



MEMORANDUM

November 8, 2021

VIA EMAIL

TO: NCAA Membership

FROM: Robert M. Gates
NCAA Constitution Committee Chair

SUBJECT: Draft of the new NCAA constitution.

For the last three months, the Constitution Committee has worked to restructure the governance of college sports for the benefit of student-athletes for years to come. As has been the case throughout this process, NCAA member feedback on the draft reform constitution is vital to the Association's success.

The accompanying draft constitution includes a number of new concepts even as it codifies certain existing priorities and principles in the NCAA constitution for the first time. The draft recognizes that the NCAA encompasses public and private institutions and conferences of widely varying mission, size, resources and opportunities, and that governance must reflect these differences through the delegation of authorities and responsibilities to the divisions, conferences and member institutions.

Among the new concepts are the following:

- One constitution across all three divisions at about one-fourth the length of the current constitution.
- Clearly stating the Association's priorities.
- Providing the divisions the authority and autonomy to reorganize and restructure themselves.
- Streamlining decision-making authority on Association-wide issues to a Board of Governors reduced from 21 members to nine.
- For the first time, the board and each of the divisional leadership bodies will include student-athletes as voting members.

The new constitution defines the priorities and principles important to college sports as a part of higher education. The draft:

GATES MEMBERSHIP MEMORANDUM

November 8, 2021

Page No. 2

- Embraces name, image and likeness benefits for student-athletes while prohibiting pay-for-play.
- Reaffirms existing revenue allocations and championship opportunities for each division and assures that each division has oversight of its own budget, expenditures and revenue distribution to its members.
- Explicitly affirms the importance of student-athlete mental as well as physical health.
- Reaffirms that responsibility for institutional control rests with the president or chancellor.
- Provides new emphasis on diversity, inclusion and gender equity.

The Committee believes this proposed constitution will well-serve the 1200 member schools and conferences and more than 500,000 student-athletes who compete in NCAA sports every year.

We look forward to your feedback on the draft and to working with you in supporting student-athletes today and in the future.

RMG:krf

Enclosures

NCAA Constitution

Preamble

The National Collegiate Athletic Association is a voluntary, self-governing organization of four-year colleges, universities and conferences committed to the well-being and development of student-athletes, to sound academic standards and the academic success of student-athletes, and to diversity, equity and inclusion. Member institutions and conferences believe that intercollegiate athletics programs provide student-athletes with the opportunity to participate in sports and compete as a vital, co-curricular part of their educational experience. The member schools and conferences likewise are committed to integrity and sportsmanship in their athletics programs and to institutional control of and responsibility for those programs. The basic purpose of the Association is to support and promote healthy and safe intercollegiate athletics, including national championships, as an integral part of the education program and the student-athlete as an integral part of the student body.

Article 1. Principles

- A. The Primacy of the Academic Experience.** Intercollegiate student-athletes are matriculated, degree-seeking students in good standing with their institutions who choose voluntarily to participate in NCAA sports. It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted with the appropriate primary emphasis on the student-athlete's academic experience. Intercollegiate athletics programs shall be maintained as a vital

component of each institution's broader educational program. The admission, academic standing and academic progress of student-athletes shall be consistent with the policies and standards adopted by the institution.

- B. The Collegiate Student-Athlete Model.** Student-athletes may not be compensated by a member institution for participating in a sport, but may receive educational benefits and benefit from commercialization through use of their name, image and likeness in accordance with guidelines established by their NCAA division.
- C. Integrity and Sportsmanship.** It is the responsibility of each member to conduct its athletics programs in a manner that promotes the ideals of higher education, human development and the integrity of intercollegiate athletics. All individuals associated with intercollegiate athletic programs and events should adhere to such fundamental values as respect, fairness, civility, honesty, responsibility, academic integrity, ethical conduct, and the rules of their respective conferences.
- D. Student-Athlete Well-Being.** Intercollegiate athletics programs shall be conducted in a manner designed to protect, support and enhance the physical and mental health and safety of student-athletes. Each member institution and conference shall facilitate an environment that reinforces physical and mental health within athletics by ensuring access to appropriate resources and open engagement with respect to physical and mental health. Each institution and conference is responsible for ensuring that coaches and administrators exhibit fairness, openness and honesty in their relationship with student-athletes. Student-athletes shall not be discriminated against or disparaged because of their physical or mental health. Institutions, conferences, administrators and

coaches shall protect student-athletes from physical and mental abuse, neglect and undue harm.

- E. **Institutional Control.** It is the responsibility of each member institution to monitor and control its athletic programs and to provide education and training to ensure compliance with the rules established by the Association, its division and conference. Responsibility for maintaining institutional control ultimately rests with the institution's campus president or chancellor.
- F. **Compliance.** It is the responsibility of each member institution to report all rules violations to its respective NCAA division and conference in a timely manner and to cooperate fully with enforcement efforts.
- G. **Diversity and Inclusion.** The Association is committed to diversity and inclusion. Divisions, conferences and member institutions shall create diverse and inclusive environments and shall provide education and training with respect to the creation of such environments and an atmosphere of respect for and sensitivity to the dignity of every person. Divisions, conferences and member institutions shall commit to promoting diversity and inclusion in athletics activities and events, hiring practices, professional and coaching relationships, leadership and advancement opportunities.
- H. **Gender Equity.** The Association is committed to gender equity. It is the responsibility of each division, conference and member institution to comply with federal and state laws regarding gender equity. Activities of the Association, its divisions, conferences and member institutions shall be conducted in a manner free of gender bias. Divisions, conferences and member institutions shall commit to preventing gender bias in athletics

activities and events, hiring practices, professional and coaching relationships, leadership and advancement opportunities.

- I. **Recruiting Standards.** Division by-laws shall be designed to promote informed decisions and balance the interests of prospective and current (or transfer) student-athletes, their educational institution and intercollegiate athletics as a whole.

Article 2. **Organization**

A. The Association

1. The membership of the NCAA encompasses public and private institutions and conferences of widely varying mission, size, resources and opportunities. Accordingly, Association-wide governance must reflect these differences through the delegation of authorities and responsibilities to the divisions, conferences and individual member institutions except where necessary to promote and maintain the Association's core principles.
2. The Association shall:
 - a. Conduct all NCAA championships. Each member in good standing in its division shall be eligible to compete in NCAA championships assuming it meets applicable Association, division and conference requirements. The Association shall oversee broadcasting, communications and media rights for all NCAA-conducted national championships.
 - b. When requested by a Board of Governors recognized committee or the Committee on Competitive Safeguards and Medical Aspects of Sports, develop and promulgate guidance, rules and policies based on consensus of

the medical, scientific, sports medicine and sport governing communities, as appropriate, for student-athlete physical and mental health, safety and performance. The Association shall make available such guidance, rules and policies to all members.

- c. Promote gender equity, diversity and inclusion in all aspects of intercollegiate athletics.
- d. Establish the rules for sports competitions and participation, with flexibility at the division, sub-division or federated level as deemed necessary.
- e. Manage the Association's intellectual property and maintain historical and statistical records of the Association.
- f. Serve as liaison to the United States Olympic and Paralympic Committees.
- g. Defer to other regulating bodies the investigation of and sanctions against school and school representatives' conduct that violates other regulating body or legal standards (e.g., Title IX violations that may also violate NCAA gender equity principles or academic accreditation standards that may violate NCAA academic principles). After final determination by a regulating body or court of school and school representative misconduct, the NCAA Board of Governors or division Board of Directors or Presidents Council may issue a public censure or take disciplinary action.

3. The Board of Governors:

- a. Composition of the board shall include, with due attention to diversity and gender equity, the following voting members:

- (i) Four members from Division I, to include at least one member institution president or chancellor and one conference commissioner.
- (ii) One member from the Division II Presidents Council.
- (iii) One member from the Division III Presidents Council.
- (iv) Two independent members who are not currently employed or compensated by any member institution.
- (v) One graduated NCAA student-athlete, who shall have graduated not more than four years prior to appointment.
- (vi) Ex officio non-voting members of the board shall comprise the NCAA president, the chairs of the Division I Council and Division II and Division III Management Councils, the president of one Historically Black College and University (HBCU), and one former NCAA student-athlete from each of the two divisions not represented by the student-athlete voting member of the board, who shall have graduated not more than four years prior to appointment.

b. Selection of members of the Board of Governors.

- (i) Division I members of the Board of Governors shall be appointed by the Division I Board of Directors; Divisions II and III members of the Board of Governors shall be appointed by the Division II and III Presidents Councils, respectively.
- (ii) Independent members of the Board of Governors shall be selected by the Division I, II and III members of the Board of Governors.

- (iii) Each divisional Student-Athlete Advisory Committee shall nominate one graduated student-athlete member for the Board of Governors. One of those nominees shall be selected by the other eight members of the board to be a voting member. The other two nominees shall be ex officio members of the board. (See Article 2.A.3.a.(vi) above.)
 - (iv) The HBCU ex officio member of the board shall be selected by the Division I, II and III members of the board.
- c. Each member of the board shall have a two-year term, renewable for an additional two years.
- d. Duties and responsibilities:
 - (i) Provide final approval and oversight of the Association's budget, internal and external audits, enterprise risk management, strategic planning, allocation of assets and establish policies related to fiduciary responsibility;
 - (ii) Employ the Association's president, who shall be administratively responsible to the Board of Governors. Annually evaluate the president and approve employment terms, including but not limited to compensation, benefits, discipline and termination.
 - (iii) Monitor adherence by the divisions to the principles in Article I and act on behalf of the Association to resolve issues that may arise in that regard consistent with the policies and procedures of the Board of Governors.

- (iv) In consultation with the leadership of the divisions, adopt and implement legal strategy, Association risk mitigation, and government relations and policy matters that affect the Association as a whole.
- (v) Provide Board of Governors meeting agendas in advance to the chair of the Division I Board of Directors, and chairs of the Division II and III President's Councils to solicit comment and advice, and report fully to the same individuals board actions. For matters pertaining primarily to one division, the board will consult with and solicit comment from that division's Board of Directors or President's Council with due attention to its views.
- (vi) May create an executive committee and other committees or bodies to fulfill the duties and responsibilities of the board.
- (vii) Formulate policies and procedures consistent with this Constitution.
- (viii) Convene at least one combined meeting per year of the divisional presidential governing bodies.
- (ix) Convene at least one same-site meeting per year of the Division I Council and the Division II and Division III Management Councils.
- (x) Sponsor proposed amendments to the Constitution to the entire membership for a vote.
- (xi) Call for a vote of the entire membership on the action of any division that it determines to be contrary to the basic purposes and general principles set forth in the Association's Constitution. This action may

be overridden by the Association's entire membership by a two-thirds majority vote of those institutions voting.

(xii) Call for an annual or special convention of the Association.

e. Duties and responsibilities of the NCAA president:

(i) Administer the national office to implement directions of the Board of Governors and divisional leadership bodies.

(ii) Enter into, administer and enforce all Association contracts, including but not limited to media rights and revenue producing agreements and initiatives of the Board of Governors and divisional leadership bodies.

(iii) Oversee and direct regulatory and disciplinary processes, including discretion, in consultation with the Board of Governors, to determine consequences for an action or statement by an institution or its representatives that materially violates a constitutional principle and undermines the interests of the Association.

(iv) Undertake other actions necessary to accomplish the purposes of the Association as determined by the Board of Governors and divisional leadership bodies.

(v) Serve as an ex officio member of the Board of Governors with authority to vote in instances when the vote of the board results in a tie.

B. The Divisions

1. Each division shall have independent authority to organize itself, consistent with the principles of the Association. Each division is authorized to structure itself as it deems necessary, including creation of sub-divisions or creation of a new division and determination of membership eligibility for these new organizations, including the role of conferences. New divisions or sub-divisions must be self-funded by the originating division.
2. Each division shall set standards for academic eligibility.
3. Each division shall determine its own governing structure and membership.
4. Each division shall establish regulations to ensure consistency among member institutions regarding the use of a student-athlete's name, image or likeness and to prevent exploitation of student-athletes or abuses by individuals or organizations not subject to the authority of the student-athlete's school.
5. Each division shall determine the sports in which they run a national championship and the access criteria for participation.
6. Authorities not explicitly enumerated in this Constitution for Association-wide governance are reserved to the divisions or, at their discretion, to sub-divisions, conferences or individual institutions.
7. Each division shall determine the policies under which conferences are formed and operated.
8. Each division shall oversee the operations of its member conferences and their adherence to the principles and provisions in this Constitution.

9. Each division shall ensure its member institutions implement the provisions of Section D below.

C. The Conferences

1. A member conference is a group of colleges and/or universities, created and operated in a manner governed by the policies of their respective divisions, that conducts competition among its members, determines a conference champion in one or more sports in which the NCAA conducts championships, and meets the conference membership requirements established by the divisions.
 - a. Multi-Sport Conferences: Multi-sport conferences are the primary conference members and serve a critical role in Association and divisional governance as they represent the positions of their member colleges and universities.
 - b. Multi-sport conferences shall have voting representation by division and sub-division on NCAA committees, working groups, task forces and other organizational bodies with oversight over Association or division-wide policy.
 - c. Multi-sport conferences must meet all of the specified divisional membership criteria, including number of member institutions, sports sponsorship minimums and regular-season competition requirements.
2. Single-Sport Conferences:

- a. A single-sport conference conducts competition and determines a conference champion among its members in one sport.
- b. Single-sport conferences must meet all of the specified divisional membership criteria for single-sport conferences.
- c. The governance and legislative role for single-sport conferences is limited to issues impacting that sport and subject to the structure and requirements of the respective divisions.
- d. Each division shall have the authority to determine the membership requirements for multi-sport and single-sport conference members and the role and representation of multi-sport conference members in the respective divisional governance structure.

3. All conferences must:

- a. Adhere to the principles and provisions in this Constitution and those established by their division, including in the conduct of athletics events.
- b. Each conference shall maintain written policies for its licensing, marketing, sponsorship, advertising, and other commercial agreements that may involve use of a student-athlete's name, image or likeness. Each conference shall provide such policies to student-athletes and to their respective division.
- c. Member conferences shall comply completely and promptly with the rules and regulations governing the enforcement process and shall

cooperate fully in the process as a condition of membership in the Association.

4. Each conference shall support its member institutions in implementing the provisions of Section D below, subject to guidance from its division.

D. Member Colleges and Universities

1. All members of the NCAA must:
 - a. Ensure participating student-athletes are in good standing with the member institution, the conference, division and national Association.
 - b. Annually submit documentation demonstrating compliance with the division's academic program and publish progress-toward-degree requirements for student-athletes.
 - c. Submit annually to the division and the NCAA their financial data detailing operating revenues, expenses and capital relating to the intercollegiate athletics program.
 - d. Establish an administrative structure that provides independent medical care for student-athletes, affirms the autonomous authority of primary athletics health care providers, and implements NCAA guidance, rules and policies based on consensus of the medical, scientific, sports medicine, and sport governing communities. Schools shall provide care consistent with prevailing consensus. The physicians and health care staff at each member institution have the ultimate decision-making authority over the health and welfare of student-athletes. Consistent with the member institutions' primary

obligation with respect to student-athlete health and safety, member institutions will make NCAA guidance, rules and policies available to student-athletes. Member institutions shall be responsible for the oversight and administration of coach, administrator and staff education on relevant student-athlete physical and mental health topics, prevailing consensus for engaging student-athletes about physical and mental health, how to most effectively support student-athlete physical and mental health, and appropriate resources on campus or in the local community. Member institutions are responsible for regulating practice schedules, taking into consideration the health of student-athletes and their academic success.

- e. Each institution shall maintain written policies for its licensing, marketing, sponsorship, advertising and other commercial agreements that may involve the use of a student-athlete's name, image or likeness. Each institution shall provide such policies to student-athletes and to its respective conference and division.
- f. In furtherance of institutional commitments to student-athletes and to support diversity, equity, and inclusion, each institution shall appoint separate individuals who have the following designations: Faculty Athletics Representative; Senior Woman Administrator; Athletics Healthcare Administrator; and Athletics Diversity and Inclusion Designee. Each institution will have the flexibility to assign duties associated with each position that best serves the needs of the institution and student-athletes.

Division III will receive 3.18% of all operating revenue sources, as agreed on January 9, 1996.

- B. All Division II and Division III member schools and conferences shall receive services from the national association. Each division may choose to support additional service needs through their divisional budget. An annual review will be conducted to validate the additional Association service expenses that Divisions II and III pay for directly out of their allocation.
- C. All members shall pay Association-wide membership dues set by the Board of Governors on an annual basis that contribute to the NCAA budget.
- D. Each division shall have oversight and final approval of its own budget and expenditures and the division's revenue distribution to its members.
- E. Divisions may levy assessments on their members, which can be allocated to the division budget. Any division levy or increase in division membership dues by an individual division can be kept and allocated by said division acting independently of the Association or other divisions.

Article 4. Rules, Compliance and Accountability

- A. Each member institution, consistent with the principle of institutional control, shall hold itself accountable to support and comply with the rules and principles approved by the membership. Further, each school shall ensure that its staff, student-athletes, and other individuals and groups representing the institution's athletics interests comply with applicable rules (institutional, conference, divisional and NCAA-wide) in the conduct of the institution's intercollegiate athletics programs.

- B. Each division shall determine the methods of investigation and adjudication to hold accountable its members whose representatives engage in behaviors that violate the rules and principles approved by the membership.
1. Those accountability measures shall identify the people who engage in investigation and adjudication and define their operating authority.
 2. The measures shall be designed to prioritize integrity and fair play, provide fair investigative and adjudicatory procedures and prescribe appropriate penalties in a timely manner.
 3. Member institutions shall cooperate fully in all accountability measures established by the applicable division and shall take all necessary measures to ensure the cooperation of their staff, student-athletes, and institutional representatives.
 4. Institutions may also agree to compliance with, enforcement, and adjudication of rules at the conference level.
 5. Division and, as appropriate, conference regulations must ensure to the greatest extent possible that penalties imposed for infractions do not punish programs or student-athletes innocent of the infraction(s).
 6. Investigation of alleged infractions and, if appropriate, sanctions or penalties, by a division or conference should be consistent and timely. Decisions with respect to minor infractions should be prompt and proportionate.

7. Each division shall annually report to the NCAA Board of Governors all major infractions as defined by each division during the preceding year, the status of investigations, and penalties imposed.

Article 5. Amendments to the Constitution

- A. Provisions of the NCAA constitution may be amended only at a special or annual convention. The membership shall receive reasonable notice of proposed amendments. An amendment may be sponsored by the Board of Governors or by a two-thirds vote of a divisional leadership body. A sponsored amendment shall require a two-thirds majority vote of all delegates present for approval. The chair of each divisional Student-Athlete Advisory Committee shall be eligible to vote.
- B. Sponsored amendments shall include a statement of intent and rationale. Amendments to amendments may be sponsored as set both above but may not expand the scope of the original amendment. Amendments to amendments shall be approved by a majority vote of all delegates.
- C. Approved amendments shall become effective on the first day of August following adoption, unless another effective date is approved by a two-thirds majority vote of all delegates.
- D. Before the end of a special or annual convention, any member who voted on the prevailing side may move for reconsideration.

Article 6. Institutional Control

- A. The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and the division and conference of which it is a member. A member institution's president or chancellor has ultimate responsibility and final authority for the conduct of the intercollegiate athletics program and the actions of any board in control of that program.
- B. If an institution has an athletics board or an athletics advisory board, administration, faculty members and student-athletes shall constitute at least a majority of the board.
- C. Each institution shall establish a student-athlete advisory committee. Its duties may be established by the institution but student-athletes must constitute a majority of the membership of the committee.