.
- Cabinets and Committees. Issues to work out regarding cabinets and committees particular to FBS division and those that will be joint FBS/Division I. For both FBS cabinets and joint FBS/Division I cabinets, fewer cabinets with broader roles so that “silo-ing” of athletic and campus issues is reduced and integrated discussion may occur. Cabinets and committees to report to their respective Management Councils so that there may be a regularized, focused process for

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<sup>1</sup> See Figure 1 for a chart depicting a new FBS Division. As we describe *infra*, a new division both would permit grouping of institutions and conferences with greater similarity in revenues and mission and also permit not only smaller governance groups but groups that can include a critical mass of campus/FAR and athletic administrator voices. We use the term “FBS” as a shorthand placeholder for the eventual name of the new division. We also recognize that there will likely be much discussion concerning the precise contours of what should be the institutions and conferences included within the division.

reviewing activities and assuring coordination. [Additional issues: composition; scope of cabinet role; weighted FBS voting in joint FBS/Division I cabinets, etc.]

## II. OBJECTIVES

There are a myriad of worthwhile objectives that might be served by a new Division I governance structure. The problem is that they cannot all be achieved or at least not with equal attention. The 1A FAR Board believes that the most critical objectives in a new governance structure are:

- (1) the perception of intercollegiate athletics in general and NCAA Division I in particular must instill confidence that policy is adopted and problems are solved in an efficient and timely fashion in a way that embodies the values of higher education and the student-athlete experience;
- (2) the goals and ethos of our colleges and universities must be front and center in the consideration and adoption of policies and bylaws;
- (3) those charged with implementing policies and bylaws must have substantial input in their development and, in turn, buy-in;
- (4) the FBS must be the master of its own fate, particularly with regard to matters of enhancement of the student-athlete experience that depend on increased revenue allocation;<sup>2</sup>
- (5) presidents and chancellors must have ultimate authority for the direction of intercollegiate athletics and the policy and bylaw goals to be achieved. (The academic reforms over the past decade and the implementation of CAP are direct results of president/chancellor involvement); and
- (6) the simpler the governance structure the better.

As an observation, we note that any governance structure will produce negative consequences. What we propose here, therefore, is what we believe, on balance, is the most workable way to achieve the six objectives listed above.

## III. DISCUSSION

Optimal achievement of the above objectives depends on the cooperation, communication, and interactive engagement (early and throughout the process) of a critical mass of senior-level campus athletics administrators with broad-based experience and a critical mass of FARs. Athletics administrators have overall responsibility to administer athletics programs. They daily deal with the stresses and requisites of the competitive environment, including student-athletes, coaches, boosters, and agents, and they also have end-line responsibility to

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<sup>2</sup> See Figure 2 for a table of athletics expenditures by institution subdivision membership for the 2011-12 year.

manage finances and increase resources. FARs are expected to understand both the prerogatives and stresses of the campus environment as well as the operation of athletics programs and the interworking of NCAA bylaws, programs, and processes. To exercise their responsibilities, FARs must have the trust of the president or chancellor. As “direct report” representatives of our presidents and chancellors, we best reflect their priorities and the interests of all the constituencies that they represent. We also believe, moreover, that much of the current criticism of intercollegiate athletics will become even more strident unless there is an effective, and visibly effective, faculty voice.

#### A. New, Separate FBS Division

The 1A FAR Board supports a governance structure in which FBS institutions and conferences form a new, separate, NCAA division as such a division can group together institutions that are more closely aligned in resources dedicated to athletics programs and in the types of issues faced. An FBS division satisfies several salutary process functions: (i) the governance groups most directly involved in policy adoption can be smaller, permitting more robust and focused discussion with more timely policy resolution; (ii) even though smaller, the governance groups can include more FARs and senior level athletics administrators with broad-based responsibilities than is possible under the current structure; and (iii) the governance groups may focus directly on FBS issues and are more likely to resolve issues and provide solutions workable and needed in FBS institutions.

The 1A FAR Board urges a separate FBS division rather than a fourth Division I subdivision for four reasons:

- (1) A separate FBS division permits voting on all issues rather than attempting to identify those that trigger separate FBS voting. It is often challenging to identify such issues in advance or even after the fact. Having a separate FBS division will also avoid having to take time at meetings to work out when an issue triggers a separate vote.
- (2) An FBS remaining as part of Division I is a more unwieldy approach, even if FBS conferences and institutions voted separately and adopted bylaws and policies separately and independently.
- (3) An FBS remaining as part of Division I is less likely to maintain its integrity over time as a separate voting entity and would likely be unable to avoid the experience under the current governance structure in which institutions and conferences with very different resources and facing either different issues, or the same issues but in different degrees of acuteness, were able to move to Division IA or Division I FBS, thereby recreating the need for a separate FBS voice.
- (4) An FBS remaining as part of Division I either will include a smaller group of representatives from FBS institutions and conferences than would be the case if the FBS were a separate division or the Division I governance body would have to be larger than otherwise appropriate for effective governance. The 1A FAR Board believes both consequences are negative ones. We have reviewed the NCAA governance structure

from the 1940's through the 2000's. Until the representative structure was adopted in Division I in the mid-1990's, bylaw voting was by institutions at the NCAA Convention. Until the mid-1980's, the NCAA Council had 22 members that represented all regions of the country; at least eight of the representatives were FARs. In 1973-74, the NCAA divided into three divisions. By 1994-95, the Council had 46 members, representing all three divisions (22 in Division I).<sup>3</sup> Currently governance is divided between Legislative and Leadership Councils, each with 31 members. The 1A FAR Board believes strongly that FBS governance would be much better served (and a true diversity of perspectives more easily achieved) by centering discussion and policy resolution in a group of FARs, athletics administrators, and conference commissioners exclusively from the FBS.

In recommending a separate FBS division, the 1A FAR Board has neither evaluated all issues attendant on such a change, nor attempted to work out how to resolve all of them. We would find most welcome the opportunity to work with presidents and chancellors on the Division I Board or elsewhere, NCAA senior administrative staff, representative campus athletics administrators, and conference commissioners in making concrete the new governance structure. We have not engaged in close evaluation of the questions, for example, of which conferences and institutions should be identified as belonging to the new FBS division or whether there should be weighted voting in favor of the five conferences that remain from those that were automatic qualifiers in the BCS (or a sixth, should the AAC be so included). We also do not now discuss how the cabinet structure might need to be revised.<sup>4</sup> We note, however, that, if the FBS institutions are to chart their own course, even an FBS as a separate subdivision of Division I will raise issues about cabinet structures, representation, and voting.

#### B. Separate FBS Division Combined with FBS/Division I Championships

The 1A FAR Board supports a governance structure that leaves intact the Division I championship structure in which FBS institutions compete. We urge this for three reasons. First, the men's basketball tournament funds more than 90 percent of NCAA operations, both at the national office and for all NCAA divisions, and we have no wish to create major impediments to their ability to function. Second, many NCAA operations and services funded by the men's basketball tournament inure to the direct benefit of FBS institutions and conferences – enforcement; the eligibility center; interpretations; and student-athlete reinstatement (just to name a few). Third, because we believe that the Division I championship structure works well, we see no good reason to isolate FBS teams and conferences. (Moreover, although we have not examined competition numbers, we wonder whether some FBS-only championships would have a sufficient number of teams and student-athletes to warrant separate championships.<sup>5</sup>)

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<sup>3</sup> NCAA chronology: 1906 to 1955, No Divisions; 1956 to 1972, University and College Divisions; 1973 to present, Divisions I, II, and III; 1978 to 2006, Division I-A (football bowls); Division I-AA (Division I football championship); Division I-AAA (no football); Divisions II and III; 2006 to present, DI FBS; DI FCS; Division II, Division III.

<sup>4</sup> We also have not explored alternatives to make the Convention more meaningful in Division I but suggest this might be a matter worth exploring as a mechanism for greater membership involvement.

<sup>5</sup> We know, of course, that some championships are association-wide and that, therefore, FBS championships could be restricted to the FBS in some sports and be association-wide in others. As we stated at the outset, however, we believe the best structure is the simplest one that achieves articulated objectives.

The 1A FAR Board recognizes, however, that an FBS division (or subdivision within Division I) with authority to adopt its own policies and bylaws will create stresses within the non-FBS institutions and conferences in Division I.<sup>6</sup> We have not attempted in this proposal to explore in any detail what these consequences might be, but we believe that this effort must be undertaken and, to the extent possible, the new governance structure should account for the consequences (either by drafting to avoid them or recognizing their existence and concluding that the benefits of a new governance structure still make it “a go”).

### C. Particulars of New FBS Governance Structure

1. We recommend a Management Council that combines the current functions of the Leadership and Legislative Councils. We are not sure that the division between the two current councils has worked particularly well. We believe there should be more effective ways to prune out the intricacies of bylaws that do not raise major policy questions (one of the failings identified by the Division I Board in the prior Management Council). We strongly urge that the effort to deregulate bylaws that are not directly related to NCAA principles be restarted as we believe this is the most efficient way to get rid of the weeds of unnecessary legislation and make the process more efficient. (Indeed, one reason we support a separate FBS division is our belief that deregulation more likely can be effectively achieved in a separate division.) One suggestion that might help to remove the Management Council from the grind of excessive bylaw review is to empower the cabinets to develop legislation in designated bylaw areas, with the Management Council sitting to review (and either adopt or reject) decisions made at the cabinet level. The FBS Board, in turn, would approve or disapprove (or remand) the Management Council/cabinet decisions. Another suggestion is that, except in emergencies, a bylaw adopted or amended may not be amended or even voted on again for a three-year period.

2. We recommend that, at a minimum, each FBS conference have an AD and a FAR representing it on the FBS Division Management Council. We believe that consideration should also be given to including representation by conference commissioners and SWAs. FBS conference commissioners manage institutional television rights, and/or their own networks, coordinate the objectives and obligations of all the members of their conferences, and represent conferences in a variety of venues. They also are best placed to coordinate conference discussions and responses. SWAs on campus and in conference governance typically oversee non-revenue sports and often are responsible for gender and minority equity concerns and, in general, matters of student-athlete well-being. Were there four representatives from each existing FBS conference, however, that would equal a 40-member Management Council. (In the alternative, were there weighted voting for some FBS conferences, or a configuration of conference commissioners and SWAs that does not equal one of each from each conference, then the Management Council would have fewer than 40 members.) Because Management Council representation might be weighted three athletics administrators to one FAR, we believe that Management Council votes should be recorded by governance position so that any major differences between the groups may readily be identified. (Note: The old NCAA Council had two or three presidents or chancellors who served even though there also was a President’s Commission.)

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<sup>6</sup> See Appendix A for a discussion of a few such issues and how they might play out.

3. We recommend an FBS Division Board of Directors with at least one president/chancellor from each FBS Conference (with weighted voting that reflects Management Council weighted voting, should there be weighted voting for the five FBS conferences that were BCS automatic qualifiers, and perhaps the AAC as the successor to the former Big East).

4. Because we expect the new structure to be more responsive to FBS concerns and to be able to act/react more quickly and efficiently, we recommend less (or no) reliance on working groups and task forces outside the structure. We also recommend that, except in emergency situations, bylaws proposed by the FBS Division Board enter the legislative cycle for regularized, focused comment before final adoption.

5. We recommend that all cabinets and committees report to the FBS Management Council (or Division I Legislative/Leadership Councils or Management Council) and that the FBS Management Council and Division I Management or Legislative/Leadership Councils have a regularized, focused process for reviewing cabinet and committee activities. At the very least, we recommend that the governance structure should not have two committees/cabinets reviewing the same general matters, with one reporting to the Board and another reporting to the Management Council. (We believe that to some extent this currently may be the case with academic proposals under review by both the Academic Cabinet and CAP.) An issue to be resolved will be which cabinets and committees will be exclusively FBS and which might be joint FBS/Division I. We would also envision that there would be fewer cabinets and committees to serve the new FBS Division given its smaller size.

6. We recommend that the Management Council focus less on adopting bylaws drafted elsewhere and more on exploring policy considerations for and against particular approaches. Were this to occur before a bylaw is drafted, there would be a more informed basis for drafting bylaws and a greater likelihood that bylaws will reflect all relevant considerations. We also recommend that the Management Council take a principal role in overseeing the drafting and advancement of legislative proposals. Further, we believe that the Management Council should make decisions on accepting or rejecting legislative proposals developed by cabinets/committees based on a review of those cabinets'/committees' fully articulated presentation of the consequences of various policy and bylaw alternatives.

7. We believe that there should be a reconsideration of fixed term limits for the Management Council and cabinets because such limits can result in the loss of valuable and even critical experience. On the one hand, if there are no term limits, others may be prevented from gaining experience and serving. The impact may fall hardest on minorities and women. In addition, if there are no term limits, individuals may be retained in a governance position even though they no longer adequately are fulfilling their responsibilities. On the other hand, hard term limits mean that those with the most experience and, perhaps, insight are removed from central service roles. As researchers report, the end result may be to move policy responsibility to staff and away from those charged directly with exercising that responsibility. There also are ways to preclude an individual from serving another term if (s)he fails to fulfill his/her responsibilities. Finally, term limits typically "run with" the Conference. They therefore have more impact on FARs than athletics administrators as they, unlike FARs, move to positions at other institutions

in other conferences and, therefore, their service clock might begin anew. We suggest, therefore, that terms run five years with a two-year hiatus and then reappointment, with no maximum times this may occur. There have been instances, particularly on CAP, where individuals have continued to serve in an “ex officio” capacity after a term expired because of their particular expertise. We suggest that there be explicit written authority to retain individuals as members, even in a non-voting role.

#### IV. CONCLUSION

For the reasons set forth above, the 1A FAR Board supports a new, separate, FBS Division as the best alternative to achieve confidence and buy-in in NCAA Division I governance, something widely acknowledged as missing in the current structure. We also believe that a separate FBS Division is the best alternative to serve the needs of FBS institutions and the interests of their student-athletes.<sup>7</sup> A new division will permit broad representation by governance groups in numbers sufficient to assure that there will be full exploration of all perspectives, close examination of the consequences of various alternative policy approaches, and a detailed assessment of the potential implementation implications of policies and bylaws. We believe that one result is that policy- and decision-making will be informed by those with responsibility for policy implementation and with experience in how policy and decisions will play out. Finally, we believe that a separate FBS division will be more efficient and effective in serving FBS presidents and chancellors by focusing on matters important to the administration and health of intercollegiate athletics and by providing the Board with the information and experience that will assist it in performing its role.

Nonetheless, we recognize that development of a new governance structure will require close examination of the downstream consequences of upstream decisions. We have set forth some examples in Appendix A, but we have no means noted all of them. As we said at the outset, FBS FARs, and the 1A FAR Board, would welcome the opportunity to assist in development of a new governance structure.

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<sup>7</sup> We cannot speak for Division I institutions and conferences that are not FBS, but we believe that removal of FBS conferences will also provide them efficiencies in discussion and policy implementation.

## APPENDIX A

The 1A FAR Board believes that bylaw and policy adoption by an FBS Division is likely to have some spillover effects in the rest of Division I. Although many effects might be positive, or neutral, it also is possible that some of these effects might be negative regarding student-athlete well-being in a newly configured Division I that would no longer have FBS conference members, and also in the overall health of intercollegiate athletics. Even if some consequences are negative, however, the 1A FAR Board believes that the advantages in policy, process, and perception that will be produced by a separate FBS Division will outweigh any negative consequences that might ensue. Nonetheless, the 1A FAR Board believes a move to an FBS Division should be accompanied by a consideration of how FBS policies and bylaws might play out in the rest of Division I. We do not suggest that such a consideration should impede creation of a new division. Instead, we believe that identification of consequences underscores the reasoned and deliberative process employed in creating a new division. We offer several potential examples here.

1. Research initiatives in the area of concussions and other health and well-being issues for student-athletes.

We believe that there is much research work that may be done to enhance the knowledge base and, in turn, performance and treatment protocols for student-athletes. As we understand it, the protocols established for sickle cell identification initially were adopted only in Division I, with Divisions II and III adopting similar protocols once Division I acted. We believe that there might be similar initiatives that the FBS conferences and institutions might be willing to adopt, both because of greater resources and also because their student-athletes might experience a greater incidence of certain medical/health issues.

2. Permitting institutions to offer student-athletes in head-count sports athletic scholarships equal to full cost of attendance (and basing the percentage scholarships offered in equivalency sports on the full cost of attendance).

There has been considerable discussion of this issue, much centered on whether FBS institutions and conferences would institute such a bylaw change were they to vote separately from non-FBS institutions and conferences. Although there would likely not be unanimity even within a new FBS Division, we assume here that an FBS Division would move to some version of full cost of attendance. Non-FBS institutions would thereafter compete for student-athletes against FBS institutions in an FBS/Division I championship; student-athletes in non-FBS institutions would compete against each other in the same FBS/Division I championships. We believe that ultimately this might drive the rest of Division I to permit grants going to full cost of attendance. One possible consequence could be a reallocation among spending priorities in non-FBS institutions. Another consequence could be a decrease in the number of sports sponsored by some, perhaps most, non-FBS institutions, with the impact most likely falling on men's non-revenue sports. Another possible consequence would be a decrease in the number of scholarships offered in each sport, again with an impact more likely in men's non-revenue sports. An additional alternative might be a further drain on campus resources.

### 3. Increasing athletic scholarships offered in women's sports.

Many institutions have difficulty meeting Title IX gender equity requirements. It is much less expensive to increase the number of scholarships offered in a sport that an institution already offers than it is for an institution to add another sport (with the concomitant costs of coach salaries, travel and competition schedules, and facilities).

In the 2004-05 legislative cycle, four proposals were adopted (2004-21 A, B, C, D) that would have increased the maximum number of scholarships for selected women's sports: from 12 to 14 for gymnastics; from 13 to 14 for volleyball; from 18 to 20 for cross country/track and field, and from 12 to 14 for soccer. The Management Council adopted the proposals, with the majority of FBS conferences in support of scholarship increases for all four sports and the majority of FCS/NoFB conferences opposed. The proposals went to an override vote at the next NCAA Convention. Three of the proposals were overridden (defeated) by narrow margins, even though the legislation was permissive. Although there was some discussion that additional scholarships were not needed in these sports, a great deal of the opposition came from lower-resourced institutions that feared a competitive disadvantage were they unable to provide the scholarships (with more of the highly recruited student-athletes gravitating to bigger programs that, under the proposal, would have had additional scholarship space on their rosters). Were an FBS Division to be master of its own fate, then, again, the question is what response might come from the Division I institutions?

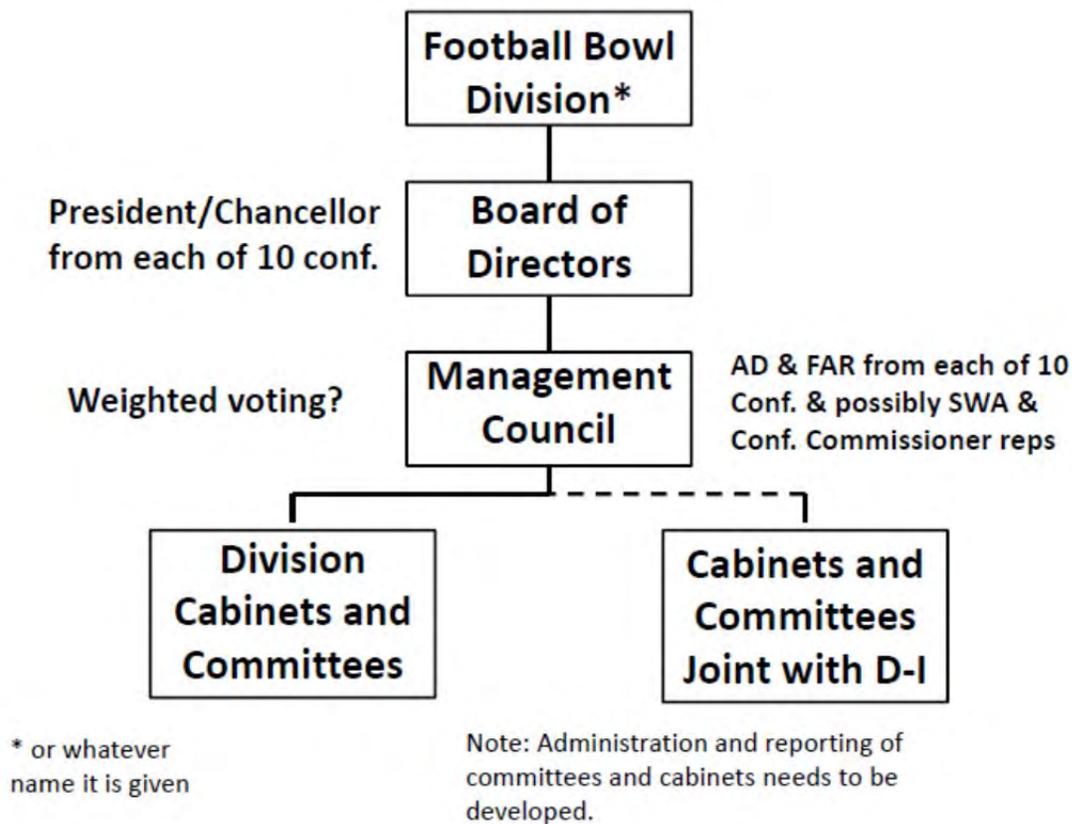


Figure 1. New NCAA Division Structure

Subdivision	2011-12 Athletics Expenses Average by Subdivision	25th Percentile	75th Percentile
FBS	\$56,664,257	\$27,558,156	\$76,978,631
FCS	\$16,885,021	\$11,335,102	\$21,631,418
D-I No Football	\$14,142,454	\$10,284,344	\$16,801,411

Figure 2. 2011-12 Athletics Expenses by Subdivision Membership:  
Average, 25<sup>th</sup> and 75<sup>th</sup> Percentile