

**WHAT'S AT OUR CORE?**

**NCAA Division I Voting Patterns**

**vs.**

**Student-Athlete Well-Being, Academic Standards,  
and the Amateur (Collegiate) Model**

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### **I. Introduction**

The NCAA was formed in 1906.<sup>4</sup> Until 1955 it had no divisions;<sup>5</sup> its members voted as a committee of the whole in adopting bylaws and policies. In 1973 the NCAA assumed its present configuration of three divisions (DI, DII, and DIII),<sup>6</sup> roughly divided along the lines of institutional demographics including mission, size, degrees offered, student profile, endowment, and operating budget.<sup>7</sup> In the NCAA divisional structure, institutions in each division conduct their own championships<sup>8</sup> and adopt bylaws and policies<sup>9</sup> consistent with NCAA core values.

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<sup>1</sup> Professor Potuto coded legislative proposals; worked with Professor Dillon to refine classification categories and coding principles and to write the qualitative analysis; prepared override vote spreadsheets; and organized and drafted the Final Report, including the preparation of appendices and inclusion of relevant cite support. See Appendix X for Professor Potuto's curriculum vita.

<sup>2</sup> Professor Dillon created initial classification categories and coding principles; prepared the initial version of the coding spreadsheet; located legislative proposals and tracked Management/Legislative Council proposal votes; coded legislative proposals; worked with Professor Potuto to refine classification categories and coding principles and to write the qualitative analysis. See Appendix X for Professor Dillon's curriculum vita.

<sup>3</sup> Professor Clough determined the methodology to analyze the impact of DI voting on core values as reflected in classification categories, and carried out the statistical analysis. He also reviewed Potuto/Dillon midpoint coding principles and classification categories. See Appendix X for Professor Clough's curriculum vita.

<sup>4</sup><http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/About+the+NCAA+history>.

<sup>5</sup> At that time the NCAA divided into university and college divisions.

<sup>6</sup> See 1997-98 NCAA DI Manual, Const. Art. 4.5.1.

<sup>7</sup> See Appendix V for a more detailed description of NCAA divisional history.

<sup>8</sup> NCAA Const. Art. 3.01.2. A few sports have championships across NCAA divisions rather than separate divisional championships: Women's Bowling, Men's and Women's Fencing, Men's Gymnastics, Women's

NCAA core values are embodied in its purposes and fundamental policies<sup>10</sup> and in its principles for administering intercollegiate athletics.<sup>11</sup> These core values apply association-wide to all three divisions.<sup>12</sup>

Division I, the focus of this Study, is subdivided<sup>13</sup> into the Football Bowl Subdivision (FBS);<sup>14</sup> the Football Championship Subdivision (FCS);<sup>15</sup> and also into what we call the Non-Football Subdivision (NoFB).<sup>16</sup> Since 1997, DI has adopted bylaws through representative governance by conferences,<sup>17</sup> with DI bylaws administered and enforced uniformly throughout DI.<sup>18</sup>

Among the most fundamental NCAA core values are the protection and advancement of student-athlete well-being<sup>19</sup> and academic standards<sup>20</sup> and the preservation of the amateur

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Gymnastics, Men's and Women's Rifle, Men's and Women's Skiing, Men's Volleyball, Men's Water Polo, and Women's Water Polo. NCAA Bylaw 20.8. In addition, a DII institution may compete in a DI championship if DII offers no championship in the sport. NCAA Bylaw 20.8.1. Unless otherwise noted, all constitutional and bylaw citations are to the 2011-12 NCAA DI Manual.

<sup>9</sup> DI members subscribe to a non-binding statement of principles that includes maintaining both breadth of academic opportunity and depth of academic quality as well as excellence in athletics competition both generally and, in particular, in football and/or basketball. NCAA Bylaw 20.9.

<sup>10</sup> NCAA Const. Art. 1.

<sup>11</sup> NCAA Const. Art. 2. For NCAA Principles of Student-Athlete Well-Being, Sound Academic Standards, Amateurism (the collegiate model), and Financial Aid, see Appendices I, II, III, and IV, respectively.

<sup>12</sup> NCAA Const. Arts. 1 and 2. The general NCAA administrative structure, budget and revenue guarantees to institutions, national office operations, and certain positional definitions also apply association-wide. NCAA Const. Arts. 4.01 to 4.02.4. Additionally, there are association-wide committees that deal with issues common to all divisions or necessary for day-to-day NCAA operations. See, e.g., NCAA Bylaws. 21.2.2; 21.4.

<sup>13</sup> Although DI teams compete in NCAA sports other than football, its subdivisions are organized around football.

<sup>14</sup> FBS institutions field football teams that compete in post season bowl games.

<sup>15</sup> FCS institutions field football teams that in an NCAA championship.

<sup>16</sup> There is no football played in the NoFB. Technically there is no DI NoFB subdivision. Instead, DI conferences that do not sponsor football are classified as DI. We call these conferences NoFB in this Report both for ease of reference and also for clarity when making comparisons to the FBS and FCS.

<sup>17</sup> DII and DIII continue to adopt bylaws by one institution/one vote at the NCAA Convention.

<sup>18</sup>The major exception is proposals related to football, where federated voting occurs. Proposals specific to FBS football are voted on only by FBS conferences; proposals specific to FCS football are voted on only by the FCS conferences. The NoFB subdivision votes on neither. NCAA Const. Art. 5.1.4.3.4; User's Guide, III Voting Requirements for Manual, at ix.

<sup>19</sup> NCAA Const. Art. 2.2; for the full text see Appendix I.

<sup>20</sup> NCAA Const. Art. 2.5; for the full text see Appendix II.

(collegiate) model.<sup>21</sup> The prime questions explored in this Study are whether (1) DI votes these core values and (2) whether DI all-division voting combined with subdivisional and institutional diversity impedes advancement of them.

As discussed more fully in this Report, the results of our statistical analysis account for about 30 percent of the variability in voting on proposals, a respectable value in statistical analysis of social science phenomena. What we found is that the price tag associated with a legislative proposal is statistically significant as to whether it is adopted or defeated, is significant to voting by DI subdivisions, and is significant even when a proposal has negative impact on student-athlete well-being or academic standards.<sup>22</sup> The one exception is that price tag is not significant overall for the six conferences we refer to as BCS FBS conferences – the Atlantic Coast, Big East, Big Ten, Big 12, Pacific12 (10), and Southeastern<sup>23</sup> – those that have been automatic qualifiers in the Bowl Championship Series (BCS).<sup>24</sup> Even for BCS FBS conferences, however, price tag was significant in the last three legislative cycles (2008-09 to 2010-11) of our Study.

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<sup>21</sup>"Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived . . . . [S]tudent-athletes shall be protected from exploitation by professional and commercial enterprises." NCAA Const. Art. 2.9; for the full text see Appendix III. The Knight Commission in particular has highlighted what it sees as the NCAA's movement from an amateur (collegiate) model toward an increasingly commercial one. Knight Commission, Restoring the Balance: Dollars, Values, and the Future of College Sports (2010); A Call to Action: Reconnecting College Sports and Higher Education (2001). See also, "Bill Proposes to Seek UC Withdrawal from NCAA," Dateline UC Davis (June 27, 2003); Wolverton & Fain, "Senate Hearing Will Focus on Rising Tuition Costs and Potential Tax Abuses by Colleges," Chron. Higher Ed. (November 17, 2006).

<sup>22</sup> More generally, price tag matters without regard to whether a proposal has positive, negative, or neutral impact on student-athlete well-being or academic standards.

<sup>23</sup> Using a qualitative analysis, we found a few proposals involving summary cost where proposals were defeated but would have been adopted had the BCS FBS voted on its own. We discuss these supra in this Report.

<sup>24</sup> The FBS football post-season is conducted independent of the NCAA. Iterations of the FBS football post season began with independent operation of bowl games through the Bowl Coalition; then Bowl Alliance; and, since 1997, the BCS. <http://www.bcsfootball.org/news/story?id=4819366>. The BCS is a cooperative arrangement between, among others, the FBS Conferences and the Rose, Orange, Sugar and Fiesta Bowls. See generally, Potuto, "They Take Classes, Don't They?: Structuring A College Football Post Season," 7 Maryland Journal of Business & Technology Law 311 (2012). A new iteration, involving a playoff of the top four FBS football teams, is set to begin in 2013.

As a general matter, we found no other statistically significant factor driving DI or subdivisional voting, including student-athlete well-being and academic standards, taken singly or in combination. In consequence, we cannot determine from the statistical analysis whether voting by DI in its entirety or by subdivisions either impedes or supports advancement of student-athlete well-being or academic standards. With regard to impacts on the amateur (collegiate) model, moreover, there were too few proposals in our Study database to permit statistical analysis.

A qualitative assessment of the Study database prompts additional observations. First, after price tag, perceived significant competitive advantages appear to be the next important driver in DI and subdivisional voting, even when a proposal has negative impact on student-athlete well-being or academic standards. Second, when proposals that advance these core values neither increase price tag nor are perceived to produce distributively different subdivisional competitive impacts, then these proposals are supported throughout DI, and with greater majorities than other proposals.

Our findings and observations may be read to say that DI votes either oblivious to, or at least unmindful of, the hierarchy of NCAA core values, prioritizing price tag and competition goals over student-athlete well-being and academic standards. Whether this is true, however, cannot be proved from our Study results. Although being able to account for 30 percent of the variability in proposal voting results is meaningful, that still leaves considerable variability unaccounted for. All the rest of the variability might simply be random. But it seems more reasonable to assume that voting on proposals was influenced by factors particular to those proposals that drown out consideration of student-athlete well-being and academic standards. Among these are institutional autonomy, compliance concerns, impact on other NCAA core

values, and voter perception that a proposal cannot achieve its stated goal. Yet another factor might be that at times voters may have an insufficient (or mistaken) understanding of the meaning of a proposal or its impacts on existing policy. Our experience in reading proposal language, parsing subparts, assessing rationales, and tracking impacts underscores just how likely this last factor may be.

Another caveat to our findings regarding DI voting and NCAA core values relates to our decision to exclude non-controversial and emergency proposals from the Study database. Non-controversial proposals do not adversely impact student-athlete well-being or academic standards. Emergency proposals are adopted because otherwise there would be undue negative impact on core values. Because non-controversial and emergency proposals are adopted either unanimously or with overwhelming majorities in all subdivisions, they offer no basis for comparing subdivisional voting. It was on that basis we excluded them. That exclusion, however, may have resulted in Study findings that understate the degree to which all of DI votes its core values of student-athlete well-being and academic standards.

Even a casual review of the Study database underscores the large number of proposals that involve matters far removed from NCAA core values. Although not the direct focus of our Study, a conclusion we reach is that NCAA deregulation is much needed to assure that bylaws are adopted, maintained, and enforced only if they relate directly and substantially to NCAA core values. There currently is a DI effort underway to identify existing bylaws that should be deregulated. We strongly support this effort.

Finally, we have two comments regarding the current subdivisional structure of DI. One relates to the division between the FCS and NoFB while the other relates to the current configuration of the FBS.

The migration of member institutions between NoFB and FCS conferences as well as the migration of these conferences between the NoFB and FCS leads us to wonder whether these institutions and conferences are sufficiently different in ethos and approach to policy questions to need separate subdivisional structures. We believe it would be a fruitful exercise for DI members to evaluate whether one combined, and renamed, subdivision of those conferences currently in the NoFB and FCS can serve their interests equally or better than the current structure.

As to the FBS. DI currently is engaged in an evaluation of NCAA bylaws, including a reconceptualizing of the NCAA regulatory structure.<sup>25</sup> Among the principles proposed for adoption is that DI should not limit the opportunities available to better-resourced institutions in the name of fair competition. We wonder, therefore, whether DI will, or should, consider further subdivision of the FBS to give the better resourced conferences more room to control their own destiny.

## **II. DI Diversity**

DI is comprised of more than 350 colleges and universities. They are public, private sectarian, and private non-sectarian; and they range from large, land-grant, PhD-awarding universities to small private colleges. They vary widely in missions, degree programs, student profiles, and in overall and athletics budgets.<sup>26</sup>

Most DI colleges and universities award athletics scholarships; some do not. Most award all the athletics scholarships that DI bylaws permit; some award none. Some DI colleges and universities operate athletics programs without subsidies from the campus; most do not. In

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<sup>25</sup> See Brown, “Emmert tells Knight Commission Reform Is On The Way,” (October 24, 2011), (<http://www.neaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2011/October/Emmert+tells+Knight+Commission+reform+is+on+the+way>).

<sup>26</sup> See Potuto, The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws that Regulate Them and the Scope of Court Review, 12 Vand. J. Ent.& Tech. Law 257 (2010).

general, the largest FBS colleges and universities have the best athletic facilities and provide the highest level of student-athlete support services. Concomitantly, widely reported problems with college athletics either are unique to FBS colleges and universities or have disproportionate impact on them.<sup>27</sup>

### **III. DI Legislative Process**

From 1997-98 until 2007-08, DI bylaws were adopted by the DI Management Council and Board of Directors.<sup>28</sup> In August 2008 the Management Council was sunsetted; its legislative responsibilities now are handled by the Legislative Council.<sup>29</sup> Voting in the Legislative Council (and the Management Council before it) is not equal among conferences. Although the precise dimension of vote distribution among conferences has changed over time, a constant throughout is that the FBS has more votes than the combined votes of the other two subdivisions. Another constant throughout is that, within the FBS, the BCS FBS conferences and Conference USA have had more votes than the other FBS conferences.<sup>30</sup> Since 2000-01, these seven conferences have had three votes each for a total of 21 votes,<sup>31</sup> the remaining four FBS conferences – those we refer to as the nonBCS FBS – have had 1.5 votes each for a total of six votes,<sup>32</sup> and the

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<sup>27</sup> These include big media contracts, multi-million dollar coach salaries, agent and other “third party” influences, cash payments to student-athletes, academic integrity issues, student-athlete academic decisions driven by competition eligibility interests, play/practice time demands overwhelming the student experience, student-athlete exploitation, student-athlete criminal behavior, and the “arms race.” See, e.g., Whitford, A Payroll to Meet: A Story of Greed, Corruption, and Football at SMU (1989); Dohrmann, “Confessions of an Agent,” Sports Illustrated (October 18, 2010); Ross v. Creighton, 957 F.2d 410 (7<sup>th</sup> Cir. 1992); McMurphy, “Infractions Scoreboard: Nearly Everybody Gets in on the Fun,” CBSSports.com (July 8, 2011); Simpson, “Fans Getting Frustrated with Scandals,” Green Valley News (July 6, 2011); “TarHeels Fumbling Their Duty to Public,” Raleigh News & Observer (June 18, 2011); Eggers, “No Sympathetic Figures in Duck Football Controversy,” Portland Tribune (July 7, 2011).

<sup>28</sup> 1997-98 DI Manual, Const. Art. 4.5.1; 2007-08 DI Manual, Const. Art. 4.5.1.

<sup>29</sup> See 2008-09 DI Manual, Const. Art. 4.6.1.

<sup>30</sup> In 1997-98, these seven conferences had two votes each, while two votes were allocated among the FBS conferences in the second group. See 1997-98 DI Manual, Const. Art. 4.5.1. NOTE. From 1997-98 until 1999-2000, the Western Athletic Conference also was in the first group and had two votes. 1997-98, 1998-99, 1999-2000 DI Manuals, Const. Art. 4.5.1. At that time, the ratio between the FBS and FCS/NoFB was 18 to 16. Id.

<sup>31</sup> In the Management Council these conferences had three representatives who each cast one vote. In the Legislative Council the conferences have one representative who casts one vote that is weighted as three votes.

<sup>32</sup> These are the Mid-American, Mountain West, Sun Belt, and Western Athletic Conferences. NCAA Const. 4.6.1.

FCS/NoFB conferences on the Management/Legislative Council have had 24 votes among them.<sup>33</sup> For the seven year span of our Study, the ratio between FBS and FCS/NoFB was 27 to 24.

#### **IV. Study Sample**

##### **A. Inclusion of Proposals**

We identified proposals relevant to our Study by searching 11 topical areas in the NCAA Legislative Services Database (LSDBi):<sup>34</sup> (1) “recruiting,” (2) “amateurism,” (3) “amateurism and awards,” (4) “benefits and expenses,” (5) “awards, benefits and expenses,” (6) “eligibility,” (7) “eligibility, financial aid, playing and practice seasons,” (8) “financial aid,” (9) “financial aid and division membership,” (10) “playing and practice seasons,” and (11) “recruiting.” With the exception of proposals related to recruiting calendars,<sup>35</sup> all adopted proposals were codified in Bylaw 12 (Amateur/Collegiate Model), 13 (Recruiting), 14 (Eligibility), 15 (Financial Aid), 16 (Awards and Benefits), or 17 (Play/Practice Limits).

##### **B. Genesis of Proposals in Legislative Cycles**

In the regularized DI legislative process, conferences are the prime initiators of legislative proposals. Proposals also may emanate from a DI cabinet, subject-specific working

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<sup>33</sup> Not all FCS/NoFB conferences were/are represented on the Management/Legislative Council. In the Management Council years of our Study there were 20 standing FCS/NoFB conferences represented, each with one vote: America East, Atlantic Sun (TransAmerica Athletic), Atlantic 10, Big Sky, Big South, Big West, Colonial Athletic, Horizon League, Ivy Group; Metro Atlantic Athletic, Mid Eastern Athletic, Missouri Valley, Northeast Conference, Ohio Valley, Patriot League, Southern, Southland, Southwestern Athletic, Summit League (Mid Continent), and West Coast. There also were four at-large conferences, each with one vote. See 2004-05, 2005-06, 2006-07, 2007-08 DI Manuals, Const. Art.4.5.1. The Legislative Council has 20 standing FCS/NoFB conferences, each with 1.2 vote. NCAA Const. Art. 4.6.1. Over the legislative cycle years in our Study, four FCS/NoFB conferences shifted between the FCS and NoFB. For more on this subject, see our text discussion *infra*.

<sup>34</sup> One way to search in the LSDBi, and the way we chose, is by topical areas. Other ways are by category (amendment, editorial, modification of wording, etc.), status (moved, tabled, defeated, etc.), progress (cabinet, legislative review, comment period, etc.), article (bylaw number, etc.), or text.

<sup>35</sup> Proposals related to recruiting calendars were codified in Bylaw 30, which covers administrative recruiting regulations.

group,<sup>36</sup> Management/Legislative Council, or the DI Board. Proposals introduced in a legislative cycle sometimes generate alternatives (A, B, C; 1, 2, 3).<sup>37</sup>

### C. Scope

We reviewed legislative proposals in the seven legislative cycles from 2004-05 through 2010-11. We chose these seven years for several reasons. First, our goal was to be as up-to-date as we could in our analysis of DI voting patterns. The 2010-11 legislative cycle was the most recent, completed legislative cycle we could include.<sup>38</sup> Second, we sought to analyze activity under both the Management and Legislative Councils. Backtracking to the 2004-05 legislative cycle permitted analysis of all three legislative cycles under the Legislative Council and four legislative cycles under the Management Council. Third, we needed a sufficient number of total proposals and proposals within bylaw categories relevant to the Study to yield a statistically reliable number of proposals after coding. Finally, we wanted a sufficiently long period to evaluate so as to have a full rendition of substantive legislative issues and their resolutions. The

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<sup>36</sup> For example, Mark Emmert, the NCAA president, appointed four DI working groups to evaluate DI operations related to student-athlete well-being; enforcement; financial sustainability; and reconceptualizing the DI regulatory structure. See Brown, “Emmert tells Knight Commission Reform Is On The Way,” (October 24, 2011), (<http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2011/October/Emmert+tells+Knight+Commission+reform+is+on+the+way>). Yet another working group will consider institutional control and integrity. See Hosick, “DI Board Reaffirms Expense Allowance, Multi-Year Scholarships,” (January 14, 2012), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2012/February/Multiyear+scholarship+rule+narrowly+upheld>.

<sup>37</sup> As a general rule, proposals were/are considered twice in a legislative cycle by the Management/Legislative Council. In the 2004-05 legislative cycle, for example, the Management Council initially considered proposals in January and then gave final review in April. 2004-05 Publication of Proposed Legislation (POPL) at iii to iv. Conferences develop positions on proposals in advance of initial Management/Legislative Council vote and then again before the final vote. Not surprisingly, there are differences over time in, for example, the type proposals for which a final Management/Legislative Council vote occurred on initial consideration; how Management/Legislative Council votes on initial consideration were/are classified for second consideration by conferences (approval; send for comment; etc.); and the extent, if any, to which proposals were voted on as a package. See Appendix VII for a summary.

<sup>38</sup> As it turns out, moreover, the 2011-12 legislative cycle proved to be so atypical that in no event could we have included in the Study. It featured a moratorium on most legislation and the convening of presidential working groups to evaluate the NCAA regulatory model, student-athlete well-being, fiscal operations, and the enforcement/infractions processes; at least in part (perhaps substantial part), working group recommendations are bypassing the regularized DI legislative process.

2004-05 to 2010-11 span of legislative cycles encompassed key legislative issues related to student-athlete well-being in the areas of recruiting, financial aid, eligibility, academic standards, and the amateur (collegiate) model. The time span also saw the birth of the Committee on Academic Performance and several iterations of its proposals as well as proposals advanced by working groups in basketball, baseball, and football.

In all, there were 1013 legislative proposals introduced during this seven year span, with 587 proposals falling in the seven relevant bylaw chapters. These, plus a number of proposals relevant to recruiting calendars (Bylaw 30), were evaluated for impact on a classification category.

#### D. Proposal Classification Categories

We developed proposal classification categories and coded proposals for their impact on them. The classification categories are:

1. Student-Athlete Well-Being
2. Academic Standards
3. Student-Athlete Promotional Activity – i.e., Amateur (Collegiate) Model Re Commercialism and Marketing of Student-Athlete Name/Likeness
4. Student-Athlete Professional Activity – i.e., Amateur (Collegiate) Model Re Student-Athlete Athletically-Related Employment; Agents; etc.
5. Budget Impact – i.e., Costs; Savings; Revenues

There were 345 legislative proposals that were coded for their impact on one or more classification categories. Of these, 339 were coded student-athlete well-being; 80 were coded academic standards; 113 were coded costs/savings/revenues; and 21 were coded the amateur (collegiate) model. Among these latter proposals, 14 related to student-athlete promotions

(marketing and commercial use of student-athlete name and likeness) and seven related to student-athlete professionalism.

We compared voting patterns among the FBS, FCS, and NoFB and also between the six BCS FBS and the five nonBCS FBS conferences.<sup>39</sup> We tallied proposal voting according to weighted voting<sup>40</sup> and also without regard to weighted voting.<sup>41</sup> Over the seven year span, there were 13 coded proposals in which weighted voting made a difference in final action on a proposal. The number of these proposals generally decreased with each succeeding legislative cycle.

## **V. Proposals Excluded from the Study Sample**

Proposals classified DI Board, non-controversial, or emergency neither were coded nor retained on the coding spreadsheets<sup>42</sup> even though they were among the proposals identified through the LSDBi search. Other proposals were retained on the coding spreadsheets but not coded for their impact on classification categories.

### A. Proposals Within Bylaw Categories but not Retained on Coding Spreadsheets

#### 1. DI Board Proposals

Proposals characterized DI Board proposals were introduced directly by the DI Board and then adopted by it without entering the regularized legislative cycle for formal consideration by conferences and vote by the Management/Legislative Council. Conference representation on the DI Board has never mirrored that of the Management/Legislative Council. Since 2008-09, DI

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<sup>39</sup> Teams in these five conferences may qualify for a BCS game based on stated competitive criteria.

<sup>40</sup> We refer to weighted voting both to mean votes to which a multiplier is applied (Legislative Council; four non-BCS conferences on Management Council) as well as the Management Council process by which the BCS FBS conferences and Conference USA had more representatives than did the other conferences.

<sup>41</sup> On occasion a conference representative was not present for a vote on a proposal.

<sup>42</sup> We also neither coded nor retained on the coding spreadsheets certain administrative regulations even when they addressed a subject pertinent to a proposal classification category. For example, Proposal 2004-46 would change national SAAC representation to exclude student-athletes more than two years from when they exhausted their eligibility, a change that arguably affects student well-being. NOTE. Had we coded Proposal 2004-46, it would have been NA under our coding principles.

Board voting is weighted 11 to 7 in favor of the FBS conferences<sup>43</sup> (compared to 27 to 24 in the Legislative Council). Unlike the Management/Legislative Council, moreover, there is no weighted voting in favor of the BCS FBS conferences among the FBS conferences represented on the DI Board. Because these variants precluded a direct comparison between DI Board proposals with impact on classification categories and Management/Legislative Council voting, DI Board proposals were excluded from the Study. Examples of excluded DI Board proposals are 2007-7,<sup>44</sup> 2007-8,<sup>45</sup> and 2007-9,<sup>46</sup> all part of a package developed by the Baseball Working Group. They were proposed by the DI Board in April 2008 and adopted by it in June 2008. (Proposal 2007-9 went to an override vote and prevailed.<sup>47</sup>)

## 2. Non-Controversial Proposals

By definition, proposals characterized non-controversial by the Management/Legislative Council have negative impact on neither student-athlete well-being nor academic standards, generate no significant disagreement among member institutions, and enjoy wide buy-in by stakeholders.<sup>48</sup> Non-Controversial proposals do not go through the full regularized legislative process but, instead, are adopted on initial Management/Legislative Council vote.<sup>49</sup>

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<sup>43</sup> From 2008-09, the DI Board has one CEO from each of the 11 FBS conferences and seven CEOS selected from the 20 remaining FCS/NoFB conferences.

<sup>44</sup> This proposal would require that baseball student-athletes be eligible in the Fall Semester to compete in the Spring Semester.

<sup>45</sup> This proposal would exclude baseball student-athletes from using the one-time transfer exception.

<sup>46</sup> This proposal would limit baseball squad size and counters and also would require that all scholarships be equivalent to at least 25 percent of a full scholarship.

<sup>47</sup> In overriding voting each DI institution casts its own vote; DI conferences also have a vote. Because of the different voting arrangement, override votes are analyzed separately in this Report.

<sup>48</sup> The full definition of non-controversial proposals is that they are non-controversial only if:

- a. Broader consultation and debate are unlikely to improve the proposal in any substantial way.
- b. Significant disagreement or alternative points of view will not be generated.
- c. Such proposals do not have a significant impact (unanticipated consequences, undesirable precedent) on existing legislation or proposed legislation.

A non-controversial proposal, at a minimum, should have the following factors present:

- a. The proposal should have minimal impact on competitive or recruiting equity.
- b. The proposal should have minimal financial impact.
- c. The proposal must enjoy broad support from its primary stake holders.
- d. The proposal should not negatively impact student-athlete welfare.

### 3. Emergency Proposals

By definition, proposals characterized emergency by the Management/Legislative Council are those for which immediate adoption is needed to avoid undue hardship on significant values.<sup>50</sup> Emergency proposals do not go through the full regularized legislative process but, instead, are adopted on initial Management/Legislative Council vote.<sup>51</sup>

#### B. Proposals Retained on Coding Spreadsheets but not Coded

Some proposals were coded not applicable (NA). NA proposals had relevant considerations in equipoise, too many moving parts to permit coding, or considerations outside the scope of our Study. Other proposals either had no or *de minimis* impact on any classification category and were coded *de minimis* (DM). NA and DM proposals were retained on the coding spreadsheets, with sponsor rationale statement, for informational purposes so that the decision not to code them could be evaluated.

##### 1. NA Proposals

a. Equipoise. On occasion there was equipoise between the substance of a proposal and an existing bylaw or between subparts of a proposal. When that happened, we coded the proposal NA. For example, Proposal 2008-46 would extend the time period for mandatory play/practice from 13 to 14 weeks for baseball student-athletes. On the one hand, the extra week means more time between games and potentially fewer class conflicts than would be produced

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- e. The proposal should not significantly impact the Division I academic standards (initial and continuing eligibility).

<sup>49</sup> A non-controversial designation requires at least 75 percent of Management/Legislative Council voters to so vote. Otherwise, the proposal continues in the regularized legislative cycle.

<sup>50</sup> The full definition of emergency proposals is that they are emergency only if:

- a. Significant values or harm are at stake; and
- b. The use of the regular legislative cycle is likely to cause undue hardship to the Association or the Division I membership because of the delay in its effective date.

Examples of situations in which it may be appropriate to consider legislation emergency include, but are not limited to, the following:

    Immediate health and safety concerns or issues.

<sup>51</sup> An emergency proposal requires at least 75 percent of Management/Legislative Council voters to so vote. Otherwise, the proposal continues in the regularized legislative cycle.

by a 13-week schedule.<sup>52</sup> More in-season rest time also might equate to fewer injuries. On the other hand, adding a week to the schedule extends the time frame in which student-athletes devote 20 hours weekly to mandatory athletics activity. We were unable to conclude that either alternative better advances student-athlete well-being or academic standards. As another example, Proposal 2008-37 would prohibit a student-athlete returning from a year-long church mission from competing in the first year back if she transfers to another institution on her return. According to its sponsor, the proposal advanced student-athlete well-being because otherwise coaches might decline to recruit such a student-athlete for fear she would change her mind after completing the mission and transfer to another institution. But the proposal also limited a student-athlete's opportunity to make a different collegiate choice on her return from a mission. We were unable to conclude that coaches necessarily would act as predicted by the proposal's sponsor. More fundamentally, we were unable to conclude that either of the potential outcomes better advances student-athlete well-being.

b. Too Many Moving Parts. Some proposals included elements with conflicting impacts on a classification category. Typically we evaluated elements and made an overall coding decision for the category. Some proposals, however, had so many such elements that they foreclosed an overall coding decision. For example, Proposal 2004-39 would establish a play/practice season for women's rugby, but its two pages of detailed information regarding athletics-related activities prevented an overall coding decision.

c. No relevance to a Coding Classification Category. On occasion a proposal was within a bylaw chapter included in the Study but had no impact relevant to a classification category.

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<sup>52</sup> The proposal's sponsors said that a 13-week schedule had more weekday games than would a 14-week schedule and that 15 percent of colleges and universities reported more missed class time in the 13-week-schedule than in the schedule that previously had been in effect.

For example, Proposal 2010-29 would exclude a “head coach in waiting” from recruiting restrictions applicable to head coaches.

## 2. DM Proposals

Some proposals streamlined NCAA processes or made them more efficient but otherwise had little or no policy impact. For example, Proposal 2004-01 would eliminate the requirement to declare a student-athlete ineligible and seek reinstatement from the NCAA Student-Athlete Reinstatement Committee for receipt of unauthorized institutional expense money for practice sessions. In this case, a student-athlete would in any event automatically be reinstated. Eliminating the need to go through the student-athlete reinstatement process simply saved institutional effort.

## **VI. Coding of Proposals with Impact on A Classification Category**

Impact on classification categories was coded as follows:<sup>53</sup>

### A. Student-Athlete Academic Standards

Proposals involving student-athlete academic standards were coded YES (positive impact); NO (negative impact).

### B. Student-Athlete Well-Being

Proposals involving student-athlete well-being were coded YES (positive impact; expands opportunities; provides compensation for promotional activities); NO (negative impact; decreases opportunities; provides no compensation for promotional activities).

### C. Student-Athlete Promotional Activity

Proposals involving student-athlete promotional activity were coded based on how they affected opportunities for institution/conference/NCAA to promote student-athletes – e.g., use of

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<sup>53</sup> See infra for a description of the principles of statistical analysis employed to analyze coding.

name and likeness. When a proposal expanded opportunities we coded it YES for promotional activities. When it decreased such opportunities, we coded it NO.

#### D. Student-Athlete Professional Activity

Proposals involving student-athlete professional activity were coded based on how they affected student-athlete athletically related professional opportunities. When a proposal decreased opportunities for student-athletes to be compensated for athletics-related work, we coded it YES for professional activities. When it increased such opportunities, we coded it NO.

#### E. Budget Impact

Budget impact proposals preliminarily were grouped in separate classification categories for costs, savings, and revenues and then coded either HIGH or LOW for budget impact.<sup>54</sup> We also coded for whether the budget impact was on the NCAA or on a conference or institution. We later collapsed costs, savings, and revenues into one “summary cost” category – with savings and revenues reported as negative costs.

#### F. Final Action

We coded Management/Legislative final action on a proposal ADOPT; DEFEAT; or TABLE.

#### G. Interaction of Proposal Classifications and Coding Decisions

To illustrate how proposals were coded, we provide two examples. First, consider a proposal that would expand the permissible circumstances in which a university could use a student-athlete’s name, likeness, or identifiable characteristics (uniform number) in promotional activities but would continue the prohibition against a student-athlete being compensated for such use. We would code this proposal NO for student-athlete well-being; YES for promotional activity; and HIGH for summary cost. Second, consider a proposal that would permit student-

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<sup>54</sup> See infra for a discussion of budget impact coding principles.

athletes to give paid private lessons teaching skills in their respective sports. We would code this proposal YES for student-athlete well-being and NO for professional activity.

## **VII. Coding Principles**

Coding NCAA legislative proposals for their impact on core values is a qualitative analysis. As we quickly discovered, coding requires a high level of experience with the NCAA regulatory structure and the day-to-day operations of intercollegiate athletics. Often the particular purpose or range of impacts of a proposal is not apparent from its language or rationale statement. Often an assessment of impacts depends on close understanding of how things work under existing bylaws, both in the particular area directly affected by a proposal and also in related areas and over time. For example, a proposal that would increase the time frame for award of a scholarship (multi-year rather than one-year award)<sup>55</sup> has potential impact on bylaw criteria for withdrawing a scholarship during the term of an award. At times even the meaning of a proposal is difficult to discern.

Because of the difficulty in coding proposals, Professors Dillon and Potuto engaged in a lengthy, interactive process that resulted in refining and re-refining as we reviewed several cycles of proposals and encountered nuances of detail and permutations of possibilities not before anticipated. Set forth here are the ultimate coding principles that governed our coding decisions.<sup>56</sup>

### A. General Coding Principles

1. When a proposal had subparts embodying competing values or different impacts within a classification category, we evaluated each part independently and then made an overall

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<sup>55</sup> DI made this change in the 2011-12 legislative cycle. Hosick, "Multiyear Scholarship Rule Narrowly Upheld," (2/17/2012), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2012/February/Multiyear+scholarship+rule+narrowly+upheld>

<sup>56</sup> Our discussion of coding principles describes when we coded a proposal YES; we coded proposals NO when it had a converse impact.

coding decision for the category. The overall coding decision resolved conflicts from the perspective of higher education values and individual autonomy. For example, we coded proposals involving use of student-athlete name and likeness from the perspectives of an individual's right of publicity and the opportunities generally available to all students.

2. When a proposal amended an existing bylaw, we coded it compared to the base bylaw and not as a free-standing proposal. For example, Proposal 2010-82A-B would raise the amount provided student-athletes for unitemized incidental expenses at championships from \$20.00 to \$30.00. As an absolute matter we believe the \$30.00 amount is too low.<sup>57</sup> But we coded Proposal 2010-82-A-B YES for student-athlete well-being because it was better than the base bylaw. As another example, Proposal 2004-70 would extend membership on an institutional professional sports counseling panel to include one person not employed full time at an institution. We believe that such a limitation may exclude those best positioned to provide marketing, estate planning, and investment advice, among others. Although the proposal, as an absolute, does not optimally advance student-athlete well-being, we coded it YES because it was an improvement over what was permitted by the base bylaw.

3. When a proposal had several versions (A, B, C; 1, 2, 3), we coded it compared to the base bylaw and not compared to its other versions. For example, Proposal 2005-67 would permit a student-athlete to be paid for modeling even though she had not modeled prior to college enrollment (the base bylaw requirement that Proposal 2005-67 sought to amend). Proposal 2005-67-1 would exclude football and men's basketball student-athletes from the expanded opportunity to model. Although Proposal 2005-67 advances student-athlete well-being more

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<sup>57</sup> In fact, we have particular knowledge regarding the progress of this proposal because Professor Dillon was on the DI Championships Cabinet in February 2011 when it was discussed and endorsed. The original Southeastern Conference would have increased the amount to \$55. The Championships Cabinet proposed \$30.00. Professor Dillon attempted, and failed, to get the amount to \$40.00. The Championships Cabinet settled on \$35.00. The Legislative Council then amended it to \$30.00.

than does Proposal 2005-67-1, we coded both versions YES for student-athlete well-being because both were better than the base bylaw.

## B. Student-Athlete Well-Being Coding Principles

### 1. Student-Athlete Well-Being, in General

When a proposal had a direct and positive impact on individual student-athletes, cohorts of student-athletes, or all student-athletes, we coded it YES for student-athlete well-being.

Positive impacts include:

- Treating Student-Athletes No Less Well than Treatment of Students not Athletes. Examples are proposals that harmonize treatment of student-athletes and students not athletes in (a) opportunities to enroll for on-line courses and (b) opportunities to profit from exploitation of name and likeness.
- Enhancing Student Athlete Health or Safety. Examples are proposals that (a) impose sickle cell testing requirements, (b) permit athletics personnel to oversee voluntary practices involving safety risks (gymnastics routines), and (c) limit daily play/practice mandatory sessions.
- Enhancing Fair Treatment of Student-Athletes. Examples are proposals that (a) afford a student-athlete the right to appeal to a campus committee a decision not to renew an athletics scholarship and (b) increase the per diem provided student-athletes for championship travel.
- Involving Student-Athletes in NCAA Legislative Processes or in NCAA, Conference, or Campus Committee Processes or Policy Development. Examples are proposals that (a) support activities of the national Student-Athlete Advisory Committee and (b) include student-athletes on NCAA committees.

- Assuring Time and Opportunities for Student-Athlete Curricular and Extracurricular Opportunities. Examples are proposals that (a) limit missed class time and (b) reduce pressure to engage in so-called voluntary practice.
- Offering Cultural Diversity Opportunities to Student-Athletes. Examples are proposals that (a) support foreign tours and (b) provide funds to campus life skills administrators to offer programming relevant to cultural diversity.
- Enhancing Equitable Treatment Based on Gender. An example is a proposal that supports emerging sports.

## 2. Student-Athlete Well-Being, in Particular

- When a proposal advanced the interests of individual student-athletes at the expense of a team or a group of student-athletes, we coded it YES for student-athlete well-being. For example, a proposal that would increase transfer restrictions would be coded NO because it impedes the interests of a student-athlete seeking a transfer even though it may advance team interests in stability and competitiveness.
- When a proposal increased skill instruction for student-athletes or coach contact with them but did not increase the maximum limits on countable athletically-related activities, we coded it YES for student-athlete well-being (in much the same way we would conclude that increased student/teacher interaction is a net good). For example, Proposal 2005-129 would permit two hours of skill instruction to be included in the permissible eight hours of mandatory out-of-season athletically-related activities.
- When a proposal expanded (or decreased) the time frame (play/practice season) but not the maximum permissible number of games, practices, or other countable athletically-related activities, we coded it NA. For example, Proposal 2008-46, discussed supra,

would expand the baseball season from 13 to 14 weeks but not the maximum number of countable athletically-related activities.

- When a proposal expanded a student-athlete's opportunities to profit from use of her name and likeness, or to pursue professional opportunities, we coded it YES for student-athlete well-being. For example, Proposal 2005-67, discussed supra, would permit a student-athlete to be paid for modeling even though she had not modeled prior to college enrollment.

### C. Budget Coding Principles

How to decide whether a proposal represented high or low summary cost posed a particular coding problem. To better understand the range of factors in these proposals and their possible budget impacts, Professors Dillon and Potuto preliminarily reviewed proposals with budget impact in five years of legislative cycles. Two issues were identified. First, an assessment of high/low summary cost is contextual based on resources available at an institution or conference. Second, proposals often permit but do not mandate action and, therefore, budget consequence depends on whether an institution or conference undertakes to do what a proposal permits. We had no reliable way either to project budget impact across institutions or to predict how discretion would be exercised by them. More fundamentally, we believe that the nature of the athletic environment and concerns about competitive viability mean that lower resourced institutions will fund initiatives if they believe they must do so to stay competitive. We also believe that funding concerns drive voting decisions.<sup>58</sup> For all these reasons, we coded summary cost primarily by reference to the reach of a proposal even if the price tag of the particular item was low.

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<sup>58</sup> Indeed, an impetus for this Study was our observation that lower-resourced institutions seem to vote against proposals inuring to the benefit of student-athletes because they cannot afford them and seek to prevent either having to fund them nonetheless or experiencing what they perceive to be a competitive disadvantage if they do not.

- When a proposal affected all or all of a defined cohort of individuals (all boosters; all wrestling coaches; all seniors with exhausted eligibility; all student-athletes honored at academic or awards banquets; all prospective student-athletes on official visits; all coach contacts in women’s basketball), we coded it HIGH for summary cost no matter the price tag of the particular item. For example, Proposal 2004-28 would permit an institution to cover expenses for student-athletes with one year of eligibility remaining to attend a women’s basketball clinic for aspiring coaches. As another example, Proposal 2004-21 would increase the maximum permissible grants-in-aid in selected women’s sports.
- When the price tag of a particular item was clear and not subject to evaluative judgment and the individual item cost was more than or equivalent to an increase in the maximum number of scholarships or the maximum amount included in a scholarship, we coded it HIGH for summary cost no matter its reach. As it turned out, Proposal 2007-76 (increasing the maximum amount of a post graduate scholarship for two senior scholar-athletes annually) was the only such proposal in our sample.

#### D. Recruiting Coding Principles

A preliminary issue regarding recruiting proposals was whether to include them in the Study. Although we believed these proposals might surface significant differences in subdivisional voting,<sup>59</sup> we sought to assure that we could code them with confidence. In consequence, Professors Dillon and Potuto preliminarily reviewed recruiting proposals in two legislative cycles. With the possible exception of third party influence on prospects, we found

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<sup>59</sup> A recent analysis of recruiting costs (more than 1000 colleges and universities reviewed for the years 2003-10) reported that the FBS “by far” spends more than the FCS and NoFB (FCS and NoFB spend 32 to 42 percent less than the FBS on men’s sports and 42 to 52 percent less on women’s sports) and that the NoFB “usually” spends more than the FCS. NCAA Recruiting Expenditures Overview, Winthrop Intelligence (5/29/2012), <http://winthropintelligence.com/2012/05/ncaa-recruiting-expenditures-overview>.

that recruiting proposals neither raise issues unique to prospects nor include factors unique to the pre-college experience.

- When a proposal expanded a prospect's athletic opportunities but not the time frame in which the activities could occur, we coded it YES for student-athlete well-being. For example, Proposal 2011-48 would permit coaches (except in men's basketball) to have recruiting conversations when a prospect attends an institution's camp or clinic.
- When a proposal expanded a prospect's opportunities to learn about an institution, its athletics program, an athletics conference, higher education, or college athletics, we coded it YES for student-athlete well-being even if it expanded the time frame in which these activities occur, so long as no coach or athletics administrator with sports specific responsibilities was involved. For example, Proposal 2005-112 would permit an institutional compliance staff member to telephone a prospect at any time regarding compliance matters.
- When a proposal expanded a prospect's opportunities to interact with college coaches for state, regional, national, or international training and competition, we coded it YES for student-athlete well-being. For example, Proposal 2010-45 would permit coaches to participate in Olympic and national team development programs.
- When a proposal expanded the recruiting calendar (time frame) for coach involvement – phone calls, texts, letters, evaluations, contacts, etc. – we coded it NO for student-athlete well-being. For example, Proposal 2010-30 would permit telephone calls to prospects more than a year earlier than the base bylaw.
- When a proposal increased the number of coach contacts – phone calls, texts, letters, evaluations, contacts, etc. – but not the recruiting calendar (time frame) in which the

involvement occurred, we coded it NA for student-athlete well-being. For example, Proposal 2008-31 would permit a coach to conduct an off-campus evaluation through scout service video without counting it as an evaluation.

- When a proposal decreased the influence of non-scholastic events or third parties neither family members of a prospect nor high school staff, we coded it YES for student-athlete well-being. For example, Proposal 2008-20 would prohibit football coaches from evaluating student-athletes at non-scholastic events.

## **VIII. Special Coding Issues**

### A. Alternative Versions of a Proposal

On occasion, the same numbered proposal had alternative versions (A, B, C; 1, 2, 3).

Although all versions may have been voted on; only one version may take effect. There were three possible Management/Legislative Council voting resolutions.

#### 1. Each Version of a Proposal Voted on Separately and Each Defeated

In this case, we coded each version separately and provided the Management/Legislative Council votes for each. For example, Proposals 2005-49 A and 2005-49 B both would permit use for NCAA eligibility purposes of nontraditional courses taken at an institution other than the certifying institution. Proposal 2005-49 B would limit use of these courses to a total of nine credit hours. Both versions were defeated; both versions are included in the sample.

#### 2. One Proposal Version Adopted and Then Modified by a Subsequent Vote on a

Different Version

The modifying version of a proposal, once adopted, moots the earlier version that had been adopted. In this case, we coded only the final version as amended, and no other version was retained in the sample. For example, Proposal 2009-49-1 would have prohibited an

institution's varsity and subvarsity intercollegiate teams from competing against teams with prospects. It was approved and then modified by Proposal 2009-49. Proposal 2009-49 modified Proposal 2009-49-1 by permitting an institution's varsity teams to compete against teams from two-year colleges and its subvarsity teams to compete against high school and preparatory school teams. We coded only Proposal 2009-49.

3. Each Version of a Proposal Voted on Separately, with One Version Adopted and the Others Defeated

When one version of a proposal was adopted and the others defeated, we coded only the version that was adopted and retained no other version in the sample. For example, Proposals 2008-15 A and 2008-15 B in certain circumstances would permit prospects who signed a national letter of intent (NLI)<sup>60</sup> to be treated as student-athletes for Bylaw 13 contact requirements and under Bylaw 16. We coded Proposal 2008-15 B, which was adopted. Proposal 2008-15 A (defeated) was not retained on the coding spreadsheet.

NOTE. On occasion, the version of a final adopted proposal included no rationale statement adequate to explain its scope and effect because the full rationale was set forth in another version. In that case we also retained the other version in the sample, but simply to provide a full rationale for the final adopted proposal; we included neither coding nor any votes taken by the Management/Legislative Council. For example, Proposals 2008-13 A and 2008-13 B would permit student-athletes in individual sports to accept prize money based on competition finish up to the total of actual expenses. Proposal 2008-13 A would permit receipt of prize

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<sup>60</sup> The NLI is a binding agreement between a prospective student-athlete and a university by which the student agrees to attend the institution full-time for one academic year and the university agrees to provide him a scholarship for the same period. For more information about the NLI, see <http://www.ncaa.org/wps/wcm/connect/nli/nli>.

money during any vacation period; Proposal 2008-13 B would permit receipt of prize money only during the summer. Proposal 2008-13 B was adopted and coded in the sample. Although Proposal 2008-13 A was defeated and not coded, we retained it on the coding spreadsheet because its recitation of general rationale was needed to understand the rationale for Proposal 2008-13 B.

#### B. Tabled Proposals

When a proposal was tabled by the Management/Legislative Council, we retained it on the coding spreadsheet for the legislative cycle of the year in which it was proposed no matter the legislative cycle in which final action was taken.

##### 1. Tabled Proposals That Were Sunsetted

When a proposal never came to a vote and was sunsetted, we noted it as TABLED but did not code it. For example, Proposals 2007-25 and 2007-26 both would expand the involvement of commercial entities in promotional activities. Both are coded TABLED on the spreadsheet for the 2007-08 legislative cycle.

##### 2. Tabled Proposals Voted on in Subsequent Legislative Cycle

When a tabled proposal was voted on in a subsequent legislative cycle, we coded it and recorded the vote (with annotation re date and fact of tabling). For example, Proposal 2005-102 would permit purchase of medical insurance for student-athletes. It was tabled in April 2006 to permit review of data regarding medical expenses and insurance. It was adopted by the Management Council in November 2007 pending possible DI Board review after the settlement in the White v. NCAA case.<sup>61</sup> It finally was adopted in August 2008. We coded it and set forth

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<sup>61</sup> The case involved an antitrust lawsuit brought against the NCAA by the Metropolitan Intercollegiate Basketball Association. The settlement was that the NCAA bought the preseason and postseason NIT Tournaments. Katz, "NCAA Buys Tournaments, Ends NIT Litigation," ESPN.com (8/17/2005).

the November 2007 Management Council vote on the spreadsheet for the 2005-06 legislative cycle.

### C. FBS- and FCS-Specific Proposals

Although institutions in both the FBS and FCS field football teams, only the FCS has an NCAA championship in football. Because of that, some proposals are specific to the FBS or FCS and are voted on only by their respective subdivisions.

#### 1. Parallel FBS- and FCS-Specific Proposals voted on in Same Year

When parallel proposals were voted on in the same year, they in effect equated to a single proposal with impact on both the FBS and FCS and their votes were relevant to a comparison of subdivisional voting. We coded them and reported votes as though they were one proposal. For example, Proposals 2009-49 FBS and FCS both would prohibit an institution's varsity and subvarsity teams from competing against teams with prospects. The FBS proposal was adopted; the FCS proposal was adopted as amended.

#### 2. FBS-Specific Proposal but No Parallel FCS-Specific Proposal

When there was an FBS-specific proposal but no FCS one, we coded the FBS-specific proposal in the sample and counted FBS votes so that BCS FBS conference votes could be compared against non-BCS FBS conference votes.

#### 3. FCS-Specific Proposal but No Parallel FBS-Specific Proposal

When there was an FCS-specific proposal but no FBS one, we excluded the FCS-specific proposal from the sample.

## **IX. Statistical Findings and Qualitative Observations**

Professor Clough conducted the statistical analysis of the proposals in the Study.

### A. Findings Derived from Statistical Analysis

## 1. Integration of Study Database

Professor Clough created a spreadsheet for each legislative year that combined the coding classification category and voting record of each proposal. A simple numeric code was used to denote the characteristics of a particular proposal with respect to the key factors (coding classification categories), e.g., a +1 was used to show that a proposal was favorable to student-athlete well-being while a -1 was used to show that it was unfavorable. Professor Clough entered the voting record data for each block (BCS FBS, nonBCS FBS, FCS, NoFB) and then combined the data in a weighted total. Voting percentages were also calculated for each block and for overall. Thus, seven spreadsheets were created which then were merged into a single “All-Years” spreadsheet containing 345 legislative proposals.

As discussed infra, after Professor Clough created the seven and All-Years spreadsheets, we discovered errors in our information regarding the conference subdivisional affiliation of four conferences. As a result, Professor Clough revised the annual voting record tally spreadsheets to reflect the correct conference alignment for the FCS and NoFB, revised the Study database spreadsheets to reflect the revisions to the tally spreadsheets, and recalculated the voting percentages for each block and for overall. The tables and graphs reflect the corrected numbers as does the resultant statistical analysis and interpretation set forth in the Report. .

## 2. Transfer of Data to Minitab®

Statistical analysis of an integrated database requires a sufficient number of occurrences of a particular factor. No statistical analysis was conducted on proposals coded for promotional or professional activity because there was an insufficient number to permit such analysis. Because the factors (coding classification categories) of cost, savings and revenue, taken separately, were of insufficient number, Professor Clough combined them into a “summary cost”

category with signed coding to represent level of funds implicated by a proposal and direction of funds:

- +2: high cost
- +1: low cost
- 0: cost neutral
- 1: low revenue/savings
- 2: high revenue/savings

The following factors and voting records were then transferred to Minitab® worksheets:

Factors:

- Year of the Proposal (a blocking factor)
- Student-Athlete Well-being
- Academic Standards
- Summary Cost

Voting Blocks (Percentage Favorable)

- FBS/BCS
- FBS/non-BCS
- FCS
- NoFB

Minitab® worksheets were created for each of the seven legislative cycles taken separately (2004-05 to 2010-11), for the four years of Management Council legislative cycles (2004-05 to 2007-08) combined, for the three years of Legislative Council legislative cycles (2008-09 to 2010-11) combined, and for all seven years of legislative cycles combined. These worksheets formed the basis for the statistical analysis.

### 3. Weighted vs. Unweighted Voting

Professor Clough began by conducting a statistical analysis of the actual Management/Legislative Council results that were achieved by weighted voting. He next

examined each proposal to determine whether there would have been a difference in its adoption or defeat if voting had been unweighted. There were 13 such proposals, with only three occurring in the Legislative Council years of 2008-09, 2009-10, and 2010-11. These 13 proposals are discussed in more detail below.

#### 4. Blocking and Segmentation Factors

Statistical analyses were carried out using the legislative year as a blocking factor. The year was included in the analysis for the entire database (“All Years”), the years 2004-05 to 2007-08 (“Management Council Years”), and the years 2008-09 to 2010-11 (“Legislative Council Years”). Statistical analysis was also carried out for each individual year. Voting results were studied by voting blocks, as noted above, and by overall percentage.

#### 5. Analysis Methodology

The general method employed to analyze the data and provide results to test hypotheses was the analysis of variance (ANOVA) using a general linear model, with the variability in voting record outcomes partitioned as assigned to the various blocking and legislative factors.

The key result studied from the analysis of variance was the “P-value,” which can be described as the probability that the factor (coding classification category) under study has no apparent effect on the response (the voting result). A low P-value indicates that the response is apparently quite different for differing values of the factor. In other words, the factor (coding classification category) affects the response in a significant way. Many different factors affect voting response. If all other factors could be held constant (this is hypothetical), and the factor in question were changed in value, there would be a discernible change in the response, the voting percentage.<sup>62</sup> As with all statistical analyses, it is necessary to make a judgment regarding the

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<sup>62</sup> What makes this difficult to see, proposal by proposal, is that other factors also change, thus masking the effect of the factor under consideration.

threshold of probability to be used to assess significance. We chose a value of 10 percent for this analysis, a value common for exploratory research in the social sciences.

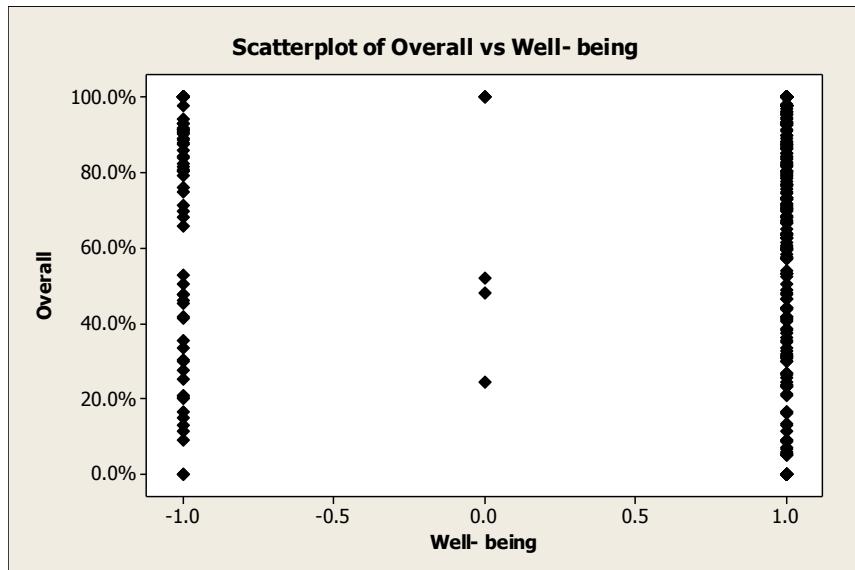
An additional consideration common to ANOVA is the determination of the portion of the variance in the response that can be explained by the variation in a given factor (coding classification category). This is described by the coefficient of determination or “R-squared” value. For highly deterministic phenomena, such as those encountered commonly in science and engineering, R-squared values can reach values close to one, indicating that almost all of the variability in the response is explained by the identified factors. In matters related to social science and phenomena, such as those in the current study, R-squared values may be relatively low. Low values indicate that, although a factor may have a clear influence on the variability of a response, there still is much unexplained variability, either related to other unidentified factors or random. This is the case with our Study.

## 6. Analysis Results for DI Overall

A primary finding of the statistical analysis for the All-Years database is that neither student-athlete well-being nor academic standards affects the voting results. In other words, neither factor (coding classification category) accounts for a significant portion of the variability in the votes on a proposal. By contrast, the summary cost factor is significant, with a P-value of 2% for the overall voting result. Additionally, the blocking factor of legislative year is significant, with a P-value of 9%.

For the student-athlete well-being factor (coding classification category), the chart below depicts the overall voting percentage at the three different levels of the factor. Although the number of items at a student-athlete well-being value of -1 (a proposal adverse to student-athlete well-being) is fewer than the number at a value of +1 (a proposal favorable to well-being), the

distribution of overall voting percentages at the two values is not dramatically different. The following chart illustrates graphically what the statistical analysis determined.



Given that legislative year was determined to be a significant blocking factor, ANOVA was carried out for the individual years of the Study and for the four- and three-year segments corresponding to the Management and Legislative Council years. The sample sizes of these segments are naturally smaller than that of the All-Years database. The table below depicts P-values for the various factors (coding classification categories) for all the time periods analyzed.<sup>63</sup>

Factors	Division I Overall Voting									
	All Years	ManCo Years	LegCo Years	2004	2005*	2006	2007	2008	2009	2010
Student-athlete Well-being	97%	76%	15%	4%	74%	17%	31%	41%	15%	59%
Academic Standards	70%	58%	75%	43%	5%	9%	18%	24%	91%	1%
Summary Cost	2%	66%	0.5%	9%	3%	2%	25%	59%	1.0%	5%
Year	9%	12%	22%							

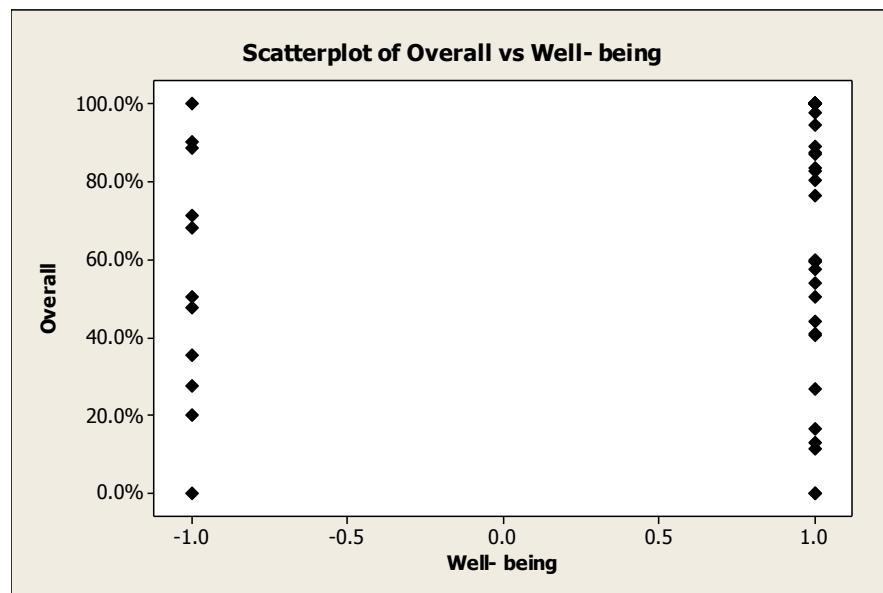
Entries are ANOVA P-values      2005\* results from regression, not ANOVA

In the 2004-05 legislative cycle, student-athlete well-being has a low P-value. The chart below shows student-athlete well-being and the overall vote percentage when this factor is in

<sup>63</sup> The structure of the database for 2005 did not allow for an ANOVA of the general linear model. An alternate approach, using a general linear regression model, was used to generate the P-values for this year.

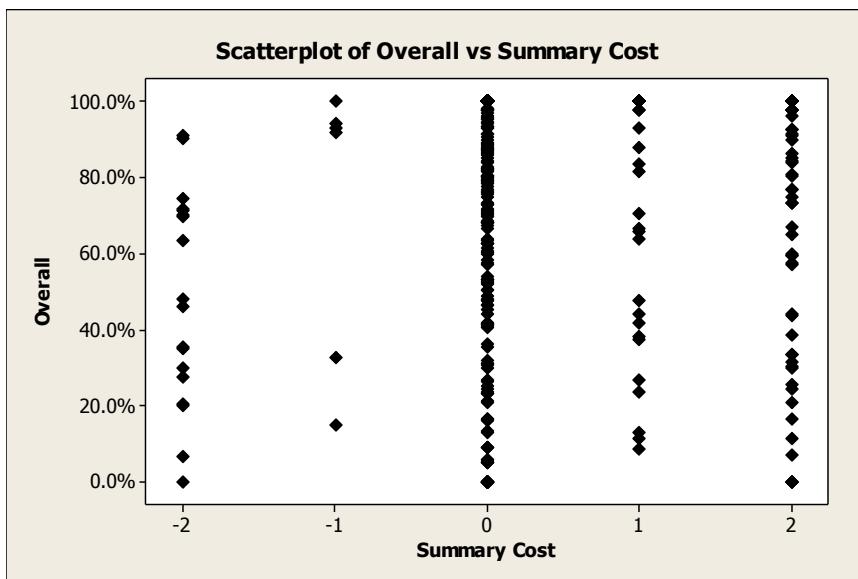
play. For proposals with a positive student-athlete well-being value (+1), there is a higher frequency of voting percentages at higher values than at lower values. By contrast, votes are evenly distributed across the range at the negative student-athlete well-being value (-1). This leads to us to conclude that, despite the variability, 2004-05 proposals that favored student-athlete well-being also received, generally, a higher response in voting percentage. We also note that these differences are somewhat subtle, not dramatic. The R-squared value for the ANOVA general model was 30% which means that the all the factors considered account for 30% of the variability in the response in voting percentage. In turn, this indicates that voting results depend strongly on other factors, likely the individual nature of the legislative proposals. However, we claim that the statistical interpretation is correct.

As noted, a statistical analysis requires a sufficient number of values for the factor at the different levels available. Otherwise, it is difficult to determine whether there is an effect on the response or not. In the figure below for 2004-05, we can observe that, although there are more proposals at the +1 level, there also are numerous values at the -1 level, which bolsters the validity of the analysis. This balance was checked for all cases studied.



As can be seen in the DI Overall Voting table set forth above, 2004-05 is the only legislative cycle year in which student-athlete well-being is a significant factor. The significance of student-athlete well-being diminishes when viewed in combination with the other six years. The consequence is that it is not statistically significant overall.

With reference again to the table of P-values for the overall voting percentage response, for three of the years, the academic standards factor (coding classification category) had a significant effect on the overall voting percentage response. Nonetheless, the effect across all years was not significant. By contrast, the summary cost factor is significant in five of the seven years of the Study, and this carries over to its significance in the ANOVA of the entire database. Although it is more difficult to interpret, the chart below depicts the relationship between voting patterns and the levels of the summary cost factor for the database containing all seven years.



The baseline observation from this chart is that, when summary cost is not significant to a proposal (factor value of 0), there is a concentration of voting results at higher percentages. When the summary cost value is high, either +2 or -2, the voting pattern is more evenly

distributed. Again, the effect of the chart may appear subtle, however, the statistical result is convincing with a P-value of 2%.

There are 18 proposals in the Study sample that have a summary cost factor of -2, indicating a high level of revenues or cost savings. Because the summary cost factor is statistically significant, one might also expect the distribution of votes to be toward higher percentages for these proposals. This effect is not apparent, however. There are 61 proposals in the Study sample that have a summary cost factor of +2. Because there are fewer proposals with a summary cost factor of -2, conclusions regarding these proposals are not as certain as for those in the +2 category.

In three of the legislative cycle years, 2005-06, 2006-07, and 2010-11, the academic standards factor shows as significant in the overall voting percentage response. The table below documents the occurrence of proposals for all the time periods analyzed and the occurrence of their characteristic values. It is notable that there is a small number of proposals with values of either +1 or -1 for the academic standards characteristic in the years noted above, and there is an imbalance between the count with +1 and -1. We should be cautious in reading too much into the P-values for these years, however. Because there are 81 proposals in the All-Years sample and only 27 in the -1 category, we conclude that, across all years of the Study, the academic standards characteristic did not have a significant effect on the variability of the overall voting percentage response.

Factor Counts	All Years	ManCo Years	LegCo Years	2004	2005	2006	2007	2008	2009	2010
<b>Student-athlete Well-being</b>										
+1	276	181	95	43	70	33	35	28	30	37
-1	67	43	24	11	16	8	8	6	6	12
<b>Academic Standards</b>										
+1	54	38	16	6	14	13	5	5	4	7
-1	27	18	9	5	1	3	9	4	2	3
<b>Summary Cost</b>										
+2	61	34	27	7	10	8	9	8	7	12
+1	28	22	6	9	9	2	2	3	1	2
-1	6	3	3	0	1	1	1	0	1	2
-2	18	8	10	5	0	3	0	1	4	5

As discussed previously, DI has weighted voting. The above observations and conclusions were made with respect to the weighted voting response across DI, including all subdivisions. Since weighted voting determined the ultimate fate of the proposals, analyzing these overall voting results is rational.

## 7. Analysis Results for DI Subdivisions, BCS FBS, and nonBCS FBS

We also analyzed the voting percentage responses for the BCS FBS, nonBCS FBS, FCS, and NoFB. The ANOVA results are presented in the four tables below.

Division I FBS/BCS										
Factors	All Years	ManCo Years	LegCo Years	2004	2005*	2006	2007	2008	2009	2010
Student-athlete Well-being	58%	32%	13%	3.8%	66%	17%	90%	37%	27%	40%
Academic Standards	78%	81%	74%	43%	7%	10%	41%	30%	39%	8%
Summary Cost	36%	99%	0.1%	30%	13%	1%	19%	42%	0.2%	7%
Year	13%	11%	36%							
Entries are ANOVA P-values				2005* results from regression, not ANOVA						

Division I FBS/non-BCS										
Factors	All Years	ManCo Years	LegCo Years	2004	2005*	2006	2007	2008	2009	2010
Student-athlete Well-being	79%	42%	31%	0.4%	78%	20%	8%	59%	32%	75%
Academic Standards	83%	76%	96%	21%	12%	23%	85%	35%	69%	7%
Summary Cost	0.4%	18%	1%	12%	2%	3%	25%	58%	1%	24%
Year	8%	6%	29%							
Entries are ANOVA P-values				2005* results from regression, not ANOVA						

Division I FCS										
Factors	All Years	ManCo Years	LegCo Years	2004	2005*	2006	2007	2008	2009	2010
Student-athlete Well-being	89%	78%	37%	2%	97%	36%	18%	45%	24%	91%
Academic Standards	57%	36%	97%	18%	4%	11%	8%	24%	96%	0.6%
Summary Cost	7%	39%	10%	0.2%	3%	10%	63%	74%	16%	12%
Year	7%	8%	15%							
Entries are ANOVA P-values				2005* results from regression, not ANOVA						

Factors	Division I No Football									
	All Years	ManCo Years	LegCo Years	2004	2005*	2006	2007	2008	2009	2010
Student-athlete Well-being	86%	71%	30%	6%	42%	38%	15%	82%	32%	16%
Academic Standards	44%	49%	77%	16%	7%	16%	13%	25%	68%	1.3%
Summary Cost	2.1%	31%	4%	0.1%	4%	12%	25%	69%	10%	0.8%
Year	11%	54%	0.3%							

Entries are ANOVA P-values      2005\* results from regression, not ANOVA

Considering the All-Years column of P-values, the insignificance of the student-athlete well-being and academic standards factors (coding classification categories) is consistent across all subdivisions and with the BCS FBS and nonBCS FBS (as well as consistent with the observations of the overall voting percentage response). Considering the All-Years column of P-values, the summary cost factor is significant across all subdivisions except for the BCS FBS. The question is, “Why?”

In general, institutions in the BCS FBS have the largest athletic budgets. One obvious explanation for the fact that the financial impact of legislative proposals is of less concern to BCS FBS institutions, therefore, derives from their relative advantage in resources. This observation is contradicted, however, by the fact that in the three Legislative Council years summary cost is a significant factor for the BCS FBS. It may be that in the latter years even better resourced institutions began to feel the pinch of the arms race in athletics spending. There also may be something particular in the nature of the proposals introduced in these years. But these are possibilities that cannot be confirmed by statistical analysis.

In any event, it is clear that in the three legislative cycles under the Legislative Council summary cost was a significant factor in all subdivisions, the BCS FBS, and the nonBCS FBS. The latter correlates with the P-value result, 0.5%, for the overall voting percentage response.

## B. Observations Derived from Qualitative Analysis

## 1. Weighted vs. Unweighted Voting

As described above, all proposals in the database also were analyzed to determine whether unweighted voting would have changed voting results. As also described above, weighted voting gives an edge to FBS conferences – in other words, those conferences comprised of better-resourced institutions. The table below summarizes what we found.

Weighted vs Non-weighted Voting -- Result Reversals							
	2004	2005	2006	2007	2008	2009	2010
Proposal Number	21A	67	62	None	46	62	None
21C	101	67			48		
21D	58						
86	47						

Of the 345 in the database, there were 13 where weighted voting made a difference, either adoption of a defeated proposal or defeat of an adopted proposal. Not surprisingly, where weighted voting made a difference, the voting was close – nearly 50 percent on each side. As can be seen in the table, moreover, with each succeeding legislative cycle there were fewer proposals in which different results would have obtained were voting unweighted. The reduction in frequency of proposals where unweighted voting would have produced a different result is, therefore, in part related to a reduction in the number of close votes.

With one exception (Proposal 2005-101) we could detect no obvious reason why these 13 proposals were ones in which weighted voting made a difference in result and, with one proposal (Proposal 2005-47), the voting result seems counter-intuitive. It may be that the closeness of the vote effectively forecloses even a qualitative analysis. It may also be that to detect any possible pattern, the subjects and imports of these 13 proposals would need to be compared against all the proposals where weighted voting made no difference, and particularly against those proposals where weighted voting *almost* made a difference.

Proposal 2004-86 would allow the use of high school advanced placement and similar credit to be used toward progress-toward-degree requirements. It was defeated but would have been adopted on an unweighted vote.

Proposal 2005-67 would liberalize restrictions on promotional activities for student-athletes. It was defeated but would have been adopted on an unweighted vote. (We look more closely at this proposal below in our qualitative analysis of proposals with a coding classification category of professional or promotional activities.) Proposal 2005-58 would remove restrictions on participation of high school student-athletes in all-star games. It was defeated but would have been adopted on an unweighted vote.

Proposal 2006-62 was specialized and dealt with the opportunity for a student-athlete to compete while serving a military obligation. It was defeated but would have been adopted on an unweighted vote. Proposal 2006-67 liberalized the regulation concerning discontinued sport programs. It also was defeated but would have been adopted on an unweighted vote.

There were no proposals in either the 2007-08 or 2010-11 legislative cycles where unweighted voting would have produced a different result. In 2008-09, there were two such proposals. Proposal 2008-46 would define and place restrictions on the scheduling of the first baseball game. It was adopted but would have been defeated on an unweighted vote. Another baseball proposal was 2008-48, which would reduce the baseball season from 56 to 52 games. It was defeated but would have been adopted on an unweighted vote.

The number and scheduling of games in baseball was a subject of much DI discussion over several years. Both to ameliorate perceived competitive disadvantage and the necessity for their teams to play exclusively road games at the beginning of the season, institutions in colder climates advocated for a specified, and later, start date to the baseball season. At the same time,

the poor academic performance of DI baseball teams was under review. One solution advanced was to decrease the number of games played. An NCAA Task Force that looked particularly at baseball advanced a series of interrelated (and compromise) proposals. These were adopted. It may be, therefore, that the voting fate of these two baseball proposals was influenced by the effects of the overall baseball discussion and the work of the Task Force.

Proposal 2009-62 dealt with the participation of former student-athletes in organized institutional practice sessions and placed a limit on the number of years for such participation. This proposal was restricted to rowing and other individual sports. It was adopted but would have been defeated on an unweighted vote.

Proposal 2005-101 would restrict permissible medical expenses to athletically-related injuries and illnesses. It was defeated, but would have been adopted on an unweighted vote. There are obvious cost implications with this proposal. It is not unexpected, therefore, that conferences with institutions with fewer resources might support the proposal and that those with better resourced institutions (the ones that benefit from weighted voting) would oppose it. By contrast, Proposal 2005-47 would permit institutions to provide aid to student-athletes to take summer-session courses at branch institutions. It was defeated but would have been adopted on an unweighted vote. This proposal seems to have potential cost implications (tuition might be higher at branch schools; student-athletes unable to attend branch schools might not attend summer school). It is not apparent why conferences with better resourced institutions opposed it.

The override process is one in which each member institution (and conference) has one vote. It was designed to permit a super-majority of the membership to speak its will notwithstanding the Management/Legislative Council representative structure. It might be said

to “correct” for weighted voting in which FBS conferences have an edge. It might also be said to “unmute” the voice of conference members in the minority from a conference majority position on proposals. To prevail, an override requires 62.5 percent of those voting to vote to rescind.

Two of the proposals adopted by the Management/Legislative Councils only on a weighted vote went to an override vote. The override effort failed with regard to Proposal 2008-46 but prevailed in substantial part regarding Proposal 2004-21. For each of these proposals, we examined subdivisional (and conference) voting patterns of the Management/Legislative Councils and compared them to institutional voting in the override process.

Proposal 2004-21 would increase 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 proposal, with the majority of FBS conferences in support of scholarship increases for all sports and the majority of FCS/NoFB conferences opposed. Those in favor argued that additional scholarships would help them meet gender equity scholarship requirements in a way less costly than adding additional women’s sports (with the concomitant costs of coach salaries, travel and competition schedules, and facilities). One factor in the opposition was the cost of providing additional scholarships. Although the legislation was permissive, lower resourced institutions 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 additional scholarship space on their rosters). They also argued that Title IX concerns should not translate into additional scholarships unless the requisites of the sport substantively supported such additions.

In the override process, the four sports were voted on separately. Override votes by institutions generally tracked the earlier subdivisional votes of their conferences in the legislative council. Scholarship increases were overridden in three of the sports: gymnastics (2004-21 a) by four votes (62.7 percent of institutions voting to rescind); volleyball (2004-21 b) by four votes (63.75 percent of institutions voting to rescind); and cross country/track and field (2004-21 c) by one vote (62.5 percent of those voting to rescind). The national Student-Athlete Advisory Committee argued in favor of the scholarship increase in soccer (2004-21 d). This override effort failed by six votes, with 61 percent of the institutions voting to rescind.

Proposal 2008-46 moved the first permissible date of competition in men's baseball to a date three weeks earlier in February. It prevailed in the Legislative Council due to support in the FBS so substantial as to outweigh opposition by the FCS and NoFB. The voting patterns within subdivisions tended to reflect the geographical locations of institutions within conferences: conferences with institutions in the north (e.g., Big Ten) generally opposed for fear of competitive disadvantage arising out of more competition occurring in the winter months (and, concomitantly, more team travel early in the season). The override effort failed (37.3 percent of those voting voted to support the override).

By contrast to Proposal 2004-21 (a, b, c, d), the override votes cast by the FCS and NoFB institutions on Proposal 2008-46 not only failed to track their respective subdivisional Legislative Council votes, but they were in direct contrast to them. A majority of both the FCS (63 percent) and NoFB (57 percent) institutions voted to sustain the legislation (and against the override) while a majority of their conferences in the Legislative Council opposed the proposal, and by even larger percentages (FCS: 64 percent; NoFB: 67 percent). FBS conferences supported the proposal in the Legislative Council. In the override vote, FBS institutions not only

continued to support the proposal (and, therefore, oppose the override), but their vote margin to sustain the legislation (73 percent) was even greater than the FBS votes in the Legislative Council (67 percent on weighted voting).

#### Override Voting by Sub-Division (Institutional Voting)

Proposal	2004-21(a)		2004-21(b)		2004-21(c)		2004-21(d)		2008-46	
Vote	Rescind	Sustain	Rescind	Sustain	Rescind	Sustain	Rescind	Sustain	Rescind	Sustain
NFB	89%	11%	93%	7%	92%	8%	90%	10%	43%	57%
FBS	16%	84%	21%	79%	20%	80%	17%	83%	28%	73%
FCS	81%	19%	86%	14%	87%	13%	84%	16%	37%	63%
Votes	188	111	204	117	202	117	192	125	100	168
Total	299 (23 abstained)		321 (0 abstained, 1 did not vote)		320 (0 abstained, 3 did not vote)		317 (1 abstained, 4 did not vote)		268 (19 abstained, 1 did not vote)	
Total Eligible	322		322		322		322		288	

#### Management/Legislative Council Voting (Weighted Voting)

Proposal	2004-21(a)		2004-21(b)		2004-21(c)		2004-21(d)		2008-46	
Vote	Oppose	Support	Oppose	Support	Oppose	Support	Oppose	Support	Oppose	Support
NFB	100% (5)	0% (0)	90% (9)	10% (1)	90% (9)	10% (1)	90% (9)	10% (1)	63% (6)	38% (3.6)
FBS	22% (5.5)	78% (20)	20% (5)	80% (20.5)	16% (4)	84% (21.5)	16% (4)	84% (21.5)	33% (9)	67% (18)
FCS	60% (3)	40% (2)	62% (8)	38% (5)	77% (10)	23% (3)	69% (9)	31% (4)	67% (9.6)	33% (4.8)
Total	38% (13.5)	62% (22)	45% (22)	55% (26.5)	47% (23)	54% (25.5)	45% (22)	55% (26.5)	48% (24.6)	52% (26.4)
Total Votes	35.5 (14 abstained, 1.5 did not vote)		48.5 (1 abstained, 1.5 did not vote)		48.5 (1 abstained, 1.5 did not vote)		48.5 (1 abstained, 1.5 did not vote)		51 (0 abstained, 0 did not vote)	

Note: Number of votes cast in parenthesis.

#### 2. Amateur (Collegiate) Model Proposal

After excluding non-controversial, *de minimis*, emergency, and DI Board proposals, we were left with 21 coded proposals that related to promotional or professional activity. This was an insufficient number to permit statistical analysis of voting patterns, particularly after an additional seven of the 21 proposals were excluded because they were adopted unanimously or

nearly so by all three DI subdivisions.<sup>64</sup> We therefore did a qualitative analysis of the remaining proposals.

What we found was that most of the proposed legislative changes were narrow in scope. What we observed were that there were few voting differences among DI subdivisions or between the BCS FBS and nonBCS FBS, and none for proposals that expanded promotional activities. It is no surprise that all subdivisions and the BCS FBS and nonBCS FBS supported these latter proposals (an observation underscored by our finding that the summary cost of proposals is statistically significant in voting results) as promotional activities are a revenue source for institutions. The three subdivisions and BCS FBS and nonBCS FBS also supported some proposals that expanded professional opportunities for student-athletes. From our limited sample, therefore, we see some support to liberalize rather than narrow the application of the amateurism (collegiate model) principle.

Five proposals affected a student-athlete's opportunity to assess his professional prospects either by trying out for a professional team (2006-22; 2006-23<sup>65</sup>) or by entering his name in a professional draft (2006-24; 2008-79-1; 2010-24) and yet still retain NCAA competition eligibility in his sport should he ultimately elect to remain in school. The FBS and FCS were united in support of Proposals 2006-22, 2006-24, 2008-79-1 and 2010-24 and both unanimously opposed Proposal 2006-23. The NoFB also opposed Proposal 2006-23 and agreed

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<sup>64</sup> Proposals 2004-70 (permissible for one individual unconnected with institution to serve on professional sports counseling panel); 2004-84 (permissible to provide one shirt to each student-athlete with commercial logo; only one conference – an FCS conference – opposed); 2009-22 (student-athlete in men's ice hockey and skiing may compete on a professional team and receive actual and necessary expenses); 2009-23 (staff may help student-athlete get loan against future earnings to pay for health/injury insurance), 2009-24 (men's ice hockey student-athletes may receive actual and necessary expenses from the NHL to attend the Combine), and 2009-63 (student-athlete may compete in one outside competition each season that is exempt from maximum number of team contests and not have the competition count as a season of competition). The final proposal, Proposal 2005-124, not only garnered a unanimous vote but it also was FBS only.

<sup>65</sup> Student-athlete could not be full time, could try out only during the summer, and could receive expenses only once per team for a period not to exceed 48 hours.

with the other two subdivisions in support of Proposals 2006-22, 2006-24 and 2010-24 (strong support).<sup>66</sup> By contrast to the other two subdivisions, however, the NoFB essentially was equivocal on Proposal 2008-79-1.<sup>67</sup>

Proposal 2006-24 extended to student-athletes in all sports the opportunity one time to place their name in a professional draft without professionalizing themselves, so long as they withdrew their names within 72 hours after the draft.<sup>68</sup> The proposal advanced student-athlete well-being by permitting student-athletes to “vet” their professional prospects before making an irrevocable choice to leave college in pursuit of a professional career. This opportunity already was available to student-athletes in football and basketball.

Proposal 2009-79-1 (and Proposal 2009-79, which was defeated) was specific to men’s basketball student-athletes. It reduced the time they had to withdraw from the NBA draft from 30 days after the draft (in other words, through June) to May 8. Proposal 2008-79 would have reduced the time period even more, by setting the withdrawal date deadline as the day before the beginning of the NLI signing period. The following year, Proposal 2010-24 re-raised making the draft withdrawal date the day before the NLI signing period. This time that date prevailed.

The all-division support for Proposal 2010-24 was a revisiting of a decision made just the year before. It raises the substantive question, what changed to provoke such a turnaround?. It raises the process question, what mechanisms can be put in place to introduce legislative discipline?. As to what drove adoption of Proposal 2010-24 (and Proposal 2008-79-1 before it) – it certainly may be explained as driven by competition interests such as reducing uncertainty in team rosters and providing timely information to college coaches regarding their use of available

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<sup>66</sup> Proposal 2006-23: 3 (support) to 5 (opposed), 2 votes to refer to the membership; Proposal 2006-24: 9 (support) to 2 (opposed), one abstention; Proposal 2010-24: 7 (support) to 2 (opposed), unweighted (8.4 support to 2.4 opposed, weighted)

<sup>67</sup> Proposal 2008-79-1: 4 (support) to 5 (opposed), unweighted (4.8 support to 6.0 opposed, weighted).

<sup>68</sup> There were two additional criteria to remaining eligible: (1) the student-athlete was not drafted, and (2) she had to withdraw her name within 72 hours after the draft.

scholarships. Proponents also argued that reducing the time frame ultimately advanced the interests of individual student-athletes in that a delay in making a full commitment to remain in college might have adverse impact on academic performance.

Proposals 2006-22 and 2006-23 also would advance student-athlete interests in testing the water as to professional opportunities, but this time by engaging in tryouts with professional teams at team expense.<sup>69</sup> Proposal 2006-22 would permit tryouts (no more than 48 hours) to take place during the summer or academic year, so long as no classes were missed. It was supported handily by the FCS<sup>70</sup> and NoFB<sup>71</sup> and narrowly by the FBS.<sup>72</sup> The less enthusiastic FBS support might relate to the greater likelihood that anything that facilitates student-athlete pursuit of professional sports opportunities will more likely inure to the disadvantage of FBS institutions as their student-athletes likely will have more opportunities to go pro before exhausting eligibility for intercollegiate competition. Proposal 2006-23 was essentially the same proposal as Proposal 2006-22. The prime difference (and the apparent reason why it failed in preference to Proposal 2006-22) was its negative impact on academic standards since it did not foreclose tryouts that would result in missed class time.

Now consider subdivisional votes on Proposal 2006-22 with those on Proposal 2008-13

B. The FBS strongly supported the latter proposal,<sup>73</sup> which would permit student-athletes to receive prize money based on their performance in outside competitions held during the summer. Like Proposal 2006-22, this proposal related to student-athlete professional rather than promotional activity. But this proposal did not raise an equivalent concern that its adoption might result in more student-athletes turning pro before they exhausted eligibility for

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<sup>69</sup> It also would permit a tryout during the academic year if a student-athlete were part-time.

<sup>70</sup> 12 to 1.

<sup>71</sup> 7 to 3.

<sup>72</sup> 13.5 to 12.5 weighted; 6 to 5 unweighted. The BCS FBS split 9 to 8 weighted and 3 to 3 unweighted while the nonBCS FBS split 4.5 to 4.5 weighted and 3 to 2 unweighted.

<sup>73</sup> FBS 21 to 4.5 weighted, 8 to 2 unweighted. The BCS FBS vote was 5 to 1; the NonBCS FBS vote was 3 to 1.

intercollegiate competition. By contrast to the strong FBS support, Proposal 2008-13B had only marginal support from the FCS<sup>74</sup> and the NoFB.<sup>75</sup> The most apparent reason is worry among FCS and NoFB institutions that adoption of Proposal 2008-13 B would put them at a competitive disadvantage against FBS schools.

Proposal 2005-65 (adopted) would permit a student-athlete to be a professional, and ineligible for NCAA competition, in one sport but to be an amateur, and eligible for NCAA competition, in another sport; it was supported handily by all three subdivisions. The only variance came from the nonBCS FBS, which was equivocal about the proposal – splitting 4.5 to 4.5 on a weighted vote and supporting 3 to 2 on an unweighted vote.

We coded Proposal 2005-65 as advancing student-athlete well-being because it maximized student-athlete choices – giving them the opportunity to compete in two sports in which they excel as well as the chance to pursue professional athletic opportunities while not foregoing a college education. In that sense, DI conferences voted core values in supporting the proposal. But motives can be mixed. Support for the proposal also can be seen as maximizing institutional opportunities to retain talented student-athletes on their teams.

Proposals 2005-64 B<sup>76</sup> and 2005-68<sup>77</sup> would permit student-athletes engaged in promotional activities for an institution to receive expense money. Both were supported by all three DI subdivisions.<sup>78</sup>

Proposals 2005-25 and 2010-26-3 also involved promotional activity. Each had almost universal support from all three subdivisions.<sup>79</sup> Proposal 2005-25 would enhance institutional

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<sup>74</sup> FCS 7.2 (support) to 6.0 (opposed) weighted, 6 (support) to 5 (oppose) unweighted.

<sup>75</sup> NoFB 6.0 (support) to 4.8 (oppose) weighted, 5 (support) to 4 (oppose) unweighted.

<sup>76</sup> The promotional activity related to media activities (pursuant to NCAA Bylaws 12.5.3 and 16.9.1) and had to be within 30 miles from campus. (Alternative Proposal 2005-64 A was defeated.)

<sup>77</sup> The promotional activity related to educational products used in skill instruction.

<sup>78</sup> Proposal 2005-64 B: FBS 22.5 to 3.5 weighted, 9 to 2 unweighted; FCS and NoFB supported unanimously; Proposal 2005-68: FBS 22.5 to 4.5 weighted, 9 to 2 unweighted; FCS 10 to 3 unweighted; NoFB 11 to 0 unweighted (no weighted FCS/NoFB voting in 2005-06).

revenues by permitting commercial items with the names and likenesses of student-athletes also to carry a commercial logo if the items are sold on an institution's campus; the proposal illustrates the statistical significance of summary cost on the adoption or defeat of proposals. There were three versions of Proposal 2010-26. Proposal 2010-26, the original version introduced, was in response to a Board directive to reconsider what should constitute permissible promotional activity by student-athletes. It contained two key elements: (i) it expanded the concepts of name and likeness in an attempt to regulate use consistent with the capabilities of current technology, and (ii) it expanded the scope of promotional activity. Proposal 2010-26-3, the version that was adopted, was the least expansive with respect to permissible uses of student-athlete name and likeness; nonetheless, it still permitted promotional activity that was prohibited by legislation then in effect.<sup>80</sup>

Yet another proposal, Proposal 2005-99, would permit third parties to handle sales of student-athlete photographs, an issue at best only tangentially related to student-athlete promotional activity. The near unanimous FBS opposition<sup>81</sup> was sufficient to carry the division-wide vote (17 to 32 weighted; 14 to 20 unweighted). From our recollection of Conference conversations regarding the proposal, and also, for one of us, discussion at the Management Council, we believe that a likely explanation for the subdivisional voting differences has less to do with philosophical differences regarding sale of photographs of student-athletes and more to do with the fact that FBS institutions have infrastructure permitting them to handle in-house the sales of photographs and, therefore, have no need for third parties to handle these transactions.

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<sup>79</sup> There was almost universal support in the FBS, with only the Big East Conference opposed. The FCS supported 12 to 2.4 weighted and 10 to 2 unweighted; and the NoFB supported 6 to 3 unweighted and 7.2 to 3.6 weighted.

<sup>80</sup> It also eliminated distinctions among media.

<sup>81</sup> 4 to 22 weighted voting; 1 to 10 unweighted voting.

In consequence, FBS schools can focus on what they might see as the potential adverse consequences from monitoring third party activities.

The final proposals where a weighted vote made a difference in result are Proposal 2005-67, which would permit student-athletes to engage in modeling activity even if they did not model prior to first full-time enrollment at an NCAA institution, and Proposal 2005-67-1, which would exclude football and basketball student-athletes from such modeling activity. Proposal 2005-67 was strongly opposed by the BCS FBS,<sup>82</sup> enough so that it was defeated on a weighted vote 23 to 26<sup>83</sup> even though it was supported by the other two subdivisions and would have prevailed (19 to 16) on an unweighted vote.<sup>84</sup> We looked closely at this proposal for insight on why the best-resourced DI institutions departed so emphatically from all other DI institutions.

We doubt that student-athletes in the BCS FBS have an edge on modeling talent and attractiveness. One explanation for the BCS FBS opposition is that there is a higher degree of likelihood (or at least a greater fear) that student-athletes in the BCS FBS would be offered modeling opportunities not because (or not exclusively because) of their talent or attractiveness but, instead, because they are likely to have higher public profiles (particularly if they compete in football or basketball) than student-athletes in the rest of DI.

We believe that this supposition is reasonable, even given the defeat of Proposal 2005-67-1, an alternative version of Proposal 2005-67, by a much wider margin (10 to 39 weighted and 7 to 29 unweighted). At first glance, the vote on Proposal 2005-67-1 undercuts our belief that the FBS vote on Proposal 2005-67 reflected FBS concern that there was a greater likelihood that high profile FBS student-athletes would engage in modeling. Per contra. We believe that the vote on Proposal 2005-67-1 more likely reflects a different consideration – a reluctance to

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<sup>82</sup> BCS FBS 3 to 15 weighted, 1 to 5 unweighted.

<sup>83</sup> FBS 8 to 17; FCS 8 to 5; NoFB 7 to 4.

<sup>84</sup> FBS 4 to 7; FCS 8 to 5; NoFB 7 to 4.

treat student-athletes in football and basketball differently from those in all other sports with regard to the opportunity to engage in modeling.<sup>85</sup>

Assuming that BCS FBS opposition reflects an assessment that more of their student-athletes will become models, we still wonder why BCS FBS schools are so opposed. Is this a pristine expression of support for the amateur (collegiate) model? Are BCS FBS administrators afraid that such modeling opportunities make it too easy for rogue boosters or agents to disguise illicit payments to student-athletes? Are they afraid of the time demands away from the sport that these modeling opportunities might provide?

### 3. Additional Observations

As discussed in detail supra in the statistical analysis findings, summary cost was the only factor (coding classification category) we analyzed that was statistically significant overall on voting patterns. As we also discussed, the approximately 30 percent of variability in proposal voting results accounted for by reference to the coding factors is a value that would be judged reasonable by statisticians. Nonetheless, the remaining 70 percent of variability in the voting percentages overall and within subdivisions still makes it difficult to quantify with any decent certainty a predictive relationship between the summary cost factor and the voting percentages in the DI subdivisions. In statistical terms, a valid predictive formula cannot be obtained through a general linear regression method. The result is that there is not enough certainty in our Study data to answer whether, for example, presence of high summary cost influences voting in the FCS more towards defeat than it influences the NoFB. With that understanding, we now proceed to look more closely at these factors (coding classification categories).

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<sup>85</sup> The weighted BCS FBS vote was marginally more supportive of Proposal 2005-67-1 (5 to 12) than of Proposal 2005-67 (3 to 14). It may even be that the reluctance to treat sports differently was particularly propelled by a concern that the sports excluded would be the ones in which modeling opportunities might be most available and that, therefore, explaining their exclusion would be a particular problem.

a. Summary Cost and the BCS FBS. As is detailed in the statistical analysis, summary cost was significant in affecting the voting percentage in all three subdivisions and also in the nonBCS FBS. It was not significant, however, in affecting voting percentage overall in the BCS FBS. Put another way, summary cost influenced the voting patterns of all three subdivisions and the nonBCS FBS but did not influence the voting patterns overall of the BCS FBS.<sup>86</sup> This makes some practical sense, as the institutions in the BCS FBS conferences have the largest athletic budgets.

Whether this translates into the BCS FBS voting core values with regard to student-athlete well-being or academic standards (or doing a better job than the other two subdivisions and the nonBCS FBS) is a different question. As one attempt to evaluate this, we searched all proposals coded for student-athlete well-being or academic standards and also for cost/savings revenues and then extracted for evaluation those proposals with a voting result in the BCS FBS different from the voting result of the nonBCS FBS, the FCS, and the NoFB, as well as those proposals where FBS voting results were different from the other two subdivisions.

Over seven legislative cycles, there were six such proposals defeated by the Management/Legislative Councils; four would have been adopted were the BCS FBS conferences voting on their own and two would have been adopted by the FBS voting on its own. There were none that were adopted by the Management/Legislative Councils that would have been defeated either by the BCS FBS conferences or the FBS. Six proposals (or four or two) are not only far too small a sample for statistical analysis, they also are too small a sample from which to claim a trend. In any event, a close look at the proposals shows no consistent

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<sup>86</sup> As we discuss elsewhere in this Report, summary cost was a significant factor for the BCS FBS in the three Legislative Council legislative cycles.

pattern, no matter how limited – except that the FBS BCS (or FBS) was prepared to absorb costs or relinquish savings/revenues.

1. Proposal 2004-99-B would reduce for all sports from five to four the maximum number of expense paid official visits for each prospect. We coded it NO for student-athlete well-being. Its revenue/savings impact was high. The BCS FBS would have adopted it (although on a close vote).
2. Proposal 2005-115 would increase the maximum equivalency in women's swimming and diving from 14 to 16. We coded it YES for student-athlete well-being. It cost impact was high. The BCS FBS would have adopted it (although on a close vote).
3. Proposal 2006-42 would permit an institution to print and provide other recruiting information that is posted on the institution's Web site to prospective student-athletes via regular mail or during official or unofficial visits. We coded it YES for student-athlete well-being. Its cost impact was low. The BCS FBS would have adopted it (although on a close vote).
4. Proposal 2007-67 would prohibit two-year college transfers from taking extension and distance learning courses at institutions where they are not enrolled full time. We coded it NO for academic standards. It had little or no summary cost impact. The BCS FBS would have adopted it emphatically.
5. Proposal 2007-80 would remove the 48 hour departure restriction for conference championships. Its cost impact was high. We coded it NO for academic standards. The FBS would have adopted it.
6. Proposal 2008-40 would increase the maximum grant-in-aid for women's volleyball from 12 to 13 scholarships. We coded it YES for student-athlete well-being. Its cost impact was high. The FBS would have adopted it.

**b. Student-Athlete Well-Being and Academic Standards.** As is detailed in the statistical analysis, across all three subdivisions and the BCS FBS and nonBCS FBS, the student-athlete well-being and academic standards factors (coding classification categories) had no statistically significant effect on voting percentages. The only exception is student-athlete well-being in the 2004-05 legislative cycle.<sup>87</sup> The result is that we could not conclude from the statistical analysis that DI voting – in toto, in subdivisions, or in the BCS FBS and nonBCS FBS – either impedes or advances either or both of these core values.

One potential conclusion from the findings of the statistical analysis is that the core values of student-athlete well-being and academic standards are insufficiently important to impel voting results by Management/Legislative Council voters, no matter the subdivision or BCS affiliation. This, if true, is a sobering conclusion. There are countervailing considerations, however.

First, as we noted previously, in the absence of cost or competitive impact, proposals advancing student-athlete well-being tended to be supported by all DI subdivisions, and with greater majorities than other proposals. Second, any such conclusion regarding the importance accorded student-athlete well-being and academic standards rests on too flimsy a statistical basis because of the substantial variability unaccounted for in the Study results. Third, we do not know whether the unaccounted-for variability reflects factors that also advance important interests, whether other NCAA core values or institutional values of autonomy and the requisites of institutional academic missions. It is too easy to assume, for example, that opposition to raising academic standards stems exclusively from interest in keeping student athletes eligible to

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<sup>87</sup> Although these proposals tended to have a higher voting percentage for adoption when there were positive for student-athlete well-being, the difference was subtle, not dramatic.

compete. In discussions regarding proposals offered as advancing academic standards, concerns frequently are raised about potentially negative impacts on student-athletes unrelated to eligibility. One example is the impact on access to higher education for prospective student-athletes from disadvantaged backgrounds. Finally, it seems reasonable to assume that voting is influenced by factors particular to individual proposals that might drown out consideration of these two core values. As we point out in this Report, analysis of proposals is hindered by their multi-subject nature and complexity. It would be no surprise if voting on them is similarly hindered.

We also wonder whether the exclusion of non-controversial and emergency proposals means that our Study results understate the extent to which DI and its subdivisions vote core values. By definition, non-controversial proposals cannot adversely impact student-athlete well-being or have significant effect on academic standards. By definition, emergency proposals are adopted because otherwise there would be undue negative impact on core values. A large number of these proposals are adopted each year. As noted, we excluded them because they typically enjoy virtually unanimous support and demonstrate no subdivisional voting differences.

## **X. Confounding Issues, Conclusions, Limitations, Further Study**

In exploring whether DI votes its core values and the impact of subdivisional voting, we encountered several difficulties with the DI legislative process and its organizing and recording of proposals and votes. As a result, in this section we address not only the prime research questions that prompted our Study but also issues related to the DI legislative process.

### A. Confounding Issues

#### 1. Manner of Management/Legislative Council Voting

Over the seven legislative cycles in our Study, the number of votes of the FBS (27 total; six BCS FBS conferences with three votes each and the remaining four nonBCS FBS conferences with 1.5 vote each) and FCS/NoFB (24) did not change. But there was a change in the configuration of voting members.

In the Management Council years of our Study each BCS FBS conference and Conference USA had three voting representatives who cast one vote each and the four remaining nonBCS FBS conferences had one voting representative who cast 1.5 votes each. Although not frequent, at times representatives from a BCS FBS conference or Conference USA differed on a proposal, with the result that their conference vote was split. In the Management Council years there were 20 standing and four at large FCS/NoFB conferences with voting representatives. Each of these 24 representatives cast one vote.

In the Legislative Council years, each BCS FBS conference and Conference USA had one voting representative who cast three votes each; the remaining four nonBCS FBS conferences continued to have one voting representative who cast 1.5 vote each. In the Legislative Council years, there were 20 FCS/NoFB conferences with representatives on the Legislative Council. Each representative cast 1.2 votes.

The difference in subdivisional voting structures from the Management to Legislative Councils was prompted by an assessment that better policy discussion would result from a smaller body (31 rather than 49 members). That the number of total votes in the FBS, FCS, and NoFB as well as all voting ratios remained constant, however, does not mean that there were no consequence to the move from Management to Legislative Council voting structures.

One, obvious, actual consequence is that divergent votes within BCS FBS conferences were no longer possible and the reduction by four of FCS/NoFB voting representatives also

decreased the possibility for a divergent vote in these subdivisions. A related actual consequence to the elimination of split votes in the BCS FBS is that minority institutional positions can no longer fight their way out of majority conference positions. A related actual consequence to the reduction from 24 to 20 FCS/NoFB representatives is elimination of the institutional perspectives of those conferences now excluded.

One potential consequence from the decreased possibility for a divergent vote is that this may be a factor in the decrease in close votes in the three Legislative Council legislative cycles included in our Study. Although the voting ratio between and among subdivisions did not change, another potential consequence of the different Council structures is that proposal voting results on close votes might have been different were the alternative structure in place. We did not track split votes when a Management Council vote margin was very tight (some votes might have passed on  $\frac{1}{2}$  vote) to see if a split vote was the difference in adoption or defeat. To evaluate voting consequences attendant on the different Council voting structures, further study is needed.

## 2. Transition from Management to Legislative Council

In anticipation of the new Legislative/Leadership Council governance structure beginning in the 2008-09 legislative cycle, a few proposals were defeated by the Management Council that did not reflect disapproval on the merits. For instance, Proposal 2006-25 dealt with the opportunity for men's basketball student-athletes to declare for the NBA draft. In January 2007 the Management Council created a subcommittee to evaluate the proposal. On August 1, 2008, Proposal 2006-25 was defeated so that the new Leadership Council might address in toto a broad array of men's basketball issues.<sup>88</sup> As another example, a proposal to reduce the number of baseball games in a season was tabled by the DI Board in April 2008. It was defeated in August

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<sup>88</sup> As we discussed *supra*, DI ultimately adopted a proposal, Proposal 2008-79-1, permitting men's basketball student-athletes to place their names in the NBA draft without by that act irrevocably foregoing college eligibility.

2008 and then referred to the new Legislative Council which was charged with addressing a broad array of baseball issues.

### 3. Accuracy of Conference Subdivisional Affiliation Set Forth in Management/Legislative Council Voting Records

NCAA records regarding conferences and their FCS and NoFB subdivisional affiliations are not always accurate. These errors are not discoverable by reference to Management/Legislative Council conference representative lists in the DI manual as they there are set forth in a combined FCS/NoFB list, not as separate subdivisional lists.<sup>89</sup> They are not discoverable through review of NCAA conference subdivisional voting lists in any given legislative cycle. Nor are they discoverable by comparison of NCAA conference subdivisional voting lists from year to year, except to the extent that a change in conference subdivisional affiliation may prompt further inquiry.

In our Study, we initially designated as FCS conferences the Big South, Big West, Missouri Valley, and Colonial Athletic Conferences; and we designated the Atlantic-10 Conference as in the NoFB. We discovered discrepancies when we checked these subdivisional designations against NCAA records.<sup>90</sup> In follow-up consultation with the involved conference

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<sup>89</sup> See, e.g., 2005-06 NCAA DI Manual, Const. Art. 4.5.1; 2011-12 NCAA DI Manual, Const. Art. 4.6.1.

<sup>90</sup> For the years in our Study NCAA records show the following. Atlantic 10 Conference: FCS 2004-05 to 2007-08; NoFB 2008-09 to 2010-11. Big South Conference: FCS 2005-06, 2009-10 to 2010-11; NoFB 2004-05; 2006-07 to 2008-09. Big West Conference: FCS 2004-05 to 2005-06, 2008-09; NoFB 2006-07 to 2007-08 and 2009-10 to 2010-11. Colonial Athletic Conference: FCS 2009-10 to 2010-11; NoFB 2004-05 to 2008-09. Missouri Valley Conference: FCS 2009-10 to 2010-11; NoFB 2004-05 to 2008-09.

offices – the best way to assure accurate subdivisional affiliation<sup>91</sup> – we identified 12 errors in NCAA voting records.<sup>92</sup>

Misidentification of conference subdivisional affiliation in NCAA records is troubling as the minimum justifiable expectation regarding NCAA records is that they are accurate. That said, there are at least two reasons particular to the DI legislative process that may help explain why these errors occurred. In the first place, charting subdivisional affiliation of FCS and NoFB conferences is not necessarily as straightforward or easy as it seems at first blush.<sup>93</sup> In addition, NCAA misidentification of subdivisional affiliation has no impact on the voting result of proposals. Except for FBS- and FCS-only proposals, DI proposals are adopted by majority vote

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<sup>91</sup> Information regarding NCAA errors in the conference subdivisional affiliation of the Big South Conference comes from and, therefore, NCAA errors, comes from Mark Simpson, Assistant Commissioner, Public Relations, Big South Conference (Phone conversation between D.Schiessler and Mark Simpson 9/10/2012). For information regarding NCAA errors in the conference subdivisional affiliations of the Big West, Missouri Valley, Atlantic-10 and Colonial Athletic Conferences, see notes 111and 112 *infra*.

<sup>92</sup> 2004-05: (1) Big South listed as NoFB when it was in the FCS; (2) Big West listed as FCS although it was in the NoFB; 2005-06: (3) Big West listed as FCS although it was in the NoFB; 2005-06 (January vote); (4) Sunbelt listed as FCS when it was in the FBS (but correctly counted it as having three votes); 2006-07: (5) Big South listed as NoFB although it was in the FCS; 2007-08: (6) Big South listed as NoFB although it was in the FCS; (7) CAA listed as NoFB although it has moved to the FBS in 2007; (8) Athletic-10 listed as NoFB in January and FCS in April although it was in the NoFB in April; 2008-09: (9) Big South listed as NoFB although it was in the FCS; (10) Missouri Valley listed as FCS although it was in the NoFB; 2009-10: (11) Missouri Valley listed as FCS although it was in the NoFB; and (12) Missouri Valley listed as FCS although it was in the NoFB.

<sup>93</sup> The Missouri Valley Conference (in the NoFB but with members who compete in football) offers an example. Since 2008-09, its institutions that compete in football belong to the Missouri Valley Football Conference, a separate administrative entity. For a full description of the history of the Missouri Valley Conference, see <http://www.valley-football.org/news/default/2011-12/6072/this-is-the-missouri-valley-football-conference/>. The commissioner of the Missouri Valley Football Conference is the senior associate commissioner of the Missouri Valley Conference. The Missouri Valley Football Conference is entitled to vote in the Legislative Council on FCS-football matters. Email from Patty Viverito, commissioner, Missouri Valley Football Conference and Associate Commissioner, Missouri Valley Conference, to J.R. Potuto (9/13/2012). In years in which there were FCS-only proposals (in other words, proposals specific to football) on which the Missouri Valley Football Conference cast a vote, the fact that the Missouri Valley Conference also was present and voting on all other proposals led to confusion in the NCAA designation of conference subdivisional affiliation. In the 2010-11 legislative cycle, for example, the Missouri Valley Conference is listed as voting on FCS-only proposals (in other words, those proposals specific to FCS football for which the Missouri Valley Football Conference, not the Missouri Valley Conference, had a vote). In that legislative cycle, the Missouri Valley Conference is designated, incorrectly, as FCS for all proposals. The propensity for error is, moreover, aggravated because there are times when the Missouri Valley Conference representative is authorized by the Missouri Valley Football Conference to vote for it on FCS-only proposals.

of all three subdivisions (with, of course, FBS votes counting more<sup>94</sup>). Except for FCS-only proposals (those related specifically to football) FCS and NoFB conferences vote on the same proposals, and their votes have precisely the same voting weight. We suspect, therefore, that the fact that overall voting results are unaffected by errors in subdivision affiliation means there may be less scrutiny paid by NCAA staff to assure absolute accuracy.

Finding, and then correcting for, the conference subdivisional misaffiliations in our Study entailed a fair amount of additional work. Professor Clough had to enter the correct subdivisional information on the annual and overall voting record tally spreadsheets he had already prepared, revise his Study database spreadsheets to reflect the revisions to the voting record tally spreadsheets, repeat the statistical analysis, transfer the revised results to the tables in the body of the Report and in the appendices, and then revise the discussion of findings as needed. Professors Dillon had to review all proposals discussed in the qualitative analysis and manually count all votes to assure that the NoFB and FCS proposal voting results there set forth correctly reflected the voting NoFB and FCS conferences.<sup>95</sup> Professors Dillon and Potuto then had to enter corrected numbers in the qualitative analysis section and rewrite the qualitative analysis as needed. Finally, Professor Potuto had to review the body of the completed Report to assure integration of any revised data, findings, observations, and conclusions and then had to reorganize and rewrite portions of the Report.

Extra work aside, finding the NCAA conference subdivisional misaffiliations had a positive impact on our Report as it led us to consider the broader question of FCS and NoFB

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<sup>94</sup> Misidentification of FBS subdivisional affiliation, therefore, would be a major problem as it could affect, wrongly, whether a proposal was adopted or defeated. We found one such error – in the 2005-06 legislative cycle, the Sun Belt Conference was listed as in the FCS when it is an FBS conference. Although misidentified as FCS, NCAA voting records correctly accorded the Sun Belt Conference 1.5 votes on each proposal.

<sup>95</sup> As a cross check, Ms. Schiessler also manually counted all votes.

subdivisional demarcations and their import. That, in turn, led to an additional observation and recommendation coming from this Study.

#### 4. Conference Realignment

The votes that conferences cast in the Management/Legislative Council typically reflect the majority position of conference members in a conference. It is possible, therefore, that a different array of institutions in a conference may affect the votes within that conference. We did not assess conference votes before and after conference membership changes. We note this here but are not sure it warrants further study.

### B. Conclusions, Limitations, Further Study: NCAA Process in Particular

#### 1. The FCS, the NoFB, and the FBS

The FBS and FCS vote on all generally-applicable DI proposals. They also vote, respectively, on FBS- and FCS-only proposals (those relating specifically and exclusively to football). Conferences whose institutions do not compete in football (what we refer to as the NoFB in our Study and Report) are referred to by the NCAA simply as DI because, unlike the FBS and FCS, there are no proposals exclusive to these conferences. Before we discovered NCAA FCS/NoFB conference subdivisional affiliation errors, we included in our Report a suggestion that the NCAA consider giving a subdivision name to the NoFB so as to avoid confusion with references to the entirety of DI and also to permit ease of reference, particularly when comparisons are made to the FBS and FCS. The conference subdivisional affiliation errors lead us to a different assessment and recommendation.

To date, all the “action” regarding DI subdivisions seems to revolve around differences among FBS member conferences and whether they warrant additional, separate treatment. Little or no attention has been paid to whether there is reason to maintain the line between the

NoFB and FCS conferences. We believe that the line may be so blurred in operation that DI should consider both whether separate subdivisions serve a needed purpose and also the extent to which maintenance of them creates inefficiencies. In particular, we wonder whether FCS conferences essentially are NoFB conferences in ethos and approach to policy EXCEPT that their institutions also field football teams. Consider the following as illustrations.

In 2007, the Colonial Athletic both lost and gained members, with the result that the formerly NoFB conference became an FCS conference beginning with the 2007-08 legislative cycle. In the same year, the Atlantic-10 Conference both lost and gained members, with the result that the formerly FCS conference became a NoFB conference in the 2007-08 legislative cycle. In each instance, some of the members of the conference were in that conference both when it was in the NoFB and when it was in the FCS.

The Big West and Missouri Valley Conferences are in the NoFB but have members with teams that compete in football. For football matters, these institutions belong to a football-only conference. All members of such a NoFB conference, those with and those without football teams, determine its policies and its conference positions on NCAA proposals and other matters. The fact that a NoFB conference has what effectively are FCS member institutions means that such Management/Legislative Council voting by this NoFB conference reflects a conference position that incorporates the perspective, ethos, and institutional interests of what effectively are FCS voters. More than that, the Management/Legislative Council representative from such a NoFB conference may, in fact, be from an institution that sponsors football<sup>96</sup> (effectively an FCS voice sitting on the Management/Legislative Council and voting for the NoFB conference).

The Missouri Valley Conference offers yet an additional nuance demonstrating blurred lines. Although a NoFB conference, the Missouri Valley has as members institutions that field

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<sup>96</sup> Email to J.R. Potuto from Rob Halveck, Deputy Commissioner, Big West Conference (9/13/2012).

football teams and, for football, belong to the Missouri Valley Football Conference, a separate administrative entity.<sup>97</sup> The Missouri Valley Conference remains in the NoFB, with representation on the Management/Legislative Council. The Missouri Valley Football Conference votes in the Legislative Council on FCS-football matters.<sup>98</sup> It is possible for a Missouri Valley Conference Legislative Council representative haling from an institution that does not sponsor football to vote for the Missouri Valley Football Conference on FCS-only proposals (effectively a NoFB voice voting for the football-only conference).

Ultimately, the question is what is served by maintaining DI lines of demarcation between the FCS and the NoFB. On the procedural end,

- The DI voting strength of conferences in the FCS and NoFB is the same;
- Vote distribution within a subdivision has no impact on the adoption or defeat of DI proposals as they are adopted or defeated by majority vote in DI and do not also require a majority vote of each DI subdivision;
- For NoFB conferences with member institutions that field football teams, the voting representative on the Legislative Council may come from an institution that has football; and
- For football-only conferences affiliated with a NoFB conference, the voting representative for FCS-only proposals may be a Legislative Council representative from an institution that does not sponsor football.

In addition, the migration of member institutions between NoFB and FCS conferences and the migration of these conferences between the NoFB and FCS, begs the question whether these institutions and conferences are sufficiently different in ethos and approach to policy

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<sup>97</sup> See note 91 for full discussion.

<sup>98</sup> Email from Patty Viverito, commissioner, Missouri Valley Football Conference and Associate Commissioner, Missouri Valley Conference, to J.R. Potuto (9/13/2012).

questions to require separate subdivisions. From our evaluation of the landscape, we believe that it would be worth the time and attention of DI members to consider whether it is possible and efficient to have one combined subdivision, perhaps named the Championship Subdivision,<sup>99</sup> with a continuation of the current practice whereby only conferences that sponsor football vote on what currently are called FCS-only proposals.

We have not fully explored the ramifications of this recommendation. It may be that our sample showing the extent of the migration of institutions and conferences between the NoFB and FCS is not indicative of the overall situation, particularly when all FCS institutions are evaluated. It may also be that some FCS conferences have members with very different policy interests and perspectives than those of institutions that do not sponsor football. We also do not know how many institutions belong to a NoFB conference but participate in football in another conference. But these all are questions with readily available answers.

There likely are other considerations. It is possible, for example, that conference subdivisional affiliation responds to important components of conference and institutional identity. There also may be potential consequences in the number of individuals from the FCS and NoFB who would be eligible for membership on NCAA councils, cabinets, and committees. Currently there may be spaces allocated for members from FCS conferences and separately for members from NoFB conferences. (But we do not know how often a NoFB conference Legislative Council – or cabinet or committee – representative hales from an institution that sponsors football.) Similarly, we do not know the extent to which distribution of NCAA general funds, or those allocated to particular programs, are predicated on affiliation with the FCS or

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<sup>99</sup> This name would capture all championships, including football. It is not ideal, as the FBS also participates in NCAA championships. But it would do.

NoFB or, if so, how easily distribution issues could be accommodated were the two subdivisions merged.

Whatever the ultimate answer, we believe that DI should examine what policies are served by maintaining separate FCS and NoFB subdivisions, what the impediments might be to consolidating the two subdivisions, and whether these obstacles are too difficult to surmount.

As to the FBS. Another question regarding NCAA DI structure is whether NCAA core values might be better served if the FBS were to be subdivided to group together those conferences whose institutions have the most resources available and committed to intercollegiate athletics. The NCAA currently is engaged in reviewing the NCAA regulatory structure and the approach to bylaw adoption and retention.<sup>100</sup> Among the proposals is a definition of “fair competition”<sup>101</sup> to exclude attempts to “prevent or reduce the advantages that arise from . . . an institution’s financial or other natural advantages.”

Our Study results show that price tag drives decisions, and that price tag was statistically significant even for the BCS FBS in the last three legislative cycles in our Study database. What we do not know is whether the tenor of discussions, and proposals advanced, might change were the better resourced institutions grouped separately. We also do not know the extent to which such a grouping of the better resourced FBS conferences might better surface what these institutions do, or fail to do, with regard to advancing student-athlete well-being and academic standards or whether voting behaviors would be affected by having votes stand unmasked by

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<sup>100</sup> NCAA president Mark Emmert appointed four working groups. Among them is the Rules Working Group, charged with reconceptualizing the DI regulatory structure. See Brown, “Emmert tells Knight Commission Reform Is On The Way,” (October 24, 2011).

(<http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2011/October/Emmert+tells+Knight+Commission+reform+is+on+the+way>).

<sup>101</sup> Fair competition currently is encompassed in NCAA Const. Art. 2.10 (Competitive Equity). It is proposed that it from the basis of a new core concept to be codified in a new NCAA article, 2.17.3. NCAA Publication of Proposed Rules Working Group Legislation – Division I (8/15/2102).

general DI voting. Nor do we know whether this, in turn, might prompt different decision-making.

It is quite possible that the recent spate of FBS conference realignments will require a reassessment of which FBS conferences should continue to have voting priority in the FBS. At least in the context of that reassessment we believe it would be fruitful for DI to consider a broader question with regard to its subdivisional structure as it applies to the better resourced FBS conferences.

## 2. Legislative Discipline

Professors Potuto and Dillon had the prime role in coding proposals. Professor Clough reviewed coding principles and decisions after three legislative cycles were coded to provide his input and to assure his concurrence. All three serve as the facilitator at their universities for assessing NCAA legislative proposals and for overseeing the process by which a campus position on proposals is identified and then forwarded to a conference. All three served on the Big 12 FAR Council, which reviewed institutional votes on proposals and had a prime role in attempting to reach conference consensus on proposals. Both Professors Potuto and Dillon represented the Big 12 Conference on the Management Council. Professor Potuto also served on the Management Council's Legislative Review Subcommittee (LRS). LRS evaluated all legislative proposals, preliminarily designated proposals non-controversial or emergency, identified salient characteristics of proposals for Management Council consideration, and, in some years, developed a legislative package of proposals for the Management Council to handle as a package rather than by voting on individual proposals. Even for us, the coding process was lengthy and difficult. Our experience persuades us that DI needs a process by which a measure of legislative discipline may be achieved.

a. Over Regulation. Close review of seven consecutive years of proposals underscores the large number that involve matters far removed from core values. A common theme is the effort to avoid any semblance of recruiting or competitive advantage. We believe that deregulation is much needed and strongly support the current DI effort to deregulate.

b. Revisiting Proposals. From our experience with the DI legislative process, Professors Potuto, Dillon and Clough all knew that defeated proposals often reappear in a subsequent legislative cycle and also that adopted proposals often return thereafter for “tweaking.” One example, already discussed, relates to the opportunity of men’s basketball student-athletes to enter the NBA draft and yet preserve the opportunity to continue eligible for college competition. Proposals related to skill instruction offer another example. There has been an effort over time to contain skill instruction so as to avoid it constituting additional mandatory practice. Proposal 2005-136, which would provide skill instruction for more than four student-athletes at a time, was defeated. Proposal 2005-141, which would permit skill instruction for more than four student-athletes at a time if conducted in separate facilities, also was defeated. The concept reappeared with Proposal 2008-45 and once again was defeated.

Close review of seven consecutive years of proposals underscores the need to curtail these occurrences. One way might be simply to limit the number of proposals that may be introduced by a conference in a legislative cycle. We believe a better way would be to prohibit a proposal from being resubmitted for four successive legislative cycles unless the Legislative Council classifies it as an emergency proposal. There would need to be a process to decide whether a new proposal was different from one submitted within the prior four years. The burden would be on a proposal’s sponsor to demonstrate that it is different in salient ways. The

Legislative Council would make the final decision, possibly on a vote of a super majority (75 percent, the same percentage used to adopt non-controversial and emergency proposals).

c. Proposals with Subparts. Proposals often have several subparts; some that advance core values and some that do not. Enforcing a blanket one-subject per proposal requirement would result in a cumbersome and inefficient process. There also may be situations – these often occur on working group proposals – in which subparts of a proposal need to be voted on as a whole either to enhance the likelihood of an affirmative vote or because the subparts reflect a carefully constructed interworking of competing considerations. Nonetheless, it might be worthwhile to create a process by which proposals would be evaluated to decide if they could be divided into separate proposals.

d. Modifying Legislative Cycles. To curtail overregulation and also replicative proposals, it might be worth considering an every-other-year legislative cycle except for proposals that the Legislative Council classifies as emergency or non-controversial.

### 3. Transparency

Full transparency requires a system of recording and archiving all legislative records, including governance group agendas, reports, and actions. Although Management/Legislative Council documents generally are available on the LSDBi, tracking action on proposals is not always easy.

The NCAA does not record Management/Legislative Council votes in any consistent pattern, either by legislative proposal or by grouping conference votes by subdivision.<sup>102</sup> Proposals are not necessarily organized in numerical order either for Management/Legislative Council voting or when posted on the LSDBi. Even alternative versions of a proposal may not be grouped together.

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<sup>102</sup> We also discovered errors in conference subdivision designation between the FCS and NoFB. See infra,

Unanimous votes are not always easy to locate. Conference voting records on emergency and non-controversial proposals are not accessible prior to 2010. Often votes on non-controversial and emergency proposals are taken by voice Management/Legislative Council vote in October, with no record of the votes recorded. Similarly, there apparently may be a voice vote at the October meeting with regard to inclusion of proposals in a consent package (proposals preliminarily supported).

Few, if any, Management Council agendas are archived, and many of its Reports also are not. Tracking votes on proposals from Management/Legislative Council sessions is arduous. We are indebted to NCAA staff<sup>103</sup> for their assistance. Without it, there would have been a number of proposals for which we would not have found a record of conference votes.

The above discussion underscores the need for a more transparent NCAA recording of votes to make them more readily accessible and searchable.

#### C. Conclusions, Limitations, Further Study: in General

##### 1. Reasons for Adopting or Defeating Proposals

The reason a proposal is defeated is highly relevant to an assessment whether proposal votes reflect adherence to core values. It also is relevant to why and when DI subdivisions depart from them. For example, legitimate monitoring concerns by compliance staff are, in our opinion, very different from resource reasons for adopting or defeating a proposal. We did not include a coding category that encompassed the reasons for final action on a proposal. We suggest that this is a prime area where further research is warranted.

##### 2. Summary Cost and the BCS FBS

As described above, summary cost was not a significant factor in BCS FBS voting overall but was significant in the three years of the Legislative Council that were included in this

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<sup>103</sup>In particular, we are indebted to Leland Zeller, NCAA Associate Director of Academic and Membership Affairs.

Study (2008-09, 2009-10, 2010-11). We speculate that this might reflect the impact of the arms race in athletic spending, particularly with the downturn in the economic climate in the latter years of our Study. Another potential factor might be the decrease in funding for higher education and general state support for public institutions. Athletic spending, particularly in BCS FBS institutions, is a frequently voiced concern. Further research into the voting behaviors of BCS FBS institutions might surface helpful information. Matching these behaviors against national and regional economic data might provide useful context. So too would matching these behaviors against data on higher education funding.

### 3. Non-Controversial and Emergency Proposals.

For reasons discussed supra, we believe that the commitment of DI overall to student-athlete well-being and academic standards may be understated in this Report due to the exclusion of non-controversial and emergency proposals. Analysis of the votes on these proposals might provide a better indication of the level of DI commitment to these core values.

### 4. Override Votes

We did not evaluate override votes to see which institutions cast override votes different from their Conference vote in the Management/Legislative Council. Although there are an insufficient number of override votes in any legislative cycle (or in a cohort of legislative cycles) to permit statistical analysis, a qualitative analysis might be employed to evaluate whether there are patterns that predict when, and which, institutions depart from a Conference Management/Legislative Council vote or which subject areas or coding categories seem to trigger such departures.

## 5. DI Board Action

a. To Reverse Management/Legislative Council. The DI Board has plenary authority with regard to legislation. Proposals adopted by the Management/Legislative Council may be defeated by the DI Board or remanded by it for further action. Formally, proposals defeated by the Management/Legislative Council are not forwarded to the DI Board for action. Nonetheless, and without regard to formal processes that treat a decision to defeat as final, the DI Board may “resurrect” a defeated proposal. Practically, the DI Board rarely reverses Management/Legislative Council action. A prime reason is that it can resurrect a defeated proposal only if the proposal is called to its attention in some way. Although unlikely, this can occur. An example is Proposal 2004-145, a women’s basketball proposal that was defeated by the Management Council in April 2004 but ultimately adopted by the DI Board. There is no record of the reason for the DI Board action. Our best guess is that the Board adopted it because a similar proposal (Proposal 2004-145) was adopted in men’s basketball.

The focus of our Study was to analyze DI voting by the Management/Legislative Council. In consequence, we did not analyze DI Board action that reversed decisions of the Management/Legislative Council. This is an area that might warrant further study.

b. To Initiate and Then Adopt Proposals. As noted, we neither analyzed DI Board proposals nor attempted a comparison between DI Board action and that of the Management/Legislative Council. Of late, the DI Board has become increasingly active in circumventing the regularized legislative process by initiating and then adopting proposals. This is an area that might warrant at least a qualitative analysis.

## 6. Institutional Differences within Conferences

There are aspects of Management/Legislative Council processes that were outside the scope of our Study but that nonetheless might be interesting to pursue. One example is an analysis of the votes of institutions within FBS conferences to see if there are patterns among institutions based on size, student profile, mission or resources that are masked by Conference voting. These patterns might surface voting differences between higher and lower resourced institutions that are not apparent from analysis of Conference voting. Such an analysis also might provide information regarding the extent to which a conference representational voting structure may subvert institutional interests, including perspectives on core NCAA values. That said, we are not certain there are ways to assess institutional votes within conferences. We doubt conferences keep records of institutional voting over time. Although votes in the Management/Legislative Council name the representative who voted, it is doubtful that these votes reflect the institutional position of the representative.

All Conferences charge their representatives to vote Conference perspectives and, for at least some of the conferences, Management/Legislative Council votes may be directed by Conference majority positions on legislation. When Professors Potuto and Dillon represented the Big 12 Conference on the Management Council, for example, we were free to exercise independent voting judgment only when the Conference vote was divided 6 to 6. In an exceptional case (advice from the NCAA general counsel that a particular proposal would put the NCAA at significant litigation risk, for example) we could depart from a majority Conference position, but we then had to inform the Conference governance groups at the next available opportunity.

All that said, we offer a couple of comments. First, representatives from Conferences with less stringent rules for how its representatives must vote might have voted their institutional (or governance position – FAR, AD, SWA) preferences. Second, even in Conferences with directed voting, a Management Council representative whose institution’s vote helped form the Conference majority position on a proposal could switch the vote of his institution if persuaded by Management Council discussion. If the Conference vote had been close (7 to 5 for the Big 12 Conference, for example), such a vote switch could change the Conference position so as to free the Management Council representative from a directed Conference vote. Third, matters regularly came up that were not anticipated by prior Conference votes. Here, the different perspectives of the Management Council representatives arising out of institutional (or positional) differences might have informed discussion of policy yet to be reduced to legislative form. Fourth, discussion reflecting various perspectives at the preliminary Management Council meeting would have informed subsequent Conference discussion and might have affected Conference final positions on legislative proposals.

The possibility of different perspectives informing discussion and affecting ultimate votes raises the issue of the breakdown by governance position of Management Council representatives. There were 49 voting members of the Management Council in each of the four years of our Study. Over that time, on average there were six faculty athletics representatives,<sup>104</sup> 17 from Conference offices,<sup>105</sup> and 26 campus athletic administrators,<sup>106</sup> typically the director of athletics or senior woman administrator.

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<sup>104</sup> Six in 2004-05 and 2005-06, 7 in 2006-07; 5 in 2007-08.

<sup>105</sup> 17 in 2004-05; 16 in 2005-06 and 2006-07; 20 in 2007-08.

<sup>106</sup> 26 in 2004-05 and 2006-07; 27 in 2005-06; 24 in 2007-08.

## 7. Conference USA

Conference USA is not a BCS FBS conference but over the seven legislative cycles in our Study Conference USA always had the same number of votes as the BCS FBS conferences. It might be interesting to evaluate whether the analysis of BCS FBS and nonBCS FBS votes would be different if Conference USA were included with the six BCS FBS conferences.

## 8. Reputed Coach Behavior in Recruiting

Coach behavior in recruiting prospects to a campus and then “running them off” is a topic that has been much discussed over the years. Current discussion is focused on the high number of transfers in men’s basketball.<sup>107</sup> Whether student-athlete transfers are the product of “bad” coach behaviors, however, is a difficult matter to assess. Similarly difficult to assess is whether and in what circumstances a transfer inures to the benefit of a student-athlete.

Most student-athletes attend an institution because they believe it is a good fit both academically and athletically. They want a college degree, but they also want to compete in a sport while enrolled. If a coach makes a good faith, but mistaken, evaluation that a prospective student-athlete will make a team, should not the student-athlete be able to transfer? Is it fair to describe this as “running off” the student-athlete? Similarly, a change in head coach may bring with it a change in playing schemes and philosophy; players recruited under a different system may no longer fit in the new one. If they seek to transfer, is this a decision to be discouraged through bylaws?

No doubt it is a different situation if a coach regularly recruits several prospective student-athletes with the expectation that after one year their scholarships will be offered to another round of recruits. The opportunities these student-athletes had when initially recruited

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<sup>107</sup> A year-long evaluation of NCAA transfer policy is now underway, with the Legislative Council acting as “point person” and anticipated DI Board adoption of bylaw changes in August 2013.

may be much reduced when they seek to transfer. And in any event there may be a detrimental impact on student-athlete academic progress attendant on transfer.

Consider Proposal 2004-112-D, which would not charge a student-athlete with a season of competition for athletic participation in preseason. It certainly could be argued that the proposal advances student-athlete well-being by giving a prospective student-athlete a chance to make her first choice of team and institution and then to move without consequence to another choice should the first choice opportunity not pan out. We nonetheless coded the proposal NO for student-athlete well-being because we think it unduly increases a coach's opportunity to try out a prospective student-athlete in circumstances in which the prospective student-athlete may be ill-placed realistically to evaluate her chance to make the team.

Not only is it difficult to assess qualitatively whether and in what circumstances recruiting behaviors lead to transfers that are a net negative to prospects, but there also are other impacts attendant on transfers – team stability; effect on coach ability to discipline student-athletes for misconduct; etc. These also are difficult to assess. For all these reasons, we believe that further study of the landscape might be helpful to attempt to parse out circumstances and achieve a better and more certain way to evaluate proposals with impact on recruiting behavior.

## **XI. Methodology: Classification, Coding, Vote Tabulation, Statistical Analysis**

This Study involved a qualitative evaluation of legislative proposals for their impact on coding classification categories. Study reliability thus relied on inter-relater reliability in identifying and categorizing legislative proposals. A multi-stage process was employed to achieve reliability.<sup>108</sup>

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<sup>108</sup> In our grant proposal we said that we would involve students in a Governance of Intercollegiate Athletics graduate class as an element to achieve inter-relator reliability. In the event, their coding did not enhance reliability and we involved the students only in coding two legislative cycles. See Appendix V.

## A. Coding Legislative Proposals: The Pilot

Professor Dillon and Ms. Sherraine Pencil (Project Research Assistant)<sup>109</sup> took the first stab at operationalizing the Research Questions and Data and Methodology set forth in our Knight Commission grant proposal. With the concurrence of Professors Potuto and Clough, Professor Dillon selected the 2005-06 legislative cycle as a pilot year to test the implementation of coding principles and classification categories. A prime reason to select 2005-06 was that it was reasonably representative of other legislative cycles with respect to the number and diversity of proposals involving student-athlete well-being and the amateur (collegiate) model. Another reason was that 2005-06 included an override of adopted proposals. Finally, we were unsure of the challenges we might face in accessing NCAA records for the text and rationale of archived proposals and concomitant Management Council voting records. It therefore seemed prudent to select as pilot a year when the Management Council adopted proposals so to discover any issues at the outset and early account for them.

Step 1. Professor Dillon created initial classification categories and coding principles for student-athlete well-being, amateurism (professional activities), and promotional activities (commercialism) based on NCAA core values as reflected in NCAA purposes and fundamental policies and principles for administering intercollegiate athletics.

Step 2. Ms. Pencil collected the 2005-06 proposals using criteria provided to her by Professor Dillon (11 topical areas on LSDBi).

Step 3. Professor Dillon created a coding spreadsheet that contained initial classification categories for the 2005-06 proposals.

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<sup>109</sup> Ms. Pencil earned her BA Degree in political science and sociology in 2008 from San Diego State University, where she competed in track and field. She served on the campus, conference, and national Student-Athlete Advisory Committees and also on the NCAA Minority Opportunity and Interests Committee. In 2012, Ms. Pencil earned her M.Ed. degree from the University of Oklahoma in Adult and Higher Education – Intercollegiate Athletics Administration. Ms. Pencil was a governance intern in the Big Ten Conference Office in 2009-10 and currently is an assistant compliance coordinator at Michigan State University.

Step 4. Using these initial coding principles, Professor Dillon and Ms. Pencil independently each reviewed and coded each 2005-06 legislative proposal.

Step 5. Professor Dillon and Ms. Pencil compared their coding decisions. Although in general their coding decisions were consistent, they had two areas of disagreement.

1. They disagreed when proposals had subparts that included both academic standards and, more generally, areas of student-athlete well-being outside academics (for example, athletic participation opportunities). The particular area of disagreement was in deciding which subpart interest trumped for purposes of coding the overall proposal. [NOTE. In our final coding principles we eliminated this issue by coding academic standards separately from student-athlete well-being.]

2. The other area of disagreement sat generally in the area of the amateur (collegiate) model. The particular issue was how to code a proposal for student-athlete well-being that enhances ways for colleges and universities to increase revenues by using student-athletes in promotions. Was it a YES for student-athlete well-being because more revenue might equate to more money used to enhance the student-athlete experience? Or was it a NO because of student-athlete involvement in these activities? With Professor Potuto's input, Professor Dillon decided to code these NO. [NOTE. At this point, the negative student-athlete well-being factor related to failure to compensate was not considered.]

Professor Dillon then refined the preliminary coding principles and added cost and revenue classification categories. Professor Dillon then revised the coding spreadsheet.

Step 6. Employing the refined coding principles and revised coding spreadsheet, Professor Dillon and Ms. Pencil again independently coded the 2005-06 legislative proposals.

Step 7. Professor Dillon and Ms. Pencil again compared their coding decisions. Their level of agreement increased. Again, any remaining differences were discussed and resolved. A few additional, minor changes were made to the spreadsheet. At that point, Professor Dillon entered their coding decisions on the revised coding spreadsheet.

Step 8. Professor Potuto then independently coded the 2005-06 legislative proposals on the revised coding spreadsheet. There was a high degree of agreement. Areas of disagreement were flagged and discussed. One area involved the issue discussed at Step 5, #2. We agreed that a potential use of funds for student-athletes was too conjectural to warrant coding. A re-revised set of coding principles was the result.

#### B. Coding Legislative Proposals: The Rest of the Project

Step 1. Ms. Pencil collected the proposals for the six additional legislative cycles to be analyzed in the Study using criteria provided to her by Professor Dillon (11 topical areas on LSDBi).

Step 2. Professor Dillon, Ms. Pencil, and Professor Potuto coded proposals in the 2009-10 legislative cycle using the revised coding spreadsheet and coding principles. As with the Pilot Study, Professor Dillon and Ms. Pencil independently reviewed and coded the legislative proposals, compared and discussed their independent analyses, and reconciled differences. As with the pilot, Professor Potuto independently coded the proposals and then she and Professor Dillon reconciled any remaining differences.

Step 3. Using the same process described in Step 1, Professor Dillon, Ms. Pencil, and Professor Potuto coded proposals in the 2007-08 legislative cycle.

Step 4. Professors Dillon, Clough and Potuto conducted a teleconference to review the classification categories and coding decisions for 2005-06, 2007-08, and 2009-10. With

Professor Clough's input, final classifications categories were established and coding principles were further refined.

Step 5. Professor Clough created a preliminary format analysis. Professors Dillon, Clough and Potuto conducted a teleconference to review the format analysis.

Step 6. Using the same process described in Step 1 and the re-revised coding principles and spreadsheet, Professors Dillon and Potuto then evaluated and codified legislative proposals in the remaining four years of the sample. In so doing, Professors Dillon and Potuto repeatedly reassessed coding principles as proposals posing new issues were reviewed and evaluated. Professors Dillon and Potuto conducted three additional teleconferences to review proposals in the remaining legislative years and to make final decisions regarding coding principles. They then reviewed coding decisions for all seven years in the sample to assure that coding principles were consistently applied.

### C. Vote Tabulation

#### 1. Regular Legislative Cycle

Step 1. Ms. Pencil collected voting records for the Management/Legislative Council as well as institutional and conference override voting records for all seven legislative cycles in the sample.

Step 2. Professor Dillon reviewed Management/Legislative Council voting records and identified all proposals within the scope of the Study.

Step 3. Professor Dillon tracked final votes on all proposals within the scope of the Study (we recorded only final votes). She used the final Management/Legislative Council votes from the April meeting. When there was no April vote, Professor Dillon reviewed votes taken at the January meeting. Proposals for which an April vote might be missing included tabled proposals

voted on in a subsequent legislative cycle, non-controversial and emergency proposals for which final votes were taken in January, and proposals defeated in January.

Step 4. Diann Schiessler, the project administrative assistant, created a vote tally spreadsheet for each of the seven legislative cycles that set forth each legislative proposal and the votes by conference for each proposal. Votes were organized by (a) the FBS, (b) the FCS, (c) the NoFB, and (d) the six BCS FBS conferences and the five nonBCS conferences.

Step 5. Ms. Schiessler recorded votes by subdivision and by BCS FBS and nonBCS conferences showing weighted voting for the Management Council (votes by individual conference representatives and conference totals) and one-conference/one-vote for the Legislative Council

Step 6. Professor Clough combined the coding and vote tally spreadsheets. He created unweighted voting tallies for the Management Council and, using the appropriate multiplier (3, 1.5, 1.2), weighted voting for the Legislative Council.

Step 7. In the first two legislative cycles for which we reviewed proposals, no conference switched subdivisions. We erroneously assumed that no such subdivision switches occurred.<sup>110</sup> We subsequently learned that for all years of our Study we had misidentified subdivision affiliation of the Big West and Missouri Valley Conferences<sup>111</sup> and for some years we had misidentified the Atlantic-10 and Colonial Athletic Conferences.<sup>112</sup> The extent to which a NoFB or FCS vote might be skewed due to these subdivisional affiliation errors was a maximum of

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<sup>110</sup> For a list of the errors, see note 92 *supra*.

<sup>111</sup> The Big West Conference was in the NoFB all the years of our Study. Phone conversation between D.Schiessler and Rob Halveck, Deputy Commissioner, Big West Conference (9/10/2012); email to J.R.Potuto from Rob Halveck (9/13/2012). The Missouri Valley Conference was in the NoFB all the years of our Study. Email to J.R. Potuto from Andi Myers, formerly Director of Athletics, Indiana State University (Missouri Conference member) (9/10/2012); phone conversation between D. Schiessler and Patty Viverito, Senior Associate Commissioner, Missouri Valley Conference (9/10/2012); emails to J.R. Potuto from Patty Viverito (9/11/2012; 9/13/2012).

<sup>112</sup> The Atlantic-10 Conference was in the FCS until 2007-08 legislative cycle and then in the NoFB. Email to J.R. Potuto from Jackie Campbell, NCAA Director of Division I, and formerly Assistant Commissioner, Atlantic-10 Conference (9/10/2012); email to J.R. Potuto from Tom Yeager, Commissioner, Colonial Athletic Conference (9/10/2012). The Colonial Athletic Conference was in the NoFB until 2007-08 legislative cycle and then in the FCS. Emails to J.R. Potuto from Tom Yeager, Commissioner, Colonial Athletic Conference (9/12/2012; 9/14/2012).

three votes (unweighted) for any given proposal year. Professor Clough reviewed the database and reported that 103 proposals might be affected.

Step 8. Using information from the conferences whose subdivisional affiliation initially was misidentified, Professor Clough corrected the FCS and NoFB information on the annual voting record tally spreadsheets.

Step 9. Professor Clough revised the Study database spreadsheets to reflect the revisions to the voting record tally spreadsheets.

Step 10. Based on the revised database and voting record tally spreadsheets, Professor Clough repeated the statistical analysis and transferred the revised results to the tables in the body of the Report and in the appendices to the Report. The statistical analysis provided herein is based on the revised results.

Step 11. Professors Dillon and Potuto provided a qualitative analysis focused on proposals for which there were insufficient numbers on which to base a statistical analysis.

Step 12. After we discovered the conference subdivisional affiliation errors, Professor Dillon and Ms. Schiessler reviewed and manually corrected all voting errors attendant on the conference subdivisional affiliation errors. Professors Dillon and Potuto then revised the numbers reported in our initial qualitative analysis of proposals and, where needed, Professor Potuto revised the consequent discussion.

## 2. Override Votes

a. The Coding Principle. For a DI override vote to succeed, 62.5 percent of those voting must vote YES. On occasion, a school or conference votes to abstain. We coded abstentions as NO votes for two reasons. First, because an abstention has the effect of a NO vote. Second, because a school that abstained nonetheless took the trouble to vote, and we assumed the

abstaining school understood the voting rules. We did not count a failure to vote as a NO vote as we had no way to assess why a conference<sup>113</sup> or institution failed to vote. Asleep at the switch? Weak support of the proposal? Confidence the override would not succeed?

**b. Override Vote Methodology**

Step 1. Professor Potuto reviewed all override votes to assure that those included on the spreadsheet were proposals that were coded on a coding spreadsheet for the corresponding Management/Legislative Council legislative cycle.

Step 2. Ms. Schiessler prepared spreadsheets for each proposal that set forth the classification categories and recorded the override votes by institution and conferences.

Step 3. Professor Potuto entered the voting tallies on the override spreadsheets.

Step 4. Ms Schiessler prepared a list of all override votes with breakdown by subdivisions and by BCS FBS and nonBCS FBS. After we discovered the conference subdivisional affiliation errors, Professor Dillon reviewed and corrected, as needed, the subdivisional breakdown of override votes.

**D. Statistical Analysis**

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<sup>113</sup> In override votes, each conference has a vote separate from the vote of its members.